

**DESIGNATED NON-PERMANENT FUND AGREEMENT  
BETWEEN**

\_\_\_\_\_ **COMMUNITY FOUNDATION, INC.,**

**AND**

\_\_\_\_\_ **(“COMMUNITY GROUP”)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ Community Foundation, Inc. (the “Community Foundation”), and \_\_\_\_\_ (“Community Group”).

**RECITALS**

WHEREAS, the Community Group (**choose all that apply**: a nonprofit corporation, charitable trust, charitable limited liability corporation, unincorporated nonprofit association, tax exempt organization described in Code section \_\_\_\_\_, other) desires to establish a designated non-permanent fund in the Community Foundation; and

WHEREAS, the Community Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code (“Code”) section 501(c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such a designated non-permanent fund; and

WHEREAS, the Community Foundation is willing and able to hold and administer such a designated non-permanent fund, subject to the terms and conditions hereof.

**GENERAL PROVISIONS**

NOW THEREFORE, the parties agree as follows:

**1. FUND DESIGNATION.** Community Group has signed a Fiscal Sponsorship Agreement with the Community Foundation, a copy of which is attached as Exhibit A and incorporated by reference and wishes to establish a designated non-permanent fund to be known as the \_\_\_\_\_ Community Project Fund (the “Fund”). Subject to the right of the Community Foundation to reject any particular gift, from time to time the Community Foundation may accept irrevocable gifts of property from the Community Group or from any other source to be added to the Fund, all subject to the provisions hereof. All gifts, bequests, and devises to this Fund shall be irrevocable once accepted by the Community Foundation.

**2. PURPOSE.** The purpose of the Fund shall be to provide support to \_\_\_\_\_ Community Project on behalf of the Community Group as directed by the Board of Directors (the “Board”) of the Community Foundation. Such support shall be used to further the charitable or other exempt purposes of the Community Project within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and shall be consistent with the mission and purposes of the Community Foundation.

**3. DISTRIBUTIONS.** The ordinary income, capital appreciation (realized and unrealized), and principal (both historic dollar value and any principal contributions, accumulations, additions, or reinvestments) allocable to the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted, or expended solely for purposes described in this Agreement.

If any gift to the Community Foundation for the Fund is accepted subject to conditions or restrictions as to the use of the gift or income therefrom, such conditions or restrictions will be honored, subject, however, to the authority of the Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Board unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Community Foundation or the needs of the community served by the Community Foundation. No distribution shall be made from the Fund that may in the judgment of the Community Foundation jeopardize or be inconsistent with the Community Foundation's Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code.

**4. ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, the Community Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and the Community Foundation's Articles of Incorporation and Bylaws, as amended from time to time. The Board shall oversee distributions from the Fund and shall have all powers of modification and removal specified in United States Treasury Regulation section 1.170A-9(e)(11)(v)(B). Additional administrative provisions are listed in the attached Exhibit B incorporated herein by reference. The Board agrees to provide Community Group a copy of any annual examination of the finances of the Community Foundation as reported by independent certified public accountants. This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

**5. CONDITIONS FOR ACCEPTANCE OF GIFTS.** Community Group agrees and acknowledges that the establishment of the Fund is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws of the Community Foundation, as amended from time to time, including, but not by way of limitation, provisions for:

- a. Presumption of Community Group' intent;
- b. Variance from Community Group' direction; and
- c. Amendments.

**6. CONTINUITY OF THE FUND.** The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Fund is terminated, the Community Foundation shall use any remaining assets in the Fund exclusively for charitable or other exempt purposes that;

- a. are within the scope of the charitable and other exempt purposes of the Community Foundation; and

b. most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

**7. NOT A SEPARATE TRUST.** The Fund shall be a component part of the Community Foundation. All money and property in the Fund shall be held as general assets of the Community Foundation and not segregated as trust property of a separate trust.

**8. ACCOUNTING.** The receipts and disbursements of the Fund shall be accounted for separately and apart from those of other gifts to the Community Foundation.

**9. INVESTMENT OF FUND ASSETS.** The Community Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Community Foundation's general assets.

