

Form 990 Policy Series

The attached Memorandum is a part of the *Form 990 Policy Series*, developed by a group of lawyers, all members of the California bar and practicing nonprofit law (the “Form 990 Policy Series Group”). The *Form 990 Policy Series* includes Memoranda containing rationales and procedures for legal counsel to use in advising their clients on drafting and adopting appropriate policies responding to the new Form 990 as well as form policies and/or questionnaires.

The members of the Form 990 Policy Series Group with respect to the attached Memorandum (posted October, 2012) were as follows: Joel S. Corwin, Chair; Elizabeth Bluestein; Lani Meanley Collins; Henry Lesser; Louis Michelson; Joy P. Paeske; Alicia Plerhoples; Robert Siemer; Ronit M. Stone; Martin J. Trupiano; and J. Patrick Whaley. The views expressed in the Memoranda do not necessarily reflect the views of the law firms or employers at which these lawyers practice or any individual member of the Group.

The date at the top of the attached Memorandum is the date that the Memorandum was finalized, and the Memorandum may not reflect changes in law or practice since that date.

**FORM 990 POLICY SERIES
MEMORANDUM**

Re: Gift Acceptance Policy – Form 990, Schedule M, Part I, Line 31 (Form 990 Policy Series Memo #14)

Date: September 25, 2012

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. The inclusion of a sample policy in this material is 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 formulation in the sample necessarily fits 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.

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 on Form 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 and, except as specifically discussed in this material, the laws of other States are not addressed.

1. Summary

Form 990, Schedule M, Part I, line 31, asks whether the organization has a “gift acceptance policy that requires the review of any non-standard contributions.” There is no legal requirement that an organization have a gift acceptance policy or one that requires the review of non-standard contributions. *See 3.D. below.* However, an organization that adopts a gift acceptance policy requiring the review by its board of non-standard donations will not only permit the organization to answer “Yes” on the Form 990, the organization will have established a useful protocol for its board members and staff with respect to the evaluation of proposed non-cash gifts. A well-drafted and

consistently applied gift acceptance policy may avert acceptance of a gift with unexpected carrying costs or liabilities or burdensome administrative obligations.

Schedule M must be filed by organizations that either: (1) reported more than \$25,000 in aggregate non-cash contributions on Form 990, Part VIII, Statement of Revenue, Line 1g; or (2) during the year received contributions of art, historical treasures, or similar assets, or qualified conservation contributions (regardless of whether it reported any revenues for such contributions in Part VIII).

This Memorandum is intended to provide guidance for the adoption of a gift acceptance policy in general, and, in particular, a policy that is responsive to Form 990 and the IRS Instructions. A customized approach, with outside professional advice, is recommended.

As indicated in the Note above: A gift acceptance policy may have relevance to or be advisable for 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; gift acceptance policies provide development staff and volunteer leadership with a guide from which to solicit funds, and may help preserve donor relationships when a gift is rejected. An organization should consider publishing its gift acceptance policy on its website and annual report.

2. Rationale for Adoption of the Policy

Despite the tempting application of the adage, “Don’t look a gift-horse in the mouth,” a nonprofit organization should adopt a written gift acceptance policy to delineate for the organization’s fundraising staff the types of gifts the organization may accept and the manner in which such gifts must be administered. Although the issues giving rise to an organization’s need for a gift acceptance policy generally relate to non-cash donations (and “non-standard contributions”), the nature and mission of an organization may likewise justify limitations on the receipt of unrestricted gifts of cash or sponsorships from certain proposed donors (e.g., a controversial enterprise or one that promotes activities inconsistent with the organization’s mission). The policy should provide guidelines to assist the organization to evaluate the risks (including reputational risks), costs, and benefits associated with a proposed gift before it is accepted.

Enlisting an organization’s board of directors, staff, and legal counsel to craft a carefully thought-out policy will help avoid embarrassment or ill-feelings by donors and unexpected burdens on the organization relating to a proposed gift, such as costly upkeep or maintenance of personal property or real estate. Once the policy is drafted, it is up to the organization’s management to assure it is enforced and that every potential gift is evaluated according to the policy before it is accepted by the organization.

The main purpose of a gift acceptance policy is to assist the organization in evaluating potential gifts in order to protect the organization from “problem” gifts (gifts that expose the organization to risk or are inconsistent with its mission).

3. **Background of Requirements/Sources for the Policy**

A. **Acknowledgement of the Gift**

A donor may not claim a tax deduction for any single contribution of \$250 or more without “a contemporaneous, written acknowledgment of the contribution from the recipient organization.”¹ Since a donor must have proof of payment for all cash donations, regardless of amount², as a courtesy most nonprofits provide receipts for *all* cash donations. Where no goods or services are provided in exchange for the donation, an organization will not incur a penalty for failing to provide a donor with a written acknowledgment for a gift of \$250 or more; however, **donations greater than \$75 must be acknowledged when part of the total donation includes payment for goods or services** (e.g., purchase of a fundraising dinner ticket). The written acknowledgement must provide a description and good faith estimate of the value of any goods or services provided. It must also inform the donor that the contribution deduction for tax purposes is limited to the amount of the donation minus the value of any goods or services the donor received. The disclosure statement for these types of *quid pro quo* donations must be provided either with the solicitation for the donation or the receipt of the *quid pro quo* donation. The disclosure statement must be in writing that is easily noticed by the donor.

