



DONOR ADVISED FUND AGREEMENT

This agreement (“Agreement”) is made this [date], between [donor name] (“Donor”), and the Albuquerque Community Foundation, a New Mexico nonprofit corporation (the “Foundation”). The parties agree as follows:

1. **Establishment of Fund.** The Foundation receives and administers funds as endowments for various charitable, scientific and educational purposes. Donor desires to establish a permanent donor advised endowment fund in the Foundation to be known as the [fund name] (the “Fund”), effective upon receipt of assets acceptable to the Foundation.
2. **Property of the Fund.** The Fund shall include the property received herewith; such additional property as may from time to time be transferred to the Foundation by Donor for inclusion in the Fund; such property as may from time to time be transferred from any other source for inclusion in the Fund and accepted by the Foundation; and all undistributed income from such property. **The property of the Fund shall not include a distribution from an IRA.** All gifts to the Fund are irrevocable. The Fund shall be the property of the Foundation held by it in its corporate capacity and shall not be deemed a trust fund held by the Foundation in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund and the income derived therefrom, in accordance with the Articles of Incorporation and Bylaws of the Foundation, as may be amended from time to time, and the terms of this Agreement applied in a manner not inconsistent with such Articles and Bylaws. The Foundation may commingle the Fund with other funds of the Foundation for investment purposes.
3. **Purpose.** The purpose of the Fund shall be for grants exclusively for charitable, scientific, or educational objectives, subject to the purpose and intent of the Foundation, applicable law and Internal Revenue Service regulation. Grants may not be made to benefit an individual or to fulfill any legally enforceable pledge or obligation. Grants may only be used for charitable purposes which do not confer any private benefit on the donor or any other person.
4. **Advice by Donor.** Donor may render suggestions and advice, in writing, as to the distributions from the Fund. The Foundation will make a good faith effort to act upon the advice and recommendations of Donor but may accept or reject any advice or recommendations of Donor in the sole and absolute discretion of the Foundation. Further, x% percent (%) of the annual distributable amount of the Fund shall be transferred to the Foundation’s “Impact Fund” for the purposes of supporting those most pressing needs of the Greater Albuquerque area, in the sole opinion of the Foundation.

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5. **Successor Advisor(s)**. Donor may designate and authorize, in writing, successor advisor(s). Successor advisor(s) may recommend distributions from the Fund, as provided in this Agreement, upon the death or incapacity of Donor. Upon receipt of sufficient proof of Donor's death or incapacity, the Foundation will notify successor advisor(s) of their successor rights and duties. The Foundation retains the right to terminate successor advisement if the successor advisor(s) is incapable or unwilling to fulfill the responsibilities of advisement. Donor appoints [successor name] as successor advisor(s).
6. **Termination of Advisement**. Upon termination of advisement by Donor or Donor's successor advisor(s), the Fund shall become a separate named fund within the Foundation's "Impact Fund" for the purposes of supporting those most pressing needs of the Greater Albuquerque area, in the sole opinion of the Foundation.
7. **Amount and Timing of Distributions**. The amount available for distribution shall be as stated in the Foundation's current distribution policy, unless otherwise agreed upon by the Foundation and Donor, in writing. Within the first five (5) years of the Fund's existence, 50% of the Fund shall be permanently endowed. Thereafter, an additional 10% of the fund will be permanently endowed each year until the fund is 100% endowed at end of 10 years. At no time shall the distribution reduce the Fund's balance below the minimum amount required to establish a Donor Advised fund as of the date of this Agreement (\$25,000). The Foundation will consider distribution suggestions as soon as is practicable.
8. **Fund Activity**. A Fund is considered active when there is regular communication between the Foundation and the Donor regarding the existence and purpose of that fund. Activity is stated in the Foundation's current Fund Activity Policy, unless otherwise agreed upon by the Foundation and Donor, in writing.
9. **Fees**. The Fund shall be charged an initial set up fee of \$250. An administrative fee, plus actual investment management fees, will be charged in accordance with the most current fee schedule of the Foundation.
10. **Reporting**. Donor will receive quarterly statements of the Fund's fiscal activity, income, and distributions.
11. **Variance Power**. Pursuant to paragraph 6 of this Agreement, Termination of Advisement, the Board of Trustees of the Foundation shall have the power to modify the provisions of this Agreement designating use of the Fund if the purposes for which it was created ever become obsolete, incapable of fulfillment; inconsistent with the charitable, scientific, and educational needs of the Albuquerque community; or inconsistent with the purpose and intent of the Foundation.
12. **Foundation**. If the Foundation ceases to be a qualified charitable organization or if the Foundation proposes to dissolve, the assets of the Fund shall, after payment or making provision for payment of any liabilities properly chargeable to the Fund, be distributed in such manner and to such organization or organizations in the Albuquerque community as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of the Foundation.

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13. **Name Restriction.** Under no circumstances shall the name of the Foundation be used in any pamphlet, newsletter, brochure or in any other way by the Donor for purposes of soliciting donations without advanced written approval from the Foundation.

14. **Definitions and Construction.**

A. As used in the Agreement:

(1) "Qualified charitable organization" means an organization described in §501 (c)(3) of the Internal Revenue Code and which is not a private foundation under §509 (a) of the Internal Revenue Code; and

(2) References to any provision of the Internal Revenue Code shall be deemed references to the U.S. Internal Revenue Code of 1986 as the same may be amended from time to time.

B. The Fund shall be a component part of the Foundation. Nothing in this Agreement shall adversely affect the status of the Foundation as a qualified charitable organization. This Agreement shall be interpreted so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto, as they apply to the intended status of the Foundation.

15. **Indemnification.** Donor shall indemnify, hold harmless, and defend the Foundation, its officers, directors/trustees and employees ("indemnitees") against any claims, liabilities, or loss or expense, including without limitation attorney's fees and court costs, which arise as a result of the participation of said indemnitees in the administration of the Fund.

16. **Binding Effect.** This Agreement is binding on, and the benefits inure to the parties, their successors and assigns, is specifically enforceable, constitutes the entire agreement of the parties, is governed by and construed under the laws of the State of New Mexico. In the event any paragraph within this Agreement is deemed unenforceable, it shall not destroy the remaining provisions of the Agreement. All other provisions of this Agreement shall continue to bind all parties herein.

DONOR:

Donor

DATE: _____

Donor

DATE: _____

FOUNDATION:

Albuquerque Community Foundation,
a New Mexico nonprofit corporation

By _____
R. Randall Royster, President & CEO

DATE: _____