

GIFT AGREEMENT WITH NAMING RIGHT

between

_____ [DONOR]

and

_____ [FOUNDATION]

This Gift Agreement With Naming Right (“Agreement”) sets forth the agreement between _____ (“Donor”) and _____ (“Foundation”), on behalf of _____, a member of The Texas A&M University System and an agency of the State of Texas (“Member”), effective _____ (“Effective Date”).

I. PURPOSE AND PAYMENT SCHEDULE

Donor wishes to support _____ [Enter intent of donation]. Donor hereby pledges to gift to Foundation the amount of _____ [Dollar Amount in Words] (\$) _____ [Dollar Amount in Numbers] (the “Gift”) by whichever is later of: 1)

_____ [alternatively, a payment schedule may be attached], or 2) within ten (10) business days after receipt by Donor of written notice that The Texas A&M University System Board of Regents (“Board of Regents”) has formally approved the Naming (defined below) as set forth herein. The Gift will be used for the following purpose(s): _____

_____ [please state “unrestricted” or the purpose(s) for which the Gift will be used – an additional exhibit may be attached if necessary].

If the purpose(s) of the Gift become impracticable, illegal, or if by reason of changed conditions its further execution becomes unnecessary or unwise in the judgment of the Member, the Member may designate another purpose deemed more appropriate under the circumstances, assuming the original intent and interests of the Donor are taken into regard, and the purpose so designated will thereupon become the purpose of the Gift, but the Naming will continue.

II. RECOGNITION

A. Naming Right and Signage

In grateful recognition of Donor’s generosity, the Member will seek the Board of Regents’ approval to name:

_____ [Existing name of building/location/room/geographical area]

[Proposed name of existing building/room/geographical area]

(the “Naming”). The recognition and Naming provided for herein are subject to the approval of the Board of Regents pursuant to System Policy 51.06, *Naming of Buildings, Geographical Areas and Academic Entities*. If approved, the Naming will remain in effect for the lesser of _____ years or the useful life of the existing building/room/geographical area (the “Applicable Term”). Additionally, the Member will provide recognition and signage as described in Exhibit A attached hereto, and the Member will, at its sole expense, maintain the signage and keep it in good repair.

In the event that the Board of Regents does not approve the Naming as described herein, this Agreement will be deemed null and void absent a written agreement between the parties otherwise, and upon Donor’s request, any payment(s) of the Gift made by Donor to Foundation under this Agreement will be timely returned to Donor.

B. Change of Naming

Any Donor request to change the Naming must be approved in writing by the Member. The Member may approve or deny such request in its sole discretion. In the event the Naming is changed under the provisions of this Section, the cost of effectuating such change will be borne solely and entirely by Donor, and any and all costs and expenses incurred by the Member in connection with effectuating such change will be paid by Donor promptly upon request. Any change to the Naming provided for herein is subject to the approval of the Board of Regents pursuant to System Policy 51.06, *Naming of Buildings, Geographical Areas and Academic Entities*.

III. REPRESENTATIONS, WARRANTIES, AND COVENANTS

A. Representations and Covenants of the Foundation. The Foundation hereby represents to Donor that:

1. The Foundation has the requisite right and legal authority to execute, deliver, and fully perform its obligations under this Agreement, including, without limitation, the right to grant the Naming, subject to approval by the Board of Regents.

2. Subject only to the Board of Regents’ approval of such Naming as described above, by executing this Agreement, the Foundation indicates its provisional agreement and acceptance of the Gift on behalf of the Member. Donor expressly understands that this Agreement and final acceptance of the Gift is contingent upon approval and final acceptance of the Gift by the Chancellor or designee after approval of the Naming by the Board of Regents. This Agreement, after execution and delivery, and after Board of Regents’ approval of the Naming, will constitute a legal, valid and binding obligation of the Foundation.

B. Representations, Warranties and Covenants of Donor. Donor hereby represents and warrants to the Foundation that:

1. Donor has the requisite right and legal authority to execute, deliver and fully perform its obligations under this Agreement.

2. Donor has taken all necessary action to authorize its execution, delivery and performance of this Agreement. This Agreement, when executed and delivered, will constitute a legal, valid and binding obligation of Donor.

