

## **WESTERN KANSAS COMMUNITY FOUNDATION GIFT ACCEPTANCE POLICIES AND GUIDELINES January 20th, 2015**

The Western Kansas Community Foundation, (hereinafter referred to as the Foundation) a not for profit organization organized under the laws of the State of Kansas, encourages the solicitation and acceptance of gifts to the Foundation for purposes that will help the Foundation to further and fulfill its mission. The following policies and guidelines govern acceptance of gifts made to the Foundation or for the benefit of any of its programs.

As a community foundation, the Foundation's role is to increase philanthropic giving and philanthropic resources within the community it serves. This goal is reflected in its mission: "Enriching western Kansas life through philanthropy, collaboration and leadership."

### **I. Purpose of Policies and Guidelines**

The Board of Directors of the Foundation and its staff solicit current and deferred gifts from individuals, corporations, and foundations to secure the future growth and mission of the Foundation. It is the purpose of these policies and guidelines to govern the acceptance of gifts by the Foundation and to provide guidance to prospective donors and their advisors when making gifts to the Foundation. The provisions of these policies shall apply to all gifts received by the Foundation for any of its programs or services. While these guidelines establish best practices, they are designed to provide flexibility as directed by the Gift Acceptance Committee.

### **II. Use of Legal Counsel**

The Foundation seeks the advice of legal counsel in matters relating to acceptance of gifts or when deemed appropriate by the Foundation's Board of Directors.

### **III. Communications with Donors**

The Foundation holds all communications with donors and information concerning donors and prospective donors in strict confidence, 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 a prospective donor will be granted only if permission is first obtained from the donor.

### **IV. Conflict of Interest**

The Foundation does not provide personal legal, financial or other professional advice to donors or prospective donors. All donor or prospective donors are strongly urged to seek the assistance of personal legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences.

## **V. Restrictions on Gifts**

The Foundation will accept restricted and unrestricted gifts, and gifts for specific programs and purposes, provided that such gifts are not inconsistent with its stated mission, purposes, and priorities. The Foundation will not accept gifts that are too restrictive in purpose, gifts that violate the terms of the corporate charter, gifts that are too difficult to administer, or gifts that are for purposes outside the mission of the Foundation. The Gift Acceptance Committee shall make all final decisions on these prospective gifts and submit them to the Board of Directors for acceptance.

## **VI. Gift Acceptance Committee**

The Foundation's Finance Committee shall serve as the Gift Acceptance Committee. The Foundation's Executive Director, Operations Officer, and its Program Officer shall serve as non-voting members. The Committee's role is:

- A. Review all non-marketable gifts to the Foundation;
- B. Review recommended exceptions to these policies; and
- C. Maintain minutes of its decisions as a guide to future boards and Gift Acceptance Committee members, and to maintain a record of its fiduciary decisions;
- D. Regularly report its decisions to the Board of Directors; and
- E. Review these Gift Acceptance Policies at least annually or more often as needed to ensure that they remain consistent with the applicable laws and work of the Foundation.

## **VII. Types of Gifts**

- A. The following gifts are acceptable:
  - 1. Cash
  - 2. Tangible Personal Property
  - 3. Securities
  - 4. Real Estate
  - 5. Remainder Interests in Property
  - 6. Oil, Gas, and Mineral Interests
  - 7. Bargain Sales
  - 8. Life Insurance
  - 9. Charitable Remainder Trusts
  - 10. Charitable Lead Trusts
  - 11. Revocable Trust Agreements
  - 12. Retirement Plan Beneficiary Designations
  - 13. Bequests
  - 14. Life Insurance Beneficiary Designations
  - 15. Others as deemed appropriate

