



*Giving Together Creates Impact*

SCHOLARSHIP FUND AGREEMENT

This Agreement is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Whitefish Community Foundation, Inc. (“Community Foundation”) a nonprofit Montana corporation and a community foundation and \_\_\_\_\_ (“Donor”) to create a Scholarship Fund. All contributions to this fund shall be governed by the terms of this Agreement.

WHEREAS, the Donor, in the furtherance of the Donor’s charitable purposes, deems it to be in the Donor’s best interest to create a Scholarship Fund with the Community Foundation;

WHEREAS, the Community Foundation is a nonprofit Montana corporation exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, and is an appropriate entity within which to establish such a Scholarship Fund; and

WHEREAS, the Community Foundation is willing and able to create such Scholarship Fund subject to the terms and conditions hereof.

NOW, THEREFORE, the parties agree to the following terms:

1. **Name of Fund.** There is hereby established in the Community Foundation a fund designated as the \_\_\_\_\_ Scholarship Fund (hereinafter referred to as the “Fund”).
2. **Purpose of Fund.** The primary purpose of the Fund is to make scholarship grants exclusively for tuition and related expenses, as defined by IRC 117(b)(2) expenses at an educational institution described in IRC 170(b)(1)(A)(ii).
3. **Donor Recommendations.** Additional recommendations for the Fund are described in Exhibit A. All such recommendations shall be objective, non-discriminatory, and in compliance with the Scholarship Policy.
4. **Initial Gift.** The Donor has or intends to made an irrevocable donation of \$\_\_\_\_\_ in cash or other assets to initiate the Fund as set forth in Exhibit A attached hereto. The initial gift shall be subject to the fund minimum specified in the Scholarship Fund Guidelines (the “Guidelines”) attached hereto as Exhibit B.

- 5. Additional Gifts.** Any individual, corporation, trust, estate or other legally recognized entity may make a gift, bequest, devise or other transfer to the Community Foundation for the purposes of the Fund by a transfer to the Community Foundation of cash or other assets acceptable to the Community Foundation for the benefit of the Fund. All additional gifts, bequests and devises made to the Community Foundation for the benefit of the Fund shall be irrevocable and subject to the terms and conditions of this Agreement. All additional gifts of cash shall be by check, certified check or money order, payable to the Whitefish Community Foundation, Inc., and shall reference the Fund name on the check memo line. Except as provided herein, the Community Foundation does not solicit contributions to or otherwise provide marketing or fundraising services for the Fund.
- 6. Administrative Authority.** The Community Foundation shall have all powers necessary, or in its sole discretion, desirable to administer and carry out the purpose of the Fund, including, but not limited to, the powers to retain, manage, sell, invest and reinvest the Fund assets and its income in any manner as authorized by law, and the power to co-mingle the assets of the Fund with those of other funds for investment purposes.
- 7. Distributions.** If not otherwise specified in Exhibit A, the amount, manner and frequency of scholarship grants from the Fund will be determined by the Community Foundation's Board of Directors ("Board") in compliance with the Guidelines in effect at the time of the proposed grant.
- 8. Separate Accounting and Reporting.** The Fund shall be accounted for separately and apart from other funds of the Community Foundation, but may be co-mingled with other assets of the Community Foundation for investment purposes. The Community Foundation shall provide the Donor at least annually with a written report showing the Fund's contributions, earnings, distributions, and fees.
- 9. Substantiation and Acknowledgment:** Upon accepting transfers of cash or other assets to the Fund, the Community Foundation will send a letter to the donor acknowledging the contribution. The letter serves as a receipt for tax purposes. The Community Foundation will also notify the Donor when contributions are received from third parties.
- 10. Other Reports:** The Community Foundation issues an Annual Report. The Report lists all Funds held by the Community Foundation. Copies of the Annual Report and information returns (IRS Form 990) are available upon request or on the web site at [www.whitefishcommunityfoundation.org](http://www.whitefishcommunityfoundation.org). The Annual Report includes the names of donors to the Community Foundation and the names of the Funds at the Community Foundation, but the report does not specifically identify the donors that contributed to each Fund. The Report may list scholarship grants from the Funds.
- 11. Community Foundation as Owner of the Fund.** The Fund shall be the property of the Community Foundation and owned by it in its corporate capacity. In such capacity, the Community Foundation shall have the ultimate authority and control of all assets in the Fund, and the income from the Fund for the charitable purposes of the Community

Foundation. The assets in the Fund, whether cash or other property, are not held in trust for the Donor.

