

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** January 18, 2006

**SUBJECT:** Hancock County, Mississippi Donations Fund

**ATTACHMENTS:** Donor Advised Fund Agreement - Draft  
Donor Advised Fund Guidelines and Policies  
Management Fee Policy

#### **SUMMARY OF REQUEST:**

Attached for the Board's review and approval is a draft copy of the Community Foundation's Donor Advised Fund Agreement with the Henderson County Board of Commissioners to create a fund for Hancock County, Mississippi to collect donations and remit them to Hancock County to be used for Hurricane Katrina relief and recovery efforts. This specific action to create a fund for this purpose was approved by the Board in their resolution adopting Hancock County as a Sister Community at the December 5, 2005 Board meeting.

Also included for the Board's review are the Community Foundation's Donor Advised Fund Guidelines and Policies and their Management Fee Policy.

Mr. McCray V. Benson, President and CEO of the Community Foundation of Henderson County will be present at the meeting to discuss any questions raised by the Board of Commissioners concerning the agreement.

#### **COUNTY MANAGER'S RECOMMENDATION:**

It would be appropriate for the Board to approve the attached agreement to set up this fund in support of Hancock County, Mississippi after your review, incorporation of revisions and any questions on the agreement by the Board are answered by Mr. Benson.

**DONOR ADVISED FUND AGREEMENT BETWEEN**  
**THE COMMUNITY FOUNDATION OF HENDERSON COUNTY, INC.**

**AND**

**The Henderson County Board of Commissioners**

This agreement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the Community Foundation of Henderson County, Inc. (The "Foundation") and the Henderson County Board of Commissioners (the "Grantor(s)").

The Foundation is a non-profit, tax-exempt corporation serving as a community foundation for the benefit of Henderson County, North Carolina. The Grantor(s), in furtherance of the Grantor(s)'s charitable purposes, desires to create a Non-endowed Fund with the Foundation. The Foundation and the Grantor(s) therefore agree as follows:

**NAME**

A fund designated as the **Henderson County Sister County Fund for the benefit of Hancock County, Mississippi** (the "Fund") is created by this agreement as a component fund within the Foundation to receive gifts and to be administered according to the Foundation's guidelines governing Donor Advised Funds.

**GIFTS TO THE FUND**

The Grantor(s) has this day delivered to the Foundation the following money or property to serve as the initial contribution to the Fund: \_\_\_\_\_

Any person (whether an individual, corporation, trust, estate, or any other organization or entity) may make a gift to the Foundation as an addition to this Fund. The form of the gifts and any other conditions associated with the gifts must be acceptable to the Foundation. All such gifts to the Fund shall be irrevocable.

**PURPOSES**

The purpose of the Fund is to provide support for the Hurricane Katrina relief and recovery efforts in Hancock County, Mississippi.

**DISTRIBUTION OF FUNDS**

So long as the fund continues, all assets of the fund shall be subject to distribution upon meeting the purposes of the Fund, as approved by the Foundation's Board of Directors. The Foundation will not be compelled to make distributions more frequently than quarterly.

**RECOMMENDATIONS FOR DISTRIBUTION**

Distributions from the fund shall be determined solely by the Foundation according to the Foundation's guidelines governing Donor Advised Funds. The Grantor may from time to time submit

the names of organizations or activities to which the Grantor believes distributions of income should be made. All recommendations from the Grantor shall be solely advisory, and the Foundation, by using reasonable standards and guidelines, may accept or reject them. The Henderson County Manager shall be named the primary advisor of this fund and will make recommendations on behalf on the Henderson County Board of Commissioners.

### **PROHIBITED DISTRIBUTION**

No part of the Fund shall inure to the benefit of, or be distributable to:

1. The Grantor(s) or any immediate family member of the Grantor(s);
2. Any officer or director of the Foundation or any immediate family member of any officer or director of the Foundation.

Notwithstanding this prohibition, the Foundation is authorized and empowered to pay reasonable compensation for services rendered and to pay payments and distributions in furtherance of the purposes set forth in this agreement.

### **MANAGEMENT FEES**

The Fund is responsible for bearing a fair portion of the total administrative costs of the Foundation. The Fund is therefore subject to the uniform and regular charges in accordance with the Foundation's Management Fee Policy.

