

New Mexico Foundation Gift Solicitation and Acceptance Policy

It is the objective of the New Mexico Foundation (the “Foundation”) to encourage Donors to make gifts in a manner that best implements their personal philanthropic intent. Equally important, all gifts must promote the fiscal integrity and mission of the Foundation.

Accordingly, all gifts to the Foundation shall be solicited, accepted, acknowledged, and administered in accordance with this Gift Solicitation and Acceptance Policy.

I. DEFINITIONS

“Bargain sale”: A part-sale, part-gift transaction in which a Donor sells property to the Foundation for a price which is less than its fair market value.

“Board”: Board of Directors of the Foundation.

“Chair”: Chair of the Board.

“Code”: Internal Revenue Code of 1986, as amended.

“Finance Director”: The employee designated by the President and CEO of the Foundation to oversee the solicitation, acceptance, acknowledgement, and administration of gifts by the Foundation. If there is no such designee, the President and CEO of the Foundation (the “President”) shall be the Finance Director.

“Donor” or “Donors”: One or more individuals, estates, trusts, foundations, corporations, partnerships, or other entities making, or proposing to make, a gift to the Foundation for its charitable purposes.

“Fund”: A Field of Interest Fund, Donor Advised Fund, Scholarship Fund, Designated Fund, Program Fund or Fiscal Sponsorship Fund, each as described in Article VI hereof.

“Outright Gift”: a gift to the Foundation that is not subject to a Trust Agreement.

“Personal Representative”: The individual or institution named in a will and charged with carrying out its provisions.

“Qualified Appraisal”: Appraisal described in Code Section 170(f) (11) (E) and the final Treasury Regulations thereunder.

“Special Asset”: Gift to the Foundation other than an Outright Gift of cash or unrestricted marketable securities.

“Trust Agreement”: A legal document that establishes a fiduciary relationship in which an individual or institution (the trustee) holds legal title to property with the responsibility for keeping or managing the property for the benefit of one or more beneficiaries.

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II. GENERAL

- A. RESPECT:** All gift and pledge commitments, regardless of size, designation, or gift type shall be promptly and respectfully considered.
- B. CONFIDENTIALITY:** The Foundation shall respect a Donor's request that information concerning the gift transaction be held in confidence, provided, however, that the Foundation shall disclose such information if required by law.
- C. ANONYMITY:** The Foundation shall respect the wishes of Donors to give anonymously and will take reasonable steps to safeguard those Donors' identities.
- D. ADVICE:** The Foundation, whether through its staff or through volunteers acting on its behalf, shall inform each Donor that the Foundation does not provide legal, tax, or financial advice, and will not pay professional fees on behalf of the Donor in order to secure a gift. The Foundation shall encourage all Donors to discuss prospective gifts with their legal, tax, or financial advisors before entering into any gift commitment.
- E. SOLICITATION AND SOLICITATION LAWS:** No solicitation of gifts for the benefit of the Foundation shall be made by anyone without the knowledge and approval of the Finance Director or his or her designated representative. No solicitation of gifts from one or more prospective Donors residing outside the State of New Mexico shall be made unless the Foundation is in full compliance with the charitable solicitation laws of the state in which such prospective Donors reside.
- F. ACKNOWLEDGEMENT:** Any gift or pledge commitment that is accepted shall be gratefully acknowledged by the Finance Director or President and CEO. The Foundation shall report and credit all gifts appropriately, according to its gift procedures.
- G. TAX MATTERS:** Performing all acts necessary to obtain an income, gift, or estate tax charitable deduction (including, if applicable, obtaining a Qualified Appraisal) is the responsibility of the Donor or his Personal Representative.

III. GIFT ACCEPTANCE

- A. FINANCE DIRECTOR:** All gifts to the Foundation shall be directed initially to the Finance Director or the President and CEO and shall be solicited, accepted, acknowledged, and administered in accordance with this Gift Solicitation and Acceptance Policy and with the Foundation's gift procedures. On an annual basis, the Finance Director shall review this Policy and, if necessary, recommend modifications.
- B. GIFT ACCEPTANCE COMMITTEE:** The Finance Committee of the Board shall serve, from time to time, as an ad hoc Gift Acceptance Committee. The Gift Acceptance Committee shall review and make recommendations to the Board with respect to:
 - 1. Any Special Asset; and

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2. Any Fund agreement that is not substantially in a form set forth in Exhibits A-E hereto, as those forms may be amended from time to time.