- 12. Compensation to Community Foundation and Other Expenses.** The Community Foundation carries out the distribution and financial reporting responsibilities necessary to maintain the Fund and shall charge the Fund an administrative management fee. The fee is specified in the Guidelines, and the fee may be periodically modified by an amendment to the Guidelines adopted by the Board of Directors of the Community Foundation. Said fee shall be reasonable and in keeping with the fees that community foundations customarily charge.
- 13. Variance Power.** The Fund is subject to the variance power described in Treas. Reg. Sec. 1.170.A-9(f)(11)(v)(B)(1), as amended from time to time. Pursuant to the variance power, the Board shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations, if in their sole judgment (without the approval of any advisor, trustee, custodian, or agent) such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Community Foundation.
- 14. Continuity of the Fund and Default.** It is intended that the Fund continue in perpetuity or until such time as the value of the assets in the Fund are depleted or distributed to another fund pursuant to this Agreement.
- 15. Legal Compliance.** The Donor agrees and acknowledges that the establishment of the Fund is made subject to the terms and conditions of the Articles of Incorporation and Bylaws of the Community Foundation, as from time to time amended, and the Guidelines as have been adopted by the Board and thereafter amended from time to time. Notwithstanding anything herein to the contrary, the Community Foundation is subject to and shall hold and administer the Fund and all contributions to the Fund pursuant to the laws of the State of Montana including the Montana Nonprofit Corporation Act and the Montana Uniform Prudent Management of Institutional Funds Act, and shall further be subject to all federal law, including, but not limited to the United States Treasury Department Regulations and the Internal Revenue Code. The Fund is also subject to the Community Foundation's Scholarship Policy.
- 16. Dissolution.** If the Community Foundation ceases to be a qualified charitable organization, or if the Community Foundation proposes to dissolve, then the assets of the Fund, after payment or making provision for payment of any liabilities properly chargeable to the Fund, shall be distributed to a qualified charitable organization that administers scholarship funds. The term "qualified charitable organization" as used herein shall mean an organization described in IRC 501(c)(3), which is other than a private foundation under IRC 501 (a).
- 17. Privacy Policy.** The Community Foundation does not share its mailing list. This Agreement is subject to the Privacy Policy of the Community Foundation, a copy of which is available at the Community Foundation office.

**18. Liability.** The Community Foundation, its officers, directors, employees, and agents shall not be liable to the Donor for any loss or damage to the Fund, including, but not limited to any depreciation in the value of the Fund.

**19. Entire Agreement.** This Agreement and the Exhibits attached hereto are the entire Agreement between the parties, and supersede all previous negotiations, commitments, and writings.

**20. Applicable Law.** This Agreement shall be governed by and construed under the laws of the state of Montana.

**21. Binding Effect.** This Agreement shall be binding upon the parties, their successors, and assigns.

**22. Severability.** If any term or provision of this Agreement shall be held to be invalid or unenforceable for any reason, that term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms and provisions, and this Agreement shall be construed as if such invalid or unenforceable term or provisions had not been included. In the event that any term or provision is held to be valid or unenforceable, or in the event that any term or provision shall be found to be inconsistent with any policy of the Community Foundation, the Donor and the Community Foundation shall promptly meet to negotiate substitute terms and provisions for those found to be invalid, unenforceable, or inconsistent.

IN WITNESS WHEREOF, this Agreement is signed this \_\_\_\_\_ day of \_\_\_\_\_.