### **TERMINATION**

This Fund shall continue as long as the need therefore exists or adequate money or property is available for its purposes. The Board of Directors of the Foundation shall have full and sole authority to determine whether there is a continuing need for the fund and whether there is adequate money or property available for its purposes. If, in the good faith opinion of the Foundation, the original charitable and benevolent purposes of this Fund cannot be determined or are impractical or impossible of fulfillment, then any remaining funds shall be applied in such amounts and for such purposes as the Board of Directors of the Foundation determines to carry out most nearly the original charitable and benevolent purposes of this Fund. If none is found then the Foundation may apply the fund in such a way as to be consistent with the general charitable and benevolent purposes of the Foundation as set forth in its corporate charter. Any organization chosen to receive any of the remaining fund assets must be an organization exempt under the provisions of Section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding provision of any future Internal Revenue Code.

### **VARIANCE POWER**

It is understood that the Fund to be established pursuant to this agreement will be subject to the provisions of the Charter and Bylaws of the Community Foundation of Henderson County, including the power reserved by the Board of Directors to modify any condition or restriction on the distribution of funds if in its sole judgment (without the approval of any trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the area served by the Foundation.

### **IRREVOCABLE**

The gift made by the Grantor(s) to create this Fund is irrevocable.

### **LAW**

This agreement shall be governed by, and construed according to, the law of the State of North Carolina.

Witness the hands and seals of the parties as of the day and year set out above.

\_\_\_\_\_  
William L. Moyer, Chairman

\_\_\_\_\_  
Charles Messer, Vice Chairman

\_\_\_\_\_  
Larry R. Young, Commissioner

\_\_\_\_\_  
Shannon Baldwin, Commissioner

\_\_\_\_\_  
Chuck McGrady, Commissioner



Community Foundation of  
Henderson County, Inc.

by: \_\_\_\_\_  
Chairperson/Vice Chairperson

CORPORATE SEAL  
ATTEST:

\_\_\_\_\_  
Secretary/Assistant Secretary

**ATTACHMENT TO DONOR ADVISED FUND AGREEMENT BETWEEN  
THE COMMUNITY FOUNDATION OF HENDERSON COUNTY, INC.**

**AND**

**The Henderson County Board of Commissioners**

**I/We have received the following Policies governing the Community  
Foundation of Henderson County:**

**Management Fee Policy  
Policies Governing Donor Advised Funds**

\_\_\_\_\_  
William L. Moyer, Chairman

\_\_\_\_\_  
Charles Messer, Vice Chairman

\_\_\_\_\_  
Larry R. Young, Commissioner

\_\_\_\_\_  
Shannon Baldwin, Commissioner

\_\_\_\_\_  
Chuck McGrady, Commissioner

# **Community Foundation of Henderson County**

## **Donor Advised Fund Guidelines**

### **General Information**

Donor Advised funds at the Community Foundation of Henderson County enable charitably inclined individuals to play an active role in grantmaking without incurring the paperwork, taxes and administrative expenses of maintaining a private foundation. Donor advised funds give donors the opportunity to work with the Foundation's professional program staff in making grant decisions. Our Program Officer is knowledgeable about the needs and resources of Henderson County and can help donors as they evaluate giving opportunities and explore new areas of grantmaking.

### **IRS Regulations**

The Community Foundation of Henderson County must adhere to all Internal Revenue Service (IRS) regulations as they pertain to donor advised funds. IRS rules stipulate a donor cannot make a tax-deductible contribution and at the same time retain future control over the contribution. However, the law does expressly recognize the right of the donors to make grant recommendations. In all cases the Board of Directors of the Community Foundation of Henderson County retains the right to final determination of the use of funds.

The IRS further provides grants from donor advised funds will not be made to pay dues for membership of an individual in an organization, to discharge or satisfy legally enforceable obligations or personal pledges which have been made by the donor, or for any other purpose from which the donor will receive some benefit. Examples include ticket purchases for fundraisers, greens fees for charity golf tournaments, etc. Using donor advised funds to meet these kinds of obligations is a violation of IRS regulations and can result in the donor's losing the tax deduction and paying penalties.

