



## **AGENCY ENDOWMENT FUND**

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AGENCY ENDOWMENT FUND AGREEMENT

This Agreement is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the Whitefish Community Foundation, Inc. (“Community Foundation”) a nonprofit Montana corporation and a community foundation and \_\_\_\_\_ a nonprofit Montana corporation (“Agency”) to create an Agency Endowment Fund. All contributions to this fund shall be governed by the terms of this Agreement.

WHEREAS, the Agency, in the furtherance of Agency charitable purposes, deems it to be in the Agency’s best interest to create an Agency Endowment Fund with the Community Foundation;

WHEREAS, the Community Foundation is a nonprofit Montana corporation exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, and is an appropriate entity within which to establish such Agency Endowment Fund; and

WHEREAS, the Community Foundation is willing and able to create such Agency Endowment Fund subject to the terms and conditions hereof.

NOW, THEREFORE, the parties agree to the following terms:

- 1. Name of Fund.** There is hereby established in the Community Foundation a fund designated as the \_\_\_\_\_ Agency Endowment Fund (hereinafter referred to as the “Fund”).
- 2. Purpose of Fund.** The primary purpose of the Fund is to benefit the Agency, which is a qualified charitable organization. The term “qualified charitable organization” as used herein shall mean an organization described in Section 501(c)(3) of the Internal Revenue Code, which is also described in Sections 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code (except for an organization that is Type III and not functionally integrated; and that primarily (more than 50%) benefits Montana communities and citizens. The Fund is intended to further or carry out the nonprofit purposes of the Agency to the extent that those purposes are consistent with the general nonprofit purposes of the Community Foundation. This Fund is a permanent irrevocable fund, as defined by M.C.A. Section 15-30-2327 and the Administrative Rules thereunder, as amended (an “irrevocable fund”). It is intended that gifts to the Fund will qualify for the Montana Charitable Endowment Tax Credit to the extent the donor so elects. Accordingly, all provisions of this Agreement shall be interpreted and applied in a manner that is consistent with this intention. All powers or discretions granted herein shall not be exercised or exercisable except in a manner consistent with this intent.

- 3. Initial Gift.** (check all that apply)
- a. The Agency or a third party donor has or intends to make an irrevocable donation of \$ \_\_\_\_\_ or more in cash or other assets to initiate the Fund. The initial gift shall be equal to or greater than the fund minimum specified in the Agency Endowment Fund Guidelines (the “Guidelines”) attached hereto as Exhibit A.
  - b. A third party donor has or intends to enter into a Gift Annuity Agreement with the Community Foundation. That Gift Annuity Agreement specifies that upon satisfaction of the Community Foundation's obligations under the Gift Annuity Agreement, the balance of the funds contributed pursuant to that Agreement will be distributed to the Fund.

Prior to the time that amounts are contributed to the Fund pursuant to this Section 3a or 3b, the fund minimum shall not apply.

- 4. Additional Gifts.** Any individual, corporation, trust, estate, or other legally recognized entity may make a gift, bequest, devise or other transfer to the Community Foundation for the purposes of the Fund by a transfer to the Community Foundation of cash or other assets acceptable to the Community Foundation for the benefit of the Fund. All additional gifts, bequests, and devises made to the Community Foundation for the benefit of the Fund shall be irrevocable and subject to the terms and conditions of this Agreement. All additional gifts of cash shall be by check, certified check, or money order, payable to the Whitefish Community Foundation, Inc., and shall reference the Fund name on the check memo line. Except as provided herein, the Community Foundation does not solicit contributions to or otherwise provide marketing or fundraising services for the Fund.
- 5. Administrative Authority.** The Community Foundation shall have all powers necessary, or in its sole discretion, desirable to administer and carry out the purpose of the Fund, including, but not limited to, the powers to retain, manage, sell, invest, and reinvest the Fund assets and its income in any manner as authorized by law, and the power to co-mingle the assets of the Fund with those of other funds for investment purposes.
- 6. Distributions.** The amount, manner and frequency of distributions from the Fund will be determined by the Community Foundation's Board of Directors (“Board”) in compliance with the Guidelines in effect at the time of the proposed distribution. The named Advisor of the Agency (as defined herein at Section 12) may advise the Community Foundation with respect to distributions made pursuant to the terms of this Agreement. The Community Foundation shall be authorized to act upon said advice but the advice is solely advisory, and the Community Foundation may accept or reject the advice applying reasonable standards thereto.

If the Agency is dissolved or otherwise fails to be a qualified charitable organization, the Fund shall terminate and any funds remaining in the Fund shall be added to the permanent endowment fund of the Community Foundation.

