

## **SAMPLE GIFT ACCEPTANCE POLICY AS OF SEPTEMBER 25, 2012**

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### **NOTE ON THE SCOPE OF THIS MATERIAL**

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the new IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the new Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. These sample policies are not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulations in the samples necessarily fit the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization. For more information, see the related Form 990 Policy Series Memorandum at: <http://www.publiccounsel.org/tools/assets/files/GiftMemo.pdf>.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law.

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### **GIFT ACCEPTANCE POLICY**

#### **1. Policy and Purposes**

This Policy represents the policy of \_\_\_\_\_ (the "Organization") governing the solicitation and acceptance of gifts by the Organization. The board of directors or trustees or authorized committee ("Governing Body") of the Organization and its staff solicit current and deferred gifts from individuals, corporations, foundations and others for purposes that will further and fulfill the Organization's mission. Purposes of this Policy include: (a) guidance for the Governing Body, officers, staff and other constituencies with respect to their responsibilities concerning gifts to the Organization; and (b)

guidance to prospective donors and their professional advisors when making gifts to the Organization. The provisions of this Policy shall apply to all gifts received by the Organization. Notwithstanding the foregoing, the Organization reserves the right to revise or revoke this Policy at any time, and to make exceptions to the Policy.

The mission (or a summary of the mission) of the Organization is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**2. Use of Legal Counsel**

**A. The Organization.** The Organization shall seek the advice of legal counsel in matters relating to acceptance of gifts when appropriate. Review by legal counsel is recommended for:

- (1) Closely held stock transfers that are subject to restrictions or buy-sell agreements;
- (2) Documents naming the Organization as trustee;
- (3) Gifts involving contracts such as bargain sales, partnership agreements, or other documents requiring the Organization to assume an obligation;
- (4) Transactions with a potential conflict of interest;
- (5) Gifts of real estate;
- (6) Pledge agreements;
- (7) Any gift with restrictions; and
- (8) [Insert any other instances where use of counsel is deemed appropriate by the Governing Body.]

**B. Donor.** For non-standard gifts, in order to avoid potential any conflicts or potential conflicts of interest, the Organization should encourage prospective donors to seek the assistance of their own legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences.

**3. General Policy**

The Organization shall not accept gifts that:

- (1) Violate the terms of the Organization’s organizational documents;
- (2) Would jeopardize the Organization’s status as an exempt organization under federal or state law;
- (3) Are too difficult or expensive to administer;
- (4) Are for purposes that do not further the Organization’s objectives; or
- (5) Could damage the reputation of the Organization.

Subject to Section 4 below, all final decisions on the acceptance or refusal of a gift, shall be made by the Governing Body.

#### **4. Policy Regarding Specific Types of Gifts**

**A. Gifts Generally Accepted Without Review (Unrestricted Gifts of Cash).** The Organization will accept unrestricted gifts of cash without prior review by the Governing Body, provided that, for donations of \$\_\_\_\_\_ or more, the identity of the donor has been vetted with respect to any reputational or policy issues. Unrestricted gifts of cash are acceptable in any form. Checks shall be made payable to the Organization.

**B. Gifts Subject to Governing Body Review Prior to Acceptance.** All gifts, other than unrestricted gifts of cash, must be reviewed by the Governing Body prior to acceptance, unless the Governing Body authorizes certain de minimis gifts or categories of gifts to be accepted without its review. The following guidelines also apply:

(1) **Tangible Personal Property:** The Governing Body shall review and decide whether to accept gifts of tangible personal property by considering the following factors:

- i. Whether the property furthers the mission of the Organization;
- ii. The marketability of the property;
- iii. The restrictions on the use, display, or sale of the property; and
- iv. Carrying costs and possible liability for the property.

(2) **Marketable Securities:**

i. Unrestricted marketable securities may be transferred to an account maintained by the Organization at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. All marketable securities shall normally be sold as soon as practical following receipt, unless otherwise directed by the Organization's Governing Body.

ii. If the marketable securities are restricted by applicable securities laws, the Governing Body shall make the final determination on the acceptance of the restricted securities.

