

## **DONOR ADVISED FUND AGREEMENT**

**THIS DONOR ADVISED FUND AGREEMENT** (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the CITY OF ORLANDO, a Florida municipal corporation (“City”) and the COMMUNITY FOUNDATION OF CENTRAL FLORIDA, INC., a Florida not for profit corporation (“Foundation”).

### **WITNESSETH**

**WHEREAS**, the City desires to improve the lives of low-income children and families within its boundaries by providing educational, health and recreational programs and opportunities as more fully set forth on Exhibit “A” attached hereto and incorporated herein by this reference (hereinafter the “Mission”); and

**WHEREAS**, individuals and entities making donations and grants for purposes such as the Mission have traditionally preferred to make gifts and donations directly to charitable organizations rather than governmental entities such as the City; and

**WHEREAS**, the City desires to encourage community investment in the Mission by establishing a vehicle to encourage grants and donations to the Mission; and

**WHEREAS**, a donor advised fund at a community foundation is a management and investment vehicle for charitable contributions, the assets of which are owned and held by the community foundation for distribution for such scientific, educational or charitable purposes as determined by the establisher of the donor advised fund; and

**WHEREAS**, after creation of a donor advised fund, the establisher of the fund may continue to advise and make non-binding recommendations to the community foundation holding the assets and managing the fund on the distribution of fund assets to local charities and eligible entities in furtherance of the goal for which the fund was established; and

**WHEREAS**, Foundation is a community foundation dedicated to advancing philanthropic causes throughout Orange, Osceola and Seminole Counties with over a decade of experience serving the Central Florida community; and

**WHEREAS**, the City has determined that the creation of a donor advised fund at the Foundation would advance the City’s Mission and serve a public purpose by encouraging donations and grants from individuals and organizations interested in furthering the Mission;

**NOW, THEREFORE**, for and in consideration of the above premises, the promises and provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the parties, the parties agree as follows:

1. **Recitals.** The above premises are true and correct and are incorporated herein as

material provisions of this Agreement.

2. **Establishment of Donor Advised Fund.** By this Agreement with the Foundation, the City and the Foundation hereby establish a donor advised fund with the Foundation to be known as the “Legacy Trust for Orlando Children” (the “Fund”).

3. **Purpose of the Fund.** The Fund is established solely for the purpose of furthering the Mission to improve the lives of low-income children and citizens of the City as more fully set forth on Exhibit “A”. Upon notice to the Foundation, the City reserves the right to amend the purpose of the Fund from time to time, provided that any amended purpose shall be for a qualified scientific, educational, civic or charitable purpose. Any amendment of the purpose of the Fund by the City shall be subject to the prior approval of the Foundation to ensure that the amended purpose is consistent with the tax exempt status of the Foundation. The Foundation’s approval of any amendment to the purpose of the Fund by the City shall not unreasonably be withheld.

4. **Funding of the Fund.**

A. **General Contributions.** The Foundation shall accept all gifts, grants, donations, bequests, and other contributions to the Fund from public and private individuals and entities desiring to contribute, provided that such contributions do not violate any state or federal law or rule, regulation, or policy of the Internal Revenue Service of the United States regarding the acceptance of such contributions by the Foundation. The City may solicit contributions from individuals and entities to be made directly to the Foundation for deposit in the Fund. All contributions received by the Foundation on behalf of the Fund shall be credited or deposited into the Fund.

B. **Grants.** In furtherance of the mission for which the Fund is being established, the Foundation acknowledges and agrees that it has been selected to submit an application for a Robert Wood Johnson Foundation (“RWJF”) grant to assist low-income children and families in the Parramore Heritage Neighborhood under the RWJF’s Local Initiative Funding Partners Program (hereinafter the “RWJF Grant”), the award of which shall be placed into the Fund. Notwithstanding the preceding, if required by the terms of the RWJF Grant award, the grant funds may be kept separate and apart from the Fund and shall be placed into a separate donor advised fund to be established at the Foundation on terms and conditions substantially similar to those contained herein for the Fund (including, but not limited to, the requirement that the City shall have the right to appoint the advisor to such fund). The City, acting through its Advisor (as that term is hereinafter defined) shall provide assistance to the Foundation in preparing such application for a RWJF Grant.

