

**\_\_\_\_\_ FUND**  
Donor-Advised Fund Agreement

AN AGREEMENT, dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between \_\_\_\_\_ (the "Donor"), with a mailing address of \_\_\_\_\_, and The Community Foundation of Herkimer & Oneida Counties, Inc. (the "Foundation"), a New York State not-for-profit corporation located at 2608 Genesee Street, Utica, New York 13502, for the creation of a **donor-advised fund**.

**1. Creation of Fund**

The fund shall be known as the \_\_\_\_\_ Fund (the "Fund").

An initial gift of \$ \_\_\_\_\_ has been made for use consistent with this Agreement (the "Donation").

**2. Management of the Fund**

The Fund shall be the property of the Foundation and administered according to provisions of the Foundation's Fund Terms and Conditions, which may be amended from time to time, and are attached hereto and made a part of this Agreement (Attachment C).

The assets of the Fund will be invested collectively with other assets of the Foundation but accounted for separately and in the name of the Fund. The market value of the Fund is not guaranteed by the Foundation and may fluctuate depending upon investment results.

The Fund shall be subject to an administrative fee in accordance with the fee schedule adopted from time to time by the Foundation Board of Trustees (Attachment B). The value of the Fund shall be separately determined and set forth at least annually by the Foundation, and such determination shall be conclusive.

**3. Use Restrictions**

The Fund shall at all times be used exclusively for the charitable purposes as defined under Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

It is intended that the Fund shall be a component part of the Foundation as defined in Section 1.170A-9(f)(11) of the Income Tax Regulations and that nothing in this Agreement shall affect the status of the Foundation as an organization (i) described in Section 501(c)(3) of the Code and (ii) which is not a private foundation within the meaning of Section 509(a) of the Code. The Fund shall meet the requirements of a donor-advised fund under Section 4966 of the Code. Among other things, the Fund shall not (i) make distributions to individuals, private non-operating foundations, certain supporting organizations or to any organization for a non-charitable purpose; (ii) maintain excess business holdings as described under Section 4943(e) of the Code; (iii) engage in excess benefit transactions as described under Section 4958 of the Code or (iv) provide prohibited benefits as described under Section 4967 of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and to conform to the requirements of the foregoing provisions of the Federal tax laws and any regulations issued thereunder.

Distributions from the Fund shall be in the form of grants and the recipient of any grant from the Fund shall be advised that the grant is to be used solely for charitable purposes.

**4. Fund Advisors**

The fund will be administered as a traditional donor-advised fund, which allows for two generation of fund advisors. The initial fund advisor(s) are indicated in Attachment A.

**5. Future Legacy**

The advisement period for the Fund shall end upon the death or resignation of the last remaining original or successor advisor. The Fund shall then become a permanently endowed fund with the same name.

**6. Acknowledgement**

Donor agrees and acknowledges that it has read the Foundation’s Fund Terms and Conditions and agrees to the fees, terms, and conditions described therein.

Donor understands any contribution, once accepted by the Foundation’s Board of Trustees, represents an irrevocable gift to the Foundation.

The Foundation’s Board of Trustees has variance power under IRS regulations, and this gift is not refundable to the Donor.

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.

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.

Donor hereby certifies, to the best of its knowledge, that all information presented in connection with this form is accurate, and will notify the Foundation promptly of any changes.

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) Initial Fund Advisors (provided by donor on \_\_\_\_\_)
- B) Donor-Advised Fund Administrative Fee Schedule (as of September 2018)
- C) The Foundation’s Fund Terms and Conditions (as of January 2018)

**ATTACHMENT A – FUND ADVISOR INFORMATION**

Fund

The initial advisors to the fund shall be:

- 1) Name: \_\_\_\_\_ (PRIMARY CONTACT)  
Contact information: \_\_\_\_\_
  
- 2) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_
  
- 3) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_
  
- 4) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_
  
- 5) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_

The above-named individuals will have full advisory privileges over the fund, including, grant recommendations and access to fund financial information.

