

All donor advised funds at Greater Houston Community Foundation ("GHCF") are subject to the terms and conditions described in the Program Guidelines. GHCF reserves the right to modify the Program Guidelines at any time.

## **DONOR ADVISED FUNDS**

Donor Advised Funds make giving easy and efficient. Donors (individuals, families, groups, companies, or other foundations) recommend grants from the fund to any section 501(c)(3) nonprofit organization they wish to support.

## **FUND RELATIONSHIP AND FUND ADVISORY PRIVILEGES DEFINITIONS**

### Primary Fund Contact

Primary contact for all matters concerning the fund. May or may not have fund advisory privileges for grants.

### Donor/Founder

The individual(s) establishing the fund.

### Current Advisor

Full advisory privileges over a fund, including grant recommendations, investment recommendations, naming the fund, and appointment of other fund advisors and successor advisors. (This is the highest level of privilege.)

### Successor Advisor

A second-generation fund advisor; they have no advisory privileges until after some or all of the initial fund advisor(s) are unable to exercise their right to advise the fund. Successor advisor(s) may be required to provide written notification and sufficient proof of the advisor(s) inability to serve prior to assuming the privileges and duties of a fund advisor.

### Fund Representative

Access to fund information, but no fund advisory privileges. (This is the lowest level of privilege.)

## **ENDOWED AND NON-ENDOWED FUNDS**

### Endowed Fund

A spending policy is established to ensure the availability of grantmaking dollars to the community in perpetuity. Annual grant distributions are subject to the GHCF spending policy. The dollar amount is determined by calculating the rolling average value of the liquid assets over the previous 12 quarters (or since inception for funds less than three years old). This rolling average is then multiplied by the current spending percentage (such as, three or four percent) to arrive at a spendable amount. The GHCF Governing Board reviews its spending policy annually and may increase or decrease the percentage available to spend. A copy of GHCF's current spending policy as contained in the GHCF Investment Policy Statement is available upon request.

### Non-Endowed Fund

Fully expendable: the entire fund balance is available for grant making.

## **FUND BALANCE AND FUNDS AVAILABLE FOR GRANT MAKING**

### Fund Balance

The net worth of the fund including all investment assets and any illiquid assets. This total excludes any grant amounts scheduled for future payment.

### Available Fund Balance

The portion of the fund balance that may be used to fund grants immediately.

## FUNDRAISING

In general, GHCF does not permit fundraising. Please reference GHCF's "Fundraising Policy" for further guidance.

## TAX STATUS OF CONTRIBUTION

Funds established at GHCF are component funds of GHCF, a Section 501(c)(3) public charity. Contributions other than cash or marketable securities must first be approved by GHCF. All contributions to GHCF's funds are treated as gifts to a public charity and are generally tax-deductible, subject to individual limitations. GHCF does not provide tax or legal advice; we recommend consulting a professional advisor with questions about a gift to GHCF.

## FEES AND MINIMUMS

There is no set-up fee to open a fund at GHCF; however, an initial gift minimum of \$10,000 must be met. Once established, funds are required to maintain a \$5,000 minimum balance and are subject to minimum fee requirements.

An annual administrative fee, charged monthly, at the current fee schedule will be charged against the fund's balance. While the need to do so is rare, GHCF reserves the right to deduct extraordinary costs incurred as a result of fund activity. This may include legal and professional costs, taxes, special pass-through fees, or transaction costs. Investment management costs are netted against investment income or loss in GHCF's portfolio prior to the allocation of investment income or loss to the fund.

A list of current fees and initial minimums is available upon request. GHCF reserves the right to change its fee and minimum policies at any time.

Funds that fall below the minimum stated fund balance are required to replenish the fund within 12 months. If after 12 months the fund has yet to meet the minimum stated fund balance, the donor is required to recommend a grant for the entire fund balance. GHCF will calculate any outstanding administrative fees, process the final grant and the fund will be closed. If the donor fails to recommend a grant for the entire fund balance after the 12 months, the balance of the fund will be placed into GHCF's Unrestricted Fund for highest and best use as determined by the Foundation.

## ROLE OF ADVISORS

Donors establishing a fund may designate any person over 18 years of age to be an advisor but preferably no more than three. If a fund is advised jointly, upon the death of one fund advisor, the remaining advisor(s) retains the privileges associated with the fund.

