

Agreement to Establish the

**Organization Name**  
**Community Project Fund**

within the

**Battle Creek Community Foundation**

This Agreement is between the **Donor Name** Advising/Governing Board (the "Donor(s)"), a Michigan nonprofit corporation, under section 501(c)(3) of the Internal Revenue Code of 1986, (the "Code"), or a committee or advisory body that is established for charitable purpose, and the Battle Creek Community Foundation (the "Foundation"), a Michigan nonprofit corporation.

Recitals

- I. The Donor(s) has an interest in the welfare of the Battle Creek community, and is serving charitable, scientific, literary, or educational purposes for the benefit of the Battle Creek community as part of the Calhoun County Community.
- II. The Foundation was established to receive and administer funds as endowments and/or community project funds, for various charitable, scientific, literary, or educational purposes and organizations in the Battle Creek community.
- III. Various interested persons and the Donor(s) have expressed a desire to establish a fund in the Foundation in the nature of a community project fund to provide current income and long term protection for the operations of the community project.
- IV. The Donor(s) and Foundation desire to enter into a written agreement to describe the terms under which such a fund will be held and distributed.

In consideration of the covenants and agreements described in this agreement (the "Agreement"), the sufficiency of which is acknowledged, the Donor(s) and the Foundation agree as follows.

Terms

1. Establishment of Fund. A Fund shall be established on the books of the Foundation which shall be known as the **FUND NAME** Fund (the "Fund").
2. Property of the Fund. The Fund shall include such property as may from time to time be transferred to the Foundation by the Donor(s) 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 Foundation. The Foundation may, in its discretion, refuse to accept any gift offered to the Foundation.

3. Status of Fund. The Fund shall be the property of the Foundation, held in its corporate capacity, and shall not be deemed a trust fund held by it in a trustee capacity. It is intended that the Fund will be a component fund of the Foundation. 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, By-Laws, and other governing instruments of the Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles, By-Laws, and other governing instruments. Notwithstanding the provisions of this paragraph Foundation will make a of the total proceeds in the Fund as provided in paragraph 7.

4. Notification and acknowledgment of gifts. The Foundation shall have the right to acknowledge and publicize, in the discretion of the Foundation, any gifts or transfers to the Fund, or designated for the benefit of the community project. The Foundation may periodically notify the Donor(s) of gifts and transfers from other sources to the Fund.

5. Designation of Purposes. The Fund shall be used for support of the charitable, scientific, literary, or educational purposes of the community project and its affiliated agencies, as determined from time to time by the Foundation, under this Agreement, and as otherwise provided in this Agreement.

6. Investment of Fund. The Foundation shall have final authority and discretion as to the investment and reinvestment of the Fund. The Fund will be held by the Foundation as part of the general investment assets of the Foundation, and will be invested as determined, from time to time, by the Foundation. The overall investment guidelines, objectives, and performance of the Fund will be provided to the Donor(s) on the request of the Donor(s).

7. Distributions.

7.1 Distributions of Earnings. The net earnings of the Fund, if any, as determined by the Foundation in its discretion, shall be paid and distributed for charitable purposes as specified by the Donor(s) annually, or more or less frequently. Payment by the Foundation of the net earnings shall be a complete release and discharge of the Foundation with respect to the earnings paid, and the Foundation shall not be responsible to the Donor(s) or to any other person for the use of such earnings. The Donor(s) may direct that part or all of the net earnings be reinvested; such net earnings shall be held by the Foundation as a part of the Fund, pursuant to this Agreement.

7.2 Other distributions. Distributions of principal from the Fund, to meet the purposes for which the community project was organized, may be made in any year, in amounts and at the times mutually determined by the Foundation and the Donor.

8. Reporting. The Foundation shall provide a written financial report of the Fund on an annual basis. The Foundation may provide more frequent reports, specified with Donor at the

time the Fund is established. The Foundation shall provide all routine accounting reports to the Michigan Attorney General and the Internal Revenue Service with respect to the Fund.

9. Dissolution of the Donor(s). Except as provided otherwise in this Agreement, on the dissolution of the Donor(s), the Fund shall continue to be held by the Foundation and shall be administered *cy pres* for the purposes of its creation as nearly as may be within the appropriate provisions of the Code and regulations. **It is agreed at this time that if the the Donor(s) should cease to exist, the next most appropriate distribution of the Fund will be to \_\_\_\_\_.**

10. Publicity. The Foundation may use materials submitted by the Donor(s) and the name of the community project in the Foundation's promotional efforts, printed materials, newsletter, annual report, and special mailings to prospective donors, as determined by the Foundation. The Foundation, in its discretion, may publicize that the Foundation holds the Fund.

11. Fees. The Foundation will charge its customary and usual fees for its management, accounting and investments services for the Fund. The Foundation is authorized to charge the Fund with special expenses incurred in connection with the Fund, as Requested by the Donor(s) or as determined to be necessary by the Foundation to maintain the Fund's legal status, from time to time. Such services will be discussed with the Donor(s) prior to those services being performed. If such fees and charges are not paid directly by the Donor(s), then the Foundation is authorized to pay such fees and charges from the Fund.

12. Variance. If the Board of Trustees of the Foundation may exercise the variance power under Article IX of the By-Laws of the Foundation. The Foundation shall promptly notify the Donor of any decision made to exercise the variance power.

13. Dissolution of the Foundation. If the Foundation ceases to be exempt from taxation under Code section 501(c)(3) or if the Foundation proposes to dissolve, then the assets of the Fund shall, after payment or making provision for payment of any liabilities properly chargeable to the Fund, be distributed to the community project. If the community project is then (i) not exempt from taxation under Code section 501(c)(3) or (ii) a private foundation under Code section 509, then such assets shall be distributed in such a manner and to such organization or organizations in the Battle Creek community as are (i) exempt from taxation under Code section 501(c)(3) and (ii) not a private foundation under Code section 509 (a "Qualified Charitable Organization") and serve purposes, all in the discretion of the Foundation.

14. Actions consistent with Foundation's tax status. Notwithstanding any provision of this Agreement, in no event will the Foundation be required to take any action or fail to act, if, in the determination of the Foundation, such action or failure to act would cause the Foundation to fail to meet the requirements for exemption from income taxation applicable to the Foundation, or if such action or failure to act would cause the Foundation to cease to be a Qualified Charitable Organization. If, but for this section, such action or failure to act is required under this Agreement, then the Foundation, in its determination, shall take such action and decline to act in the manner determined by the Foundation.

15. Construction. Nothing in this Agreement shall affect the status of Foundation as a Qualified Charitable Organization. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Code and any regulations or rulings promulgated under the Code, applicable to the Foundation's status, and in accordance with the laws of the State of Michigan, to the extent not inconsistent with the Code.

16. Amendments. The Foundation has the power to modify any restriction or condition on the distribution of the Fund if, in the sole judgment of the Foundation, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Battle Creek community.

This Agreement is effective immediately. In witness of the adoption of this Agreement to Establish the **FUND NAME**, each of the Donor(s) and the Foundation, by their duly authorized representatives, have executed this Agreement.

**Donor(s)**

**Battle Creek Community Foundation**

by: \_\_\_\_\_

by: \_\_\_\_\_

Brenda L. Hunt

its: \_\_\_\_\_

its: President and CEO

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

Yearbook Description

**(This description is the write-up for New Fund Plaques, as well as other advertising for the fund.)**