



Gift/Fund Acceptance Policies – August, 2010

The Asset Acquisition program of the Community Foundation for Monterey County (hereinafter “the Foundation” or “CFMC”) encompasses the solicitation and acceptance of **outright gifts** with income dedicated immediately to the charitable needs of the community, **planned gifts** with split interest of income and principal reserved to charitable or non-charitable beneficiaries, and **testamentary gifts** for all purposes consonant with the objectives of the Foundation.

The Foundation endorses and subscribes to A Donor Bill of Rights, **Appendix A**.

AUTHORIZATION

It is the policy of the Foundation Board of Directors (hereinafter “the Board”) to facilitate outright, planned and testamentary gifts. Planned and testamentary gift types include bequests, charitable remainder trusts, charitable lead trusts, retained life estates, gifts of life insurance or retirement assets, interest in business entities such as partnerships or closely-held stock, and such other gift arrangements as the Board may from time to time approve. It is the Board’s directive that staff shall actively seek such gifts, and that adequate staff and resources for a fully effective program are maintained. All programs, solicitation plans, and activities shall be subject to the oversight of the Board.

PURPOSE OF GIFTS

The purposes of gifts to the Foundation should relate to the Mission Statement of the Foundation, **Appendix B**. The purpose of the gift and the procedures for its administration shall, when feasible, be defined in a letter or agreement signed by the donor.

ROLES AND RESPONSIBILITIES OF THE GIFT ACCEPTANCE COMMITTEE

A Gift Acceptance Committee shall be the Officers of the Board of the Foundation, and may include other qualified persons. The primary responsibilities of the Gift Acceptance Committee shall be to review proposed gift transactions specified on pages 3-4. The Committee shall also adopt standard forms for agreements with donors, and annually approve Gift Acceptance Guidelines for planned gifts, consistent with established policies and guidelines.

POLICIES

The policy of the Foundation is to inform, serve, guide or otherwise assist donors who wish to support the Foundation’s activities, but never under any circumstances to pressure or unduly persuade.

All information concerning donors and prospective donors shall be held in strict confidence by the Foundation, subject to legally authorized and enforceable requests for information by government

agencies and courts. All other requests for or releases of information concerning a donor or prospective donor will be honored or allowed only if permission is obtained from the donor or the donor's representative prior to the release of such information.

Persons acting on behalf of the Foundation shall encourage the donor to discuss the proposed gift with the legal and/or tax advisors of the donor's choice, at the donor's expense. This is to ensure that the donor receives a full, accurate, and independent explanation of all aspects of the proposed charitable gift.

Persons acting on behalf of the Foundation shall advise the donor that it is the donor's responsibility to obtain any necessary appraisals, file appropriate personal tax returns, and defend against any challenges to claims for tax benefits.

The President/CEO of the Foundation and consultants retained by the Foundation for this purpose are authorized to negotiate planned gift agreements with prospective donors, following program guidelines approved by the Board.

All planned giving agreements requiring execution by the Foundation shall first be reviewed and approved as to form by the Foundation's legal counsel. However, each agreement need not be reviewed provided it is based on a prototype agreement that has been reviewed and approved.

The Foundation may serve as trustee of irrevocable charitable remainder trusts and charitable lead trusts, or as co-trustee with a trust institution. The Foundation has a strong preference that it be named as the 100% irrevocable remainderman beneficiary for all trusts for which it serves as sole or co-trustee. Up to 75% of this remainder portion may be designated for special purpose funds, existing restricted purpose funds, or some other permanent charitable endowment for the long-term benefit of the community. The Foundation is also willing to offer trustee and management services to local not-for-profit agencies and their donors for such trusts, as long as the Foundation is named as either sole or co-trustee with the donors, and is also named irrevocably in the trust as at least a 50% remainderman beneficiary for an unrestricted gift. The Foundation may employ one or more financial managers for the administration and investment of trust assets. Expenses related to investments and administrative services shall be charged to the respective trusts.

The Foundation will not serve as trustee or co-trustee of any revocable trusts or of other trusts that are not qualified charitable remainder trusts, charitable lead trusts, or irrevocable trusts naming the CFMC as a residual beneficiary.

PROCEDURES FOR REVIEW OF GIFTS

In reviewing gifts to the Foundation, the Gift Acceptance Committee and/or staff will consider the following criteria:

- The charitable intent and ultimate community benefit;
- The nature of any restrictions;
- The permanency of the gift, or in the case of a non-permanent fund, the amount of time the fund will remain with the Foundation;
- Projected costs of managing the gift asset; and
- Fee revenues to the Foundation for administering the gift.

