

Designated Fund Agreement

AN AGREEMENT, dated this [redacted] day of [redacted] 2018, by and between [redacted] (the "Donor"), with a mailing address of [redacted], and The Community Foundation of Herkimer & Oneida Counties, Inc. (the "Foundation"), a not-for-profit corporation located at 2608 Genesee Street, Utica, New York 13502, for the creation of a **designated fund**.

1. Creation of Fund

The fund hereby created shall be known as the [redacted] Fund (the "Fund").

The Donor hereby donates to The Foundation a gift of not less than \$10,000 (ten thousand dollars) for use consistent with this Agreement (the "Donation").

2. Management of the Fund

The assets of the Fund shall be wholly-owned, invested and managed by the Foundation. The Foundation has full right and power to commingle and co-invest the assets of the Fund with other investment assets of the Foundation and to delegate investment management of the assets of the Fund. The Donation and all income generated therefrom, as well as all gains and losses, realized and unrealized, attributable to the Donation, shall be credited to the Fund.

Additions to the Fund shall be accepted from any and all sources, be subject to the same restrictions as are placed on the Donation, and shall be valued as at the time of receipt.

A minimum fund balance, currently \$10,000, shall apply to the Fund and must be maintained. Grant-making will be suspended until donations and/or investment returns increase the Fund to above the minimum. The value of the Fund shall be separately determined and set forth at least annually by the Foundation, and such determination shall be conclusive.

The Fund shall be subject to an administrative support fee as established from time to time by the Foundation Board of Trustees (Attachment B).

3. Use Restrictions and Designations

The Fund shall be used exclusively for the charitable purpose of providing grants to the beneficiaries designated and described in Attachment A, entitled "Donor Designations", as long as they remain organizations described in Section 501(c)(3) or Section 509(a)(1) or (2) of the Internal Revenue Code of 1986, as amended. The Donor reserves the right to recommend changes to the designated recipients, described use and/or the proportion of the distributions as stated on Attachment A at the any time during their lifetime by notifying the Foundation in writing.

Notwithstanding any of the foregoing, no part of the Fund may be used, directly or indirectly, for any of the following: the relief of any legal obligation of any donor to the Fund; the benefit of any foreign charities, private foundation or other organization not described in Internal Revenue Code Sections 501(c)(3) and 509(a)(2) or Section 509(a)(1); to influence legislation within the meaning of Code Section 4945(e); to influence the outcome of any specific public election except as provided in Code Section 4945(f).

4. Endowment Restrictions

It is understood and agreed that the Fund shall be an endowment fund. The annual amount of support provided by the Fund will be determined in accordance with the Foundation's policy on endowment spending as established by its governing Board, including its application even in the event the value of the Fund falls below its original gift value (Attachment C). The spending policy may be amended by the Board from time to time and at any time.

Reports on performance of the Fund and use of its proceeds shall be provided at least annually to the Donor at the last available address on the records of the Foundation.

5. Distributions

Distributions from the Fund shall be in the form of grants as earnings allow based on the spending policy. The Foundation will make automatic payments annually, as long as grant dollars are available. A minimum grant amount shall apply, currently \$200, and all grants will be ratified by the Foundation's Board of Trustees.

6. Conditions and Variance Power

Donor agrees and acknowledges that the Donation is made in recognition of, and the Fund is at all times subject to, the terms and conditions of the Certificate of Incorporation and Bylaws of the Foundation, which may be amended from time to time. The Foundation Board has the power to modify any restriction or condition on the distribution of grants from the Fund for any specified charitable purpose or to any specified organization if, in the sole judgment of the Foundation Board, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served. Consistent with its status as a community foundation, the Foundation Board may modify such restrictions or conditions without obtaining the approval of the Justice of the State Supreme Court or giving notice to the New York State Attorney General.

7. Governing Law

This Agreement shall be governed by and its terms and conditions construed in accordance with the laws of the State of New York, without regard to conflict of law principles.

8. Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the Donation, and supersedes all oral and written agreements entered into before or at the same time as this Agreement.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS, WHEREOF, the Donor and the Foundation have executed this Agreement as of the date first set forth above.

Donor

By: _____ Date: _____

Name: _____

The Community Foundation of Herkimer & Oneida Counties, Inc.

