

**Nonprofit Agency Fund  
Non-endowed**

---

THIS AGREEMENT is made as of the \_\_\_ day of \_\_\_, 20\_\_\_, at \_\_\_, \_\_\_, between the \_\_\_\_\_ (“The Nonprofit”), a corporation established under the nonprofit corporation law of the State of \_\_\_\_\_, with its principal office located at \_\_\_\_\_, and Berkshire Taconic Community Foundation (the “Foundation”), a corporation organized under the nonprofit corporation law of CT, with its principal office located at 800 North Main Street, Sheffield, MA.

WHEREAS, the Parties to this Agreement have a common interest in the welfare of the Berkshire Taconic community and in serving charitable, scientific or educational purposes for the benefit of the Berkshire Taconic region;

WHEREAS, each Party is a qualified charitable organization (as defined herein); and

WHEREAS, the Foundation has been established with a principal purpose to receive and administer funds as endowments for various charitable, scientific or educational purposes and organizations in the Berkshire Taconic region, various interested persons have expressed a desire to establish a fund in the Foundation to provide current income and long-term growth for the operations of The Nonprofit, and The Nonprofit wishes to have the benefits of such a fund.

NOW, THEREFORE, the Parties agree as follows:

1. Establishment of the Fund. A fund shall be established on the books of the Foundation and shall be known as the \_\_\_ Fund (“Fund”). The Foundation acknowledges receipt of the property listed in Schedule “A” attached hereto and made a part hereof as the initial property of the Fund.

2. Property of the Fund. The Fund shall include the property received with the execution of this Agreement, such additional property as may from time to time be transferred to the Foundation by The Nonprofit for inclusion in the Fund, such additional 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 the foregoing property. The minimum value of the property for the Fund to be established and maintained shall be \$10,000. The Fund shall be the exclusive property of the Foundation, held by it in its corporate capacity, and shall not be deemed a trust fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived from it, in accordance with the Articles of Incorporation and Bylaws 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 and Bylaws.

3. Designation of Purpose. The Fund shall be used for the sole purpose of supporting the charitable, scientific, or educational purposes of \_\_\_\_\_ and its affiliated agencies. (*The schedule of the mission is described in B*)

## **Berkshire Taconic Community Foundation**

800 North Main Street, PO Box 400, Sheffield, MA 01257-0400

T: 413.229.0370 F: 413.229.0329 [info@berkshiretaconic.org](mailto:info@berkshiretaconic.org) [www.berkshiretaconic.org](http://www.berkshiretaconic.org)

4. Disbursements. Disbursements from the Fund shall be recommended by any two of the following representatives of The Nonprofit: Executive Director, President, Vice President, Chair, Vice Chair, Secretary or Treasurer along with at least two signatures. A current list of officers and board members are included in attachment C. Requests for large distributions (amounts exceeding \$250,000) require 120 days advance notice. For administrative purposes, the minimum grant recommendation shall be \$100.00. This amount may be amended from time to time. To comply with legal requirements, the Foundation must reserve the discretion to accept or reject such recommendations.
4. Representatives. The Foundation will be notified by the existing two representatives in writing of any changes in representatives, and the Nonprofit will submit a list of officers and board members annually.
5. Exercise of Variance Power

(a) This Agreement is subject to the Foundation's authority to vary the terms of the gift. As stated in section 3.10 of the Foundation's bylaws, The Board shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if, in its sole judgment (without the necessity of the approval of any participating trustee, custodian, or agent except in the case of a gift or donation accepted by the Corporation pursuant to a resolution of the Board which contains restrictions or conditions not permitting such discretionary modification concerning distribution of such funds), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served.

(b) The Foundation shall promptly notify The Nonprofit of any decision made to exercise the variance power. Notification of the exercise of the power shall be delivered in writing to the last known address of The Nonprofit within 30 days following the Foundation's decision. The Foundation shall also notify The Nonprofit if it becomes aware of any other action instituted or proposed by any person to vary the purposes, uses or method of administration of the Fund.