Acceptance by staff of gifts consistent with the purposes, bylaws and procedures of the Foundation shall not require review by the Gift Acceptance Committee if the gifts are in any of the following forms:

- Marketable securities;

Cash;

Checks;

Gifts of usable furniture and equipment for the offices or programs of the Foundation;

Gifts of precious metals, where the value is easily established;

Charitable remainder trusts or charitable lead trusts, if funded with cash or publicly traded securities valued at \$100,000 or more.

Gifts requiring review and approval of the Gift Acceptance Committee include the following:

Gifts of real estate. The donor will be required to provide an independent appraisal and a description of the property. An environmental review at the expense of the donor may also be required. The Gift Acceptance Committee will review these documents as well as consider any liabilities, restrictions or other conditions related to the gift. These policies also will apply to any other asset that has real estate holdings as an element of its value (e.g., certain limited partnerships or other business entities).

Interests in business entities (i.e., closely held securities, limited partnerships and limited liability company interests) where, in the opinion of staff, there may be concerns about the following: valuation, long-term disposition, income production, business partnership, charitable intent, requirements or limitations, tax deductibility or other questions which indicate that a review by the Gift Acceptance Committee is necessary.

Charitable remainder trusts or charitable lead trusts if funded with assets other than cash or publicly traded securities.

Retained life tenancy in a residence, ranch or farm.

Arrangements where the donor receives fees for services to the Foundation.

Other property that may be unusual or fall outside the type of gifts usually handled by the Foundation, including tangible personal property unrelated to the Foundation's charitable purpose.

Gifts to establish funds for a purpose that may fall outside the mission, bylaws and procedures of the Foundation.

Gifts requiring committee review will be handled promptly. Foundation staff will deliver to the Chair of the committee all information necessary to make a decision. If a gift is not accepted, the donor will be notified promptly in writing by CFMC staff. All gift reviews will be handled with confidentiality.

Note: Gifts requiring immediate action (e.g., gifts on December 31, or pending sale of property) may be exempted from full Gift Acceptance Committee review if, in the judgment of the President/CEO, in consultation with the Chair of the Gift Acceptance Committee, that gift may be accepted without significant reservations or in any way jeopardizing the Foundation's tax-exempt status.

The Board will review and decide on the use of all unrestricted bequests, regardless of the amount, on a case by case basis, and retain the option of setting a non-binding "cap" (such as "up to \$100,000 to the Operating Fund and the remainder to the General Endowment or the Operating Endowment") on such bequests as a preferred policy.

FUNDS

The Foundation establishes component funds and supporting organizations in response to community needs and donors' charitable concerns. The Board of the Foundation has responsibility for acceptance, management and disposition of component funds. Options for fund structures at the Foundation include the following:

Unrestricted (or Discretionary) Funds

Unrestricted funds are available to the Foundation for any of the charitable purposes encompassed by the Foundation's mission.

Field of Interest Funds (\$10,000 minimum)

Field of Interest funds are restricted in their use by the donor's preference for a limited charitable purpose, without designation of recipient organizations or programs through which such charitable purposes may be served. The Board determines which organizations and programs receive grants from field of interest funds and the amount and timing of such grants. Examples of field of interest funds include but are not limited to:

- Youth Fund
- Fund for the Arts
- Fund for the Environment

Donor-Advised Funds (\$10,000 minimum for non-endowed, \$25,000 for endowed)

Donors establish donor-advised funds for unrestricted charitable purposes. The donor, or persons identified by the donor, maintains the ability to offer recommendations to the Foundation regarding the recipients and amounts of grants from the fund. Advised funds typically treat donations as permanent endowments, and do not permit grants to be made from the donation corpus. In some cases, however, donors may choose to establish an advised fund that permits the invasion of corpus for grant-making purposes.

Scholarship Funds (\$25,000 minimum)

Scholarship funds are dedicated to providing grants for educational purposes to assist individuals within an identified class, such as residents of a particular region, students attending a specific university or undertaking a selected course of study.

Agency Funds (non-stewardship) (\$10,000 minimum)

Designated funds are earmarked for one or more charitable organization or program, and all grants made from such funds must be made to or for the use of the designated recipient organization. If the recipient organization ceases to exist or changes its status or mission as a charitable organization, the Foundation's Board may exercise its variance authority, selecting an alternate use for the fund compatible with its original charitable purpose.

