

AGREEMENT ESTABLISHING

**THE \_\_\_\_\_ ENDOWMENT FUND**

A NONPROFIT ORGANIZATION ENDOWMENT FUND  
OF  
THE YAMPA VALLEY COMMUNITY FOUNDATION

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a Colorado nonprofit corporation (the "Nonprofit Organization"), and THE YAMPA VALLEY COMMUNITY FOUNDATION, a Colorado nonprofit corporation (the "Foundation").

The Nonprofit Organization desires to establish an endowment fund (the "Fund") within the Foundation for the benefit of the Nonprofit Organization. The Foundation is willing to receive, administer and distribute all contributions to the Fund upon the following terms and conditions.

1. Name of Fund. The Fund shall be established on the books of the Foundation as a nonprofit organization endowment fund and shall be known as The \_\_\_\_\_ Fund (or by such other name or names as the parties may agree to from time to time).

2. Contributions. The Fund shall include the property listed on Schedule A, such property as may from time to time be transferred to the Foundation by the Nonprofit Organization for inclusion in the Fund, such property as may be transferred to the Foundation from other sources and accepted by it for inclusion in the Fund, and all income from the foregoing property. The Foundation shall not be obligated to engage in the Nonprofit Organization's fundraising efforts or otherwise solicit gifts to the Fund, or to accept any particular gifts, transfers or additions to the Fund from the Nonprofit Organization or any third party. Further, if assets transferred to the Foundation from the Nonprofit Organization were previously received by the Nonprofit Organization as donor-restricted gifts, such assets shall be added to and held as part of the Fund only if such donor-imposed restrictions are specifically approved and accepted by the Foundation, in which case the Foundation shall establish and account for a separate endowment sub-fund within the Fund to hold and administer such gift.

3. Investments. In addition to all of the powers granted by the Colorado Uniform Prudent Management of Institutional Funds Act or other provisions of application law, the Foundation shall have all powers necessary, in its sole discretion, to carry out the purposes of the Fund, including, but not limited to, the power to retain invest and reinvest the Fund in accordance with the Foundation's investment policies, as amended from time to time. For investment purposes, the Foundation shall have the power to commingle the assets of the Fund with those of other funds, subject to the maintenance of appropriate accounting records with respect to the Fund. The Foundation may, in its sole discretion, delegate to its committees, to its officers or employees, or to

agents (including investment counsel) the authority to act in place of the board of directors in investment and reinvestment of the Fund; to contract with independent investment advisors, investment counsel or managers, banks, or trust companies so to act; and to authorize the payment of compensation for advisory or management services.

4. Distributions. The Foundation shall make annual distributions to the Nonprofit Organization from the Fund in accordance with the Foundation's spending policy for endowment funds, as it may be amended from time to time. The Foundation's current spending policy is attached as Schedule B.

5. Distributions and Loans from Principal. It is the intention of the parties that the principal of the Fund shall be preserved in perpetuity. However, distributions or loans from the principal of the Fund to the Nonprofit Organization may be made as provided in this paragraph 5. The Foundation may from time to time make one or more distributions or loans from principal to the Nonprofit Organization but only to meet an emergency need of the Nonprofit Organization and then only if the distribution has been approved both by a vote of three-fourths of all directors of the Nonprofit Organization then in office and by a vote of three-fourths of all directors of the Foundation then in office.

6. Spendthrift Provision. Notwithstanding any other provision of this Agreement, no income or principal distributable from the Fund may be assigned or encumbered by the Nonprofit Organization, or be attached by or subject to the interference or control of any creditor of the Nonprofit Organization, or reached by any legal or equitable process in satisfaction of any debt or liability of the Nonprofit Organization, prior to its actual receipt by the Nonprofit Organization.

7. Cy Pres. If, at any time and for any reason, the Nonprofit Organization shall cease to operate or to exist, or shall cease to be qualified as a tax-exempt organization described in section 501(c)(3) of the Code, contributions to which are deductible under section 170(c) of the Code, then the Foundation shall select one or more organizations that are carrying out appropriate purposes reasonably similar to those that had been pursued by the Nonprofit Organization, and shall substitute those organizations for the Nonprofit Organization for all purposes of this Agreement.

