

date

Sol Anderson
President and Chief Executive Officer
Evanston Community Foundation
1560 Sherman Avenue, Suite 535
Evanston, IL 60201

Dear Sol:

Before *date*, Nonprofit Organization ("Nonprofit") will contribute \$10,000 to establish an organizational endowment fund with the Evanston Community Foundation ("Foundation" or "ECF"). Both Nonprofit and the Foundation are qualified charitable organizations. Nonprofit and ECF agree as follows:

Commented [JF1]: \$10,000 is the current minimum to establish a fund.

1. The Fund shall be known as the **Nonprofit Organization 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 Nonprofit and any future affiliates, and will be used to support its charitable purpose.
2. The initial contribution from Nonprofit represents the initial property of the Fund. Subsequent contributions to the Fund may be made by Nonprofit 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 Nonprofit, 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, 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 Nonprofit 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 Nonprofit within six months of the close of the Foundation's fiscal year. The Foundation's fiscal year currently ends December 31. Nonprofit 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. Distributions in excess of the Foundation's spending policy may be made to Nonprofit in any year as determined by the ECF board of directors. From time to time Nonprofit may, by recommendation of its board of directors, request such distributions. Such recommendations shall be solely advisory and not binding upon the Foundation; however, the Foundation will give them due consideration and will not unreasonably withhold its consent.
7. ECF may, in its discretion at any time, distribute all or any part of the Fund, whether principal or income, or both, to Nonprofit. 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 Nonprofit.
8. 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. Direct expenses would include credit card processing fees attributable to Fund contributions.
9. If Nonprofit, in the reasonable opinion of the Foundation's board, should become insolvent, cease charitable activities, or lose its exemption from income taxation, or if Nonprofit dissolves with no tax

Commented [JF2]: This phrase enables the fund to accept gifts of stock, bequests or other gifts from supporters of your organization

Commented [JF3]: Under Dept of Treasury regulations, community foundations must control fund assets in order to invest them for the benefit of other organizations. Because the assets are held solely for your organization's benefit, accounting rules specify your organization will present the fund as an asset in its financial reports, while ECF reports the fund as a liability.

Commented [JF4]: In order to preserve fund assets in perpetuity, ECF's board sets the spending policy annually in the range of 3.5% and 6%. The current spending rate of 5% has been in effect for the past twenty years.

At the current rate, the net distribution offered each year to your organization would be 5% of the three year average fund balance, reduced by the annual fund support charge as described in Section 7.

Commented [JF5]: Most NPOs opt to include this clause, as it provides flexibility to request more than the annual net spending. To ensure compliance with Treasury regulations, this language creates a procedural formality in which your organization's board requests a distribution of all fund assets, and ECF's board can approve the distribution request.

It is important to note that, depending upon the size and frequency of these special distributions, it is possible such distributions will intrude on the fund's principal and cumulative net investment results, reducing the regular distribution amounts in future years.

Commented [JF6]: Section 9 enables ECF to return the entirety of the fund assets to your organization. This clause clarifies the intentions of Nonprofit and ECF that at some future point in time, Nonprofit may request at return of all or part of the Fund.

Commented [JF7]: The support charge decreases as fund assets increase beyond \$1 million.

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 Nonprofit.

Commented [JF8]: Nonprofit may specify, 'with annual spending allocated to grants for the good of Evanston' or similar, or may specify an existing ECF fund to receive the Fund assets.

- 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. Nonprofit will be notified promptly of any decision made by the Foundation to exercise its variance power.

Commented [JF9]: This 'variance power' language is unique to community foundations and intended to be a benefit for those administering the fund in the future; it is also required by Dept of Treasury regulations. 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, rather than pursuing a request through the courts, the ECF board would be able to approve another beneficiary group to benefit from the original fund by assuming the authority granted in this clause.

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 Nonprofit. If Nonprofit 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 Nonprofit and consistent with both the tax exempt purposes of the Foundation and Nonprofit.

- 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. Nonprofit will have online access to ECF's fundholder portal, with the ability to view fund activity, monthly statements, donations, donor details and annual distribution election forms. In addition, the Foundation will provide fund reports to Lighthouse Rotary upon request, presenting the balance of the Fund and a summary of fund activity, including distributions and net investment results. .

This letter will constitute our entire agreement concerning the **Nonprofit Organization Fund** of the Evanston Community Foundation.

Dated this ____ day of _____, 20xx:

By:

Nonprofit Organization Executive Director

Nonprofit Organization Board Officer

ACCEPTED as of the date set forth above by

Sol Anderson, President & CEO