

Gift Agreement

Note: There has been a growing trend in the law for state governments or courts to become involved in situations in which donors to charities, or their representatives or heirs, claim that the charities that received gifts from the donors have thwarted the donors' intentions and purposes. It was once relatively unlikely that a charity's use, application, or allocation of donated assets would be questioned, much less overturned by law enforcement authorities. But a body of law is being established in which donors' purposes are increasingly being mandated under the law. To help avoid misunderstandings, let alone legal proceedings, which could be expensive and embarrassing for donors and charities alike, it is prudent for larger donations to be addressed in gift agreements between the charities and their donors. For large gifts, such as multimillion-dollar bequests to universities, museums, or hospitals, elaborate and complex agreements have become common. For large but not so massive gifts to foundations and other charities, something simpler will suffice. This sample agreement is a "bare bones" version that might be adapted for use in an actual donation situation.

Agreement with Donor for Gift

This gift agreement ("Agreement") is entered into on _____, 20____, between _____ (the "Donor") and the _____ (the "Charity"), a nonprofit corporation that has been determined to be exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code and as a public charity, in order to establish a fund to be held, managed, allocated, applied, and used by the Charity for the purposes described in this Agreement.

1. **Establishment of the Fund.** The Charity will establish the Fund (the "Fund") according to the terms of this Agreement and the Charity's policies adopted by the Charity's Board of Trustees. The Fund will be classified internally for accounting purposes as a permanent endowment with assets held and managed for investment and for distribution to advance the purposes described in this Agreement. To the extent permitted by then-applicable General Accepted Accounting Principles, the financial condition of the Fund will be separately described in the annual financial audit and summaries of the financial condition of the Charity. The Fund will remain as part of the assets of the Charity permanently, will be used only to advance the purposes described in this Agreement, and will not in any way revert or end upon the death, bankruptcy, or dissolution of the Donor.

2. **Transfer of Assets.** The Fund will be established by the Charity upon transfer to, and acceptance by, the Charity of these assets irrevocably contributed by the Donor:

a. _____; and

b. Any other gifts or bequests that the Donor, its heirs, or representatives or other persons may designate for the purposes described in this Agreement.

3. **Purposes of the Fund.** At the direction of the Charity's Board of Trustees, the Fund's principal and income shall be held, managed, allocated, applied, and used by the Charity exclusively for the following

purposes: _____. In the event that, at any time, one or more of those purposes are deemed by the Charity's Board of Trustees, after careful and detailed examination and consideration, to be impractical, unfeasible, or impossible, then the Charity's Board of Trustees is authorized to hold, manage, allocate, apply, and use the principal and income of the Fund exclusively for purposes determined by the Board of Trustees as most closely resembling the purposes described above but that are practical, feasible, and possible.

4. **Fund Payout.** The amounts distributed from the principal and income of the Fund on a periodic basis will be determined by the investment and expenditures policies established by the Charity's Board of Trustees, which policies have been provided to the Donor, which may change from time to time in the exclusive discretion of the Charity's Board of Trustees, and which are in accordance with state law, tax exemption requirements, and Generally Accepted Accounting Principles.

5. **Investment of Fund Assets.** The Charity will invest the Fund's assets with the goal of optimizing yield and maintaining the spending power of the assets to achieve the purpose described in this Agreement. The Fund's assets will be subject to the investment policies of Charity relating to endowments, and will be managed in a manner that is consistent with these policies in accordance with state law, tax exemption requirements, and Generally Accepted Accounting Principles. The Charity's Board of Trustees will exercise exclusive authority over management of the Fund, including the pooling of the Fund for investment or expenditures purposes in the exclusive discretion of the Charity's Board of Trustees.

6. **Additional Assets.** Additional assets may be added to the Fund by contribution or by transfer of other funds held by the Charity. Those additional assets will not contain restrictions, conditions, or designations that are inconsistent or in conflict with this Agreement.

7. **Miscellaneous.**

a. **Governing Law.** This Agreement is to be interpreted under the laws of _____.

b. **Counterparts.** This Agreement may be signed in counterparts.

c. **Severability.** If any provision of this Agreement is invalid, illegal, or incapable of being enforced, all other provisions of this Agreement will nevertheless remain in full force and effect.

d. **Arbitration.** Any dispute arising under or related in any way to this Agreement will be subject to binding arbitration in which the Charity and the Donor, or the Donor's heirs, representatives, or other persons designated by the Donor, will each appoint one nominator, and those two nominators will select an impartial arbitrator, who will be instructed to resolve the dispute in the fastest, most efficient, most confidential way possible, with no discovery or the most minimal discovery, with the arbitrator establishing all procedures and assessing costs, including, potentially, attorneys' fees for the nonprevailing party, and with the arbitrator's award to be final and not subject to appeal to any private or governmental body; the arbitrator will have specific authority to make any award, whether injunctive or monetary and regardless of the area or principles of law invoked, which in the arbitrator's sole discretion is consistent with this Agreement including its attachments.

Approved by:

(Donor)

(Charity)

[Signature] By

[Signature] By

Printed name

Printed name

Title

Title

Date

Date