C. OUTRIGHT GIFTS OF CASH AND UNRESTRICTED MARKETABLE SECURITIES:

1. Outright Gifts of cash and unrestricted marketable securities may be made by Donors during life—or at death under a will or trust agreement in which the Foundation is designated as beneficiary of a specific amount, a percentage, or the residue of the decedent’s estate.
2. The Finance Director or the President and CEO may, on behalf of the Foundation, accept Outright Gifts of cash and unrestricted marketable securities that are consistent with this Policy. Alternately, the Finance Director may, in his discretion, refer such proposed gifts to the Gift Acceptance Committee for review. After such review, the Gift Acceptance Committee shall promptly make its recommendation to the Board regarding acceptance, and the Board of Directors shall vote to accept or reject.

D. SPECIAL ASSETS:

1. All Special Assets shall be referred by the Finance Director or the President and CEO to the Gift Acceptance Committee for review. In determining whether to recommend acceptance of such gifts, the Gift Acceptance Committee shall consider the following:
 - Recommendation of the Finance Director or the President and CEO
 - Associated risk to the Foundation, whether reputational or financial
 - Fair value
 - Liquidity
 - Projected income
 - Carrying costs (e.g., insurance, real estate taxes, maintenance)
 - Funds provided by the Donor to cover carrying costs.
 - Proposed gift terms and conditions; and
 - Tax consequences, including the receipt of “unrelated business taxable income” as defined in Code Section 512.

In the course of this review, and in its discretion, the Gift Acceptance Committee may seek the advice of legal counsel.

2. After referral and review of a Special Asset, the Gift Acceptance Committee shall promptly make its recommendations to the Board, and the Board shall vote to accept or reject.

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IV. ASSET TYPES ACCEPTED

A. CASH: The Foundation may accept gifts of cash (including transfers by check, money order, debit card or credit card).

B. UNRESTRICTED PUBLICLY TRADED SECURITIES:

1. The Foundation may accept gifts of unrestricted publicly-traded stocks, mutual funds, bonds, and other securities.
2. Upon acceptance, the Foundation shall dispose of gifts of unrestricted publicly-traded securities.

C. RESTRICTED SECURITIES:

1. A proposed gift of restricted securities shall be referred to the Gift Acceptance Committee and shall not be accepted unless approved by the Board.
2. The Foundation shall dispose of all gifts of restricted securities as soon as possible after acceptance.

D. CLOSELY HELD STOCK, INCLUDING S CORPORATION STOCK:

1. The Foundation may accept gifts of closely held stock.
2. In determining whether to accept gifts of closely held stock, The Foundation shall consider the excess business holdings rules set forth in Code section 4943, which is applicable to donor advised funds as if they were private foundations. As a general rule, the holdings of a donor advised fund in a closely-held corporation that is a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed twenty percent of the voting stock of the corporation. Donor advised funds receiving gifts of interests in a closely-held corporation that is a business enterprise have five years from the receipt of the interest to divest holdings that are in excess of the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury.
3. A proposed gift of closely held stock shall be referred to the Gift Acceptance Committee and shall not be accepted unless approved by the Board.
4. Prior to recommending the acceptance of any gift of closely-held stock, the Gift Acceptance Committee shall require the Donor to provide the Foundation with (i) a Qualified Appraisal of the stock to be gifted; (ii) any and all written agreements restricting the future sale of the stock by the Foundation; (iii) three years of income tax returns for the underlying corporation; (iv) three years of financial statements for the underlying corporation; and (v) such other information as legal counsel to the Foundation may request. The Foundation shall not generally accept such a gift unless

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the Qualified Appraisal values the stock to be gifted at in excess of \$25,000. The expense of obtaining this documentation shall be borne entirely by the Donor.

5. The Foundation shall dispose of gifts of closely held stock as soon as possible after acceptance.

E. SOLE PROPRIETORSHIPS, JOINT VENTURES, PARTNERSHIP OR LIMITED LIABILITY COMPANY INTERESTS, BENEFICIAL INTEREST IN A TRUST:

1. The Foundation shall not accept any interest in a sole proprietorship or joint venture.
2. The Foundation shall not accept any gift of a partnership interest in a general partnership or of a general partner interest in a limited partnership.
3. The Foundation may accept gifts of limited partnership or limited liability company interests as well as gifts of beneficial interests in trusts.
4. In determining whether to accept gifts of limited partnership, limited liability company interests, or beneficial interests in trusts, the Foundation shall consider the excess business holdings rules set forth in Code section 4943, which is applicable to donor advised funds as if they were private foundations. As a general rule, the holdings of a donor advised fund in a limited partnership that is a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed 20 percent of the profits interest of the partnership; the holdings of a donor advised fund in a limited liability company that is a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, generally may not exceed 20 percent of the voting stock of the limited liability company; the holdings of a donor advised fund in a trust that is a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, generally may not exceed 20 percent of the beneficial interests in the trust. Donor advised funds receiving gifts of interests in a limited partnership, limited liability company or trust that is a business enterprise have five years from the receipt of the interest to divest holdings that are in excess of the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury.
5. Prior to recommending the acceptance of any limited partnership interest, any membership interest in a limited liability company, or any beneficial interest in a trust that is a business enterprise, the Gift Acceptance Committee shall require the Donor to provide the Foundation with (i) a Qualified Appraisal of the interest to be gifted; (ii) any and all written agreements governing the operation of the entity and the sale of interests in the entity; (iii) three years of financial statements for the entity; (iv) three years of income tax returns for the entity; and (v) such other information as legal counsel to the Foundation may request. The expense of obtaining this documentation shall be borne entirely by the Donor.

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6. The Foundation shall not generally accept such a gift described in section 5 above unless the Qualified Appraisal values the interest to be gifted at in excess of \$25,000.
7. The Foundation shall dispose of gifts of interests in partnerships, in limited liability companies, and in trusts that are business enterprises as soon as possible after acceptance.

F. REAL ESTATE, INCLUDING INTERESTS IN REAL ESTATE:

1. The Foundation may accept gifts of real estate. However, no such gift may be accepted prior to its being referred to the Gift Acceptance Committee and approved by the Board.
2. Prior to referring a proposed gift of real estate to the Gift Acceptance Committee, the Finance Director or his designee shall conduct a visual inspection of the property.
3. Prior to recommending the acceptance of any gift of real estate, the Gift Acceptance Committee shall require the Donor to provide the Foundation with (i) a Qualified Appraisal of the property; (ii) an environmental audit of the property, including a Phase I environmental site assessment meeting standards promulgated by the U.S. Environmental Protection Agency; (iii) a preliminary title insurance report; (iv) any and all written agreements (including mortgages and leases) affecting the property; (v) if the property is income producing, three years of income and expense statements; (vi) a summary of insurance policies in force with respect to the property showing annual premiums; and (vii) such other information as legal counsel to the Foundation may request. The expense of obtaining all such documentation shall be borne entirely by the Donor unless the Board otherwise approves.
4. The Foundation shall generally not accept a gift of real estate unless the Qualified Appraisal values the interest to be gifted at in excess of \$25,000.
5. The Foundation shall dispose of gifts of real estate as soon as possible after acceptance unless the real estate is to be used by the Foundation.

G. TANGIBLE PERSONAL PROPERTY:

1. The Foundation may accept gifts of tangible personal property (artwork, collections, equipment, etc.). No such gift shall be accepted prior to referral to the Gift Acceptance Committee and approval by the Board.
2. If the Foundation estimates that the value of the tangible personal property to be gifted is in excess of \$5,000, the Gift Acceptance Committee, prior to recommending the acceptance of the gift, shall require the donor to provide a Qualified Appraisal of the property.
3. Upon their acceptance, the Foundation shall immediately use gifts of tangible personal property for its exempt purposes or promptly dispose of them.

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H. RETIREMENT ASSETS (E.G. IRA, 401(K) PLAN, OR DEFINED CONTRIBUTION PLAN):

1. The Foundation may accept a lifetime gift of retirement plan assets.
2. The Foundation may accept a gift of retirement plan assets made by designating the Foundation as a beneficiary of the retirement plan, either outright or in trust.
3. If retirement plan assets include one or more Special Assets, the provisions of this Policy with respect to Special Assets shall apply. For example, if the retirement plan assets include real estate, the provisions of Section IV F of this Gift Solicitation and Acceptance Policy would apply.

I. LIFE INSURANCE:

1. Subject to the requirements of this subparagraph I, the Foundation may accept gifts of life insurance. However, no such gift may be accepted prior to its being referred to the Gift Acceptance Committee and approved by the Board.
2. The Foundation shall not accept a gift of life insurance unless:
 - The Foundation is irrevocably designated the beneficiary of the policy or is designated both owner and beneficiary.
 - The policy is fully paid, or the Donor makes a written pledge to continue paying the premiums.
 - The insurance policy is underwritten by an insurance carrier with a financial rating acceptable to the Gift Acceptance Committee; and
 - Prior to referral of the gift to the Gift Acceptance Committee, the Donor provides the Foundation with (i) a current annual statement for the policy to be gifted; (ii) an in-force illustration for such policy, using interest rate and investment rate return assumptions approved by the Foundation; and (iii) such other information as may be requested by an insurance consultant retained by the Foundation.