C. **No Minimum Contribution; Contributions by the City.** The Foundation acknowledges and agrees that by execution of this Agreement and the establishment of the Fund, the City is not guaranteeing the Foundation any minimum level of funding for the Fund and that the Foundation has waived its policy of a minimum Twenty Five Thousand

Dollar (\$25,000.00) contribution to form a donor advised fund. The Foundation enters into this Agreement with the explicit understanding and knowledge that the Fund may never receive any grants or contributions of any kind or amount. The Foundation acknowledges, understands, and agrees that the City has absolutely no obligation under any circumstances to contribute City money as assets to the Fund for any reason. In addition, nothing herein shall be deemed to require the City, now or in the future, to apply for any grant or donation or to direct any monies or grant awards it may receive (whether in furtherance of the Mission or not) to be made into the Fund.

**D. Tax Status of the Foundation.** The transfer of all amounts and property to the Foundation to be received and held by the Foundation pursuant to this Agreement is subject to the condition that the Foundation, as of the date of transfer to the Foundation, is classified in good standing by the Internal Revenue Service as an Organization (i) described in section 501(c)(3) of the Internal Revenue Code of 1986 as it now exists or may be amended (hereinafter the “Code”) and (ii) which is not a private foundation as defined in section 509(a) of the Code.

## **5. City Advisor to the Fund.**

**A. Initial Advisor.** The City hereby designates such person as may from time to time hold the position of Director of the City’s Families, Parks and Recreation Department as the Fund advisor (“Advisor”). To the extent that any exhibits to this Agreement, documents incorporated by reference herein, or any policies, rules or regulations of the Foundation (now existing or hereinafter created) applicable to donor advised funds require that an advisory board be established to advise the Foundation, the Foundation hereby waives, abolishes and deletes such requirement with respect to the Fund. Notwithstanding the preceding, nothing herein shall be deemed to preclude the City now or in the future from using or establishing a City oversight committee or board on such terms and conditions as it deems appropriate in its sole discretion to monitor and approve the actions of its Advisor related to this Agreement. No such board or committee of the City shall be deemed an advisory board to the Foundation and the Foundation shall have no right to appoint any members thereto. The City’s Advisor shall be the sole advisor to the Foundation with respect to the Fund unless replaced as provided in paragraph B below. The Foundation may rely on the Advisor having obtained all necessary City board or committee approvals prior to taking any action permitted to be taken by Advisor under this Agreement without the need for further inquiry.

**B. Authority to Change Advisors.** The Mayor of the City may from time to time replace the holder of the office of Director of the City’s Families, Parks and Recreation Department as the Advisor to the Fund with any other person or the holder of any other office as the Mayor deems appropriate in the Mayor’s sole discretion. Such person may, but need not be, an employee or officer of the City.

**C. Authority of Advisor.** The Advisor shall have the sole authority on behalf of the City to advise the Foundation on the making of all grants and distributions from the Fund.

To the extent that any existing or future City policy requires the Advisor to obtain the approval of any oversight committee or board of the City prior to making a recommendation regarding a grant or distribution from the Fund, the Advisor shall be responsible for obtaining all such approvals prior to communicating any recommendation or advice to the Foundation. Unless an election or action to be taken by the City related to this Agreement is expressly provided to be taken by the Mayor or City Council of the City, any election or other action which may be taken by the City related hereto may be taken by the Advisor acting on behalf of the City. Under no circumstances shall the Advisor be liable in the Advisor's personal capacity to the Foundation or any third party for any action taken by the Advisor on behalf of the City related to this Agreement or the Fund.

## **6. Distributions and Grants from the Fund.**

**A. Permissible Distributions and Grants.** The City acknowledges that the Foundation will distribute funds contributed to the Fund, or income earned by these funds, generally to organizations described in Sections 501(c)(3) and 509(a)(1), (2) or (3) of the Code, as it now exists or as it may be amended ("Permissible Organizations"). The City, through its Advisor, shall have the right to make non-binding recommendations to the Foundation for distributions to Permissible Organizations (and such other organizations as the Foundation may agree) in furtherance of the Mission of the Fund. The City through its Advisor is permitted to make recommended grants or distributions in the minimum amount of One Hundred Dollars (\$100.00) up to a maximum amount equal to all of the then existing principal and income contained in the Fund. Grant recommendations may be made by the Advisor either in writing on a form prescribed by the Foundation or electronically in such manner as provided for on the Foundation's website.