**10. COSTS OF THE FUND.** It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of the Community Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Community Foundation as applicable to funds of this type, as such schedule may be amended by the Community Foundation from time to time. Any costs and expenses incurred by the Community Foundation in accepting, transferring, or managing property donated to the Community Foundation for the Fund, including without limitation the Community Foundation's costs and expenses (including reasonable attorney's fees) of any claim or proceeding with respect to the Fund in which the Community Foundation is prevailing party, also shall be paid from the Fund.

**EXECUTION**

IN WITNESS WHEREOF, Community Group and the Community Foundation, by a duly authorized officer, have executed this Agreement as of the day and year first above written.

\_\_\_\_\_ **COMMUNITY GROUP:**

\_\_\_\_\_  
**Representative (s)**

\_\_\_\_\_ **COMMUNITY FOUNDATION, INC.:**

**By:** \_\_\_\_\_ **Title:** \_\_\_\_\_

## EXHIBIT A

### FISCAL SPONSORSHIP AGREEMENT

#### Disclaimer

*This template agreement is a draft of recommended language that a community foundation may consider. The terms of this agreement must be modified to reflect the circumstances. The Indiana Grantmakers Alliance, its board of directors, volunteers, staff and consultants are not providing legal or tax accounting advice. Please share this agreement with your legal counsel and board of directors for modification and approval prior to use.*

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This Fiscal Sponsorship Agreement (“Agreement”) is made by and between \_\_\_\_\_ Community Foundation (“Sponsor”), and the \_\_\_\_\_ Community Group (“Community Group”). Sponsor is an Indiana nonprofit public benefit corporation located in \_\_\_\_\_, Indiana, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (“IRC”) and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). The Community Group is a (**choose one:** nonprofit corporation, charitable trust, charitable limited liability corporation, unincorporated nonprofit association) established to oversee the affairs of the \_\_\_\_\_ Community Project described below.

#### RECITALS

A. The Sponsor Board of Directors (“Board”) has approved the establishment of a temporarily restricted non-permanent fund (“Fund”) to receive donations of cash and other property designated for support of a project planned by the Community Group known as the \_\_\_\_\_ Community Project (the “Community Project”) as described in Exhibit B incorporated into this agreement by reference and to make disbursements to fulfill the Community Project.

B. Sponsor desires to act as the fiscal sponsor of the Community Group, by receiving assets and incurring liabilities as approved by the Sponsor, identified for the purposes of the Community Project and using them to pursue those purposes, which Sponsor’s Board has determined will further Sponsor’s charitable goals. The Community Group desires to oversee the Community Project on behalf of Sponsor, subject to Sponsor’s discretion and control as defined herein.

#### NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Term of Agreement.** On \_\_\_\_\_ (the “effective date”), Sponsor shall assume operation of the Community Project, which operation shall continue in effect unless and until terminated as provided herein.

**2. Notification of Legal Status and Governing Documents of Community**

**Group.** The Community Group shall provide to the Sponsor copies of the following documents (choose all that apply):

- Articles of incorporation (for nonprofit corporation)
- Instrument of trust (for charitable trust)
- Organizing documents (for charitable limited liability corporation or other legal entity)
- List of names and addresses of current board of directors (for nonprofit corporation), trustees (for charitable trust), signature authority/ies (for charitable limited liability corporation), principal volunteers (for unincorporated association)
- Bylaws (for nonprofit corporations or other legal entity)
- IRS determination letter (for tax exempt organization)
- SS-4 form with federal tax identification number (for tax exempt organization)
- Indiana property tax exemption certificate
- Indiana sales tax exemption certificate

The Community Group shall notify the Sponsor immediately of any change in (a) Community Group's legal or tax exempt status, and (b) Community Group's board, executive(s), key staff or volunteer(s) responsible for achieving the Community Project.

**3. Not an Agency Relationship.** Nothing in this agreement shall constitute naming of the Community Group as an agent or legal representative of the Sponsor for any purpose whatsoever except as specifically and to the extent set forth herein. This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and the Community Group shall make no such representation to anyone.