V. BARGAIN SALES, GIFT ANNUITIES AND GIFTS IN TRUST

- A. BARGAIN SALES:** The Foundation may enter into bargain sales, provided that no such sale shall be completed prior to its being referred to the Gift Acceptance Committee and approved by the Board. If all or part of the subject property in a bargain sale is a Special Asset, the provisions of this Policy with respect to Special Assets shall apply. For example, if the subject property were real estate, the provisions of Section IV F would apply.

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B. CHARITABLE GIFT ANNUITIES: The Foundation does not currently offer a charitable gift annuity program to its Donors.

C. TRUSTS:

1. Donors may designate the Foundation to be a beneficiary of a trust. For example:

- **Charitable Remainder Trust:** A trust providing cash flow (for life or a term of years) to a Donor and/or named non-charitable beneficiaries, with the remainder to the Foundation.
- **Charitable Lead Trust:** A trust in which the income or “lead” interest is given to the Foundation and the remainder interest is given to one or more non-charitable beneficiaries.

2. The Foundation shall not act as Custodian or Trustee. In the trust agreement, the Donor shall designate a trustee other than the Foundation to administer the Trust.

VI. TYPES & SPECIFICATIONS OF FUNDS

A. IN GENERAL:

1. Gifts which are restricted as to purpose, or which contemplate the participation of Donor and/or third-party advisors in the distribution process shall be held as described in Sections B through G of this Article VI. Each Fund shall be governed by a written agreement.
2. Any Fund agreement not substantially in a form set forth in Exhibits A-E hereto shall be referred to the Gift Acceptance Committee for review and shall not be executed by the Foundation unless approved by the Board.

B. FIELD OF INTEREST FUNDS: Each Field of Interest Fund shall be governed by a Fund agreement substantially in the form attached hereto as Exhibit A, dated the date of the gift, and signed by the Donor and the Chair. Donors may establish a Field of Interest Fund with a minimum gift of \$10,000 or may contribute to an existing Field of Interest Fund with a gift in any amount.

C. DONOR ADVISED FUNDS: Each Donor Advised Fund shall be governed by a Fund agreement substantially in the form attached hereto as Exhibit B, dated the date of the gift, and signed by the Donor and the Chair. Donors may establish a Donor Advised Fund with a minimum gift of \$10,000 or may contribute to an existing Donor Advised Fund with a gift in any amount.

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- D. SCHOLARSHIP FUNDS:** Each Scholarship Fund shall be governed by a Fund agreement substantially in the form attached hereto as Exhibit C, dated the date of the gift, and signed by the Donor and the Chair. Donors may establish a Scholarship Fund with a minimum gift of \$10,000 or may contribute to an existing Scholarship Fund with a gift in any amount.
- E. DESIGNATED FUNDS:** Each Designated Fund shall be governed by a Fund agreement substantially in the form attached hereto as Exhibit D, dated the date of the gift, and signed by the Donor and the Chair. Donors may establish a Designated Fund with a minimum gift of \$10,000 or may contribute to an existing Designated Fund with a gift in any amount.
- F. PROGRAM FUNDS:** From time to time, the Foundation may apply to one or more governmental entities or nonprofit organizations for monies to be dedicated to a particular purpose or program. If so, required by the grantor, each such grant of funds shall be held in a separate Program Fund pursuant to the specific terms of the grant or contract.
- G. FISCAL SPONSORSHIP FUNDS:** Each Fiscal Sponsorship Fund shall be governed by a Fund agreement substantially in the form attached hereto as Exhibit E, dated the date of the gift, and signed by the Donor, the President and CEO and the Chair. Donors may establish a Fiscal Sponsorship Fund with a minimum gift of \$10,000 or may contribute to an existing Fiscal Sponsorship Fund with a gift in any amount, provided, however, that no Fiscal Sponsorship Fund will continue to be held at the Foundation unless such Fund receives contributions totaling at least \$10,000 within 24 months of its creation.

VII. PLEDGES

Pledges shall be made in writing and commit to a specific dollar amount to be paid according to a fixed time schedule. The maximum pledge period shall be five years unless a longer period is approved by the Gift Acceptance Committee.

VIII. AMENDMENT

This Policy may be amended by the Board at any regular or special meeting if at least ten (10) days written notice is given of the intention to so amend at such meeting, provided, however, that no amendment shall be retroactive to Funds already established.