Stewardship Funds

The minimum to establish and maintain a Stewardship Fund is \$50,000. After establishing the fund, the agency can make additional deposits of at least \$1,000 at any time, and the Community Foundation can accept contributions directly from donors as well. With at least 60 days written notice, the agency may request a disbursement in any amount. The agency will receive quarterly activity statements on your fund and should continue to report these assets and annual activity on its financial statements.

Supporting Organizations

Donors establish supporting organizations at the Foundation as independently incorporated tax-exempt nonprofit organizations with separate governance. A supporting organization is a grantmaking organization that avoids private foundation status by being operated, supervised, or controlled by, or in connection with the Foundation. This requirement can be met in part if the Board of the Foundation appoints a majority of the board of the supporting organization. The Board reserves the right to review the structure and purposes of each proposed supporting organization.

GIFTS

Asset Types

The Foundation will accept gifts in the form of the following assets, subject to the conditions described below. In order to provide written substantiation for gifts over \$250, the donor's name and address must be provided.

Cash

Gifts of cash should be paid to the Foundation accompanied by a written document (fund agreement, letter or other written instruction) signed by the donor indicating to which fund the contribution should be credited.

Checks

Checks must be made payable to the Foundation. The specific fund for which the check is intended should be noted in the bottom left corner of the check, or in attached correspondence.

Pledged Gifts to the Foundation

Written pledges to make gifts may be made applicable to any fund at the Foundation. A schedule of pledges payable should be included in the fund agreement letter or other written instructions from the donor.

Marketable securities

Publicly traded stocks and bonds may be electronically transferred, re-registered in the name of the Foundation, or conveyed through use of a stock power form. The Foundation also will accept interests in mutual funds. Generally, these securities are sold upon receipt. Stock controlled under Securities and Exchange Commission Rule 144 will be held until the restriction on sale expires and then will be sold. Gifts of bonds that require a holding period may be accepted and cashed when the holding period has expired.

Securities that shall not be accepted include those which are assessable or which in any way may create a liability; those, which, by their nature, may not be assigned (such as series E savings bonds); and those which have no apparent value.

Interests in business entities

Donors may make gifts of interests in business entities (i.e., closely held marketable securities, limited partnership interests, interests in limited liability companies). These can be accepted if the Foundation assumes no liability in receiving them. In evaluating a proposed gift of such assets, the Gift Acceptance Committee may consider the probability of conversion to a liquid asset within a reasonable period of time, the projected income that will be available for distribution and administrative fees, and the nature of the business from which the asset is derived.

A completed IRS Form 8283 ("Noncash Charitable Contributions") and/or a letter from the attorney drafting the partnership agreement or articles of organization must accompany gifts of limited

partnership interests or interests in limited liability companies, providing the following information:

- Independent appraisal of the value of the subject entity and a statement of the percentage of the entity to be gifted to the Foundation;
- Assurance that the Foundation will be held harmless in the event the entity becomes bankrupt or is otherwise unable to satisfy its obligations;
- Assurance that the Foundation will be held harmless in the event the entity is sued.

The Foundation does not accept gifts of general partnership interests due to potential unlimited liability.

When an interest in a business entity cannot be promptly liquidated, and the documented present value of the interest is \$20,000 or more, that interest may be credited to a new, named component fund at CFMC. The fund may be treated as an advised, designated, scholarship, field of interest, or unrestricted fund as requested by the donor. Grants may be made only from income generated by the business interest or from other liquid assets in the component fund, provided the fund's documented present value remains at least \$20,000.

In cases where an interest gifted to the Foundation is promptly liquidated, but its value is less than \$20,000, the gift generally shall be directed to the Foundation's General Endowment or to one of the Foundation's field of interest funds. The donor generally shall not have the option to direct such a gift to an advised fund, unless it is to one of the Foundation's existing advised funds.

Further details related to gifts of limited partnership and limited liability company interests are included in **Appendix C**.

As a general rule, the Foundation does not hold closely held investments.

Real property

Unencumbered real property will be accepted at fair market value as established by at least one approved appraisal, provided by the donor. The donor must provide evidence of clear title to the property to the Gift Acceptance Committee.

Real property that is encumbered by a trust deed, loan or mortgage will be accepted only in exceptional circumstances.

Prior to acceptance of a gift of real property, the Foundation and the donor must agree, in writing, on arrangements for paying expenses associated with the property, including taxes and assessments, insurance coverage, and maintenance costs.