DONOR

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

WHITEFISH COMMUNITY FOUNDATION, INC.

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

## **EXHIBIT B**

### **Scholarship Fund Guidelines**

*These Guidelines are incorporated by reference in the Whitefish Community Foundation Scholarship Fund Agreement, and they apply to all Scholarship Funds.*

Any Scholarship Fund (“Fund”) established with the Whitefish Community Foundation (the “Community Foundation”) shall be subject to the following terms and conditions:

1. **Administrative Fees** – The Community Foundation shall receive a fee for services based on the average quarterly balance in the Fund during any given calendar year. Fees are charged quarterly.
  - For a Fund with a value up to and including \$1,000,000, the annual fee is 2% of the average ending quarterly balance, with a minimum fee of \$1,000 per year.
  - For a Fund with a value over \$1,000,000, the annual fee is 2% on the first \$1,000,000 and 1.5% on the average ending quarterly balance above \$1,000,000.
  - The Community Foundation has an existing selection committee, a scholarship application, and a standard process for application review. The Community Foundation reserves the right to charge the Fund a fee of \$100 per hour if the scholarship program involves additional time, such as: replacing selection committee members, setting up a new selection committee, using a different scholarship application, or using a non-standard application review process.
  - If any Donor has more than one fund established with the Community Foundation, the annual fee shall be established based on the aggregate value of all of the Donor’s funds.
  
2. **Distributions** – Scholarship grants from the Fund will be made at such times and in such amounts as the Donor had specified in Exhibit A. If no frequency or amount of grants is specified in Exhibit A, the frequency and amount of grants from the Fund shall be determined by the Community Foundation based on any factors deemed relevant by the Community Foundation.
  - The minimum distribution that may be made from the Fund is \$1,000.
  
3. **Fund Minimum** – A Fund may be opened with a \$25,000 minimum. If the Fund balance at any time is less than \$25,000, distributions from the Fund shall be deemed terminating distributions.

**Amendment** - THESE GUIDELINES MAY BE SUPERSEDED, MODIFIED, REVOKED, REVISED, SUSPENDED, OR TERMINATED AT THE SOLE DISCRETION OF THE BOARD OF DIRECTORS OF THE COMMUNITY FOUNDATION AT ANY TIME WITH OR WITHOUT NOTICE.

## **WHITEFISH COMMUNITY FOUNDATION SCHOLARSHIP POLICY**

Whitefish Community Foundation (the “Foundation”) may make scholarship grants to individuals in accordance with the following policy:

### **1. ELIGIBILITY**

Scholarship grants may be made to individuals, including high school, college, and graduate school students, to enable the recipients to complete an undergraduate or graduate education in the field of their choice at the college or graduate school of their choice. Scholarship grants may also be made to students in primary and secondary school to attend various educational programs and to other individuals for vocational or other training. Scholarship grants must be used for tuition and related expenses, within the meaning of IRC § 117(b)(2), at an educational institution described in IRC § 170(b)(1)(A)(ii). No part of the Scholarship Grant shall be used as payment for teaching, research, or other services by the scholarship recipient required as a condition for receiving the scholarship.

### **2. GRANT AMOUNTS**

The number of grants and the amounts of each individual grant shall be determined by the Board of the Foundation.

### **3. GRANT SOLICITATIONS**

To solicit nominations for scholarship grants, the Foundation staff and designated members of the grants selection committee shall contact high school, college and graduate school administrators as well as managers of other relevant community institutions to advertise the availability of the scholarship grants and to request that these administrators nominate potential candidates or encourage potential awardees to submit applications for grants.

### **4. GRANT APPLICATIONS**

Applicants for scholarship grants shall be required to submit such application forms and supporting materials as the Foundation may deem appropriate.