IV. DEFAULT AND TERMINATION

A. Default by Donor

1. **Events of Default.** The occurrence of one or more of the following matters will constitute a default by Donor (“Donor Default”):

a. Donor’s failure to pay the Gift or other amounts when due to the Foundation hereunder, if such failure continues for a period of thirty (30) days after written notice from the Foundation to Donor, specifying the failure and demanding that it be cured.

b. The unlikely event that Donor (or its senior officers or directors, if a company) commits acts of misconduct that are illegal, unethical, immoral and/or scandalous, or has previously committed such acts that have not yet become public knowledge, that are deemed by the Member to be detrimental to the reputation, image, mission or integrity of Member, The Texas A&M University System, or its Board of Regents.

c. Donor’s failure to perform or comply with any other material term or condition of this Agreement, or its material breach of any representation or warranty made herein, if such failure or breach continues for a period of thirty (30) days after written notice from the Foundation to Donor, specifying the failure or breach and demanding that it be cured.

2. **Rights and Remedies of the Member or Foundation Upon Donor Default.** Upon the occurrence of a Donor Default, the Member or Foundation (as applicable) will have the right to do any one or more of the following: (i) enforce the specific remedies provided for herein; (ii) recover all damages provided by law or in equity; (iii) exercise any other right or remedy at law or in equity, including seeking an injunction or order of specific performance; (iv) at Member’s discretion, terminate the Naming and consider an alternative recognition for the Gift; and/or (v) terminate this Agreement and, at Member’s discretion, remove the Naming.

B. Default by Foundation.

1. **Events of Default.** The occurrence of Foundation’s failure to perform or comply with any material term or condition of this Agreement, except for a Length of Term Naming Default (defined below), or its material breach of any representation made herein, if such failure or breach continues for a period of thirty (30) days after written notice by Donor to the Foundation, specifying the failure or breach and demanding that it be cured will constitute a default by Foundation (“Foundation Default”).

2. **Rights and Remedies of Donor Upon Foundation Default.** Upon the occurrence of a Foundation Default, Donor will have the right, to the extent allowed by Texas law, to do any one or more of the following: (i) enforce the specific remedies provided for herein; (ii) recover all damages provided by law or in equity; (iii) exercise any other right or remedy at law or in equity, including seeking an injunction or order of specific performance; and/or (iv) terminate this Agreement.

3. **Default with Respect to Length of Naming.** In the unlikely event the Naming is in effect for less than the Applicable Term due to a default by the Foundation (“Length of Term Naming Default”), the Foundation, in conjunction with the Member, may cure the Length of Term Naming Default by granting an alternate naming right acceptable to Donor with a value approximately equal to the amount of the Gift divided by the Applicable Term and then multiplied by the number of years remaining to reach the Applicable Term. Alternatively, the Foundation may cure the Length of Term Naming Default by an arrangement mutually agreed upon by the parties or their successors, heirs, or assigns.

V. MISCELLANEOUS

A. Governing Law. This Agreement will be construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

B. Modification and Waiver. No provisions of this Agreement may be amended, waived, or modified except by an instrument in writing signed by the parties to be bound. A waiver by either Foundation or Donor, or both, of any obligation, duty or covenant of this Agreement will not constitute a waiver of any other breach or any obligation, duty or covenant of this Agreement.

C. Severability. Unenforceability of any provision of this Agreement will not limit or impair the operation or validity of any other provision of this Agreement.

D. Notice. Any notices required or permitted hereunder must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The parties may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

To FOUNDATION:

Attn: _____

Phone: _____
Email: _____

with a copy to:

The Texas A&M University System
Office of General Counsel
Attn: Property & Construction
301 Tarrow St., 6th Floor
College Station, Texas 77840-7896
Phone: 979-458-6120
Email: property@tamus.edu

To DONOR:

Attn: _____

Phone: _____
Email: _____

E. Assignment. Donor has no right to assign its rights or obligations under this Agreement without the express written approval of the Foundation, which will not be unreasonably withheld.

F. Counterparts. This Agreement can be executed in multiple counterparts, each of which is declared an original.

G. Publicity. Any press release and specific articles relating to this Gift must be mutually agreed upon by Donor and Member prior to being released to the media. Additionally, all recognition events, promotion, and other publicity regarding the terms of this Agreement will be developed in consultation with Donor. Furthermore, Donor acknowledges that any use of the Member or The Texas A&M University System seal, logos or other trademarks of Member or The Texas A&M University System is strictly prohibited without prior written approval.

This Agreement constitutes the entire agreement between Foundation and Donor. This Agreement supersedes all oral or written, previous and contemporary understandings or agreements relating to matters contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the day and year first written above.

FOUNDATION:

DONOR:

Foundation Name

President

[Printed Donor Name]

Date

[Donor Title if a Company]

Date

MEMBER:

Accepted and Agreed, solely with respect to Section II,
Section IV(A)2, and Section V(G)

Member Name

President

Date

**EXHIBIT A
RECOGNITION**

[Enter terms of signage, if any]

[Enter terms of recognition of Gift, if any, including publicity]