**4. Community Project Activities and Sponsorship Policies.** The following activities conducted by the Community Group shall be the ultimate responsibility of Sponsor and shall be conducted in the name of Sponsor, beginning on the effective date (choose all that apply):

- community programs,
- public information work,
- fundraising activities and events,
- processing and acknowledgement of cash and noncash revenue items,
- accounts payable and receivable,
- negotiation of leases and contracts,
- disbursement of Community Project funds, and
- Other activities conducted by the Community Group on behalf of the Community Project as approved by the Sponsor.

**a. Community Project Independent Contractors.** Unless otherwise agreed, and subject to their consent, all persons to be compensated for working on the Community Project shall be independently contracted by Sponsor pursuant to current law and

shall be subject to the applicable independent contractor agreements, policies and procedures of the Sponsor.

**b. Ownership of Property.** Unless otherwise agreed, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the Community Project shall be the property of Sponsor, held for the charitable purposes of the Community Project.

**c. Approval by Sponsor of Fundraising Activities.** The Community Group may solicit gifts, contributions, and grants to the Fund held by the Sponsor identified as in support of the purposes of the Community Project. The Community Group's choice of funding sources to be approached, and the text of the Community Group's fundraising materials, are subject to Sponsor's prior written approval as defined within the Sponsor's donor initiated fundraising policies and procedures, and shall include an express disclosure of Sponsor's variance power pursuant to this agreement. All grant agreements, pledges, or other commitments with funding sources to support the Fund on behalf of the Community Project shall be executed by Sponsor.

**d. Use of Grants from Fund.** The Community Group shall use grants from the Fund solely for the Community Project and shall repay to the Sponsor any portion of amounts granted from the Fund which are not used for the Community Project. Any changes in the purposes for which grant funds are spent must be approved in writing by the Sponsor before implementation. The Sponsor retains the right, if the Community Group breaches this Agreement, or if the Community Group's conduct of the project jeopardizes the Sponsor's legal or tax status, to withhold, withdraw, or demand immediate of grant funds, and to spend such funds so as to accomplish the purposes of the Community Project as nearly as possible within the Sponsor's sole judgment.

**e. Reports.** The Community Group shall submit a full and complete report to the Sponsor as of \_\_\_\_\_ and subsequent reports, if any, shall be due on \_\_\_\_\_. The report shall describe the Community Project programs and activities conducted by the Community Group with the aid of the grant funds and the expenditures made with grant funds, and shall report on the Community Group's compliance with all terms required by the Sponsor.

**f. Additional Policies (optional):** The parties shall abide by the operating terms set forth on the attached Exhibit B, which Sponsor may amend from time to time with advance written notice to the Community Project.

**5. Delegation (optional).** As of the effective date, oversight of the activities of the Community Project is delegated by Sponsor Board of Directors to the individual members of the Community Project Committee ("Committee"), subject to the ultimate direction and fiduciary responsibility of Sponsor's Board. Acting in their individual capacities, the members of the Committee serve as a subordinate body to the Sponsor's Board to assist with the fulfillment of the purposes of the Community Project. In matters governed by this Agreement: (a) the Committee's separate legal existence as an unincorporated nonprofit association will be solely

for the limited purpose of holding, exercising, and enforcing the contractual duties and obligations that the Sponsor may owe to the Community Project under this Agreement, and (b) those participating on the Community Project do not serve as representatives or agents of any funding source, employer, or any party other than Sponsor.

**6. Variance and Amendment Power.** Beginning on the effective date, Sponsor shall place all gifts, grants, contributions, and other revenues received by Sponsor for the purposes of the Community Project into the Fund to be used for the sole benefit of the Community Project's mission as that mission may be defined by the Community Group from time to time with the approval of Sponsor. Neither party shall spend or otherwise obligate Sponsor to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either party authorize or permit anyone to do so. Sponsor retains the unilateral right to spend the Fund so as to accomplish the purposes of the Community Project as nearly as possible within Sponsor's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. In the event that the Community Project becomes impossible, impractical, wasteful or illegal in the sole judgment of the Sponsor, then the Sponsor has the right to spend the Fund on charitable programs and purposes that in the sole discretion of the Sponsor is deemed appropriate. The parties agree that all money and the fair market value of all property in the Fund be reported as the income of Sponsor on Sponsor's financial statements and tax returns. It is the intent of the parties that this Agreement be interpreted to provide Sponsor with variance and amendment powers as defined in the designated non-permanent fund agreement for the Fund signed by the Sponsor and Community Group.