### **5. GRANT DURATION**

Grants will ordinarily be awarded for a one-year period, but may be for a shorter or longer period, at the discretion of the Board. The Foundation may consider renewing a grant on a case-by-case basis if the Foundation has no information indicating that the original grant is being used for any purpose other than that for which it was made, any reports due at the time of the renewal decision pursuant to the terms of the original grant have been furnished, and the criteria and procedures for renewal are objective and nondiscriminatory.

### **6. SELECTION CRITERIA**

Grantees are to be selected on an objective and nondiscriminatory basis. The grant program must be consistent with the Foundation's tax exempt status under IRC §501(c)(3) and the allowance of deductions to individuals under IRC §170 for contributions to the Foundation.

The group from which grant recipients are selected must be sufficiently broad so that giving grants to one or more members of the group fulfills a charitable purpose, and the selection criteria must be related to the purpose of the grant as follows:

Scholarship grants criteria shall include prior academic performance, performance of each applicant on tests designed to measure ability and aptitude for educational work; recommendations from instructors of such applicant and any others who have knowledge of the applicant's capabilities, additional biographical information regarding an applicant's career, academic and other relevant experiences, financial need and conclusions that the grant selection committee may draw as to the applicant's motivation, character, ability or potential. Criteria may also include the applicant's place of residence, past or future attendance at a particular school, past or proposed course of study or evidence of his or her artistic, scientific or other special talent.

## **7. CANDIDATES FOR GRANTS**

Scholarship grants recipients must be (1) primary or secondary school students; (2) undergraduate or graduate students at a college or university who are pursuing studies or conducting research to meet the requirements for an academic or professional degree; or (3) full or part-time students who receive a scholarship for study at an educational institution that provides an educational program acceptable for full credit toward a bachelor's or higher degree, or offers a training program to prepare students for gainful employment in a recognized occupation and is authorized under federal or state law to provide such a program and is accredited by a national recognized accreditation agency.

## **8. GRANT APPROVAL**

The Board of the Foundation shall appoint all members of the scholarship selection committee charged with the evaluation of candidates for scholarship grants. Members of the committee shall be appointed based on objective criteria established by the Board, including members representing diverse segments of the population, members with a demonstrated history of public and community service, members with capacity to foster relationships necessary to identify and solicit applications and nominations for grants. The selection committee shall forward its recommendations to the Board. The Board shall approve each grant recommended by the selection committee provided it is consistent with all policies and procedures of the Foundation. The Board shall appoint members to fill any vacancies on the selection committee using the objective criteria for appointment established by the Board and set forth herein.

## **9. REPORTING AND SUPERVISION OF GRANTS**

Each scholarship grant shall be paid by the Foundation directly to the educational institution for the use of the scholarship recipient. Each educational institution must agree in writing to use the

grant funds to defray the scholarship recipient's expenses or to pay the funds (or a portion thereof) to the recipient only if the recipient is enrolled at such educational institution and his or her standing at such educational institution is consistent with the purposes and conditions of the grant.

If for any reason, a scholarship grant is paid to a person other than the educational institution attended by the scholarship recipient or if the scholarship grant is used for expenses other than qualified tuition and related expenses within the meaning of IRC § 117(b)(2) or for room and board, the Foundation must receive a report on the progress of each recipient of such a scholarship grant at least once each year. This report must include a summary of the use of the funds awarded, and the grantee's courses taken (if any) and grades received (if any) in each academic period. This report must be verified by the educational institution. A final report is also required.

If any reports submitted, or other information (including the failure to submit reports) indicate that all or any part of a grant is not being used in furtherance of the purposes of such grant, the Foundation is under a duty to investigate. While conducting its investigation, the Foundation shall withhold further payments to the extent possible until any delinquent reports have been submitted.

If the Foundation learns that all or any part of a grant is not being used in furtherance of the purposes of the grant and the grantee has not previously diverted grant funds to any use not in furtherance of a purpose specified in the grant, the Foundation shall take all reasonable and appropriate steps to recover the grant funds or to ensure restoration of the diverted funds and the dedication of grant funds held by the grantee to the proper grant purposes. If such a diversion occurs and the grantee has not previously diverted grant funds to any use not in furtherance of the purposes of the grant, the Foundation shall withhold any further payments to the grantee until it has received the grantee's assurance that future diversions will not occur and shall require the grantee to take extraordinary precautions to prevent future diversions from occurring.