- 7. Separate Accounting and Reporting.** The Fund shall be accounted for

separately and apart from other funds of the Community Foundation, but shall be co-mingled with other assets of the Community Foundation for investment purposes. The Community Foundation shall provide the Agency at least annually with a written report showing the Fund's contributions, earnings, distributions, and fees. Assets that are contributed to the Fund by the Agency ("Agency Funds") shall be held and accounted for separate from assets that are contributed to the Fund by a third party donor ("Donor Funds").

- 8. Substantiation and Acknowledgment.** Upon accepting transfers of cash or other assets to the Fund from third parties, the Community Foundation will send a letter to the donor acknowledging the contribution. The letter serves as a receipt for tax purposes. The Community Foundation will also notify the Advisor when contributions are received from third party donors. Unless otherwise indicated, the Community Foundation shall consider the donor to be the person or entity identified as the payor on the check or money order.
- 9. Other Reports.** The Community Foundation issues an Annual Report. The Report lists all Agency Endowment Funds held by the Community Foundation. Copies of the Annual Report and information returns (IRS Form 990) are available upon request or on the web site at [www.whitefishcommunityfoundation.org](http://www.whitefishcommunityfoundation.org). The Annual Report includes the names of donors to the Community Foundation and the names of the Agency Endowment Funds at the Community Foundation, but the report does not specifically identify the donors that contributed to each Agency Endowment Fund. The Report may in the future, but does not currently list distributions from the Agency Endowment Funds.
- 10. Community Foundation as Owner of the Fund.** The Fund shall be the property of the Community Foundation and owned by it in its corporate capacity. In such capacity, the Community Foundation shall have the ultimate authority and control of all assets in the Fund, and the income from the Fund for the charitable purposes of the Community Foundation. The assets in the Fund, whether cash or other property, are not held in trust for the Agency. For accounting purposes only, Agency Funds shall be held as a liability of the Community Foundation.
- 11. Compensation to Community Foundation and Other Expenses.** The Community Foundation carries out the distribution and financial reporting responsibilities necessary to maintain the Fund and shall charge the Fund an administrative management fee. The fee is specified in the Guidelines, and the fee may be periodically modified by an amendment to the Guidelines adopted by the Board of Directors of the Community Foundation. Said fee shall be reasonable and in keeping with the fees that community foundations customarily charge.
- 12. Advisors.** An Advisor is a named representative of the Agency who has been appointed by the Agency to advise the Community Foundation as to the desired reinvestment or grants, expenditures, or distributions. The Agency may appoint successor Advisors upon written notification to the Community Foundation of the named successor Advisor. An Agency may name more than one Advisor, but in doing so must disclose if the Advisors must act jointly or may act individually on behalf of the Fund. An Agency may remove an Advisor or successor Advisor by providing written notice of the removal to the Community Foundation and if possible the acknowledgement or acceptance of the removal signed by the

removed Advisor. Any Advisor or successor Advisor must provide written acknowledgement to the Community Foundation of his or her acceptance of the duties of Advisor. All Advisors, whether initial or successor, consent to and agree to be subject to the terms of this Agreement. The initial Advisor(s) are identified in Exhibit B. The Community Foundation shall be entitled to rely upon the written appointment of Advisor as conclusive evidence of the Advisor's authority to make distribution recommendations on behalf of the Agency. If the Agency, Advisor, or successor Advisors are not available or able to act under the terms of this Agreement then the Fund shall terminate and any funds remaining in the Fund shall be added to the permanent endowment fund of the Community Foundation.

- 13. Variance Power.** The Fund is subject to the variance power described in Treas. Reg. Sec. 1.170A-9(f)(11)(v)(B)(1), as amended from time to time. Pursuant to the variance power, the Board shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations, if in their sole judgment (without the approval of any advisor, trustee, custodian or agent) such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community or areas served by the Community Foundation.
- 14. Continuity of the Fund and Default.** Following receipt of the initial gift, it is intended that the Fund continue in perpetuity, or until such time as the value of the assets in the Fund are depleted below the Fund Minimum as set forth in the Guidelines, or distributed to another fund pursuant to Section 6, Section 12, or Section 16.
- 15. Legal Compliance.** The Agency agrees and acknowledges that the establishment of the Fund is made subject to the terms and conditions of the Articles of Incorporation and Bylaws of the Community Foundation, as from time to time amended, and the Guidelines as have been adopted by the Board and thereafter amended from time to time. Notwithstanding anything herein to the contrary, the Community Foundation is subject to and shall hold and administer the Fund and all contributions to the Fund pursuant to the laws of the state of Montana including the Montana Nonprofit Corporation Act and the Montana Uniform Prudent Management of Institutional Funds Act, and shall further be subject to all federal law, including, but not limited to the United States Treasury Department Regulations and the Internal Revenue Code. The Agency shall maintain its status as a qualified charitable organization, exempt from taxation under state and federal law, and shall comply with all applicable federal, state and local laws.
- 16. Dissolution.** If the Community Foundation ceases to be a qualified charitable organization, or if the Community Foundation proposes to dissolve, then the assets of the Fund, after payment or making provision for payment of any liabilities properly chargeable to the Fund, shall be distributed to an irrevocable fund of the Agency; provided, however, that if the Agency is not then a qualified charitable organization or does not have an irrevocable fund, then said assets shall be distributed to the irrevocable funds of such qualified charitable organization or organizations as the Board of Directors of the Community Foundation in its sole discretion determines serves purposes similar to those of the Agency.