## SUCCESSOR ADVISORS

Successor advisor(s) may assume the privilege to advise the fund after the deaths or incapacity of some or all initial fund advisors named on the fund. The successor advisor(s) may be required to provide written notification and sufficient proof of the donor's or fund advisor's inability to serve prior to assuming the privileges and duties of a fund advisor. Successor advisors may appoint further successors. If the successor is a minor, GHCF's Governing Board reserves the right to require that grant recommendations be made by the minor's legal guardian.

All requests to modify or appoint additional advisors and successor advisors to a fund must be communicated to GHCF in writing. In addition, a written acknowledgment must be received from GHCF confirming that the request has been granted. If GHCF has not received the name(s) of an additional advisor(s) or successor advisor(s) to the fund, or other special instructions, in writing, GHCF will use the fund's balance to support its Unrestricted Fund.

## SUCCESSION PLANNING

A Succession Plan is recommended to address the long-term future of the assets in the fund. Advisor(s) may request that portions of the fund be administered in a variety of ways upon the death or incapacity of the fund's last surviving advisor.

## CONDITIONS WHICH GOVERN ALL FUNDS

### Protection of Tax-Exempt Status

Donors must comply with any written direction by GHCF to cease recommending grants or distributions or conducting activities that may jeopardize GHCF's tax status or otherwise subject GHCF or the fund to excise taxes that are applicable to donor advised funds as defined in the Internal Revenue Code Section 501(c)(3).

### Accuracy of Information

All information presented to GHCF in connection with a donor advised fund is accurate to the best knowledge of the donor and donor will promptly notify GHCF in writing of any changes.

### Use of Funds

GHCF will make distributions from the fund to carry out the charitable purposes of the fund in accordance with IRS code 501(c)(3). GHCF is generally unable to make reimbursements to any individual for expenditures or to make a grant or distribution for any non-charitable purpose or to any non-charitable entity under the provisions of IRS code 501(c)(3). Advisors wishing to recommend any such reimbursement, grant or distribution should discuss it with the GHCF's Donor Services Department before engaging in any activity that might otherwise lead the donor(s) to an expectation that such payment would be appropriate.

### Endowed Funds

Any Endowed Fund created is a permanent fund and only the spendable fund balance will be available for distribution.

### Irrevocable Gifts

The establishing gift and any subsequent gifts to GHCF for the purpose of establishing a fund will constitute an irrevocable gift and is not refundable.

### Ownership

Ownership tools, equipment and software used by GHCF to provide service to donor advised funds shall remain the property of GHCF and/or its licensors, and no right, title, license or interest in any of them is conveyed to the fund.

### Legal Control and Benefit

GHCF has exclusive legal control over the assets in the fund to be used exclusively for charitable purposes and not for the benefit of the Donor/Founder or for any other purpose conferring private benefit.

### Acknowledgment of Charitable Donations on Behalf of the Fund

GHCF will acknowledge to donors all contributions to funds of \$250 or more in accordance with the guidelines established by the Internal Revenue Service. Generally, the IRS requires taxpayers to complete and file an 8283 with their federal income tax return for gifts of property valued at \$5,000 or more. It is the donor's responsibility to obtain a qualified appraisal for all gifts other than cash and marketable securities for tax deduction purposes.

### Recommendations

Donor recommendations to the Governing Board shall be advisory only. The Governing Board shall make an independent investigation or evaluation of all recommendations for distributions from the Fund based on the usual reasonable standards and guidelines applied by the Board to all proposals. Donors' advice to the Governing Board shall not limit or restrict the powers of the Governing Board. In its due diligence review of donors' recommendations, the Governing Board will seek to confirm and document the tax-exempt status and fiscal integrity of proposed recipients. The Governing Board is authorized to interpret or amend the provisions of this agreement in order to conform to the provisions of applicable law or government regulations that are necessary or advisable to carry out the Donor/Founder general charitable intent.

### Publication

Unless requested by the Donor/Founder not to publicize the fund's name, the name of the fund may be listed in GHCF publications including newsletters, annual report, website and other informational venues.

### Investments

Current IRS regulations permit fund advisor(s) to designate investment preferences but require GHCF to retain final discretion regarding such investments. GHCF may, at its sole and absolute discretion, follow or decline to follow donor recommendation. GHCF may, at any time, at its sole and absolute discretion, change the investment of all or any portion of the assets in a fund. If a donor's investment recommendation is accepted, the investments will be administered in accordance with the investment policy of GHCF; all investments are subject to market and interest rate fluctuation risks, and any gain or loss generated by the investments will be credited or charged to the fund; the total investment return of each investment manager is net of its operating expenses; all investments may be commingled with assets of other funds for investment purposes; and an asset allocation is no guarantee of future results.

