

Fundraising Counsel Agreement

This is a Commercial Fundraiser Agreement (“Agreement”), dated as of _____, 20__, between _____, a [California nonprofit corporation] (“Client”) and _____, a[n] _____ (“Counsel”).

BACKGROUND

A. Client is a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code (“Code”). Its mission is *[insert mission]*.

B. Counsel is an independent entity engaged in the business of counseling nonprofits on fundraising activities. Client wishes to engage Counsel for counseling services, and Counsel wishes to provide such services, on the basis set out in this Agreement.

C. This Agreement is intended to be and is a written contract between a fundraising counsel for a charitable purpose and a charitable organization within the meaning of Section 12599.1(f) of the California Government Code (“Code”).

D. This Agreement has two exhibits. The first exhibit, a document attached as **Exhibit A** and referred to as the “Plan,” sets out the specifics of the arrangement, including the timeframe, charitable purpose, activities and services, reporting requirements, fees, insurance requirements, and contact persons. The second exhibit, attached as **Exhibit B**, is a form to be used to document any adjustments in the Plan as provided by Section 1.4 of this Agreement.

Client and Counsel agree as follows:

1. BASIC AGREEMENT

1.1 Services

Counsel will provide fundraising counseling services (“Services”) as specified in this Agreement, including the Plan attached as **Exhibit A**.

1.2 Timeframe

Counsel will provide Services during the period stated in the Plan.

1.3 Fee

Client will pay Counsel fees as set out in the Plan.

1.4 Adjustments in Plan

If either Client or Counsel believes the Plan should be adjusted in any respect, it will so advise the other of the proposed changes. Client and Counsel will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in the Plan Adjustment form attached as **Exhibit B**.

2. COUNSELING OBLIGATIONS AND ACTIVITIES

2.1 Standards and Personnel

Counsel will carry out the Services in accordance with this Agreement, applicable law, and the highest professional standards of diligence and conduct including, without limitation, in interactions with Client staff. If Client believes that Counsel personnel are not qualified or effective to perform the Services or is otherwise concerned about staffing or other aspects of Counsel’s performance, Client may so notify Counsel, and Counsel will promptly address the concern to Client’s reasonable satisfaction.

Note: This document does not reflect or constitute legal advice. This is a sample made available by the Organizations and Transactions Clinic at Stanford Law School on the basis set out at nonprofitdocuments.law.stanford.edu. Your use of this document does not create an attorney-client relationship with the Clinic or any of its lawyers or students.

2.2 Compliance with Law

Counsel will comply with all federal, California, and other applicable state and local applicable to Counsel's status as a fundraising counsel and otherwise to its performance of the Services. By way of example and not of limitation, Counsel will comply with all registration, reporting, notice, conduct, and recordkeeping requirements applicable to fundraising counsel under the Code.

2.3 Ownership of Work Product

Counsel and Client intend that Client will have full and exclusive rights to all work products created by Counsel or provided to Client under this Agreement including, without limitation, reports, fundraising materials, and presentations (collectively, "Work Product"). Accordingly, Counsel: (a) assigns to Client all rights, title, and interest worldwide in the Work Product; (b) grants to Client an irrevocable, exclusive, royalty-free, perpetual, and worldwide license to any rights in the Work Product that cannot be assigned to Client; and (c) waives enforcement against Client of any rights in the Work Product that cannot be assigned or licensed to Client. Counsel will assist Client in obtaining and enforcing these rights in the Work Product.

2.4 Counsel Materials

Counsel owns and retains all right, title, and interest in and to Counsel's pre-existing proprietary tools, know-how, and methodologies used in creating the Work Product or in otherwise providing Services.

2.5 Counsel Activity

As required by Section 12599.1(f)(6) of the Code, Counsel will not: (a) solicit funds, assets, or property for charitable purposes; (b) receive or control funds, assets, or property solicited for charitable purposes; (c) employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes; or (d) take any other action that could result in Counsel not being treated as a fundraising counsel under the Code.

[2.6 Budget and Expenditures

Counsel will submit to Client, no later than the date set out in the Plan, a reasonable operating budget for the Services. Client must give its written approval of the budget before Counsel begins counseling activities under this Agreement. Counsel will not, without first getting Client's written approval, incur expenses for an event or activity that exceed the amount budgeted by more than \$500.]

