

SAMPLE FUND AGREEMENT – To Establish an Organizational Endowment Fund for NPO

(date)

Monique B. Jones
President and Chief Executive Officer
The Evanston Community Foundation
1560 Sherman Avenue, Suite 535
Evanston, IL 60201

Dear Monique:

It is the intention of NPO to establish an organizational endowment fund with the Evanston Community Foundation (the "Foundation" or "ECF"). Both NPO and the Foundation are qualified charitable organizations. NPO and ECF agree as follows:

1. The Fund shall be known as the **NPO Fund** of the Evanston Community Foundation ("the Fund") and shall be identified as such in the course of its administration. The Fund shall be for the benefit of NPO and any future affiliates, and will be used to support its/their charitable purpose.
2. An initial contribution of \$ _____ from NPO represents the initial property of the Fund. Subsequent contributions to the Fund may be made by NPO and any other donors.
3. The Fund shall include the initial deposit, any additional property as may from time to time be transferred to and accepted by the Foundation for inclusion in the Fund, and all undistributed net investment income earned by the Fund. The Fund shall be the exclusive property of the Foundation, subject to its control and held by it in its corporate capacity for the sole benefit of NPO, and shall not be deemed a trust fund held by it in a trustee capacity.
4. The assets of the Fund may be commingled with the other assets of ECF and will be invested and administered by the Foundation in accordance with its governing instruments and the investment policies, practices and procedures adopted by the Board of Directors from time to time. The Fund's assets shall be accounted for separately.
5. Distributions from the Fund to NPO shall be made in accordance with the Foundation's Investment and Spending Policy in effect from time to time. The annual net spending amount as calculated by the Foundation shall be offered to NPO within six months of the close of the Foundation's fiscal year. The Foundation's fiscal year currently ends December 31. NPO may elect to receive the annual spending amount in full or in part; it may also elect to receive no distribution in a given year. Annual spending amounts not taken as distributions remain in the Fund.
6. At discretion of organization -- Distributions in excess of the Foundation's spending policy may be made to NPO in any year as determined by the ECF board of directors. From time to time NPO may, by recommendation of its board of directors, request such distributions. Such recommendations shall be solely advisory and not binding upon the Foundation, but the Foundation will give them due consideration.
7. The Fund may be charged regularly for direct and indirect expenses attributable to the maintenance of funds of this type and in accordance with the policies of the Foundation from time to time in effect. The current, usual foundation support charge is 1% per year.

Commented [JF1]: This phrase enables the fund to accept gifts of stock, bequests or other gifts from supporters of your organization

Commented [JF2]: Under IRS regulations and securities laws, the agreement must indicate that ECF controls the assets; however accounting rules specify that the organization establishing the fund will present the fund as an asset in its financial reports, while ECF reports the fund as a liability.

Commented [JF3]: In order to preserve assets in perpetuity, ECF board sets the spending policy annually in the range of 3.5% and 6%; the spending rate has been 5% for the past 15 years or so.

Commented [JF4]: At the current 5% spending rate, the amount distributable to the NPO is 5% less expenses paid to ECF for fund support

Commented [JF5]: Most NPOs opt to include this clause, as it provides flexibility to request more than the annual net spending.

Commented [JF6]: The support charge decreases as fund assets increase beyond \$750,000.

8. If NPO, in the reasonable opinion of the Foundation's board, should become insolvent, cease charitable activities, or lose its exemption from income taxation, or if NPO dissolves with no tax exempt successor, the Fund will cease to be administered under the terms of this agreement. At such time, the Fund assets will either become part of the Foundation's unrestricted endowment or such other fund as is most appropriate, or will be disposed of in a manner consistent with both the tax exempt purposes of the Foundation and NPO. (If appropriate, *NPO and the Foundation will develop language to specify a successor organization, or other considerations if a disposition becomes necessary and no obvious successor exists.*)
9. ECF may, in its discretion at any time, distribute all or any part of the Fund, whether principal or income, or both, to NPO. Should ECF determine at any time for any reason that continuance of the Fund as a component part of ECF is inadvisable, ECF may distribute the entirety of the Fund to NPO.
10. The Fund will be administered subject to the provisions of the Foundation's Articles of Incorporation and Bylaws as presently in effect as each may from time to time be amended, including those provisions which may permit the Foundation's board to amend, modify or vary any of the purposes, directions, restrictions, or conditions set forth herein, if in the sole judgment of the board such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment or inconsistent with the charitable purpose of the Foundation. NPO will be notified promptly of any decision made by the Foundation to exercise its variance power.

If the Foundation ceases to be a qualified charitable organization or if the Foundation proposes to dissolve, the assets of the fund shall, after payment of any liabilities properly chargeable to the Fund, revert to NPO. If NPO is not then a qualified charitable organization, the assets of the fund shall be distributed in such manner and to such qualified charitable organization or organizations serving purposes similar to those of NPO and consistent with both the tax exempt purposes of the Foundation and _____.
11. It is intended that the Fund shall be a component part of the Foundation and that nothing in this agreement shall affect the tax exempt status of the Foundation as a qualified charitable organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, and as an organization that is not a private foundation within the meaning of Section 509(a) of the Code. This agreement shall be interpreted in a manner consistent with this intention, and the Foundation is authorized to amend this Agreement to conform to the provisions of any applicable federal or state law or government regulation in order to carry out the foregoing intention.
12. The Foundation will provide periodic reports to the NPO not less often than annually presenting the balance of the Fund and a summary of fund activity, including distributions and net investment results, for the preceding period. . In lieu of receiving statements directly from ECF, NPO may elect to use the Foundation's FundWeb online access to view investment results and fund activity, and to generate fund statements

Commented [JF7]: This is the 'escape clause' providing for the return of fund assets to the organization.

Commented [JF8]: The 'variance power' language is unique to community foundations and intended to be a benefit for those administering the fund in the future. It is a 'what if' provision. The classic example is that of a fund established in the early 1900s, to benefit the organization of local lamplighters. With the disappearance of the lamplighter occupation, another beneficiary group could be identified to benefit from the original fund, using the authority granted in this clause.

This letter will constitute our entire agreement concerning the NPO Fund of the Evanston Community Foundation.

Dated this ____ day of _____, 20xx

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