### Indemnity

In consideration of GHCF creating a fund at the request of the donor(s) or entity and for other good and valuable consideration, donor(s) agree to indemnify and hold harmless GHCF against any liability, cost, or expense which GHCF may incur by reason of its acting upon instructions or recommendations given to GHCF by any donor(s) or by persons authorized to make recommendations with regard to the fund.

### Variance Power

All donor advised funds are subject to the provisions of the Certificate of Formation, Bylaws and other rules, regulations and procedures of GHCF which are now in effect and which may be adopted or amended, or both including but not limited to the power reserved by the Governing Board to modify any condition or restriction on the distribution of funds if, in its sole judgment (without the approval of any trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the area served by GHCF.

### Amendment of Agreement

Subject to the provisions of the paragraph herein entitled "Variance Power", the fund agreement and any addendums attached hereto shall constitute the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Subject to the provisions of the paragraph herein entitled "Variance Power", the fund agreement, including any exhibits or attachments hereto, may not be amended or modified, except in a writing signed by all parties to this agreement.

### Governing Law

This agreement shall be governed by the laws of the State of Texas, excluding its choice of law principles.

## GRANT DISBURSEMENT

Grants must be for charitable purposes, and those grants may be recommended to any 501(c)(3) organization or verified charitable entity (e.g. schools, religious institutions) located in the United States, or to any nongovernmental organization outside of the United States having a verifiable charitable purpose. All grants directed outside of the United States must comply with federal government regulations and must otherwise conform to all relevant U.S. federal and state laws. Grants may also be given for charitable purposes to non-501(c)(3) organizations if the charitable expenditure can be verified through a process called expenditure responsibility. Expenditure responsibility is required for any organization not described in IRS Section 170(b)(1)(A), including for-profit companies, private operating foundations and disqualifying supporting organizations.

Grants given to all 501(c)(3) public charities within the United States must be for a minimum of \$250. Grants given outside the United States or requiring expenditure responsibility within the United States must be for a minimum of \$5,000. Grant checks sent to organizations are accompanied by a grant letter specifying the name of the fund and the fund advisor's name(s) unless requested otherwise by the donor or fund advisor and as approved by GHCF. The fund advisor's address may also be included on all letters if requested by the fund advisor. Mail which the GHCF receives for the fund will not be forwarded. Approved grants are typically sent within 10 business days of the recommendation being received or the fund advisor will be notified as to the reason for a delay. Grants made from funds at GHCF are issued on checks with the name and logo of GHCF.

GHCF shall assume responsibility for check writing, bookkeeping, investment management, tax reporting, auditing and evaluation of projects, and for making available to the fund advisors and fund representatives reports of fund income, expenses and grant making, as appropriate.

## RESTRICTIONS ON GRANTS

In compliance with the Internal Revenue Code, grants are not permitted to individuals; for non-charitable purposes; for political contributions or to support political campaign activities; or for any purpose that would provide benefits, goods or services to a donor to the fund, the fund's advisor(s) or other related parties. A fund advisor is subject to IRS penalties if the fund's donor(s), advisor(s) or other related parties receive benefits, goods or services in connection with a grant recommendation. This includes grants to satisfy legally enforceable pledges made by any person, including a fund advisor, and non-deductible (or partially tax-deductible) memberships, tickets, sponsorships, registration fees in tournaments and cause-related market activities. Grants are not allowed to private non-operating foundations, or to certain fraternal and civic organizations (e.g., Chambers of Commerce, Rotary, Kiwanis or Lions Clubs). Please contact GHCF if you have questions about the exclusion of benefits from grant recommendations and/or multiple-year payments.

## PAYMENTS FROM AN ADVISED FUND

GHCF does not permit expense reimbursements, loans, compensation or other similar payments from an advised fund to any donor, fund advisor or related party. All expenses must be paid by GHCF directly after appropriate review of the expenses and their payees, and all expenditures must be preapproved by GHCF prior to being incurred. The expense submitted for review must be charitable in nature or support a charitable purpose.