**B. Grant Processing.** For grant recommendations approved by the Foundation to organizations and entities listed on the Foundation's then current approved grantee listing, grants shall be paid (i) on the 1<sup>st</sup> day of each month for grant recommendations received by the 15<sup>th</sup> day of the preceding month and (ii) on the 15<sup>th</sup> day of each month for grant recommendations received by the 1<sup>st</sup> day of the month. The City acknowledges and understands that for any entity recommended for receipt of a grant or distribution that is new or unknown to the Foundation or for which the Foundation lacks current information, the Foundation shall require time to approve such recommendation and verify that such entity is a Permissible Organization eligible to receive distributions from the Fund in accordance with the policies and procedures of the Foundation. City further acknowledges and understands that distribution and grant recommendations to any single recipient over Fifty Thousand Dollars (\$50,000.00) requires the approval of the board of directors of the Foundation, which meets regularly on a monthly basis. In order to expedite grant processing, the City may provide the Foundation with a list of entities and organizations not on the Foundation's approved listing which are being considered for grant recommendations by the City for verification of eligibility by the Foundation in anticipation of a future grant. In such situations, the Foundation shall undertake its normal verification of eligibility review for such entities without waiting for an actual grant recommendation to be submitted by the

Advisor to commence said review.

**C. Foundation Rights and Responsibilities.** Notwithstanding anything in this Agreement to the contrary, the City acknowledges that, in accordance with Internal Revenue Service rules and regulations, the Foundation shall be the absolute owner of the assets of the Fund, and shall have ultimate authority over investments of the Fund, the selection of charities to receive distributions from the Fund and the timing and amounts of distributions. In making all grants and distributions, the Foundation shall use good faith efforts to identify and distribute such amounts in accordance with the Mission of the Fund to a Permissible Organization serving citizens of the City. Under no circumstances shall the Foundation make distributions or grants from the Fund to entities for programs or services serving areas or people located primarily outside of the boundaries of City of Orlando, Florida.

**D. Donor Advised Fund Donor Information Form.** Simultaneously with the execution of this Agreement, the Advisor shall complete and submit to Foundation a Donor Advised Fund Donor Information Form in the form attached hereto as Exhibit “B”. The parties acknowledge and agree that the Foundation’s standard form entitled, “Advisor Options for Corporate/Association Donor Advised Funds” is inapplicable and need not be completed or executed by the City.

## **7. Administration of the Fund.**

**A. Investment.** The Foundation shall hold, manage, invest and reinvest the funds of the Fund exclusively for general charitable uses and purposes in accordance with the rules from time to time adopted by the Foundation regarding the investment of and distribution from donor advised funds. It is the non-binding intention of the City in establishing the Fund that all grant awards received by the Foundation for deposit in the Fund, including but not limited to any RWJF Grant, shall be held in conservative, low-risk investments to prevent a decrease in principal value resulting from market fluctuations.

### **B. Reporting.**

(i) **Quarterly Report.** The Foundation shall issue reports to the City on a quarterly basis which reports shall set forth the fair market value of the Fund at the beginning and end of each reporting period and the income earned, if any, on the assets of the Fund during the reporting period. The reports shall also set forth and itemize all grants and distributions from the Fund during the reporting period as well as any fees charged by the Foundation.

(ii) **Annual Report.** The Foundation shall also provide the City with an annual report detailing the amount of funds available in the Fund, the income generated, the amount of funds contributed by the City and other donors and grantors, the rate of increase (or decrease) in the value of the Fund, the disbursements to grant recipients, the fees charged by the Foundation, and the method and manner of investment of the

Fund assets.

**C. Online Access to Fund Information.** The Foundation shall provide the City password protected access to detailed information regarding the administration of the Fund through a portal on the Foundation's web site, which information shall include:

- (i) The grant history of the Fund;
- (ii) Grant recommendations which have been submitted but are currently pending approval or distribution;
- (iii) The fair market balance of the Fund as the end of the most recent month; and
- (iv) The most recent quarterly report for the Fund.

**D. Records.** All records of the Foundation related to the Fund (including but not limited to contribution records, investment and management records and distribution records) shall be open to inspection and audit by the City or by the City's designee during normal business hours during the existence of the Fund and for five (5) years from the date of the final grant made from the Fund.

**E. Grant Outcomes.** The Foundation acknowledges and understands that the City will be monitoring and tracking the outcomes of grants and distributions from the Fund to assess the impact of the Fund on the lives of children and other citizens in the community. The Foundation agrees that it will require the recipients of any grants or distributions from the Fund to cooperate with City in monitoring the outcomes of all programs, projects, sub-grants and other services and operations for which funds from the Fund are received. Cooperation shall include, but is not limited to, the provision of a contact person with the recipient who will work with the City to track outcomes. The Foundation shall require the recipient entity to obtain the following information from those children and adults being benefited:

- (i) The age of the beneficiary(ies);
- (ii) The primary residential address of the beneficiary(ies); and
- (iii) Such other information as the City may request in writing from time to time.

