

# Procedures for Operation of Donor-Advised Philanthropic Funds

## SECTION 1 - ESTABLISHMENT AND PURPOSE

### 1.1 Authorization

The United Way of South Hampton Roads Foundation, Inc. (the Foundation) has authorized the establishment of Donor Advised (Philanthropic) Funds as component funds of the Foundation. Article VI.1 and Article VII.3.(c) respectively of the by-laws of the Foundation authorizes the Board of Trustees (the Trustees) to develop and administer written and specific guidelines for the approval and acceptance of gifts to the Foundation.

### 1.2 Establishment of Funds

Philanthropic Funds may be established by the donation or transfer by a Donor to, and acceptance by, the Foundation of money or property, whether by contribution, gift, bequest, or devise or by transfer from a charitable or other organization (contribution), to further or carry out the purposes of the Foundation, as set forth in its Articles of Incorporation. Philanthropic Funds are and shall be administered as a part of the Foundation. The procedures set forth herein are provided in recognition of a particular purpose of Philanthropic Funds, which is to develop support of, and participation and involvement in the philanthropic interests, and activities of the Foundation by a wide range of donors. The establishment of Philanthropic Funds is designed as a means of broadening the base of endowment support, encouraging meaningful exchange of ideas by donors in the Foundation's interests and to provide funds to supplement and extend the programs of the Foundation in serving its charitable, educational, and cultural (charitable) purposes and shall encompass only those purposes set forth in Sections 170(c)(1) or 170(c)(2)(B) of the Internal Revenue Code.

### 1.3 Nature and Terms of Funds

Each Philanthropic Fund shall be the property of the Foundation held in its normal corporate capacity; it shall not be deemed a trust fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control of all property in the Fund, and the income derived therefrom, for the charitable purposes of the Foundation. Each fund will be recorded on the books and records of the Foundation as an identifiable or separate fund and may be given a name or other designation as requested by the Donor. The Donor may arrange for successor advisors at time of creation of the Fund, however the subsequent addition of successor advisors shall require approval of the Trustees. The Trustees may establish dollar limits below which a fund may no longer exist as a named fund and the privileges of advisors may be suspended.

## 1.4 Designated Funds

In the Instrument of Transfer establishing or adding to an existing fund, the Donor may designate use of the income or corpus of the fund for the benefit of or in furtherance of the purposes of one or more specified charitable organizations (described in Section 509 (a)(1), (2), or (3) of the Internal Revenue Code) where such use is consistent with the purposes of the Foundation. The Trustees, by a two-thirds vote, may modify any restriction or condition of distribution if, in the sole judgement of the Trustees such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Foundation, as determined by the Foundation. Unless the Donor specifically and with approval of the Trustees, defines permissible distributions in some other fashion, distribution will be in accordance with the Spending Policy of the Foundation, based on the principle of total return.

### 1.4(a) Income Only Restrictions

If the Instrument of Transfer provides that distributions from the Fund shall be made only out of income, such provision shall be adhered to unless changed conditions subsequently render such restriction inconsistent with the charitable needs of the Foundation as determined through the procedure set for in 1.4 above, namely a two-thirds vote of the Trustees. In accordance with Virginia law, income is defined as consisting of interest, dividends, and short term realized gains. The Foundation adopts a broader definition under the principle of total return to include all realized and unrealized income and gains net of losses, both realized and unrealized, and including both short term and long term gains and losses.

## 1.5 Forms

The Executive Director of the Foundation is authorized to provide forms for the establishment of and additions to Philanthropic Funds and such forms as are deemed necessary or desirable for the administration of Philanthropic Funds in accordance with these procedures.

## SECTION 2 - ACCEPTANCE OF FUNDS

### 2.1 Authorization

Except as hereinafter provided the Development Committee and the Executive Director of the Foundation (or such additional officers or employees of the Foundation as the Trustees may from time to time authorize) shall each have the authority to accept on behalf of the Foundation, contributions to establish or add to a Philanthropic Fund. When assets (not consisting of real estate or interests therein) proposed for contribution are not readily marketable or are subject to liabilities or when the appropriateness of accepting such a gift is in doubt, such contributions may be accepted only by action of the Trustees. When an asset proposed for contribution is real estate or interest therein, such contribution may be accepted only by action of the Trustees, after

receiving a report from the Real Estate Acceptance Committee recommending acceptance or rejection of such assets. Prior to making its report the Development Committee and the Real Estate Acceptance Committee may consult with legal counsel. The Trustee, officer, employee, or committee approving any gift shall first determine that any condition, restriction, or limitation on that gift is consistent with the charitable or benevolent purposes of the Foundation.

## 2.2 Value

The minimum amount established as a pre-requisite for creation of a Philanthropic Fund is \$10,000, or readily marketable property valued at not less than that amount. The Foundation will not certify to a Donor the value of a contribution of property.