**FUND INACTIVITY**

Inactivity occurs when no recommendations for grants from the fund or gifts made into the fund are received for a period of three consecutive years and the fund advisor cannot be contacted. GHCF staff will attempt to contact the fund advisor at least three times including once via certified mail. If contact cannot be made, GHCF's Governing Board will recommend grants that will align with the founder and/or advisor's intent for the fund or to support GHCF's Unrestricted Fund.

**FUND CLOSURE**

A fund advisor may recommend closing a fund by granting up to 100% of the fund balance to a qualified charitable organization, including any of the community foundation's funds (e.g., fields of interest funds, endowment funds, operating funds). Such recommendations must be received in writing and, if approved, funds will be disbursed in accordance with GHCF's current grantmaking policies and applicable laws and regulations. Closing a fund by recommending a grant to another qualified charitable organization which is approved will occur as follows: 80% of the current balance will be granted within 10 business days of the request date, barring any issues with the organization's status as a qualified public charity or equivalent. GHCF will calculate any outstanding administrative fees, process the final grant within the following 45 days and the fund will be closed. Endowed funds are permanent and cannot be closed.

**CONFLICT OF TERMS**

In the event of an inconsistency between these terms and conditions and any terms and conditions appearing elsewhere in connection with any fund, these terms and conditions, as interpreted by GHCF, shall govern, and GHCF reserves the right to take any actions at any time which, in its discretion, it deems reasonably necessary or desirable for the proper administration of any fund at GHCF or to comply with applicable law.

**EXCESS BUSINESS HOLDINGS**

GHCF places a limitation on accepting gifts of assets to a donor advised fund and does not allow donor advised funds to purchase business holdings. GHCF recognizes the provision included in the Pension Protection Act (PPA) regarding excess business holdings. That is, the holdings of a donor advised fund in a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed any of the following:

- Twenty percent of the voting stock of an incorporated business
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity
- Ownership of an unincorporated business that is not substantially related to the fund's purposes

GHCF will identify and monitor any new gift to a donor advised fund of any interest qualifying as an "excess business holding" under the PPA, and will accept such gifts as appropriate according to GHCF's Gift Acceptance Policy. GHCF will exercise its best possible price within five years of the date of the gift as required under the PPA. In any event, GHCF will dispose of any excess business holding prior to the five year time limit, except in the event the Treasury Department grants an additional five year holding period. GHCF will notify potential donors of such interests of this requirement prior to the contribution of such interest.

## PASS-THROUGH FEE

Unless pursuant to a separate agreement with GHCF, funds that grant more than 80% of their initial fund balance within 12 months of being established may be assessed a 3% pass-through fee on the total amount granted from the fund, with a minimum of \$500. GHCF's Governing Board sets policies and fees to ensure that all funds pay their share of the costs of the Community Foundation. It is expected that all funds pay their fair share, and to do otherwise would be to shift the administrative burden unfairly to those funds whose founders/advisors have made a long-term commitment to meeting the needs of our community.

## COMPLEX GIFT FEE

Gift assets that require special review, such as real estate, limited partnership interests, or closely-held stock, may incur additional fees to cover tax, legal or other Foundation expenses associated with the transaction.

## FAQs

*Who owns the assets once the gift is made and the fund is opened?*

The law requires the community foundation to make clear in the agreement, and to obtain the donor's written acknowledgment, that the assets in a donor advised fund are the property of the community foundation and that the community foundation has discretion and control over the use and investment of the donor's advised fund's assets.

*Why is discretion and control an issue?*

In order for a donor to take advantage of the tax benefits that flow from a charitable gift, the gift has to be complete that is, the donor has to part with control over the donated assets. The appearance of donor control could put the donor's tax deduction in jeopardy. Therefore, fund advisors cannot make pledges on behalf of the fund and can only make non-binding recommendations about grants; they cannot control when and how the community foundation will make grants nor control decisions about which grantees will receive funding.

*What are the limits on donor benefits in connection with donor advised funds?*

Donors, fund advisors and related parties (such as family members or business interests) may receive only "incidental" benefits from a grant or investment of a donor advised fund. If a donor, fund advisor or related party receives more than an incidental benefit in connection with a donor advised grant, the IRS will assess a penalty of 125% of the amount of the improper benefit. The penalty may be assessed against either the person who recommended the grant or the person that received the benefit. (There is a separate penalty if a donor, fund advisor or related party receives a direct distribution from the donor advised fund, such compensation or an expense reimbursement.)