The acknowledgement should include the organization’s name, the amount donated, and a statement that no goods or services were provided in return for the donation, if that is the case. Additional reporting requirements for donations of property valued at more than \$5,000 are described below.

B. **Reporting and Valuing a Gift valued at More than \$5,000**

A donor must file Form 8283 with the donor’s annual federal income tax return describing noncash charitable contributions for which a deduction is claimed.

If the value of the donated property (other than cash or publicly traded securities) exceeds \$5,000, (i) the donor must obtain a qualified appraisal of the property and attach [Form 8283](#) to the tax return to support the claimed charitable deduction; and (ii) the donee organization must sign Part IV of Section B, of that Form 8283. The organization’s signature on Part IV of Section B does not represent concurrence in the appraised value of the contributed property; rather it represents an acknowledgement of receipt of the property described on Form 8283 on the date specified on the form. Form 8283 inquires whether the donee organization intends to use the property for an “unrelated use.” It also requires the donee organization to affirm that “in the event it sells, exchanges, or otherwise disposes of the property described in [Form 8283] Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file Form 8282, Donee Information Return, with the IRS and give the donor a copy of that form.” *See 3.C.*

¹ IRC§ 170(f)(8) and Treas. Reg. §1.170A-13(f).

² IRC§ 170(f)(17).

below.

For more information, see IRS [Publication 561](#), *Determining the Value of Donated Property*.

C. Disposition of the Gift

If an organization sells, exchanges, or disposes of any donated property described in Section B, Part I of Form 8283 (e.g., property collectively valued over \$5,000 by donor) within three (3) years of receipt, the organization must file [Form 8282](#), *Donee Information Return*, unless the specific item (within the group of items listed in Section B, Part I of Form 8283) sold exchanged or disposed of is valued at less than \$500, or the property is distributed for charitable purposes.³

Form 8282 must be filed within 125 days after the disposition, and a copy of the Form must be given to the donor. Penalties may apply upon failure to file Form 8282.⁴

Special rules apply to donations of motor vehicles. See [Publication 4302](#), *A Charity's Guide to Vehicle Donations*.

D. Form 990, Schedule M and Instructions

Form 990, Schedule M, Part I, line 31, asks whether the organization has a “gift acceptance policy that requires the review of any non-standard contributions.” The Form 990 Instructions relating to this topic state:

“Answer ‘Yes’ if the organization has a gift acceptance policy that requires the review of any non-standard contributions. *A non-standard contribution includes a contribution of an item that is not reasonably expected to be used to satisfy or further the organization’s exempt purpose (aside from the need of such organization for income or funds) and for which (a) there is no ready market to which the organization can go to liquidate the contribution and convert it to cash, and (b) the value of the item is highly speculative or difficult to ascertain.* For example, the contribution of a taxpayer’s successor member interest of the type described in Notice 2007-72, 2007-36 I.R.B. 544, is a non-standard contribution for this purpose.” (emphasis added)

³ There are two situations where the organization does not need to file Form 8282: 1) If, at the time the original donee signed section B of Form 8283, the donor signed a statement on Form 8283 that the appraised value of the specific item was not more than \$500; and 2) if the item is consumed or distributed, without consideration, in fulfillment of the organization’s tax-exempt purpose.

⁴ Other rules may apply if the organization is not the “original donee;” e.g., the first donee to which the donor gave the property. These rules are beyond the scope of this Memorandum.

Schedule M must be filed by an organization that either: (i) received more than \$25,000 in non-cash contributions during its taxable year (excluding donated services and donated use of equipment, materials or facilities); or (ii) received contributions of art, historical treasures or similar assets, or qualified conservation contributions. Even if an organization is not required to complete Schedule M, it should consider adopting a gift acceptance policy for the reasons discussed in this Memorandum, including but not limited to providing guidelines to a charity's staff and board for soliciting and accepting gifts; identifying situations in which legal counsel should be sought; and preserving the organization's relationship with its donors by establishing criteria for possible rejection of proposed gifts.

4. Considerations and Procedures for Implementation of the Policy

In general, a gift acceptance policy will address issues related to the types of gifts that will be accepted. Smaller organizations may not have the staff or expertise to administer restricted gifts. The policy should set forth the procedural and substantive mechanisms by which potential gifts will be evaluated. The policy should encourage use of legal (or tax) counsel when deemed appropriate by the board (or other body evaluating potential gifts). Ultimately, the policy should state who is authorized to accept a gift on behalf of the organization.

