

# THE KANSAS ARTS FOUNDATION INC.'S POLICY AND MANUAL ON GIFTS

## **A. Policy Statement**

The Mission of the Kansas Arts Foundation Inc. ("Foundation") is

*“To foster the Arts in the State of Kansas through grants, education and other services in support of the Arts in the State of Kansas, and to that end, to encourage and facilitate the contribution and prudent management of funds for the accomplishment of the Foundation’s charitable, educational and literary purposes.”*

This document is designed to provide guidance to the Foundation to facilitate the gift-giving process, and is to be interpreted liberally so that prospective donors may enjoy the greatest freedom possible in formulating their gifts.

The Foundation welcomes all gifts; however, some gifts may require prior approval of the Foundation’s Board of Directors to ensure that they allow the Foundation to be a prudent and responsible steward of the Foundation’s resources.

All gifts are considered unrestricted gifts, unless expressly designated as a Restricted Gift and meeting the requirements of a Restricted Gift under this Policy and Manual. Gifts may be sought and/or received from any person (including but not limited to individuals, corporations, foundations, and federal, state and local governments), and are deemed accepted upon deposit unless action to the contrary is taken by a majority of the non-vacant number of directors of the Board. The Board shall accept the gifts with grateful acknowledgement, unless the donor expressly requests confidentiality.

The acceptance of each gift shall automatically serve to remove any term, condition or aspect of the gift that in any way inhibits, interferes with, limits or is contrary to the mission of the Foundation. Gifts that are recognized as possibly exposing the Foundation to unacceptable administrative or managerial duties, expenditures, or adverse publicity, or involve the Foundation in unexpected responsibilities because of their source, conditions, or purposes, will be referred to the Board of Directors of the Foundation before acceptance. Nevertheless, the Foundation shall not intentionally accept any gift that serves to inhibit, interfere with, limit or otherwise be contrary to the mission of the Foundation, or acceptance of gifts from other donors, be they similar or different, foreign or domestic; require expenditures beyond the Foundation's resources; or involve the Foundation in unacceptable responsibilities because of their source, conditions, or purposes.

As a general rule, neither the donor nor any person the donor designates shall have advisory privileges with respect to the distribution or investment of amounts held in the fund by reason of the donor's status as a donor. The reason for this prohibition is so that the restricted fund is not a "donor advised fund" (as defined in Section 4966 of the Internal Revenue Code of 1986, as amended (the "Code")). If, notwithstanding this general rule, a donor advised fund is established, the fund administration agreement, letter of gift, or similar agreement between the Foundation and the donor shall include necessary prohibitions, and the fund shall be administered, such that the Foundation is not subject to "taxes on taxable distributions" (as defined in Section 4966 of the Code), "taxes on prohibited benefits" (as defined in Section 4967 of the Code), or similar excise taxes.

## 1. **Unrestricted Gifts**

Unrestricted gifts are used for general purposes and can be applied to current needs or investment according to the Foundation's Investment Policy. *All gifts are considered an unrestricted gift by default, unless expressly designated as a Restricted Gift and meet the requirements of a Restricted Gift under this Policy and Manual.* The Foundation Board of Directors will designate the purpose and use of such gifts.

## 2. **Special Purpose or Restricted Gifts**

A special purpose or restricted gift supports a certain purpose, location or program designated by the donor. The Foundation appreciates *all gifts*, but may impose limitations regarding the creation, management and disposition of individual funds. Accordingly, a gift may be designated for a special purpose, otherwise be restricted, be endowed bearing individuals' names or otherwise be rendered distinct from unrestricted funds (collectively and individually referred to as "**Restricted Gifts**") only upon the following conditions:

(1) When the present value of the gift exceeds the greater of either \$50,000 or one-half of one percent (.5%) of the Foundation's end of year endowment balance in the year prior to the one in which the gift pledge is made. Gifts having a present value less than the greater of these amounts may not be restricted or otherwise be designated for a special purpose unless a majority of the non-vacant number of directors of the Board vote in favor of such restriction. A Restricted Gift in any amount may be accepted as a contribution to an existing restricted account so long as the terms and conditions of the existing fund so permit; and,

(2) A majority of the non-vacant number of directors of the Board Foundation Board of Directors finds that the

special purpose or restrictions meet the Foundation's financial and other criteria.

Any necessary approvals under (1) and (2) may be provided in advance for specific actual or potential gifts. *All gifts* remain fully appreciated!