- 17. Privacy Policy.** This Agreement is subject to the Privacy Policy of the Community Foundation, a copy of which is available at the Community Foundation office.
- 18. Liability.** The Community Foundation, its officers, directors, employees and agents shall not be liable to the Agency for any loss or damage to the Fund, including, but not limited to any depreciation in the value of the Fund
- 19. Entire Agreement.** This Agreement and the Exhibits attached hereto are the entire Agreement between the parties, and supersede all previous negotiations, commitments, and writings.
- 20. Applicable Law.** This Agreement shall be governed by and construed under the laws of the State of Montana.
- 21. Binding Effect.** This Agreement shall be binding upon the parties, their successors and assigns.
- 22. Severability.** If any term or provision of this Agreement shall be held to be invalid or unenforceable for any reason, that term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms and provisions, and this Agreement shall be construed as if such invalid or unenforceable term or provisions had not been included. In the event that any term or provision is held to be valid or unenforceable, or in the event that any term or provision shall be found to be inconsistent with any policy of the Community Foundation, the Agency and the Community Foundation shall promptly meet to negotiate substitute terms and provisions for those found to be invalid, unenforceable or inconsistent.

IN WITNESS WHEREOF, this Agreement is signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AGENCY

BY: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

WHITEFISH COMMUNITY FOUNDATION, INC.

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

## **Agency Endowment Fund Guidelines**

*These Guidelines are incorporated by reference in the Whitefish Community Foundation Agency Endowment Fund Agreement, and they apply to all Agency Endowment Funds established as a permanent irrevocable fund pursuant to M.C.A. Section 15-30-2327.*

Any Agency Endowment Fund (“Fund”) established with the Whitefish Community Foundation (“the Community Foundation”) shall be subject to the following terms and conditions:

1. **Administrative Fees** – The Community Foundation shall receive a fee for services based on the average quarterly balance in the Fund during each calendar year. Fees are charged quarterly.

- For a Fund with less than a \$30,000 balance, no fee is charged
- For a Fund with a value up to and including \$1,000,000, the annual fee is 1% of the average ending quarterly balance, with a minimum fee of \$100 per year.
- For a Fund with a value over \$1,000,000 the annual fee is .5%.
- If any Agency has more than one fund established with the Community Foundation (including, but not limited to an Agency Fund, and Agency Endowment Fund or an Agency Capital Endowment Fund), the annual fee shall be established based on the aggregate value of all of the Agency’s funds
- Administrative fees will be allocated between Agency Fund accounts and Donor Fund accounts on a proportionate basis

2. **Distributions** – Distributions from the Fund will be made as follows:

Distributions from the Fund will be made upon written request from the Fund Advisor, subject to the following:

The amount of the distribution shall be determined by Community Foundation based on the following factors:

- (a) the duration and preservation of the Fund;
  - (b) the purposes of the Community Foundation and the Fund;
  - (c) general economic conditions;
  - (d) the possible effect of inflation or deflation;
  - (e) the expected total return from income and the appreciation of investments;
  - (f) other resources of the Community Foundation;
  - (g) the investment policy of the Community Foundation; and
  - (h) any other factors deemed relevant by the Community Foundation.
- Upon request of the Fund Advisor or at the discretion of the Community Foundation, any distribution may be reinvested
  - No expenditure shall be made in any year of an amount greater than 6% of the fair market value of the Fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately

preceding the year in which the appropriation for expenditure is made. For a Fund in existence for fewer than 3 years, the fair market value of the Fund must be calculated for the period the Fund has been in existence

- No distribution shall be made while the Fund balance is below \$30,000
3. ***Fund Minimum*** – A Fund may be opened with a \$15,000 minimum. A minimum balance of \$15,000 must be maintained. If the Fund balance at any time is less than \$15,000, the Community Foundation shall give written notice to the Advisor. The Agency shall have 30 days from the date of the written notice to restore the Fund balance to the minimum amount of \$15,000. If the Agency fails to restore the Fund balance to at least \$15,000 within the 30 day period, the Community Foundation shall terminate the Fund and assets of the Fund shall be distributed to the permanent endowment fund of the Community Foundation. Prior to the time that amounts are contributed to the Fund pursuant to Section 3a or 3b of the Fund Agreement, the fund minimum shall not apply.

