

**AGREEMENT ESTABLISHING**

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

**AN AGENCY FUND  
OF  
ONWARD! A LEGACY FOUNDATION**  
Serving the Four Corners Communities  
P.O. Box 26  
Cortez, Colorado 81321

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a 501(c)(3) organization, (Organization) and **Onward! A Legacy Foundation**, a Colorado nonprofit 501(c)(3) corporation (“*Onward!*”).

The Organization hereby transfers and conveys to *Onward!* the following sum: \$\_\_\_\_\_. These assets will be held by *Onward!* as a separate fund (the “Fund”) and to be administered and distributed in accordance with the terms and conditions of this Agreement. *Onward!* hereby accepts this transfer and agrees to the terms and conditions of this Agreement.

1. Name of Fund. The Fund shall be established on the books of *Onward!* as an agency fund and shall be known as The \_\_\_\_\_ Fund.
2. Property Constituting Fund. The Fund shall include the cash and/or securities initially transferred to *Onward!* by the Organization, and such additional cash and/or securities as may from time to time be transferred to *Onward!* by the Organization for inclusion in the Fund, and such cash and/or securities as may from time to time be received by *Onward!* from any other source and accepted by *Onward!* for inclusion in the Fund, and all income and gains received with respect to any of the foregoing property.
3. Use of Fund Assets. The Organization desires that principal and net income from the fund be used for (specify charitable purpose): \_\_\_\_\_.
4. General Fund Restrictions. Notwithstanding anything herein to the contrary, the Fund shall at all times be held and administered in accordance with the provisions of the By-laws and other operative documents of *Onward!* as it now exists or may be hereafter amended (the “Declaration”), all of which are hereby accepted and agreed to by the Organization. The Organization acknowledges that under the provisions of

the Declaration and applicable tax regulations, the Board of Directors of *Onward!* shall have the power to modify any designation, restriction, or condition on the distribution of funds for any specified charitable purposes or designated organization if in its judgment *Onward!* determines that continued distributions for the above charitable purpose have become obsolete or incapable of fulfillment due to the organization's loss of their 501(c)(3) exempt status. Then, and only then, *Onward!* may change the field of interest of the Fund or shall use the principal and income from the Fund for its general and charitable purposes as set forth in the By-Laws.

5. Advisory Fund Committee.

- (A) Committee Members. The Organization shall appoint in writing members of the Advisory Fund Committee (Committee) with the initial Committee members identified on the attached Exhibit A. The Organization may, upon written notification to *Onward!*, place or remove additional advisors on the Committee for the purposes of providing recommendations regarding the Fund. The Committee shall appoint a Chair who will represent the Committee to *Onward!*.
- (B) Role of Committee. The Advisory Fund Committee shall meet from time to time and submit to the Executive Director of *Onward!* written recommendations with respect to distributions from the Fund to the Organization consistent with the above. *Onward!* has ten business days to complete the distribution under normal circumstances.
- (C) Procedures. The Advisory Fund Committee shall conduct its activities in accordance with such rules and procedures as the Committee itself may establish, subject to the rules, regulations, and policies of *Onward!*, and *Onward!* may rely on any writing signed by the chair of the Committee that purports to set forth the recommendations of the Committee. All expenses incurred by the Committee in connection with its activities and affairs shall be part of the normal administration of the Fund.
- (D) Term. The role of the Advisory Fund Committee under this Agreement shall continue indefinitely until the Fund is substantially depleted and scheduled to be terminated, or is otherwise terminated and/or no longer in existence. Following the termination of the Fund and the role of the Committee, any assets remaining in the Fund shall be transferred to the *Onward!*'s unrestricted funds. If at any time the Board of Directors of *Onward!* find that there is no effective Committee, *Onward!* may take over the functions of the Committee.

6. Reports. *Onward!* shall render reports at least quarterly to the Organization showing the assets then held as the principal of the Fund and all receipts, disbursements, and distributions during the period covered by the report. All records of *Onward!* related to its management of the Fund shall be available for inspection by the Committee, or authorized representatives of the Organization at all reasonable times.
7. Investments. All assets held as part of the Fund shall be invested by *Onward!* in accordance with its general investment policies and objectives approved by the Board of Directors of *Onward!* from time to time. Fund assets may be commingled with other assets of *Onward!* for investment purposes, provided that accurate accounts are kept of the Fund's share of any such commingled investments.
8. Management Fees and Expenses. *Onward!* shall be entitled to pay or reimburse itself for all reasonable expenses incurred by *Onward!* in managing the Fund, and shall be entitled to charge the Fund a general management fee to cover a portion of *Onward!* general operating expenses. The general management fee shall be consistent with *Onward!*'s normal practices of allocating costs of management among its various funds. Pursuant to the Declaration this fee shall be 1% of the Fund balance per year assessed monthly (minimum monthly fee of \$10), or the rate charged to other similarly situated Funds according to a management fee schedule approved by *Onward!*.
9. Dispute Resolution. Prior to the filing of any lawsuit by any party or third party to this agreement, the parties shall attempt to resolve any dispute that arises from this agreement through mediation if the parties can mutually agree on the selection of a qualified mediator, or through arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Judicial proceedings may be commenced only in the event that a dispute remains after these measures. The mediation or arbitration shall be held in Cortez, Colorado. Each party shall bear its own expenses, including but not limited to all attorneys' fees and costs of the proceedings, unless otherwise determined by agreement or by the court of jurisdiction. Punitive damages shall not be applicable to mediation or arbitration proceedings.
10. Miscellaneous.
  - (A) This Agreement shall be irrevocable, unless the Fund assets are depleted, at which time the Organization has 30 days to either add additional funds to the Fund, or this agreement is terminated with approval of the *Onward!* Board of Directors.
  - (B) 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 law.

- (C) Paragraph captions are provided for convenience only and shall have no significance in the interpretation of this Agreement.
- (D) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- (E) This writing is an integrated agreement and is meant to embody the entire agreement between the parties.

If the terms of this agreement are acceptable to the Organization, please so indicate by dating and signing this agreement in the space provided below and returning it to *Onward!* Such acceptance will constitute our entire agreement with respect to the Fund.

EXECUTED at Cortez, Colorado to be effective as of the date first above written

\_\_\_\_\_  
Board Chair of the Organization                      Date

\_\_\_\_\_  
Executive Director of the Organization                      Date  
(if applicable)

ONWARD! A Legacy Foundation  
A Colorado nonprofit corporation

By \_\_\_\_\_  
President, Onward! A Legacy Foundation                      Date

**EXHIBIT "A"**

**Onward! A Legacy Foundation  
PO Box 26  
Cortez, CO 81321**

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Name of Fund: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

**Fund Advisory Committee:**

Chairperson:

1) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

2) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

3) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

4) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

Any changes or additions to the fund advisory committee listed either above and/or on an attached form, must be made pursuant to a written resolution by the chairperson of this committee.