2.7 No Authority to Speak for or Commit Client

Counsel will not purport to speak or act on behalf of Client, including, without limitation, making statements that purport to be official positions of Client, or represent or imply that Counsel has the power or authority to bind Client to a third party or commitment in any manner.

2.8 Monitoring and Control

As required by Section 12599.1(f)(7) of the Code, and in line with policy, brand, and reputational considerations, Client will retain control and approval over the content and frequency of any solicitation on behalf of Client. Client may monitor such activities and direct or limit them as Client determines in its sole discretion.

3. COMMUNICATION

3.1 Contact Person

Client and Counsel will each appoint one individual to act as principal contact person and to coordinate activities. The initial appointees are identified in the Plan. Client and Counsel each may change its contact person at any time and will so advise the other.

3.2 Reports, Information, and Meetings

Counsel will provide to Client the reports set out in the Plan. Counsel will promptly provide such other information as Client may reasonably request, and promptly respond to email, text, and phone messages from Client. Client and Counsel will meet as provided in the Plan or as they otherwise agree. Such meetings may take place in person, on the phone, or electronically.

3.3 Notice of Regulatory and Other Developments

Counsel will promptly notify Client of: (a) any changes in its management team or key personnel responsible for carrying out the Services; (b) any legal action or investigation instituted or threatened against Counsel by the California Attorney General or other governmental agency or charitable organization relating to Counsel's activities for Client or any other person; or (c) any other development that has or could materially affect its ability to carry out the Services.

3.4 Confidentiality

Counsel will use Confidential Information (as defined below) only in connection with Counsel's activities under this Agreement and keep it confidential, using at least the same degree of care used to protect its own confidential information. "Confidential Information" means all information, in any form, furnished to or obtained by Counsel from Client including, without limitation, fundraising strategy and strategy, and planning, budgeting, client, and employee information. Confidential Information also includes the Work Product, and all notes, reports, analyses, and other documents prepared by Counsel that are based on, contain or reflect any Confidential Information. It does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by Client; (b) was known by Counsel prior to its being furnished by Client; (c) is or becomes available to Counsel on a non-confidential basis from a source other than Client; or (d) is independently developed by Counsel.

3.5 Publicity

Counsel will not identify Client as a client, or use any of Client's trademarks, in any advertising or other activities intended to promote Counsel, or in any website, press release, or public communication, including, without limitation, social media, without the prior written consent of Client.

3.6 Recordkeeping

Counsel will maintain records relating to the Services in a manner such that Client can evaluate Counsel's compliance with this Agreement and will promptly make those records available for review by Client on reasonable notice during the term of this Agreement and for a period of three years after termination or conclusion of the Services. Counsel will reasonably and promptly cooperate with Client in providing information relating to its activities under this Agreement in connection with any financial or tax audit, litigation, or similar matter involving Client.

4. REPRESENTATIONS AND WARRANTIES

4.1 Counsel Authority

Counsel represents and warrants to Client that: (a) Counsel has the requisite corporate power and authority to enter into this Agreement and to carry out the Services; (b) the individual signing this Agreement on behalf of Counsel is an "authorized contracting officer" for Counsel as contemplated by Section 12599.1(f) of the Code; and (c) neither the execution and delivery of this Agreement nor the performance of Services by Counsel will: (i) result in a violation by Counsel of any contract to which Counsel is a party; or (ii) result in a violation by Counsel of any law applicable to Counsel.

4.2 Counsel Compliance

Counsel represents to Client that: (a) Counsel has completed all registrations, reports, and obtained all governmental authorizations and approvals required by Sections

12599.1(c) and (d) of the Code for its performance of Services under this Agreement; (b) Counsel is not party to and is not aware of any legal action, proceeding or investigation by the California Attorney General or any other regulatory agency, or by other charitable organization that has retained Counsel, against Counsel or any of its directors, officers, or employees, relating to fundraising activities; and (c) no director or officer of Counsel, and no person with a controlling interest in Counsel, has been convicted by a court of any state or the United States of a crime arising from fundraising activities punishable as a misdemeanor or felony.

4.3 Client Authority

Client represents and warrants to Counsel that: (a) Client has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement and (b) the individual signing this Agreement on behalf of Client is an official for Client who has authorization from Client's governing body to sign as contemplated by Section 12599.1(f) of the Code.

