

[Draft Agreement]

GIFT OF “POLITICAL/RETURNABLE” TAPES AND MATERIALS

OF

RICHARD M. NIXON

TO

THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

1. In accordance with the provisions of chapter 21 of title 44, United States Code, and subject to the terms, conditions, and restrictions hereinafter set forth, the Richard Nixon Library & Birthplace Foundation (hereinafter referred to as the Donor) hereby gives, donates, and conveys to the United States of America, through the National Archives and Records Administration (NARA), for current or eventual deposit in the Richard M. Nixon Presidential Library (Nixon Library) the portions of tapes and textual materials that are determined to constitute private returnable information concerning political activities in accordance with the terms of the Presidential Recordings and Materials Preservation Act (PRMPA), 44 U.S.C. § 2111 note, its implementing regulations, and guidelines (hereinafter referred to collectively as the Political/Returnable Materials).

2. This deed of gift in no way affects the portions of tapes and textual materials that have been, or will be, determined to constitute information of a purely personal nature to President Nixon and his family (hereinafter referred to as Personal/Returnable Materials), which shall continue to remain under the exclusive ownership and control of the Nixon estate. In accordance with the PRMPA and the ruling in the case of *Kutler, et al. v. Carlin, et al.*, 139 F.3d 237 (D.C. Cir. 1998), NARA will either return to the Nixon Estate or destroy all Personal/Returnable Materials in the textual and audio-visual files and will destroy all Personal/Returnable Materials on the original tapes and on any and all extant copies of tapes, upon completion of the tapes processing.

a) NARA’s regulations, at 36 C.F.R. § 1275.16(b), define the term “*private or personal materials*” to “mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other non-governmental activities, including private political associations, and having no connection with his constitutional or statutory powers or duties as President or as a member of the President's staff.”

b) For purposes of this deed of gift, Political/Returnable Materials refer to materials relating solely to President Nixon’s private political associations (including matters relating to the Republican Party and election campaigns) and that have no connection

with the constitutional or statutory powers or duties of the President or a member of the President's staff.

c) For purposes of this deed of gift, Personal/Returnable Materials refer to materials relating solely to personal and family issues of President Nixon, his family, and his friends and that have no connection with the constitutional or statutory powers or duties of the President or of a member of the President's staff.

3. The Political/Returnable Materials are located in three distinct collections: a) conversations in the Nixon White House tapes (hereinafter referred to collectively as "the tapes") and dictabelts that have been or could be identified and withdrawn under the restriction codes established by NARA under the PRMPA for materials to be withdrawn and returned to the Nixon estate as private and personal (category "G"; see paragraph 6.a, below); b) textual and other audio-visual materials still in NARA's custody (described in attachment A); and c) textual and audio-visual materials returned by NARA to the Nixon estate that are located at the Nixon Library in Yorba Linda, California (described in attachment B).

4. This Deed of Gift shall be executed by the Donor and the Archivist of the United States (hereinafter referred to as the Archivist). However, title to the Political/Returnable Materials shall not pass to the United States of America until NARA has accepted the Nixon Library as a NARA presidential library in accordance with 44 U.S.C. § 2112.

5. The Political/Returnable Materials currently in NARA's custody shall be maintained by the United States in the National Archives facility in College Park, Maryland, until no sooner than NARA has completed the processing of the fifth chronological tape segment (in accordance with the terms of the 1996 Settlement Agreement, paragraph 5, in the case of *Kutler v. Carlin*) and NARA has accepted the Nixon Library as a NARA presidential library in accordance with 44 U.S.C. § 2112, after which time the Materials may be deposited in the Nixon Library. The Political/Returnable Materials currently located at the Nixon Library shall remain at the Nixon Library. Any time after execution of this deed of gift the Donor shall be permitted to examine any of the Political/Returnable Materials during the regular working hours of the depository where they are located.

6. It is the Donor's wish that the Political/Returnable Materials be made available for research as soon as possible and to the fullest extent possible, in accordance with the NARA's review standards established under the PRMPA and its regulations and guidance.

a) Accordingly, upon the execution of this Deed of Gift by the Donor and the Archivist and before title has passed to the United States in accordance with paragraph 4, NARA may commence to include, and re-insert, Political/Returnable conversations in its on-going processing of the fifth chronological tape segment. Political/Returnable conversations shall not be made publicly available prior to the transfer of title in accordance with paragraph 4, above. In the event that title does not pass to the United States, NARA will remove the Political/Returnable conversations from the fifth

chronological tape segment prior as soon as practicable. NARA will process and open the other Political/Returnable tape conversations and materials in an expeditious manner.

b) The Donor agrees that NARA staff may re-review all conversations that have been previously withdrawn under category G in order to identify and distinguish Political/Returnable Materials from Personal/Returnable Materials. The Donor shall have the opportunity to review NARA's determination as to whether a conversation constitutes Political/Returnable Materials, consistent with the established process for reviewing PRMPA materials. The Donor recognizes that conversations and materials previously withdrawn under category G may nonetheless also contain constitutional and statutory information of general historical significance that would be governed by the PRMPA.

7. Following the completion of the review provided for above, the Personal/Returnable materials will be returned or destroyed in accordance with paragraph 2 of this deed. Political/Returnable materials restricted from public access shall, consistent with NARA's handling of all other restricted PRMPA materials, not be made available for inspection, listening, reading, or use by anyone, except regular employees of NARA in the performance of normal archival work on such materials, and the Donor or persons authorized by him in writing to have access to such materials: Provided that, information which is security-classified pursuant to statute or executive order or is restricted as an unwarranted invasion of privacy of a living person shall be made available only in accordance with procedures established to govern the availability of such information.

8. Political/Returnable materials which have been restricted from public access as herein provided shall be reviewed by the Archivist or his staff from time to time, and papers or materials which, because of the passage of time or other circumstances, no longer require such restrictions shall be opened to public access, subject to the Donor review process described in section 6.a., above.

9. The Archivist may, subject only to restrictions placed upon him by law or regulation, provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction, description, exhibition, display, and servicing of the Materials as may be needed or appropriate.

10. The Donor hereby gives and assigns to the United States of America all copyrights which it has in the Materials being donated.

11. The Archivist may enter into agreements for the temporary deposit of the Materials in any depository administered by NARA or other qualified depository.

12. In the event that the Donor may from time to time hereafter give, donate, and convey to the United States of America (for deposit in the Richard M. Nixon Library) additional papers and other historical materials, title to such additional papers and other historical materials shall pass

to the United States of America upon their delivery to the Archivist, and all of the foregoing provisions of this instrument of gift shall be applicable to such additional papers and other historical materials. An Appendix shall be prepared and attached hereto that references this deed of gift and that describes the additional papers and other historical materials being donated and delivered. Any Appendix shall be properly executed by being dated and signed by the Donor and the Archivist of the United States.

Signed: \_\_\_\_\_  
Donor

Date: \_\_\_\_\_

Pursuant to the authority of Chapter 21 of title 44, United States Code, the foregoing gift of the tapes, papers and other historical materials of the Donor is determined to be in the public interest and is accepted on behalf of the United States of America, subject to the terms, conditions, and restrictions set forth herein.

Signed: \_\_\_\_\_  
Archivist of the United States

Date: \_\_\_\_\_