(3) **Closely-Held Securities:** Closely-held securities, including debt and equity positions in non-publicly traded companies, interests in LLPs and LLCs, or other ownership forms, can be accepted subject to the approval of the Governing Body of the Organization. The Governing Body shall review and decide whether to accept closely held securities based on the following factors:

- i. Restrictions on the security that would prevent the Organization from ultimately converting the securities to cash;
- ii. The marketability of the securities; and
- iii. Any undesirable consequences for the Organization from accepting the securities.

If potential problems arise on initial review of the security, further review and recommendation by an outside professional may be sought before making a final decision on acceptance of the gift. The final determination on the acceptance of closely held securities shall be made by the Governing Body of the Organization with advice of legal counsel when deemed necessary. Non-marketable securities shall be sold as quickly as possible.

- (4) **Bequests:** Donors may make bequests to the Organization under their wills and trusts. A bequest will not be recorded as a gift until the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the gift will be recorded in accordance with GAAP.
- (5) **Charitable Remainder Trusts:** The Organization may accept designations as remainder beneficiary of a charitable remainder trust. The Organization [may] [shall not] accept appointment as trustee of a charitable remainder trust.
- (6) **Charitable Lead Trusts:** The Organization may accept designations as income beneficiary of a charitable lead trust. The Organization [may] [shall not] accept an appointment as trustee of a charitable lead trust.
- (7) **Retirement Plan Beneficiary Designations:** The Organization may accept designations as beneficiary of donors' retirement plans. Designations will not be recorded as gifts until the gift is irrevocable. When the gift is irrevocable, the gift will be recorded in accordance with GAAP.
- (8) **Life Insurance:** The Organization may accept designations as beneficiary and owner of a life insurance policy. The life insurance policy will be recorded as a gift once the Organization is named as both beneficiary and irrevocable owner of a life insurance policy. The gift shall be valued in accordance with GAAP rules. If the donor contributes future premium payments, the Organization will include the entire amount of the additional premium payment as a gift in the year that it is made. If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, the Organization may:
  - i. Continue to pay the premiums;
  - ii. Convert the policy to paid up insurance, or
  - iii. Surrender the policy for its current cash value.

Donors may name the Organization as beneficiary or contingent beneficiary of their life insurance policies. Designations will not be recorded as gifts until the gift is irrevocable. Where the gift is irrevocable, , the gift shall be recorded in accordance with GAAP.

- (9) **Charitable Gift Annuities:** The Organization may offer charitable gift annuities. The minimum gift for funding is \$\_\_\_\_\_. The minimum age for life income beneficiaries of a gift annuity shall be \_\_\_\_\_. Where a deferred gift annuity is offered, the minimum age for life income beneficiaries shall be \_\_\_\_\_. No more than \_\_\_\_\_ life income beneficiaries will be permitted for any gift annuity. The Governing Body may make exceptions to these minimums.

*Payment Schedule.* Annuity payments may be made on a quarterly, semi-annual, or annual schedule. The Governing Body may approve exceptions to this payment schedule.

*Illiquid Assets.* The Organization [may] [shall not] accept real estate, tangible personal property, or any other illiquid asset in exchange for current charitable gift annuities. The Organization may accept real estate, tangible personal property, or other illiquid assets in exchange for deferred gift annuities if there is at least a five (5) year period before the commencement of the annuity payment date, the value of the property is reasonably certain, and the Governing Body approves the arrangement.

*Handling of Funds.* Funds required as reserves for gift annuities should be established and maintained in accordance with applicable state insurance laws.

- (10) **Real Estate:** Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest.

*Environmental Review.* Prior to acceptance of real estate, the Organization shall require an initial environmental review of the property to ensure that the property has no environmental problem. If the initial inspection reveals a potential problem, the Organization shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall be an expense of the donor.

*Title Binder.* A title binder shall be obtained by the Organization prior to the acceptance of the real property gift when appropriate. The cost of this title binder shall be an expense of the donor.