5. RELATIONSHIP

5.1 Non-Exclusive

This Agreement is not an exclusive arrangement. Counsel and Client are free to do business with others. Counsel understands that Client may enter into fundraising counsel, commercial fundraiser, commercial co-venture, sponsorship, or other similar arrangements with other companies.

5.2 Contracts with Other Parties

Counsel may be required to enter into contracts with third parties in order to carry out the Services. These contracts will be Counsel's sole responsibility. Client will not will assume any liability for or guarantee the performance of the other in conjunction with any of these contracts.

5.3 Counsel Relationship

Counsel is and will be an independent contractor. Nothing in this Agreement creates an employment, joint venture, or similar relationship between Client and Counsel for any purpose. Except as may be required under Section 12599.1(f)(7) of the Code with respect to oversight of solicitation, Counsel will have sole responsibility for its operations, including, without limitation, funding its business, paying its expenses, complying with legal obligations, and hiring and managing its employees.

5.4 Taxes, Contributions, and Benefits

Counsel will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority, and for paying all disability, unemployment insurance, workers' compensation contributions, and any other contributions and expenses that may be required in connection with Counsel's performance of the Services and receipt of fees under this Agreement. No Counsel employee will be entitled to or eligible for any benefits that Client makes available to Client's employees.

6. INSURANCE, INDEMNIFICATION, AND REMEDIES

6.1 Counsel Insurance

Counsel will promptly obtain insurance and proof of insurance as described in the Plan.

6.2 Indemnification by Counsel

Counsel will defend, indemnify and hold Client and its directors, officers, employees, agents, and assigns (collectively, "Client Parties"), harmless against all third party or other claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees, which a Client Party may suffer and which arise directly or indirectly from: (a) Counsel's performance of the Services under or in breach of this Agreement; (b) any inaccuracy in Counsel's representations and warranties set out in Section 4 of this Agreement; (c) Counsel's failure to comply with the Code or any other applicable

laws in carrying out Services or otherwise; or (d) any claims by employees, subcontractors, creditors, tax authorities, or other persons in a relationship with Counsel. Counsel will have no obligation to indemnify a Client Party to the extent the liability is solely caused by a Client Party's gross negligence or willful misconduct.

6.3 Limitation of Liability

Client will not be liable to Counsel for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement. Client's total liability to Counsel under this Agreement will in no case exceed the fees payable by Client to Counsel under Section 1.3 of this Agreement.

7. TERMINATION

7.1 Early Cancellation

As provided by Section 12599.1(f)(8)(A) and (B) of the Code, at any time during the ten day period following the date of execution of this Agreement ("Cancellation Period"), Client may cancel this Agreement by providing written notice to Counsel of that cancellation decision. Such cancellation will be effective upon delivery of the notice.

7.2 Termination on Notice

As provided by Section 12599.1(f)(9)(A) of the Code, Client may terminate this Agreement at any time in its sole discretion after the Cancellation Period by providing written notice of that decision to the other. Such a termination will be effective 30 days after delivery of the notice.

7.3 Termination for Conduct

Client may terminate this Agreement at any time after the Cancellation Period if Client reasonably believes that Counsel, its agents, employees, or representatives have otherwise engaged or is engaging in conduct, or has been alleged to have engaged in conduct including, without limitation, conduct involving harassment or discrimination, of a nature which causes or could cause public disparagement of Client's good name or goodwill or otherwise damage Client's reputation. Such a termination will be effective upon delivery by Client to Counsel of a written notice of termination.

7.4 Termination for Breach

If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 30 days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon delivery of such notice to the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

7.5 Financial Consequences of Cancellation or Termination

If Client cancels this Agreement under Section 7.1, Client will have no liability or payment obligations to Counsel. If Client terminates this Agreement under Section 7.2, Client will be responsible for fee and other payments, if any, due in respect of Services provided, if any, during the 30-day period following delivery of the termination notice. If Client terminates this Agreement under Section 7.3, Client will have no payment, compensation, or other liability to Counsel. If Client or Counsel terminates this Agreement under Section 7.4, then Counsel will be entitled only to compensation for Services performed through the effective date of termination, less the amount of any claims by Client arising out of such termination, including, without limitation, claims for damages and transition costs. Client will pay undisputed fees within 30 days after the later of receiving Counsel's invoice or the effective date of termination.