By: _____ Date: _____

Name: Alicia Dicks

Title: President & CEO

Attachments:

- A) Donor Designations*
- B) The Foundation's Administrative Fee Policy (as of May 2014)*
- C) The Foundation's Spending Policy (as of December 2013)*

ATTACHMENT A – DONOR DESIGNATIONS

_____ Fund

Annual grants made from the Fund will be distributed to the following organizations:

1) _____

2) _____

3) _____

4) _____

5) _____

In the event one or more of the nonprofits loses its charitable status or closes, the endowment's grant dollars shall be distributed equally among the remaining organizations. In such case, grant dollars that cannot be spent in a given year by the recipient(s) under the terms specified, as determined by the Foundation, shall remain in the endowment to be used in subsequent years.

Approved and accepted by:

Name: _____

Signature: _____

Date: _____



ADMINISTRATIVE FEES

The Community Foundation of Herkimer & Oneida Counties, Inc.
2608 Genesee Street . Utica, NY 13502 P: 315-735-8212 F: 315-735-9363
www.foundationhoc.org

CURIOUS ABOUT OUR ADMINISTRATIVE FEES?

The Foundation assesses a very small fee for services to your fund, as determined yearly by our Board of Trustees, currently 1.5% of the market value of each fund assessed quarterly, but not less than \$375 per year.

These fees allow us to provide a multitude of services, including:

- full accounting and tax filing under our umbrella (990)
- financial oversight and management of the investment pool
- maintenance of a donor database
- gift management and reporting
- a written acknowledgement of every donation
- updates of policies to be in compliance with federal and state regulations
- separate accounting for each fund and quarterly donor statements
- community needs assessments
- educational seminars for nonprofits, professional and financial advisors, donors and prospects
- yearly grant review for assessment and accountability of dollars given
- support services for planned gifts and estates
- a marketing and development program to promote charitable giving in the community
- operating support for The Foundation itself (facilities, staff, equipment etc.)

The fees allow us to share our mission without costly fundraising initiatives or events that might compete with the development activities of the charities our funds support. We depend on these administrative fees and use the dollars prudently – they have sustained us for 60+ years!



COMMUNITY INVESTMENTS SPENDING POLICY

The Community Foundation of Herkimer & Oneida Counties, Inc.
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The Foundation's Community Investments (grants and leadership) Spending Policy determines how much money The Foundation can spend on grants and leadership from its charitable assets in any given calendar year.

Historically, by using a 5% spending rate, The Foundation is able to maintain and increase the value of donated assets while funding current needs. The 5% spending rate is allocated as follows; 3.5% for the Community Investment Committee's (CIC) spending on grants and leadership and 1.5% for administrative fees in support of operating expenses.

TIME HORIZON

Consistent with the objective of The Foundation to preserve, in perpetuity, the purchasing power of its charitable assets, it is appropriate to take a long-term view. The Foundation recognizes that investment markets are cyclical and is willing to commit to considering sufficient periods of time to capture the full cyclical values.

PURPOSE

The Community Investments Spending Policy is designed to protect the principal value of the charitable assets and provide inflation protection, promote growth of both principal and income over the long-term. In addition, provide a consistent flow of dollars despite the fluctuations of the investment markets.

SPENDING RATE

The Community Investments Spending Policy rate is 3.5% of the value of the fund based on the average of the trailing twenty quarters as of September 30th of each year and is determined annually.

Funds will be managed in accordance with the New York Prudent Management Institutional Funds Act (NYPMIFA). In deciding whether to spend from a fund, the Foundation must act "in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances," and must consider, if relevant, the following factors:

- 1) The duration and preservation of the endowment fund;
- 2) the purposes of the institution and the endowment fund;
- 3) general economic conditions;
- 4) the possible effect of inflation or deflation;
- 5) the expected total return from income and the appreciation of investments;
- 6) other resources of the institution;
- 7) where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the institution; and
- 8) the investment policy of the institution.



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Generally, if the fund is under historic dollar value, the spending rate will not be applied and spending will not occur until the fund is above the historic dollar value. NYPMIFA does not prohibit appropriations below historic dollar value and recommendations to do so must be approved by the Board of Trustees.

The 3.5% spending rate is applied on the following funds:

- designated funds,
- discretionary funds,
- endowed donor advised funds,
- field of interest funds, and
- scholarship funds.

The 3.5% spending rate is not applied on agency funds and donor advised funds.

EXCEPTIONS

Exceptions to the 3.5% spending rate are as follows:

<u>Fund ID</u>	<u>Fund Type</u>	<u>Fund Name</u>	<u>Spending Rate</u>
FIRS	Field of Interest	Franklin Ely First Lake Fund	5.0%
HAYE	Scholarship	Hayes Couper Fund	5.0%

DEFINITIONS

Historic Dollar Value

Value of the gift (or gifts) that established the endowment.

Approved by Finance Committee on October 29, 2013

Approved by Board of Trustees on December 13, 2013