**F. Policies and Rules of the Foundation.** Except as otherwise provided in this Agreement, the City shall comply with and the Fund shall be subject to the policies and rules of the Foundation set forth in the Donor Advised Fund Handbook attached hereto as Exhibit "C" and incorporated herein by this reference. To the extent of any conflict between the terms of this Agreement and the Handbook, the terms of this Agreement shall control.

**G. Replacement of Fund Assets.** The Foundation agrees that it will maintain fidelity or other similar insurance sufficient to restore and replace any assets of the Fund which are misappropriated as a result of theft, embezzlement or other act of misconduct by the Foundation or any employee, officer, director, or agent of the Foundation.

**8. Compensation to the Foundation for Fund Administration.**

**A. Annual and Administrative Fees.** The Foundation shall be entitled to charge and receive from the Fund an annual fee at the rate of two percent (2%) per annum of the average fair market value of the Fund during the year. Such fee shall be paid in twelve monthly installments based upon the average fair market value maintained in the Fund during the month. In addition, the Foundation shall be entitled to charge and receive from the Fund an administrative fee of two percent (2%) on each grant or distribution made from the Fund recommended by the City's Advisor.

**B. Rate Increases; Equal Treatment to the City.** The Foundation shall have the right to increase the rate or amount of the annual and administrative fees it charges the Fund from time to time in its sole discretion; provided, however, that no increase beyond the rates of fees set forth in paragraph A above shall be permitted or charged unless such increased rates or fees charged to the Fund are equal to or below the lowest rates or fees then charged by the Foundation on any other donor advised fund then held by the Foundation. Notwithstanding the preceding, no increase in fees charged shall apply to grant awards (or income or interest earned thereon) held as part of the Fund, if such fee increase would violate the terms of the grant award under which the grant was made.

**C. No Recourse to the City.** All fees due and owing to the Foundation under this Agreement shall be paid from Fund assets and the City shall have no liability whatsoever for the payment of any amounts under this Agreement for any reason.

**9. Miscellaneous**

**A. Notices.** All notices, other than advice from the Advisor regarding the distribution of Fund assets, required or permitted to be given under this Agreement must be in writing and must be delivered to the City or Foundation at the addresses set forth below (or such other address as may hereafter be designated by such party in writing). The City's Advisor shall have full authority to send all notices related to this Agreement on behalf of the City. The parties' addresses for the delivery of all such notices are as follows:

City: City of Orlando  
Department of Families, Parks and Recreation  
Attention: Lisa Early, Director  
649 West Livingston Street  
Orlando, Florida 32801  
Facsimile: (407) 246-2875

Foundation: Mark Brewer  
Community Foundation of Central Florida, Inc.  
1411 Edgewater Drive, Suite 203  
Orlando, Florida 32804  
Facsimile: (407) 425-2990

Notices shall be either: (1) personally delivered (including delivery by Federal Express or other courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; (2) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail; or (3) transmitted via telecopier using a telecopier number provided above, if any (or such other number as receiving party may have designated in writing), in which case the delivery shall be deemed to have occurred on the day of the transmission, provided that the day of transmission is a normal business day or, if not, the first normal business day after the transmission.

**B. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their legal representatives, successors and assigns.

**C. Waiver of Breach.** The waiver by any party of a breach of any provision, agreement or covenant of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision, agreement or covenant by such other party.

**D. Entire Agreement; Amendments.** This Agreement is intended by the parties hereto to be the final expression of their agreement and is a complete and exclusive statement thereof notwithstanding any representation or statements to the contrary heretofore made. This Agreement may be amended only if such amendment is in written form and executed by the parties.

**E. Construction.** This Agreement shall be construed fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference drawn against the party drafting this Agreement in interpreting the provisions hereof.

**F. Applicable law; Venue.** The laws of the State of Florida shall govern any and all claims arising under this Agreement. Venue of any action arising hereunder or in any manner related to this Agreement shall lie in Orange County, Florida.