7.6 Other Consequences of Termination

Client and Counsel will cooperate in good faith in transition activities to minimize adverse impacts of the termination. Sections 2.3, 2.7, 3.4, 3.5, 3.6, 6, 7.5, 7.6, and 8 of this Agreement will survive the termination of this Agreement.

7.7 Cumulative Remedies

Client's rights, powers, and remedies under this Agreement, including, without limitation, those relating to indemnification and termination, are cumulative and not alternative, and will be in addition to all rights, powers, and remedies given to at law or in equity. The exercise of one or more of these rights or remedies will not impair Client's right to exercise any other right or remedy.

8. GENERAL PROVISIONS

8.1 Entire Agreement

This Agreement, together with the Plan and other exhibits, expresses Client's and Counsel's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealing, or understanding between Client and Counsel relating to its subject matter. If there are any differences between an exhibit and this Agreement, then this Agreement will control.

8.2 Amendment

This Agreement may be amended only as stated and by a writing signed by both Client and Counsel, which recites that it is an amendment to this Agreement.

8.3 Severability

If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law.

8.4 Waiver

Any waiver of the provisions of this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

8.5 Assignment

Counsel may not assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of Client.

8.6 Third Party Beneficiaries

Except as specifically provided in Section 6.2 of this Agreement, this Agreement is for the exclusive benefit of Client and Counsel, and not for the benefit of any third party including, without limitation, any employee, vendor, or client of Client or Counsel.

8.7 Counsel Staff and Subcontractors

For clarity, requirements set out in the Agreement applicable to Counsel apply to Counsel employees, subcontractors, agents, and representatives. Counsel will be responsible for ensuring such persons' conduct is consistent with this Agreement.

8.8 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered to Client and Counsel by mail, courier, fax, or email to the contact persons set out in the Plan. As required by Section 12599.1(f) of the Code, written notices of cancellation or termination that are mailed by Client shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing.

8.9 Governing Law

This Agreement is governed by California law including, without limitation, Sections 12599 – 12599.1 of the Code.

8.10 Injunctive Relief

Counsel acknowledges and agrees that: (a) any breach by Counsel of its obligations under Sections 2.3 and 3.4 of this Agreement will result in irreparable harm to Client which cannot be reasonably or adequately compensated in damages; (b) Client will be entitled to injunctive or other equitable relief in respect of such breach or imminent breach; and (c) Client will have all other rights and remedies to which it is entitled, at law or in equity, with respect to breach of Sections 2.3 and 3.4 of this Agreement, and otherwise with respect to the enforcement of all rights relating to the establishment, maintenance, or protection of Client’s Confidential Information.

8.11 Attorneys’ Fees

If there is any arbitration or legal action to enforce or interpret this Agreement, then the prevailing party will be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys’ fees and costs, incurred in the action or proceeding. Attorneys’ fees and costs will include paralegal fees, expert witness fees, and copy and delivery costs.

8.12 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or email of executed counterparts constitutes effective delivery.

* * * * *

This Agreement was signed by Client and Counsel as of the date stated in its first paragraph.

[insert legal name of Client]

[insert legal name of Counsel]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A Counseling Plan

Services

Timeframe	Date of execution of contract: Effective date: Termination date: Date solicitation activity to commence in California:
Statement of charitable purpose	
Client description and activities	
Description of Services	
[Due date for budget proposal]	
Reports by Counsel	

Fees

Fee	
Other compensation (if applicable)	

Counsel insurance

Counsel insurance requirements	[state insurance requirements]
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Counsel data and contact person

Counsel address	
Counsel telephone number	
Counsel registration number	
Counsel contact person	Name: Title: E-mail: Telephone:

Client data and contact person

Client address	
Client telephone number	
Client registration number	
Client contact person	Name: Title: E-mail: Telephone:

Exhibit B
Plan Adjustment

Date of adjustment	
Reason for change(s)	
Modifications	

This document is a Plan Adjustment as contemplated by, and is an amendment to the Fundraising Counsel Agreement, dated _____, 20__, between _____ and _____.

Agreed and confirmed as of the date stated above.

[insert legal name of Client]

[insert legal name of Counsel]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____