Where a grantee has previously diverted funds received from the Foundation and the Foundation determines that any part of a grant has again been used for improper purposes, the Foundation shall take all reasonable and appropriate steps to recover the grant funds or ensure restoration of the diverted funds to the purposes of the grant. In such case, the Foundation shall withhold further payments until: (1) the diverted funds are in fact recovered or restored; (2) the Foundation has received the grantee's assurances that future diversions will not occur; and (3) the Foundation requires the grantee to take extraordinary precautions to prevent future diversions from occurring.

The phrase "all reasonable and appropriate steps," as used above, shall include legal action where appropriate, but need not include legal action if such action would in all probability not result in the satisfaction of execution on a judgment.

## **10. RESTRICTIONS**

All grants policies shall adhere to the relevant policies of the Foundation as they may be adopted and amended from time to time, including without limitation a conflict of interest and confidentiality policy.

Every member of any selection committee charged with the evaluation of candidates for grants shall be obligated to disclose any personal knowledge of and relationship with any potential grantee under consideration and to refrain from participation in the award process in a circumstance where he or she would derive, directly or indirectly, a private benefit if any potential grantee or grantees are selected over others.

No grant covered by this policy may be awarded to any member of the Foundation's Board of Directors, any substantial contributor to the Foundation, any employee of the Foundation, or any other disqualified person.

Candidates for grants may take no part in the selection process.

## **11. RECORDKEEPING**

The Foundation shall retain the following records in connection with all grants:

- All information used to evaluate the qualifications of potential grantees;
- The identification of grantees and any relationship of any grantee to the Foundation or to a director or officer of the Foundation;
- The purpose and amount of each grant; and
- Any additional information the Foundation obtains in complying with its grants administration procedures. Information pertaining to unsuccessful applicants for awards shall be kept along with information on successful applicants.

Records pertaining to any grant made pursuant to this policy shall be kept for no less than three years after the filing of the Foundation's annual tax return for the period in which the last installment of such grant was paid.

## **12. MISCELLANEOUS**

The Foundation reserves the right to impose additional, minor reasonable restrictions and/or requirements upon the awarding of grants and the administration of such grants.

## **13. ADDITIONAL RULES FOR EMPLOYER RELATED GRANT PROGRAMS**

**PURPOSE.** The grant cannot represent compensation for past, present, or future services rendered or to be rendered to the foundation or employer by the employees or their children, and the grant cannot be for studies or research undertaken primarily for the benefit of the Foundation or the employer.

**NO INDUCEMENT.** The grant program must not be used by the employer or the Foundation to

recruit employees or to induce employees to continue their employment or otherwise follow a course of action sought by the employer.

**SELECTION COMMITTEE.** Selection of grant recipients must be made by a committee of individuals who are totally independent (except for participation on this committee) and separate from the employer concerned. An individual who is a former of the employee of the employer concerned will not be considered totally independent. Forwarding selections to the employer to verify the eligibility requirements and selection criteria the independent selection committee followed in considering candidates and making its selection will not disqualify the program. Only the selection committee or the Foundation may make public announcement of the awards, however. The awards may be announced in the employer's newsletter, if the Foundation is clearly identified as the grantor.

**AMOUNT AND NUMBER OF GRANTS.** Grants must be awarded only in the order recommended by the selection committee. The number of grants to be awarded may be reduced but may not be increased from the number recommended by the selection committee. Only the committee may vary the amounts of the grants awarded.