B. The following criteria govern the acceptance of each gift form:

1. **Cash:** Cash is acceptable in any form. Checks shall be made payable to Western Kansas Community Foundation and shall be delivered to the Foundation's administrative offices.
2. **Tangible Personal Property:** The Foundation will consider gifts of tangible personal property with a market value of \$10,000 or more for acceptance in light of the following criteria:
  - Does the property fulfill the mission of the Foundation? (i.e., will you use it instead of selling it?)
  - Is the property marketable? What is the market for the property? What is the estimated value?
  - What are the costs to sell the asset?
  - Are there any undue restrictions on the use, display, or sale of the property?
  - Are there any carrying costs (insurance, storage, ongoing maintenance) for the property?
3. **Securities:** The Foundation can accept both publicly traded securities and closely held securities.
  - a. **Publicly Traded Securities:** Marketable securities may be transferred to any Foundation account at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. As a general rule, all marketable securities shall be sold upon receipt unless otherwise directed by the Finance Committee. In some cases marketable securities may be restricted by applicable securities laws; in such instance the final determination on the acceptance of the restricted securities shall be made by the Gift Acceptance Committee.
  - b. **Closely Held Securities:** Closely held securities, which include not only debt and equity positions in non-publicly traded companies but also interests in LLPs and LLCs or other ownership forms, can be accepted subject to the approval of the Gift Acceptance Committee. The gift review should include answers to the following questions:
    - What type of entity is represented by the gift (i.e., C Corporation, S Corporation, LLC, LLP, partnership, etc.)
    - Will the security generate unrelated business taxable income to the Foundation? If so, does the Foundation have the funds to pay this tax?

- Will the gift trigger any negative tax consequences to the donor? (Advise the donor to check with his/her accountant.)
- Are there restrictions on the security that would prevent the Foundation from ultimately converting those assets to cash?
- Does the operation of the entity create liability or management responsibility for the Foundation?
- If the fund receiving this asset is a Donor Advised Fund, is the holding an excess business holding as defined under IRC §4943? If so, what is the plan to reduce the holdings below the excess holding amount within a five year period?
- Is the security marketable? If so, what is the market for sale and estimated time required for sale?

If 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 Gift Acceptance Committee shall make the final determination on the acceptance of closely held securities where necessary. Every effort will be made to sell non-marketable securities as quickly as possible.

4. **Real Estate:** The Foundation will consider acceptance of real property gifts with a market value of \$50,000 or greater. Prior to acceptance of the real property, the gift shall be approved by the Gift Acceptance Committee. Criteria for acceptance of the property shall include a clean environmental audit, clear title, and the following:

- Is the property useful for the purposes of the Foundation? If so, what will it cost to convert the property to a useful purpose, and what are the ongoing costs associated with holding the property?
- Is the property marketable? If so, what is the expected market value and how long is it likely to take to sell the property?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- What are the carrying costs for the property, which may include insurance, property taxes, mortgages, or notes, etc., associated with the property?

Unless there are plans for use of the real property to further the mission of the Foundation, gifts of real estate once accepted will be sold as soon as reasonably possible. An exception to sale may be considered for operating farms when holding that farmland is determined to be an appropriate investment for the Foundation within the criteria established under Kansas law and the

Foundation's investment policies for such investment.

5. **Remainder Interests in Property:** The Foundation will accept a remainder interest in a personal residence, farm, or vacation home subject to the provisions of paragraph 4 above. The life tenants may continue to occupy the real property for the duration of the stated life tenants subject to the deed of transfer. At the death of the life tenants, the Foundation may use the property or reduce it to cash. Where the Foundation receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor and/or life tenant(s).
  
6. **Oil, Gas, and Mineral Interests:** The Foundation may accept oil and gas property interests, where appropriate. Prior to acceptance of an oil and gas interest the gift shall be approved by the Gift Acceptance Committee and if necessary, by the Foundation's legal counsel. Criteria for acceptance of the property shall include:
  - Gifts of surface rights should have a value of \$20,000 or greater.
  - Gifts of oil, gas and mineral interests should generate at least \$3,000 per year in royalties or other income (as determined by the average of the three years prior to the gift).
  - The property should not have extended liabilities or other considerations that make receipt of the gift inappropriate
  - A working interest is rarely accepted. A working interest may only be accepted when there is a plan to minimize potential liability and tax consequences.
  - If the property is a direct ownership of the real property interest, it must undergo an environmental review to ensure that the Foundation has no current or potential exposure to environmental liability.
  
7. **Bargain Sales:** The Foundation will enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the Foundation. All bargain sales must be reviewed, recommended and approved by the Gift Acceptance Committee. Factors used in determining the appropriateness of the transaction include:
  - The Foundation must obtain an independent appraisal substantiating the value of the property.
  - If the Foundation assumes debt with the property, the debt ratio must be less than 25% of the appraised market value.