**4. Amendment** - THESE GUIDELINES MAY BE SUPERSEDED, MODIFIED, REVOKED, REVISED, SUSPENDED OR TERMINATED AT THE SOLE DISCRETION OF THE BOARD OF DIRECTORS OF THE COMMUNITY FOUNDATION AT ANY TIME WITH OR WITHOUT NOTICE.



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Initial Advisor Information and Reporting Form

Reports will be sent at least annually to the Fund Advisors. Reports will be sent to the advisor(s) at the following address(s). Advisor(s) of the Fund will notify the Foundation of any changes.

NAME OF FUND: .....

Advisor Name: .....

Address: .....

City, State, Zip: .....

Telephone

Business: ..... Home: .....

Email: .....

Advisor Name: .....

Address: .....

City, State, Zip: .....

Telephone

Business: ..... Home: .....

Email: .....

If two advisors (Initial one) \_\_\_\_\_ Acting jointly \_\_\_\_\_ Acting jointly or individually

Additional Reports:

Name: .....

Address: .....

City, State, Zip: .....

Signature: ..... (Advisor) ..... (Advisor)

Date ..... Date .....



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**Notice of Change of Agency Endowment Fund Advisor  
(Corporate/LLC/Trust Donors)**

Please complete this form and return it to the Whitefish Community Foundation as soon as possible if there is a change of Advisor for the Fund. Thank you.

Name of Fund: .....

Address: .....

City, State, Zip: .....

Corporate/LLC Position(s) authorized to act as Advisor .....

.....

Name of new Advisor(s).....

Address: .....

City, State, Zip: .....

Telephone: ..... Email: .....

Name of outgoing Corporate/LLC Advisor(s): .....

Signed ..... Date.....  
(Outgoing Advisor)

Signed ..... Date.....  
(New Advisor)

\*Attach authorization of Agency Advisor directing this action.



## DISCLOSURE STATEMENT

### **Foundation Staff**

Linda Engh-Grady, Executive Director  
Daria Perez, Controller

### **Foundation Board of Directors**

*Committee designations are indicated in parentheses: Executive Committee (EC), Governance (GV), Grants (GR), Investment (IV), Audit (AD), Marketing (MK), Foundation Development (FD), Advisory (AV)*

David Dittman, President (EC, IV, AD)  
Linda Maetzold, Secretary/Treasurer (EC, AD)  
Judah Gersh (EC, GV)  
Ardyce Whisler (EC, GR)  
Lin Akey (IV)  
Betsy Bayne (GR)  
John Collins (IV)  
Mike Jenson (FD) Board of Directors Emeritus  
James Kenyon (EC, GV, IV)

John Kramer (EC, FD) Board of Directors Emeritus  
Lori Miller (GV, AV)  
Monica Pastor (GR)  
Thomas Quinn (GR)  
Karen Rosenberg (GR)  
James Shennan (GV, FD)  
Kristin Tabor (GR, MK)  
Kenneth Wessels (EC, IV)

### **The following non-board members also serve on Foundation committees:**

Carol B. Atkinson, Past President (GR, AV)  
Harry Brown (AV)  
Janice Case (AV)  
Ian Collins (AV)  
Connie Heckathorn (AV)  
Bill Howard (AV)  
Dana McGowan (AV)

Doug Reed (GR, AV)  
Misty Scurlock (AV)  
Richard Solberg (AV)  
Dave Stewart (IV)  
Boots Barnett Warrick (AV)  
Virginia Weldon (AV)  
John Witt (IV, AV)

### **Investment Managers**

Bob McConnell of EK Riley Investments: 341 Central Avenue, Whitefish, Montana 59937

**Administrative Fees:** The Foundation charges an administrative fee, approved by the Board of Directors, of 1% on the average market value of the fund over four quarters ending December 31. The fee drops to .5% on funds over \$1 M. There is currently no additional investment fee charged.

### **Auditor**

Tony Vanorny, JCCS, CPA's Kalispell, Montana

### **Accountant**

Sallie Foley, JCCS, CPA's PC, Whitefish, Montana