Approved and accepted by:

Donor: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B – ADMINISTRATIVE FEE SCHEDULE**  
Donor-Advised Funds

**Donor-Advised Funds**

- Established with a minimum gift of \$10,000 and that amount must be maintained at all times
- Fund is permanent
- No mandatory spending requirement; grants must be \$200 or more
- Two generations of fund advisors (initial advisors and successor advisors); after successor advisement period ends, fund becomes endowed fund with same name to continue grantmaking in perpetuity
- Quarterly statements of fund activity prepared for fund advisors
- **Administrative fee:**
  - 1.5% (or \$375, if greater) on the first \$500,000
  - 1.0% on the next \$1,000,000
  - 0.50% on all over \$1,500,000

*Foundation Board Approved September 27, 2018*

## **FUND TERMS AND CONDITIONS (as of January 2018)**

### **Fund as a Component of The Community Foundation**

Funds established at The Community Foundation of Herkimer & Oneida Counties (CFHOC) are component funds of the CFHOC, a 501(c)(3) public benefit corporation (EIN 15-6016932). Legal control and responsibility for the funds rest with the CFHOC.

All contributions to the CFHOC's funds are treated as gifts to a 501(c)(3) public charity and are generally tax-deductible, subject to individual limitations. Acceptance of all gifts, including property other than cash and marketable securities, is subject to the provisions of the CFHOC's Gift Acceptance Policy. Any assets contributed to funds at the CFHOC, once accepted by the Board of Trustees, represent unconditional and irrevocable gifts and are not refundable.

The CFHOC does not provide tax or legal advice; we recommend consulting a professional advisor with questions about a gift to the CFHOC.

### **Investment of Assets**

All assets contributed to funds established at the CFHOC are managed in accordance with the CFHOC Investment Policy Statement. A copy of the CFHOC's current Investment Policy Statement is available upon request.

The CFHOC Board of Trustees and Investment Committee have the right to make any or all investment decisions regarding gifts received, but will keep a separate account of each fund's assets, and the fund's proportionate share of all investment earnings and investment fees applied to the fund. In establishing a fund, the donor acknowledges that the investments in the fund are subject to market and interest rate fluctuations. All investment returns are reported net of all investment fees.

A donor may recommend a customized investment approach through an outside investment advisor for funds carrying a significant balance. CFHOC's Board of Trustees must approve the recommended advisor, the advisor's proposed investment strategy, and underlying investments. Please contact the CFHOC to learn more about outside investment management of your fund.

### **Use of the Fund**

Grants must be for charitable purposes to any 501(c)(3) organization or verified charitable entity (e.g., schools, colleges and universities, religious institutions, town and municipal governments, police, and fire departments, etc.) located in the United States. A grant can be made to

a foreign charity with an Internal Revenue Service (IRS) determination letter or eligible US affiliation.

### **Grant Disbursements**

For endowed funds, the amount available for annual grantmaking from the fund is determined in accordance with the CFHOC's Spending Policy, which may be amended by the Board of Trustees from time to time. If the fund is expendable in nature, distributions may be made in any amount not to exceed the balance of the fund. All grants must be for a minimum of \$200.00.

Grant checks sent to organizations are accompanied by a CFHOC letter specifying the name of the fund and fund advisor's name(s), unless requested otherwise by donor or fund advisor and as approved by the CFHOC. The fund advisor's address(es) may also be included on all letters if requested by the fund advisor. Any mail CFHOC receives for the fund will not be forwarded.

Approved grants are typically sent within 10 business days of the recommendation being received or the fund advisor will be notified as to the reason for a delay. Grants made from funds at the CFHOC are issued on checks with the name and logo of the CFHOC.

### **Restrictions on Grants**

In compliance with the Internal Revenue Code, grants are not permitted for non-charitable purposes; for political contributions or to support political campaign activities; or for any purpose that would provide benefits, goods, or services to a donor to the fund, the fund's advisor(s) or other related parties. A fund advisor is subject to IRS penalties if the fund's donor(s), advisor(s), or other related parties receive benefits, goods, or services in connection with a grant recommendation. This includes grants to satisfy pledges made by any person, including a fund advisor, and non-deductible (or partially tax-deductible) memberships, event tickets, sponsorships, registration fees in tournaments, and cause-related marketing activities. Grants are not allowed to private foundations.

Donor advised fund grants cannot be used to satisfy all or a portion of a pre-existing personal pledge or other financial obligation of the donor(s), advisor(s) or any related parties. Advisors may, however, recommend that a grant be paid out over multiple years, subject to grant approval and annual due diligence.

Donor advised funds may not issue grants to individuals or make expense reimbursements, loans, compensation, or other similar payments. This includes checks written

directly to an individual or checks written to an entity for the benefit of a specified individual.