(c) 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 to The Nonprofit. If The Nonprofit is not then a qualified charitable organization, said assets shall be distributed in such manner and to such organization or organizations in the \_\_\_\_\_ community as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of The Nonprofit.

6. Fees. The Foundation shall administer the Fund in accordance with the terms of this Agreement, under and subject to the Foundation's governing instruments, as amended from time to time, and in accordance with procedures for the administration of similar funds of the Foundation. We understand the administrative fee for the Fund at this time is 1.5% annually if the assessed value of the fund is less than \$250,000 with a quarterly minimum fee of \$125. If the

## Berkshire Taconic Community Foundation

800 North Main Street, PO Box 400, Sheffield, MA 01257-0400

T: 413.229.0370 F: 413.229.0329 [info@berkshiretaconic.org](mailto:info@berkshiretaconic.org) [www.berkshiretaconic.org](http://www.berkshiretaconic.org)

assessed value of the Fund is greater than \$250,000, the fee is reduced to 0.75% per year. Administrative fees are calculated and posted on a quarterly basis.

7. Accounting. Accounting rule FASB136 requires that any funds contributed by the organization to an agency fund at the Foundation shall be reported as an asset of the organization and a liability of the Foundation. These funds, therefore, can be reflected on the organization's balance sheet as a financial asset although they remain the legal asset of the Foundation. In the event that individual donors wish to contribute directly to a fund to benefit the organization, a separate fund will be created to comply with accounting standards for those gifts.

8. Acknowledgement. The Nonprofit agrees to acknowledge its association with the Foundation in all communications including, but not limited to press releases, website, social media, e-communications, event invitations and printed materials with the following language:  
The \_\_\_\_\_ Fund is a fund of Berkshire Taconic Community Foundation.

9. Services. The Nonprofit has 24/7 access to the Fund via the Foundation's fund portal to view additions and distributions, revenue and fees, and statements;  
Monthly posting of investment performance to the Fund;  
Monthly investment performance details posted on Foundation website;  
Quarterly statements with investment performance commentary;  
Annual webinar and/or periodic conference calls outlining investment strategy and performance with Foundation Officers and investment consultants hosted on the Foundation's website;  
Invitations to webinars and planned giving seminars;  
Preferred consideration for inclusion in nonprofit management programs offered by the Foundation  
Listing of Nonprofit on Foundation's website.

10. Definitions and Construction.

(a) As used in this Agreement:

(1) "Qualified charitable organization" means an organization described in section 501(c)(3), which is other than a private foundation under section 509(a) of the Internal Revenue Code.

(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, and the corresponding provision of any future U.S. Internal Revenue Code.

(b) It is intended that the Fund shall be a component part of the Foundation and that nothing in this agreement shall affect the status of the Foundation as an entity that is a qualified charitable organization. This Agreement shall be interpreted in a manner consistent with this intention and so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto applicable to the intended status of the Foundation.

## Berkshire Taconic Community Foundation

800 North Main Street, PO Box 400, Sheffield, MA 01257-0400

T: 413.229.0370 F: 413.229.0329 [info@berkshiretaconic.org](mailto:info@berkshiretaconic.org) [www.berkshiretaconic.org](http://www.berkshiretaconic.org)

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized officers effective as of the day and year first above written.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
President (or Chair), Board of Directors  
(name of Nonprofit)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Chief Executive Officer  
(name of Nonprofit)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Jennifer Dowley, President  
Berkshire Taconic Community Foundation, Inc.

## Berkshire Taconic Community Foundation

800 North Main Street, PO Box 400, Sheffield, MA 01257-0400

T: 413.229.0370 F: 413.229.0329 [info@berkshiretaconic.org](mailto:info@berkshiretaconic.org) [www.berkshiretaconic.org](http://www.berkshiretaconic.org)