In order to avoid potential liability for environmental cleanup and toxic and hazardous materials issues related to real estate, the Foundation may require inspection through an environmental audit of all proposed gifts of real estate and assets related to real property.

In addition to the considerations listed above, commercial properties and businesses will be examined in relationship to the potential for exposure of the Foundation to unrelated business taxable income.

A completed IRS Form 8283 ("Noncash Charitable Contributions") must accompany gifts of real property.

Further details related to gifts of real property are included in **Appendix D**.

Tangible personal property

Gifts of assets such as boats, airplanes, automobiles, artwork, furniture, equipment, jewelry, gems, and metals valued in excess of \$5,000 must be accompanied by a qualified appraisal. Unless the property is to be used in connection with the Foundation's tax-exempt purpose, it will be sold at the highest possible price as soon as possible after conveyance. No commitment will be made to keep gifts of personal property. The Foundation discourages gifts of personal property which cannot be readily sold or which require unusual expenses prior to sale. If a lengthy selling period is anticipated, the Foundation may ask the donor to cover such expenses with a cash gift.

A completed IRS Form 8283 ("Noncash Charitable Contributions") must accompany gifts of tangible personal property.

Royalties, distribution rights

The Foundation may accept gifts of royalties or distribution rights on published works (such as books or films) where there is clear evidence of marketability or assurance of an income stream. A qualified appraisal is required.

A completed IRS Form 8283 ("Noncash Charitable Contributions") must accompany gifts of royalties or distribution rights.

Insurance policies and proceeds

Donors may transfer ownership of a paid-up policy to the Foundation and take a tax deduction for the interpolated terminal reserve (typically, the cash surrender value). Donors may transfer ownership of premium-due policies to the Foundation and make income tax deductible contributions in the amount of the premiums. In either case, the Foundation shall be the owner and permanent beneficiary of the policy and retain the policy in its offices. Upon redemption, the value of the policy may establish a new fund, or contribute to any existing fund at the Foundation.

Contributions for premium-due policies must be made by direct payment to the Foundation at least ten days prior to the premium date. The Foundation cannot assume delinquent premium payments. If a policy is canceled, the cash value will be added to the General Endowment Fund in the donor's name for the charitable and educational needs of Monterey County.

Paid-up policies of any value may be accepted by the Foundation. Premium-due policies must have a minimum face value of \$20,000; a one-time administrative fee of \$500 will be assessed.

Donation of policies or annuities written for a year-end tax purpose must have a certifiable date from the insurance company to be a qualified donation for that tax year.

Retirement assets

Account-type retirement plans, in which a balance accumulates as principal, may be gifted to the Foundation. These include but are not limited to Individual Retirement Accounts (IRA), 401(k), 403(b), and defined contribution plans. (Annuity plans, such as defined benefit plans, in which retirement benefits are paid out as income and principal and does not accumulate, generally cannot be used for charitable gifts.)

Methods for gifting retirement assets include:

- Naming the Foundation as successor or contingent beneficiary for all or part of the assets upon death of either the retirement asset owner or spouse;

- Creating a testamentary charitable remainder trust with the assets upon the death of the asset owner, naming the Foundation as remainder beneficiary and non-charitable heirs as income beneficiaries.

PLANNED AND TESTAMENTARY GIFTS

The Foundation's planned and testamentary giving program encompasses all forms of gifts whose benefits do not fully accrue to the Foundation until some future time (such as the death of the donor or other income beneficiaries or the expiration of a predetermined period of time), or whose benefits to the Foundation are then followed by the interests of non-charitable beneficiaries.

Donors using planned and testamentary gift techniques may establish any of the fund types listed above. Will, trust, or other documents should specify the Foundation as the charitable recipient and name the fund to which the donor's gift will be added. The type of fund and purpose of the fund may be described in detail in a separate fund agreement.

I. TESTAMENTARY GIFTS

A specific devise or testamentary gift may be from a will or trust and may be specific or contingent in nature.

Representatives of the Foundation are authorized to solicit direct testamentary charitable contributions through wills or trusts, as well as testamentary contributions to establish charitable remainder and lead trusts. Advice offered by representatives of the Foundation must be accompanied by a written recommendation that the donor consult his/her own attorney and/or tax counsel.

A testamentary gift through a will or trust to the Foundation should include the following:

- The name of the Community Foundation for Monterey County, a California nonprofit corporation located at 2354 Garden Rd., Monterey, CA 93940;
- The name of the fund to which the testamentary gift is made (this may be a new or existing fund). In the case of a new fund, the Foundation will, upon notification that the testamentary gift has been included in a will or trust, prepare a separate fund agreement defining the purpose for which the fund has been created.