Please contact CFHOC if you have questions about the exclusion of benefits from grant recommendations and/or multiple-year payments.

### **Fund Inactivity**

The CFHOC does not require a fund to receive contributions into it nor to make distributions every year, however it is the recommendation of the Board of Trustees that a grant is made at least once every four years. The CFHOC will annually review all of its donor advised funds for inactivity. After a three-year period of inactivity, CFHOC staff will contact the donor advisor(s) and/or successor advisor(s) (via letter, email, or telephone) to notify them of the period of inactivity and to educate them on how to make grant recommendations.

At any time, if a fund advisor is no longer willing or able to advise the fund's distribution, and no successor advisor is named, the remaining assets of the fund shall become part of the discretionary funds of the CFHOC and be used for charitable purposes in the community as directed by the Board of Trustees.

### **Fundraising**

Additional gifts may be made directly to a fund at any time. On rare occasions, the CFHOC may consider permitting a fund to raise money. All fundraising activities must be pre-approved by the CFHOC. Fund advisors must allow at least 30 days for approval. Use of the CFHOC's name on any fundraising material is expressly prohibited without prior written approval by the CFHOC. The CFHOC cannot reimburse the donor, fund advisor, or related parties for expenses related to fundraising activities. All contributions raised in support of the fund must be made payable to The Community Foundation of Herkimer & Oneida Counties with the name of the fund in the memo line. The CFHOC is not responsible for the success of fundraising activities.

### **Fund Minimums**

There is no set-up fee to open a fund at the CFHOC. With certain exceptions, gifts must meet specific initial fund minimums, which vary by fund type. The CFHOC reserves the right to change its initial gift minimum policies at any time. A list of current initial fund minimums is available on the CFHOC website.

### **CFHOC Support Fees**

CFHOC's annual operating budget is supported in large part by the fees received from managing the assets of component funds, enabling the CFHOC to have a powerful impact in the community. Administrative fees cover the costs of the CFHOC's core services, including fund establishment, gift acknowledgement, investment management, accounting, tax reporting and auditing, grants administration and individualized donor services, such as research on nonprofit organizations and special requests.

A list of current fees minimums is available on the CFHOC website. The administrative fee structure may be amended from time to time by the CFHOC Board of Trustees with 45 days' written notice to the donor. The fee structure for future funds, to be established by bequest or charitable trust, will be based on the fee structure in place at the date of funding.

### **Investment Fees**

Funds invested in the CFHOC investment pools incur costs related to third-party investment management and consulting and bank custodian services. CFHOC's investment fee is a blended rate based on the asset values and current fees charged by our underlying investment managers and custodians; reported returns are net of those fees. The CFHOC's investment pool performance summaries and audited financial statements are available on the CFHOC website.

### **Fund Relationships and Advisory Privileges**

*Primary Contact:* One person per fund who should be contacted first for anything concerning the fund. This individual may or may not have fund advisory privileges.  
*Fund Advisor:* Individual has full advisory privileges over a fund, including, grant recommendations, appointment of other fund advisors and successor advisors, and access to fund financial information.  
*Successor Advisor:* The second-generation fund advisor; he or she has no advisory privileges or access to fund financial information until the cessation to act of all initial fund advisors.  
*Fund Representative:* Individual has access to fund financial information but no fund advisory privileges.

It is the responsibility of the donor(s), fund advisor(s), and fund representative(s) to promptly notify the CFHOC in writing of any changes in contact information and/or communication preferences.

### **Role of Fund Advisors**

Donors establishing a donor advised fund may designate any person over 18 years of age to be an advisor on the fund. A fund can have more than one fund advisor. If a fund is advised jointly, upon the death of one fund advisor, the remaining fund advisor(s) retain(s) the privileges associated with the fund.

From time to time CFHOC staff may bring to the advisor's attention grantmaking opportunities in which the advisor may have an interest. The advisor is not obligated to recommend a grant for the identified program. Advisors will also be furnished with lists of the unmet charitable needs of the community, as determined by the CFHOC, from time to time.

### **Role of Successor Advisors**

For permanent donor advised funds, the founding donor and initial fund advisor(s) may designate any person within one generation to be a successor advisor to exercise the privileges and duties of a fund advisor. Successor advisors may assume the privilege to advise the fund only after the deaths or resignations of all initial fund advisors named on the fund. Successor advisors may not appoint further successors but may appoint additional fund advisors as long as they are in the same generation as the successor advisor.

