

## **GIFT AGREEMENT**

This gift agreement (this “Gift Agreement”), effective on the date on which the last party has executed the Gift Agreement (“Effective Date”), is between the County of Dakota, a Political subdivision of the State of Minnesota, by its library, having its principal business at 1340 Westcott Road, Eagan, Minnesota 55123, (the “Donee”), and the city of South St. Paul (the “Donors”) The Donee and Donor may each be referred to as a “Party” and collectively as the “Parties.”

### **Background**

- A. The statue depicting the Peanuts cartoon character known as Lucy was donated to the City of South St. Paul by Nancy and Greg Schouweiler to be displayed at the South St. Paul Library. (The Work)
- B. The City library has become part of the County library system with a new building.
- C. The City wishes to donate the statue to the County for display at the new Kaposia Library in South St. Paul.
- D. The Work weighs approximately 300 pounds and is 6 feet high, and 4 feet wide.
- E. The Work is approximately valued at \$3,000.
- F. The Donee is willing to accept the charitable donation under the terms and is subject to the conditions in this Gift Agreement.

Accordingly, the Parties agree as follows:

Both Donee and Donor acknowledge and agree that valid consideration has been given in return for the promises and conditions outlined in this Gift Agreement.

The Donors will arrange to have the Work repaired and refurbished to the satisfaction of the Donee prior to donation. The Donors hereby irrevocably and unconditionally give, transfer, and assign, by way of gift, without limitation or restriction, to the Donee, its successors, and assign all rights, titles, and interests in, arising from, and to the Work.

The Donors hereby certify the following: (i) that the Donors are the sole owner of the Work; (ii) have good and complete rights, title, and interest in and to the Work; (iii) have full authority to give, transfer and assign right, title, and interest in and to the Work to the Donee; (iv) the subject of this gift is free and clear of all encumbrances and restrictions; and (v) to the best of the Donors’ and Artist’s knowledge the Work has not been imported or exported into or from any country contrary to its laws.

The Donors agree that Donee may use the Work as it deems most beneficial, including, however, not limited to, mounting outside of the Kaposia Library.

The Donee reserves the right to use an image of the sculpture as it appears in the Dakota County Library for promotions or other educational purposes. The Donee also reserves the right to move to another location or de-accessed the Work for any reason. If the Work is de-accessed, the Donee will offer the Donor the first right to request the Work be returned to the Donor before the Donee takes any other action.

To the greatest extent allowed by law, in the performance of or failure to perform this Gift Agreement, the Donors shall indemnify, defend, (in the case of third-party claims, with counsel satisfactory to Donee), and hold harmless Dakota County and Donee, its officers, agents, and employees, from and against any actual or alleged loss, litigation cost, (including, but not limited to, reasonable attorney fees and costs and expenses of defense), costs, settlement, judgment, demands, damage, liability, lien, debt, injury, harm, fees, fines, penalties, interest, expenditure, diminution in value, disbursement, action, claim, proceeding, or dispute of any sort, (collectively “Losses”), whether or not involving a third-party, which are attributable to the Donors’, or Donors’ agents’, independent contractors’, employees’, or delegates’, actual or alleged:

- A. Intentional, willful, or negligent acts or omissions.
- B. Actions or omissions that give rise to strict liability; or
- C. Negligent or intentional misrepresentation, breach of warranty, covenant, contract, or subcontract whether or not well-founded in fact or law, known or unknown, foreseen, or unforeseen, fixed or contingent, and howsoever originating or existing, and whether or not based upon statute, common law, or equity. This indemnity provision survives the expiration or termination of this Gift Agreement.

The indemnification, defense, and hold harmless obligations of this section do not apply to the extent that liability is the direct or proximate result of the negligence or fault of the Donee or any third party for whom the Donors are not legally liable. This limitation is not a waiver on the part of the Donee of any immunity or limits on liability under Minn. Stat. Ch. 466, or other applicable State or Federal law.

The Parties shall promptly provide notice in writing and reasonable detail of:

- A. Any demand, action, suit, or proceeding against the Party providing notice; or
- B. Any event or fact that may give rise to indemnification under this section by the Artist or Donors.

The Donors shall promptly provide notice to the Donee of any proposed settlement, and Donors may not, without the Donee’s prior written consent, (which the Donee will not unreasonably withhold, condition, or delay), settle such claim or consent to entry of any third-party judgment. Nothing in this section precludes the Donors from allowing the Donee to undertake control of the defense.

Neither Party shall be liable to the other Party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party’s reasonable control, providing the defaulting party gives notice to the other Party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

Any amendments to this Gift Agreement are only valid when reduced to writing, specifically identified as an amendment, and signed by the Parties.

Each Party agrees that the electronic signatures of the Parties included in this Gift Agreement are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

The laws of Minnesota govern all matters related to this Gift Agreement, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Gift Agreement must be in those courts located within Dakota County, State of Minnesota, or U.S. District Court, District of Minnesota.

The Donors shall not assign or delegate any interest, right, duty, or obligation related to this Gift Agreement without the Donee's prior written consent. The Donee may void any purported assignment, delegation, or subcontract in violation of this section.

This Gift Agreement constitutes the sole and entire agreement between the Parties and supersedes and merges all prior agreements, proposals, negotiations, discussions, and understandings between the Parties relating to the subject matter of this Gift Agreement. No Party has relied on or can rely on any statement or representation that is not expressly contained in this Gift Agreement as an inducement to enter into this Gift Agreement.

To evidence the Parties' acceptance of the Agreement, they have executed it as of the date set forth below:

**Donee**

By:

\_\_\_\_\_  
[Name, Title]  
[Department]

Date                      of                      Signature:

\_\_\_\_\_

**Donor**

*(I represent and warrant that I am authorized by law to execute this contract and legally bind the Contractor.)*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Date of Signature: \_\_\_\_\_