Donors are encouraged to recognize that over the many years following the establishment of a Restricted Gift, the needs, policies, and circumstances of the Foundation can change in unforeseen ways. The Foundation must have the flexibility to make use of funds in the best interest of the Foundation and in accord with donor interests and specifications. Thus, donors are advised to describe the specific purposes of their gifts as broadly as possible and to avoid detailed limitations and restrictions. Donors considering bequests for a specific purpose are encouraged to consult with the Foundation or its official designee.

Because conditions change over time, all instruments granting a Restricted Gift shall be subject to and should contain the following contingency clause:

It is understood by all parties to this agreement that if, in the future, circumstances become so altered that the purposes and conditions under which this fund is established, accepted and administered no longer pertain, or becomes a violation of current law, then **The KANSAS ARTS Foundation, INC.**, or its successor, may use the income only / income and principal (**circle one**) from this gift for another purpose within the **KANSAS ARTS Foundation, INC.** that is as nearly as possible in keeping with the original intent of the donor(s).

It is further understood that if such an alternate use should ever be deemed necessary and appropriate, then it shall be designated as the \_\_\_\_\_

Fund.

In the event that the balance of the fund declines to a point that it becomes impractical or uneconomical to continue administering it as a separate fund, the Kansas Arts Foundation, Inc., or its successor, may add the balance to a different fund with a similar purpose or move it into an unrestricted fund account.

It is the intention of Donor that if Donor dies before this pledge is fully funded, then Donor's Estate and/or Trustee would honor this commitment and complete the funding of this pledge.

Eligible gifts donated to the Foundation with an express limitation placed upon them shall be credited to the applicable restricted fund account. *All other gifts*, including special purpose or restricted gifts not meeting the applicable requirements for same, shall be credited to unrestricted fund accounts.

## **B. Gift Acceptance Policies and Procedures**

### **1. Types of Gifts Accepted.**

(a) **Liquid Assets.** Subject to the provisions of this Policy, the Foundation will accept any and all gifts of cash, either by check, credit card or electronic transfer. In addition, the Foundation will accept in-kind gifts of liquid assets including, but not limited to: publicly-traded securities and the proceeds or death benefits from life insurance policies, annuity contracts or qualified retirement plans.

(b) **Illiquid or Unique Assets.** The Foundation may accept in-kind gifts of illiquid or unique assets; however, such acceptance will be contingent upon approval by the Board of the Foundation (or a committee thereof) following a due diligence review and receipt of a qualified appraisal of such assets. Such assets may include: real estate, closely-held

business interests, restricted securities, and tangible and intangible personal property.

(c) **Planned or Deferred Gifts.** The Foundation will accept planned or deferred gifts; however, such acceptance will be contingent upon approval by the Board of the Foundation (or a committee thereof) following a due diligence and document review and receipt of a qualified appraisal of such gifts. Such gifts may include: charitable remainder and lead trusts, charitable gift annuities, remainder interests in real estate properties and irrevocable gifts of life insurance policies.

## 2. **Gift Acceptance Policies**

(a) **Transfers and Valuation of Gifts.** Transfer and valuation of gifts to the Foundation will generally be made in accordance with procedures established by the Foundation's Custodian, which will be in conformance with commercially-reasonable and accepted policies and procedures established for the transfer of gifts to public charities, and also in conformance with rules and regulations established by the Internal Revenue Service.

(b) **Liquidation and/or Transfer of In-Kind Gifts.** With respect to in-kind gifts, it is the policy of the Foundation to liquidate such gifts as soon as administratively and commercially feasible, unless special circumstances exist regarding the marketability, liquidity or valuation of such investments or such retention is approved in writing by the Board of the Foundation, or a Committee thereof. The liquidation of such gifts enables the Foundation to invest the proceeds from such liquidation in accordance with its overall Investment Policy.

## C. **Final Approval, Acceptance, and Execution by the Foundation**

Documents effectuating the acceptance of all gifts, the creation of endowment programs, and the transfer of real or tangible personal property to the Foundation, must be approved by Foundation legal counsel and executed by

the authorized Foundation officer. Documents shall be executed in duplicate, and the donor and the Foundation shall each retain an original of the documents.

**D. Supplements to Gift Policies**

From time-to-time, the Foundation Board may supplement or amend these gift policies through formal action. Any such supplements have the same force and effect as set forth in this document.

**Nothing in this policy or manual should be taken as advice about the legal, tax or accounting aspects or benefits of any gift. It is the sole responsibility of the Donor and his or her personal advisor to make those determinations.**

Approved the Board of Directors of the Kansas Arts Foundation this 6<sup>th</sup> day of December, 2012.