- The Foundation must determine that it will use the property, or that there is a market for sale of the property allowing sale within a reasonable time after receipt.
  - If the subject of the bargain sale is real property, it must comply with the requirements of paragraph 4 above.
  - The Foundation must calculate the costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period.
8. **Life Insurance:** The Foundation must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. If the donor contributes future premium payments, the Foundation 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 Foundation may:

- continue to pay the premiums,
  - convert the policy to paid up insurance, or
  - surrender the policy for its current cash value.
- Once the policy is accepted, life insurance holdings will be reviewed annually to determine whether it is best to continue to pay the premiums, convert the policy to paid up insurance, surrender the policy for its current cash value, or change the underlying investment structure.
9. **Charitable Remainder Trusts:** The Foundation may accept designation as remainder beneficiary of a charitable remainder trust. The Foundation will not accept appointment as Trustee of a charitable remainder trust and will instead encourage the donor to use a professional fiduciary.
10. **Charitable Lead Trusts:** The Foundation may accept a designation as income beneficiary of a charitable lead trust. The Foundation will not accept an appointment as Trustee of a charitable lead trust and will instead encourage the donor to use a professional fiduciary.
11. **Revocable Trust Agreements:** The Foundation encourages its donors to name the Foundation as a beneficiary of all or a portion of a revocable trust agreement. However, the Foundation will not serve as trustee of a revocable trust agreement but will encourage the donor to use a professional fiduciary.

12. **Retirement Plan Beneficiary Designations:** Donors and supporters of the Foundation shall be encouraged to name the Foundation as beneficiary of their retirement plans. Such designations shall not be recorded as gifts to the Foundation until such time as the gift is irrevocable. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.
13. **Bequests:** Donors and supporters of the Foundation shall be encouraged to make bequests to the Foundation under their wills and trusts. Such bequests shall not be recorded as gifts to the Foundation until such time as the gift is irrevocable. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.
14. **Life Insurance Beneficiary Designations:** Donors and supporters of the Foundation shall be encouraged to name the Foundation as beneficiary or contingent beneficiary of their life insurance policies. Such designations shall not be recorded as gifts to the Foundation until such time as the gift is irrevocable. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

### VIII. Excess Business Holdings

The Pension Protection Act of 2006 amended section 4943 of the Internal Revenue Code to limit ownership of closely-held business interests in a donor advised fund. A fund's holdings, together with the holdings of disqualified persons (donor, advisor, members of their families and businesses they control) may not exceed any of the following:

- 20% of the voting stock of an incorporated business;
- 20% of the profits interest of a partnership, joint venture, or the beneficial interest in a trust or similar entity;
- Any interest in a sole proprietorship.

These limitations do not apply if the donor-advised fund holds an interest that does not exceed two percent of the voting stock and two percent of the value of the business. Donor-advised funds receiving gifts of interests in a business enterprise have five years from the receipt of the interest to divest holdings that are above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. To prevent a violation of these rules, it is the Foundation's policy is to divest itself of such holdings within five years from the date the Foundation acquired the asset.

If that is not possible, the asset will be transferred to a new or existing fund that is not an advised fund.

Because they are not "business enterprises," the rule will not apply to most gifts of real property, although undeveloped land may become a business enterprise under some circumstances. Interests in investment partnerships and LLCs—including family partnerships, hedge funds, REITs, and so forth—are excluded from the definition of business enterprise as long as 95 percent or more of the entity's income is from passive sources. Examples of other property gifts that are excluded because they are not business enterprises include: oil and gas interests (non-working); life insurance; tangible personal property (as long as it is not inventory); and remainder interests in personal residences and farms.

## IX. Miscellaneous Provisions

- A. The donor shall provide an appraisal (where required) and seek the advice of legal, financial or other professional advisors for all gifts made to the Foundation.
- B. Valuation of gifts for development purposes: The Foundation shall record a gift received by the Foundation at its valuation for gift purposes on the date of gift.
- C. Responsibility for IRS Filings upon sale of gift items: The Foundation is responsible for filing IRS Form 8282 upon the sale or disposition of any asset sold within three years of receipt by the Foundation where the charitable deduction value of the item is more than \$5,000. The Foundation must file this form within 125 days of the date of sale or disposition of the asset. Form 8282 with Filing Instructions may be obtained from the IRS.
- D. Gift acknowledgement: Acknowledgement of all gifts made to the Foundation and compliance with the current IRS requirements in acknowledgement of such gifts shall be the responsibility of the Board of the Foundation. Publication 561 Determining the Value of Donated Property and IRS Publication 526 Charitable Contributions are available from the IRS.

Approved: 1/20/2015

Board Chairman: 

Executive Director: 