### **Grantmaking From Donor Advised Funds**

The minimum size of a grant from a donor advised fund is \$100.00

Donors shall make all recommendations for grants in writing. A Donor Advised Recommendation Form is provided by the Foundation for the convenience of the donor. Recommendations will, in each case, be evaluated independently by the Foundation staff to determine if they are consistent with the purposes of the Foundation and that the grantee is a charitable organization as defined in section 501(c)(3) of the Internal Revenue Code. Donors should understand that their recommendations are advisory and will not be binding on the Board of Directors, who legally retains the final responsibility for all distributions made from the Foundation.

A letter accompanies all grant checks from an advised fund. This letter specifically states the name of the fund from which the grant is made in addition to the purpose of the grant. Grants can also be made anonymously if the donor desires. A copy of each grant letter is sent to the donor.

It is anticipated that the donor will develop a close working relationship with the Foundation's staff. Staff will provide giving opportunities to all donors of advised funds on a regular basis. All opportunities presented will have been thoroughly investigated and considered deserving of support.

# **Community Foundation of Henderson County Policies Governing Donor Advised Funds**

## **Resolution**

The Community Foundation of Henderson County works with families, individuals, businesses and organizations to meet charitable needs and opportunities primarily for the benefit of the greater Henderson County area. The Community Foundation believes that the establishment of Donor Advised funds as component funds within the Community Foundation of Henderson County is an important aspect of its role in philanthropy. Therefore, be it resolved that the Community Foundation of Henderson County will continue to encourage the establishment of Donor Advised funds.

Donor advised funds are subject to close regulatory scrutiny by the Internal Revenue Service to ensure that they do not become private foundations. Failure to comply with regulatory restrictions can jeopardize the Foundation's standing as a public charity and the deductibility of donor's contributions. Accordingly, the Foundation has adopted the following policies governing donor advised funds:

In accepting donor advised funds, the goals of the Community Foundation of Henderson County are:

1. to meet charitable needs and opportunities primarily for benefit of the greater Henderson County area
2. to increase charitable giving by persons in the greater Henderson County area.

The Community Foundation of Henderson County manages two types of Donor Advised Funds:

- **Donor Advised Endowment**

As with all permanent endowments these funds are placed in the Community Foundation's investment pool and will pay fees stipulated in the Management Fee policy. Donor Advised Endowment funds also fall under the Foundation's investment and payout policies. The donor can make recommendations on the distribution of income only as set by the payout policy.

- **Non-endowed Donor Advised**

- **Less than \$100,000 balance**

Donor Advised Funds which maintain less than \$100,000 balance are not placed in the investment pool but rather invested in a money market account. No management fee is charged to these funds, however any income earned shall be retained by the Community Foundation and added to its discretionary funds. The minimum balance of these funds shall not fall below \$5,000. If the donor wishes to drop the fund below the \$5,000 minimum, all funds must be distributed within six months at which time the fund shall be terminated. Donors may recommend distributions on the total amount of the fund.

**Greater than \$100,000 balance**

Donor Advised Funds which maintain greater than \$100,000 are placed in an account, consisting of short-term investments, with each fund receiving its portion of the earnings as stipulated in the Management Fee Policy. All donor advised funds will be governed by a written agreement between the Foundation and the donor, of which these policy statements will be a part.

A minimum initial contribution of \$5,000 will be required to create a donor advised fund. Additional contributions in any amount may be added to a donor advised fund once it is established.

The minimum distribution from a donor advised fund will be \$100.00

The donor may identify, in writing, additional advisors to the fund. Where persons in addition to the donor or spouse may make recommendations, the Foundation may require that one person be designated to submit recommendations to the Foundation.

If no successor advisors are identified by the donor, any remaining assets will be added to the unrestricted endowment of the Foundation to be used to meet emerging needs in the community.

Recommendations on distributions from donor advised funds must be made in writing to the Foundation and forms for this purpose will be available from the Foundation.

The Board of Directors of the Foundation shall have full authority and discretion as to the investment and reinvestment of the assets of the Fund. No donor may impose any material restrictions or conditions that would prevent the Foundation from fully and effectively employing the contributed assets or the income derived therefrom in furtherance of the charitable purposes of the Foundation.

Distributions from advised funds will be consistent with the Foundations general grantmaking principles; i.e. grants for a wide range of philanthropic purposes in arts and culture, education, health, human services and other fields.