All requests to modify or appoint additional advisors and successor advisors to a fund must be communicated to the CFHOC in writing. In addition, a written acknowledgement must be received from the CFHOC confirming that the request has been granted. If CFHOC has not received the name(s) of an additional advisor(s) or successor advisor(s) to the fund, or other special instructions, in writing, the fund shall become part of the discretionary funds of the CFHOC and be used for charitable purposes in the community as directed by the Board of Trustees.

Successor advisors are not permitted for expendable donor-advised funds. At any time during his or her lifetime, the founding donor may request that the CFHOC convert the fund to a permanent donor-advised fund in order to designate successor advisors. Final approval remains with the Board of Trustees.

### **Role of Fund Representatives**

Many donors open funds with the CFHOC with advice from an attorney, accountant, financial advisor, or other professional. These individuals may also be involved in the transfer of assets into the fund. Authorized fund representatives are provided fund financial and investment information, but no fund advisory privileges are granted.

### **Variance Power**

As required by law, all assets contributed to funds become irrevocable gifts to the CFHOC, and legal control and responsibility for the funds rest with the CFHOC. All funds established at the CFHOC are subject to the CFHOC's variance power, subject to individual limitations, as set forth in the CFHOC's bylaws. Variance power gives the CFHOC the authority to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if, in the sole judgment of the CFHOC's Board of Trustees, such restriction or condition becomes unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community served.

### **Conflict of Terms**

In the event of an inconsistency between these terms and conditions and any terms and conditions appearing elsewhere in connection with any fund, these terms and conditions, as interpreted by the CFHOC, shall govern, and the CFHOC reserves the right to take any actions at any time which, in its discretion, it deems reasonably necessary or desirable for the proper administration of any fund at the CFHOC or to comply with applicable law.

### **Indemnity**

In consideration of the CFHOC creating a fund at the request of the individual(s) or entity named and for other good and valuable consideration, the donor(s) hereby agree to indemnify and hold harmless the CFHOC against any liability, cost, or expense which the CFHOC may incur by reason of its acting upon instructions or recommendations given to the CFHOC by any of the undersigned or by persons authorized to make recommendations with regard to the fund.

## Frequently Asked Questions

### *What is a donor-advised fund?*

A donor-advised fund is not a separate legal entity like a trust or a corporation. It is a fund defined by the IRS that a sponsoring charity, like the CFHOC, creates through a written agreement with a donor. The donor contributes assets to the CFHOC, and the CFHOC agrees to treat those assets as a separate fund on its books. The donor retains the privilege of recommending charitable grants from the fund and the way in which the CFHOC should invest the fund's assets.

### *Who owns the assets once the gift is made and the fund is opened?*

The law requires the CFHOC to make clear in the agreement, and to obtain the donor's written acknowledgement, that the assets in a donor-advised fund are the property of the CFHOC and that the CFHOC has discretion and control over the use and investment of the donor-advised fund's assets.

In order for a donor to take advantage of the tax benefits that flow from a charitable gift, the gift has to be complete – that is, the donor has to part with control over the donated assets. The appearance of donor control could put the donor's tax deduction in jeopardy. Therefore, fund advisors cannot make pledges on behalf of the fund and can only make non-binding recommendations about grants; they cannot control when and how the CFHOC will make grants nor control decisions about which grantees will receive funding.

### *What are the limits on donor benefits in connection with donor-advised fund grants?*

Donors, fund advisors, and related parties (such as family members or business interests) may receive only "incidental" benefits from a grant or investment of a donor-advised fund. If a donor, fund advisor, or related party receives more than an incidental benefit in connection with a donor-advised grant, the IRS can assess a penalty of 125% of the amount of the improper benefit. The penalty may be assessed against either the person who recommended the grant or the person who received the benefit. (There is a separate penalty if a donor, fund advisor or related party receives a direct distribution from the donor-advised fund, such as compensation or an expense reimbursement.)

## Please return this form to:

The Community Foundation of Herkimer & Oneida  
Counties  
*Attention: Development Department*  
2608 Genesee Street  
Utica, NY 13502

Phone: 315.735.8212  
Fax: 315.735.9363  
[www.foundationhoc.org](http://www.foundationhoc.org)

Contact CFHOC at [giving@foundationhoc.org](mailto:giving@foundationhoc.org) or 315.735.8212 if you have questions.