*Factors for Acceptance.* The Governing Body and legal counsel shall review and decide whether to accept real property based on the following factors:

- i. Whether the property is useful for the purposes of the Organization;
- ii. The marketability of the property;
- iii. Any encumbrances, leases, restrictions, reservations, easements, or other limitations associated with the property;
- iv. Any carrying costs associated with the property, including insurance, property taxes, mortgages, notes or other costs;
- v. Any concerns which the environmental audit revealed.

(11) **Remainder Interests in Property:** The Organization will accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions of this Paragraph 4. The donor or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the life tenant(s), the Organization may use the property or reduce it to cash. Expenses for maintenance, real estate taxes, and any property indebtedness shall be paid by the donor or primary beneficiary.

(12) **Oil, Gas, and Mineral Interests:** The Organization may accept oil and gas property interests when appropriate. The Governing Body and legal counsel shall review and decide whether to accept oil, gas, and mineral interests subject to the following limitations:

- i. Gifts of surface rights should have a value of \$\_\_\_\_\_ or greater.
- ii. Gifts of oil, gas and mineral interests should generate at least \$\_\_\_\_\_ per year in royalties or other income (as determined by the average of the three years prior to the gift).
- iii. The property should not have extended liabilities or other considerations that make receipt of the gift inappropriate.
- iv. A working interest should only be accepted after consideration of potential liability and tax consequences.
- v. The property should undergo an environmental review to ensure that the Organization has no current or potential exposure to environmental liability.

(13) **Restricted Gifts:** A gift with restrictions will be accepted only if and when the restrictions are approved by the Governing Body.

(14) **Named Funds:** A donor, or group of donors, may contribute and name a fund and restrict the use of the income or principal of the fund. Named funds require a minimum contribution of \$\_\_\_\_\_ and are subject to Governing Body approval like any other restricted gift.

## 5. Additional Provisions

**A. Gift Agreements.** Where appropriate, the Organization shall enter into a written gift agreement with the donor, specifying the terms of any restricted gift, which may include provisions regarding donor recognition.

**B. Pledge Agreements.** Acceptance by the Organization of pledges by donors of future support of the Organization (including by way of matching gift commitments) shall be contingent upon the execution and fulfillment of a written charitable pledge agreement specifying the terms of the pledge, which may include provisions regarding donor recognition.<sup>1</sup>

**C. Fees.** The Organization will not accept a gift unless the donor is responsible for (1) the fees of independent legal counsel retained by donor for completing the gift; (2) appraisal fees; (3) environmental audits and title binders (in the case of real property); and (4) all other third-party fees associated with the transfer of the gift to the Organization.

**D. Valuation of Gifts.** The Organization shall record gifts received at their valuation on the date of gift, except that, when a gift is irrevocable, but is not due until a future date, the gift may be recorded at the time the gift becomes irrevocable in accordance with GAAP.

**E. IRS Filings upon Sale of Gifts.** To the extent applicable, the Governing Body shall file IRS Form 8282 upon the sale or disposition of any charitable deduction property sold within three (3) years of receipt by the Organization. “Charitable deduction property” means any donated property (other than money and publicly traded securities) if the value claimed by the donor exceeds \$5,000 per item or group of similar items donated by the donor to one or more donee organizations (e.g., the property listed in Section B on Form 8283). The Organization shall file this form within 125 days of the date of sale or disposition of the asset.

**F. Written Acknowledgement.** The Governing Body of the Organization shall provide written acknowledgement of all gifts made to the Organization and comply with the current IRS requirements in acknowledgement of the gifts.

**G. Changes to or Deviations from the Policy.** This Policy has been reviewed and accepted by the Organization's Governing Body, which has the sole power to change this Policy. In addition, the Governing Body [or \_\_\_\_\_] must approve in writing any deviations from this Policy.

**H. Donor Recognition.** [Consider whether to include criteria for recognition of donors and details of recognition.]

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<sup>1</sup> In California, charitable pledge agreements are generally not enforceable in the absence of consideration flowing to the pledgor. To assure collectability of the pledge, the Organization should enter into a valid contract with the pledgor.