II. CHARITABLE REMAINDER TRUSTS

A. Description: Unitrusts

The basic form of Unitrust provides for payment to the donor and/or beneficiary of an amount equal to a set percentage of fair market value of the assets of the trust, valued annually. The percentage is determined at the time the trust is created, is stated in the trust, and is permanent. The payout rate must equal no less than 5% of the annual fair market value of the trust, and may be made quarterly, semiannually or annually. If the annual income and/or realized capital gains do not equal the committed Unitrust percentage, principal is used to supplement the shortfall. If there is any excess income or appreciation in excess of the stipulated payment, it is added to the principal. Additional contributions may be made to Unitrusts.

The present value of the remainder interest must be equal to or greater than 10% of the original contribution to the trust.

A variation of the basic Unitrust, known as the Net Income with Make-Up Unitrust, may be used if the donor and the Foundation agree on its use. When the trust is created, it includes a provision which defines the Unitrust's payments to be the lesser of the specified payout rate or the actual annual income generated from the investments in the Unitrust. In subsequent years, any income generated from the Unitrust in excess of the specified payout percentage is used to make up any deficit from previous years and is paid to the income beneficiary/donor prior to being added to the Unitrust corpus. The Unitrust can also be structured to be a Net Income Unitrust. In this case the payout is made from income only; principal is not accessed for income payout.

Another variation of the basic Unitrust is known as the Flip Unitrust. A Flip Unitrust starts as a Net Income Unitrust or a Net Income with Make-Up Unitrust. Upon the occurrence of certain specified events (e.g., a specific date, sale of real property, etc.), a Flip Unitrust "flips" to function as a basic Unitrust. A flip provision typically may be attractive to donors who intend to fund their Unitrust with assets that are not producing income, such as undeveloped real property.

B. Description: Annuity Trusts

The donor and/or beneficiary annually receive a payout that is fixed irrevocably at the time of the gift and stated in the trust agreement. The payout must equal at least 5% of the fair market value of the assets placed in the trust when it is created. Income in excess of the annual payment is added to principal. If the income in any year is less than the annual payment, the difference is derived from realized capital gain or principal. Additions may not be made to Annuity Trusts.

The present value of the remainder interest must be equal to or greater than 10% of the original contribution to the trust.

C. Policy

1. Representatives of the Foundation are authorized to solicit gifts in the form of Charitable Remainder Trusts (including basic Unitrusts, Annuity Trusts, Net Income Unitrusts, Net Income with Make-Up Unitrusts and Flip Unitrusts) with annual payout rates of no less than 5% of fair market value of trust assets; payout rates of more than 9% must be reviewed for approval by the Gift Acceptance Committee. (Net Income Unitrusts do not require this approval.)
2. Donors who elect to self-trustee must be informed of the administrative and tax-reporting responsibilities entailed by their trusteeship. The CFMC representative may provide information on vendors providing administrative and tax reporting services.
3. The Foundation prefers to serve as Trustee only when:
 - a. The assets initiating the trust are valued at a minimum of \$100,000;
 - b. The Foundation is named as irrevocable remainder beneficiary, for endowment purposes, for a minimum of 50% of the remaining assets.
4. Sample trust agreements provided by the Foundation to the donor shall be accompanied by a letter indicating that the sample does not constitute legal advice and strongly advising that the donor seek legal counsel prior to completing the trust.
5. The Foundation Board of Directors shall ratify any agreements that name the Foundation as trustee.

III. CHARITABLE LEAD TRUSTS

A. Description

Income earned from the assets within the Charitable Lead Trust is donated for a period of years, or for the remaining life of the donor or beneficiary. The remainder interest is either retained by the donor or given to a non-charitable beneficiary.

A contribution of the income generated from the assets within the trust must be in the form of either an annuity or unitrust interest.

B. Policy

1. Representatives of the Foundation are authorized to solicit gifts for Charitable Lead Trusts. The donor may select any annuity or fixed payout percentage.
2. Sample trust agreements provided by the Foundation to the donor shall be accompanied by a letter indicating that the sample is not a completed legal document and strongly advising that the donor seek legal counsel prior to completing the trust.
3. The Executive Committee of the Foundation shall ratify any agreements that name the Foundation as trustee.
4. Exceptions to the above must be approved by the Gift Acceptance Committee of the Foundation prior to execution of the agreement.