**ELIGIBILITY.** The program must impose identifiable minimum requirements for grant eligibility. These requirements must relate to the program's purpose and must limit the selection committee's consideration to employees (or children of employees) who meet the minimum standards for admission to an educational organization for which the grants are available (as defined in section 151(e)(4) of the Code). No persons will be considered eligible if they would not reasonably be expected to attend such an organization, however, even if they meet the minimum standards. If an employee must have been employed for some minimum period by the employer, the minimum period of employment may not be more than three years. Moreover, eligibility must not be related to any other employment-related factors, such as the employee's position, services, or duties. The preferential treatment derived from employment must not have any significance beyond that of an initial qualifier. The group of employees, or children of employees, from which grantees are to be selected must be sufficiently broad so that the awarding of grants to members of such a group could be considered consistent with the fulfillment of a purpose described in IRC Section 170(c)(2)(B).

**OBJECTIVE BASIS OF SELECTION.** Selection of grant recipients must be based only upon substantial objective standards that are completely unrelated to the employment of the recipients or their parents and to the employer's line of business. Such standards may include past academic performance, performance on tests designed to measure ability and aptitude for higher education, recommendations from instructors or other individuals not related to the potential awardees, financial need, conclusions drawn from personal interviews as to motivation and character. The grant must be awarded on an objective and nondiscriminatory basis.

**ONGOING EMPLOYMENT.** Once a grant has been awarded, it may not be terminated because the recipient or the recipient's parent no longer works for the employer, regardless of the reason for terminating employment. If a grant is awarded for one academic year and the recipient must reapply for an additional grants to continue studies for a later year, the recipient may not be

considered ineligible for a subsequent grant simply because that individual or the individual's parent is no longer employed by the employer. If a grant is awarded for more than one academic year, subject to renewal, renewal standards must be based only on non-employment-related factors such as need and maintenance of scholastic standards. Renewal may not be denied because the recipient or parent has previously terminated employment with the employer. When the grant is awarded or renewed, there must be no requirement, condition, or suggestion, express or implied, that the recipient or the recipient's parent is expected to perform future employment services for the foundation or the employer, or be available for future employment, even though the future employment is at the discretion of the foundation or the employer.

**COURSES OF STUDY.** Courses of study for which grants are available must not be limited to those that would be of particular benefit to the employer or foundation. If the courses of study for which grants are available include one or more that would be of particular benefit, a grant may not be conditioned on the recipient choosing such a course of study. The recipient must have free choice to use the grant in the pursuit of a course of study for which the grant is otherwise available that is not of particular benefit to the employer or to the foundation. The terms of the grant and the courses of study for which grants are available must be consistent with a disinterested purpose of enabling recipients to obtain an education in their individual capacities only for their personal benefit. Grant terms and courses of study must not include any commitments, understandings, or obligations, conditional or unconditional, suggesting that recipients undertake the studies for the benefit of the employer or the Foundation or that studies' objective is to accomplish any purpose of the employer or the Foundation, even though consistent with its exempt status, other than to enable the recipients to obtain an education in their individual capacities and solely for their personal benefit.

**PERCENTAGE TESTS.** In the case of a program that awards grants to children of employees of a particular employer, the program has to meet a percentage test. The program meets the percentage test if the number of grants awarded under that program in any year to such children does not exceed 25 percent of the number of employees' children who, (i) were eligible, (ii) were applicants for such grants, and (iii) were considered by the selection committee in selecting the recipients of grants in that year, or 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

In the case of a program that awards grants to employees of a particular employer, the program meets the percentage test if the number of grants awarded under that program in any year to such employees does not exceed 10 percent of the number of employees who, (i) were eligible, (ii) were applicants for such grants, and (iii) were considered by the selection committee in selecting the recipients of grants in that year.

For the purpose of meeting these percentage tests, an employee or child of an employee will be considered eligible only if the individual meets all of the eligibility requirements imposed by the program. Renewals of grants awarded in prior years will not be considered in determining the number of grants awarded in a current year. Grants awarded to children of employees and those awarded to employees will be considered as having been awarded under separate programs for purposes of all of the requirements of this policy, whether or not they are awarded under separately administered programs.