8. General Restrictions. The Fund shall at all times be held and administered in accordance with the provisions of the articles of incorporation and bylaws of the Foundation and the various policies and procedures adopted by the Foundation, as amended from time to time. In addition, notwithstanding anything to the contrary herein, the board of directors of the Foundation shall have the power to modify or eliminate any designation, restriction or condition on the use or distribution of the Fund for any specified charitable purposes or to specified organizations, or on the investment of the Fund, if in the sole judgment of the board of directors (without the necessity of the approval of any participating trustee, custodian or agent) such designation, restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by the Foundation.

9. Component Part. It is intended that the Fund shall be a component part of the Foundation and not a separate trust, and that nothing in this Agreement shall affect the status of

the Foundation as an organization described in section 501(c)(3) of the Code and as a “community trust” within the meaning of Treasury Regulations section 1.170A-9(e)(11). This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. The Foundation is authorized to amend this Agreement to conform to the provisions of any applicable law or government regulation in order to carry out the foregoing intention.

10. Fees and Expenses. The Foundation shall be entitled to pay or reimburse itself from the Fund for all reasonable expenses it incurs in administering the Fund, and shall be entitled to charge to the Fund a general administration fee to cover a portion of the Foundation’s general operating expenses. The fee charged by the Foundation shall be in accordance with policies, fee schedules and payment schedules established by the board of directors of the Foundation, and may be amended from time to time. At the present time, such fee is calculated and assessed semi-annually based on the average beginning and end of period value of the Fund. See Schedule C for the current fee schedule.

11. Records, Reports and Audits. The Fund shall be accounted for separately and apart from other funds of the Foundation. The Foundation will provide to the Nonprofit Organization at least annually a report showing the assets then held as the principal of the Fund and all receipts, expenses and distributions during the period covered by the report, as well as such other information relating to the Fund as the Nonprofit Organization may reasonably request. The Foundation shall not be obligated to obtain a separate audited financial report for the Fund.

12. Contact Information. For purposes of this Agreement, all notices, recommendations and reports shall be delivered by mail, delivery service, fax or e-mail as follows, unless either party provides different contact information in writing to the other party:

If to Nonprofit Organization:

(name of organization): \_\_\_\_\_

Attn: \_\_\_\_\_

(address): \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

If to Foundation:

The Yampa Valley Community Foundation

Attn: Mark Andersen

465 Anglers Drive, Suite 2G

Steamboat Springs, CO 80488

Telephone: (970) 879-8632

E-mail: [mark@yvcf.org](mailto:mark@yvcf.org)

13. Miscellaneous.

(a) References in this Agreement to the Internal Revenue Code or the Code are to the Internal Revenue Code of 1986, as amended, and shall include the corresponding provisions of any subsequent federal tax laws.

(b) Paragraph captions are provided for convenience only and shall have no significance in the interpretation of this Agreement.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

(d) This writing is an integrated agreement and constitutes the entire agreement between the parties with respect to the Fund.

EXECUTED at Steamboat Springs, Colorado to be effective as of the date first above written.

\_\_\_\_\_  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE YAMPA VALLEY COMMUNITY  
FOUNDATION, a Colorado nonprofit  
corporation

By: \_\_\_\_\_  
Mark D. Andersen, Executive Director

**Schedule A**

[Property Contributed to the Fund]

**Schedule B**  
Current Spending Policy  
Endowment Funds

The recommended spending policy amount for endowments shall be computed using a simple average of the total fund balance of all eligible funds for the previous 12 quarters multiplied by 4.5%. This amount would be distributed based on a percentage allocation of ending fund balance of each fund for the previous year. Funds with a balance less than \$10,000 will have no recommended spending amount and not be included in the computation. Funds with a specific spending policy outlined in their fund agreement would not be affected by this calculation.

**Schedule C**  
General Administration Fees  
Endowment Funds

[Insert current fee schedule]

Minimum fee = \$250/year