Recommendations will, in each case, be evaluated independently by the Foundation staff to determine if they are consistent with the purposes of the Foundation and that the grantee is a charitable organization as defined in section 501(c)(3) of the Internal Revenue Code.

Final decisions on all grants from donor advised funds will be made by the Foundation Board of Directors. The Board of Directors has given the authority to the Presidents/CEO and the Program Director to approve all Donor Advised recommendations that they deem consistent with the general grantmaking principals of the Foundation. The Board of Directors will receive a monthly report from the staff for confirmation of these Donor Advised distributions. Donors should understand that their recommendations are advisory and will not be binding on the Board of Directors.



Donors of advised funds may not participate in the decision making process other than to make the recommendation.

The Community Foundation of Henderson County will decline to make distributions as recommended by advisors when:

1. A recommended grant is intended to satisfy a pledge of the advisor or any other person
2. The Foundation finds that the recipient does not meet the Foundation's general grantmaking guidelines or the recipient is not a 501(c)(3) charitable organization
3. The recommendation is deemed unworkable
4. The recommendation will result in the donor receiving some benefit. Examples include ticket purchases for fundraisers, greens fees for charity golf tournaments, etc.

Any distribution from a donor advised fund, unless otherwise requested by the donor will identify to the grantee organizations the name of the fund from which the distribution is made.

Initial Board Approved April 5, 2000  
Last date of Revision 12/9/05

# COMMUNITY FOUNDATION OF HENDERSON COUNTY

## MANAGEMENT FEE POLICY

Basically, two service charge plans exist depending on whether the fund is of a permanent or temporary nature. Any out-of-pocket expenditures by Community Foundation of Henderson County, Inc. for investment services or other property management services will be charged in addition to anything set forth below.

1. **PERMANENT FUNDS** are endowments or trusts from which income is distributed. An annual fee based on a percentage of the Fund Balance will be levied at the beginning of each fiscal quarter computed on previous month-end balance depending on the classification of the fund. Funds that are set up by the same donor are combined for fee purposes. The following are the classifications of funds:

	Annual Fee	Minimum Annual Charge
Agency Endowments	.75%	\$38.00
Designated	.75%	\$38.00
Scholarship Funds	1.5%	\$75.00
Field of Interest Funds	1.5%	\$75.00
Unrestricted Funds	1.5%	\$75.00
Mixed Funds	1.5%	\$75.00
Administrative Endowment	1.0%	\$50.00
Donor Advised Endowments	1.0% First \$1M	\$50.00
	.55% \$1M - \$3M	
	.45% Over \$3M	

*Funds are added to the pool at the first of a quarter, therefore a management fee will not be charged until the beginning of the next quarter after the funds have been invested for a full quarter.*

2. **TEMPORARY FUNDS** are not established in perpetuity.
  - a. Donor Advised Funds (non-endowed) - established by an individual or business, which retains privilege of recommending fund distributions. No fee is charged and all earnings are directed to the Foundation for administration.
  - b. Pass-Through Funds - organization designated fund, which has full payout program. A 1% fee is charged to all cash contributions and all earnings are directed to the Foundation for administration.
  - c. Donor Advised Funds (non-endowed) as defined below will be charged an annual fee of 1.5% of the Fund Balance, which will be levied at the beginning of each fiscal quarter computed on previous month-end balance.
    1. which are grandfathered and placed into the permanent endowment pool
    2. which maintains a balance of \$100,000 or more and placed into an account, consisting of short-term investments
3. **CHARITABLE REMAINDER TRUSTS** are set up with transfers of money, securities or both to a trust that pays the donor income for life. The trust can also provide income for a survivor or survivors for life. Then the trust assets become a permanent endowment with the Community Foundation and the income is paid to the charitable interests of the donor. A fee of .75% of market value per year, charged quarterly. This charge will be levied in addition to the direct cost of preparing the annual tax return by a CPA.
4. **CHARITABLE GIFT ANNUITIES** are set up with transfers of money, securities or both to a trust that pays the donor income for life. The trust can also provide income for a survivor or survivors for life. Then the trust assets become unrestricted with the Community Foundation. A fee of .5% (1% if not unrestricted) of market value per year, charged quarterly. This charge will be levied in addition to the direct cost of administration services.

**Amended by the Board February 4, 2004**