A. Furthering the Charitable Purpose of the Organization. In deciding whether to accept a gift, an organization should examine whether the acceptance will compromise the core values of the organization, or whether it will further its mission, goals and objectives. Before accepting a controversial gift or a standard gift from a controversial source, the organization should consider whether the acceptance might create a public relations problem. The organization's gift acceptance policy (or a summary) can be posted on the organization's website to inform potential donors of possible restrictions or conditions related to intended gifts.

B. Gift Acceptance Committee. An organization should consider creating a gift acceptance committee of the board vested with authority to accept gifts in accordance with the policy. The board will need to decide who should be the members of the gift acceptance committee and the extent of the committee's delegated authority. Unless the gift acceptance committee's delegated authority were limited, it would be charged with the responsibility of reviewing gifts in accordance with the policy, researching and evaluating the proposed gift in light of the organization's policy, and/or making recommendations to the board with respect to such gifts.

C. Gifts Subject to Board Review. The policy should identify the types of gifts that are subject to board (or committee) review, including the factors to be considered in making its determination. Gifts of real estate and restricted gifts, including gifts not easily negotiated or valued, should always be carefully reviewed by the board. When an organization accepts a restricted gift, it is legally obligated to comply with the terms established by the donor. Legal counsel can help assure that the nature and extent of the obligations are fully understood.

D. Legal Counsel. The policy should identify the situations in which the organization should consider engaging legal counsel, as well as the circumstances in which the donor should be encouraged to engage the donor's own legal counsel. The organization needs to be mindful of the importance of making it clear that it is not the donor's advisor.

E. Real Property. Gifts of real property may present unique issues requiring analysis before acceptance. There can be significant carrying costs if the real property is to be held, as well as costs associated with a sale. The organization should request a copy of an appraisal of the property if available. If the real estate is to be used by the organization in connection with its exempt purpose, consider whether there are any restrictions, reservations, easements, or other limitations associated with the property.

If a gift of real estate is accepted by an organization, it should be appraised by a qualified and independent (independent of the donor and the organization) appraisal firm. The appraisal will establish the donor's tax deduction, possibly provide a reasonable value at which the property is recorded on the organization's books and establish a proposed sales price if it is to be sold.

If the real property is sold within three (3) years of its acceptance, the organization must file [Form 8282](#) (see 3.C. above). Donors should be required to disclose carrying costs related to the property, any encumbrances or limitations on the use of the property, including any environmental issues that may impact the use or value of the property. *Environmental liability can attach to anyone in the chain of title, including a nonprofit organization that received the property as a gift and did nothing to contribute to the hazard, so the policy should include detailed procedures before the organization can accept real property as a gift, including consideration of whether a Phase One Environmental Audit of the property may be appropriate.*

F. Planned Giving. An organization that solicits or encourages planned gifts should include the criteria for gift annuities, charitable remainder trusts, and pooled income funds (minimum level of gift, minimum age(s) of annuitant or beneficiaries, and what type of assets will be accepted). In California, the authority to issue charitable gift annuities comes from a state license. Any California nonprofit considering issuing a charitable gift annuity must do so through a licensed third party, unless the organization itself is licensed by the California Department of Insurance.

G. Restricted Gifts. Donors often wish to restrict the purposes for which their gifts will be used. If the organization will accept gifts with donor restrictions, the policy should set forth the criteria for such acceptance. Restricted funds require additional accounting and tracking. A new endowment fund should have a required minimum donation to justify the compliance costs associated with monitoring such a fund. The policy should include uniform policies related to endowments that will be included in written gift agreements with donors, including a provision that gives the organization variance power to use the endowment for a similar purpose, if the original purpose is no longer possible or practical.

H. Donor Recognition. If applicable, the policy should include criteria for the recognition of donors based on giving levels. Identify who may be recognized (individual, family or corporation). Identify what, if any, benefits are available at each level of giving so donor recognition is applied consistently and fairly. If the organization has naming opportunities, its Governing Body should establish a written schedule of naming opportunities, including details such as how and where names will be listed (size and scale of lettering on signage). Consider a temporal limitation for naming recognition (will donors be recognized in perpetuity?). Consider whether “in-kind” donations will be including in giving levels and whether giving may be cumulated over years to reach certain giving levels. The policy should address what happens if a named building, room or area is renovated, demolished, destroyed. The Governing Body should retain the right to terminate or modify the recognition if the Governing Board determines that a recognized donor is engaged in activities that conflict with the organization’s mission and values or that the donor is otherwise involved in disreputable or criminal activities or activities that would dishonor or embarrass the organization.

I. Review and Updating the Policy. Any gift acceptance policy should be reviewed periodically to assure that it remains consistent with the organization’s mission and core values, as the same may shift from time to time.

J. Acceptability of Gifts. The policy should state that the organization will not accept any gift that does not further the objectives of the organization.

K. Miscellaneous. The policy should identify who will be responsible for all fees and costs related to the gift and its transfer to the organization, including but not limited to legal fees or third party professional fees. The policy should also identify who is authorized to approve deviations from the policy.

5. **Sample Policy or Policies**

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.⁵

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

⁵ 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.

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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