**7. Performance of Charitable Purposes.** All of the assets received by Sponsor under the terms of this Agreement shall be devoted to the purposes of the Community Project, within the tax-exempt purposes of Sponsor. Expenditures for any attempt to lobby and influence legislation within the meaning of IRC Section 501(c)(3) shall be subject to the approval and limitations imposed by Sponsor. Sponsor shall not use any portion of the assets to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3).

**8. Not a Donor Advised Fund.** Sponsor has determined, based on the advice of legal counsel, that the Fund is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.

**9. Fees.** An administrative charge of all amounts paid to the Community Group from the Fund shall be deducted by Sponsor to defray Sponsor's cost of administering the Fund and grants. Additional charges may be paid from the fund to reimburse Sponsor for costs associated with the Community Project (e.g., costs of reports or other compliance measures required by funding sources). These fees and charges shall be calculated pursuant to the fee schedule for the Fund as defined in Exhibit B and which may be amended by the Sponsor with notice to the Community Group. All such fees and charges for extra services will be paid to the general operating fund of Sponsor from the Fund.

**10. Termination.** This Agreement shall terminate when Sponsor determines that the objectives of the Community Project can no longer reasonably be accomplished by Sponsor. If the objectives of the Community Project can still be accomplished but either the Community Group or the Sponsor desires to terminate Sponsor's fiscal sponsorship of the Community Project, the following understandings shall apply. Either Sponsor or the Community Group may terminate this Agreement on \_\_\_ days' written notice to the other party, so long as another nonprofit organization acceptable to both parties (a "Successor") is found that is tax-exempt under IRC Section 501(c)(3), is not classified as a private foundation under Section 509(a) and is willing and able to sponsor the Community Project. The Successor must have charitable purposes compatible with the purposes of the Community Project and the financial and administrative capacity to competently manage the Community Project. The balance of assets in Sponsor's restricted fund for the Community Project, together with any other tangible and intangible assets held and liabilities incurred by Sponsor in connection with the Community Project shall be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required. If the Community Project has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as it has received a determination letter from the Internal Revenue Service, indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof. If no Successor acceptable to both parties is found within a reasonable time, Sponsor may dispose of the Community Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws. Either party may terminate this Agreement, based upon a material breach of the Agreement by the other party, by giving \_\_\_ days' written notice to the other party, and any Community Project assets and liabilities shall be disposed of at the end of the notice period in a manner consistent with the provisions stated above in this Paragraph.

**11. Liability for Claims, Release and Indemnification.** In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. Community Group hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Sponsor, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Community Group, its employees or agents, in applying for or accepting a grant from Sponsor, in expending or applying the funds furnished pursuant to said grant or in carrying out the Community Project, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any act or omission of Sponsor, its officers, directors, trustees, employees or agents.

**12. Entire Agreement.** This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. All Exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by both parties to this Agreement. Each provision of this Agreement shall be separately enforceable, and the invalidity of one



provision shall not affect the validity or enforceability of any other provision. The failure of Sponsor to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

**13. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

IN WITNESS WHEREOF, the parties have executed this Fiscal Sponsorship Agreement as of the effective date set forth in Paragraph 1 above.

\_\_\_\_\_ **COMMUNITY FOUNDATION**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_ **COMMUNITY PROJECT REPRESENTATIVES**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

## **EXHIBIT B**

### **OPERATING AGREEMENT TERMS AND CONDITIONS**

- 1. Description of Project**
- 2. Distribution Request Approval**
- 3. Community Project Contact and Information**
- 4. Fundraising Guidelines**
- 5. Advertising Guidelines**
- 6. Budget Change Guidelines**
- 7. Fee Structure**