**G. Non-Waiver of Sovereign Immunity; Limitation of Liability.** Nothing contained in this Agreement, or any exhibits attached hereto or in any instruments executed pursuant to the terms of this Agreement or in relation hereof shall be construed as a waiver or attempted waiver by City of its sovereign immunity under the Constitution and laws of the State of Florida. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE EXHIBITS ATTACHED HERETO, ANY POLICY, RULE OR REGULATION OF THE FOUNDATION NOW IN EXISTENCE OR HEREINAFTER CREATED, OR IN ANY OTHER DOCUMENT EXECUTED OR APPLICABLE IN RELATION HERETO, UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE TO FOUNDATION OR ANY OTHER PERSON OR ENTITY FOR ANY CLAIM OR ACTION ARISING FROM OR RELATED TO THIS AGREEMENT UNDER ANY**



**CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER ARISING AS A TORT OR CONTRACT CLAIM OR OTHERWISE, IN EXCESS OF THE LIMITS PER CLAIM AND PER OCCURRENCE SET FOR TORT LIABILITY IN SECTION 768.28 OF THE FLORIDA STATUTES WHICH LIMITS ARE HEREBY MADE APPLICABLE TO ALL MANNER OF CLAIMS AGAINST THE CITY RELATED TO THIS AGREEMENT AND ARE NOT CONFINED TO TORT LIABILITY.**

**H. Non-Exclusive Agreement.** This Agreement is a non-exclusive Agreement between the parties.

*IN WITNESS WHEREOF*, the parties hereto have executed these presents and have set their hands and seals the day and year first above written.

**CITY OF ORLANDO, FLORIDA**

BY \_\_\_\_\_  
Mayor/Pro Tem

ATTEST:

\_\_\_\_\_  
Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY,  
for the use and reliance of the  
City of Orlando, Florida only.  
\_\_\_\_\_, 2006

\_\_\_\_\_  
Assistant City Attorney  
City of Orlando, Florida

**COMMUNITY FOUNDATION OF CENTRAL  
FLORIDA**, a Florida not for profit corporation

By: \_\_\_\_\_  
Signature of Authorized Representative/Officer

\_\_\_\_\_  
Printed Name/Title  
Federal ID Number \_\_\_\_\_

STATE OF FLORIDA        }

COUNTY OF ORANGE       }

**PERSONALLY APPEARED** before me, the undersigned authority,  
\_\_\_\_\_, [ ] well known to me or [ ] who has produced his/her  
\_\_\_\_\_ as identification, and known by me to be the  
\_\_\_\_\_ of the agency named above, and acknowledged before  
me that he/she executed the foregoing instrument on behalf of said agency as its true act and deed, and  
that he/she was duly authorized to do so.

**WITNESS** my hand and official seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## EXHIBIT “A”

### Mission of the Legacy Trust for Orlando Children

The purpose of The Legacy Trust for Orlando Children (“Legacy Trust”) is to improve the lives of low-income children and their families within the City of Orlando. Specifically, the Legacy Trust seeks to improve the lives of children and families in low income neighborhoods of the City by improving school outcomes for these children, providing constructive after school and summer activities for these children, providing families increased access to health care and child care, providing increased economic and educational opportunities to families and equipping these children with the tools and opportunities necessary to assist them in making a successful transition to adulthood. The Legacy Trust strives to accomplish these goals, in part, by providing children and families in low income neighborhoods with new or increased access to educational, health, and recreational programs and opportunities within the City. Such programs may include, but are not limited to:

- ✓ Pre-kindergarten and parenting programs
- ✓ Pediatric health and dental care
- ✓ Family economic success initiatives
- ✓ Mentoring
- ✓ Constructive activities for children and youth during out-of-school hours
- ✓ Academic enrichment and tutoring programs
- ✓ Programs that effectively help youth transition into jobs and higher education

The Legacy Trust plans to accomplish its goals by:

1. Developing a model for this strategy in Orlando’s lowest income neighborhood - the Parramore Heritage neighborhood, whose child poverty rate was determined by the 2000 census to be 73%. This model may then be duplicated in other low-income City neighborhoods.
2. Conducting an on-going evaluation of strategies that are developed to determine their effectiveness, by tracking such indicators as neighborhood and/or zip code level child abuse and neglect rates, teen pregnancy rates, high school graduation rates and juvenile arrest rates, and to also measure intermediate objectives such as the rate of insurance coverage among neighborhood children and enrollment in pre-kindergarten, after school and summer programs.
3. Thereafter targeting Legacy Trust resources to Orlando neighborhoods whose child poverty rate is greater than 27% and to engage in extensive creative outreach in these neighborhoods to reach as many children as possible with the aim of enrolling all children in these neighborhoods in the aforementioned programs shown to result in positive child health and educational outcomes, thereby improving conditions for a critical mass of children in the target neighborhoods.

**EXHIBIT “B”**

Donor Advised Fund Donor Information Form

**EXHIBIT “C”**

Donor Advised Fund Handbook