## SECTION 3 - INVESTMENT OF FUND ASSETS

### 3.1 Responsibility and Administration

Article IX of the by-laws of the Foundation authorizes the Investment Committee to administer and manage the assets of the Foundation in accordance with specific guidelines, policies, and procedures established by the Trustees.

The Investment Committee has the responsibility and authority for the investment of the assets of each Philanthropic fund. The assets of any Fund may be commingled with those of other Philanthropic Funds, may be invested in units of a common investment fund which may be established or utilized by the Foundation. The Foundation shall have no obligation, however, to commingle the assets for investment purposes, and may, at its discretion, retain any assets received or hold the assets of a Fund as a separate unit for investment purposes. Any investment or reinvestment of assets shall be made only in such investments as are appropriate for a prudent fiduciary.

## SECTION 4 - DISTRIBUTIONS FROM THE FUND

### 4.1 General

The Trustees, upon recommendation of the Distribution Committee, has the right to direct all distributions of income or corpus of Philanthropic Funds. In the case of a Fund with a valid designation of use of income or corpus in the Instrument of Transfer and as provided in Sec. 1.4 of these Procedures and in the case of restrictions on the use of income provided in Sec. 1.4(a), the Trustees shall monitor all such distributions.

The Donor (or designee as permitted in Section 4.2 below) may recommend to the Foundation distributions from the Fund which are consistent with the purposes of the Foundation.

The Foundation shall consider and evaluate all such recommendations, but such recommendations will be solely advisory and the Foundation is not bound by such

recommendation.

## 4.2 Donor Privileges

The privilege of making recommendations (as described in Sec. 4.1) shall be extended to Donors and designees, subject to the following limitations:

- (a) The privilege of making a recommendation is ordinarily limited to the Donor, or, in the case of a jointly advised Fund, his or her spouse, unless otherwise specified in the instrument establishing the Fund.
- (b) Recommendations may be made by the Donor or designee at any time, and may be written or oral, however reasonable administrative practice suggests that the Trustees will consider such recommendations on a quarterly basis, except in the case of emergency and/or pressing need, and utilization of a form similar to that attached in Appendix B will facilitate Foundation evaluation and action.
- (c) Such privilege will be continuous with the existence of the Fund unless earlier terminated by (i) death, (ii) advisor would give written notice of release or, (iii) a finding by the Trustee that the person involved is not available or otherwise not competent to exercise the privilege.
- (d) The Donor may designate in the instrument establishing the Fund, or subsequently in a written amendment to such instrument (subject to approval by the Trustees), a person or persons other than the Donor or spouse to exercise advisory privileges, and to make further contributions to the Fund. In such case the privilege will exist only during the lifetime of such persons entitled to make recommendations as indicated in the instrument establishing a Fund, unless earlier terminated as described in (a) above. The instrument establishing a Fund may designate a child or children (and spouses) of a Donor to be advisors after the termination of said privilege of the Donor. Such designation of a successor or successors to the original Donor may, at the discretion of the Trustees, be recognized if it furthers continued family participation, support, and involvement by such successors. Where the privilege to make recommendations extends to persons in addition to the original Donor or spouse, the Foundation may require all those having such privilege to designate one person to act for them in submitting recommendations to the Foundation.
- (e) The privilege to designate successors ordinarily ends with the original Donor. Thus, after the passage of time and generations the Fund would normally become Non-Advisory (while retaining its identity, providing the required balance be retained) and consequently subject to the Spending Policy of the Foundation for Unrestricted Funds. The authority of the Trustees to consider the extension of advisory privileges to subsequent generations on a case-by-case basis governs in such matters.
- (f) Overriding all of the above is the understanding that the Fund is the irrevocable property of

the Foundation, and any "member" not so designated may make a recommendation as to a fund to which he or she is not so designated.

(g) A corporate Donor, or its officers or directors acting on behalf of such corporations in their capacity as such, which establishes a Philanthropic Fund will have the privilege of making recommendations for a period not to exceed 15 years from the date of establishment of the Fund. The privilege to make recommendations, at the discretion of the Trustees, may be extended beyond the 15 year limitation if substantial additional contributions are made and the corporation maintains a continuing charitable involvement with the Foundation. Such corporation, or those acting on its behalf, shall designate one person (and may designate his or her successor) to submit the recommendations of the corporation to the Foundation.

For convenience hereinafter, the term "Donor" will include and shall apply to all persons having advisory privileges as provided above.

#### 4.3 Charitable Needs

The Trustees shall enumerate specific categories of charitable needs to which distributions from Philanthropic Funds may be made. Attached as Exhibit A is a partial list of such categories of charitable needs enumerated at the time of approval of these procedures (Table of Charitable Needs). The Trustees is authorized to modify the list from time to time. It is the policy of the Foundation to encourage recommendations from all sources, including from persons other than Donors.

#### 4.4 Limitations

The following limitations apply to all distributions from Philanthropic Funds:

(a) The minimum amount of any one distribution from a Fund shall be \$100.00 unless the Trustee sets a higher limitation.

(b) The Foundation, as a public charity, will not make any distribution from a Philanthropic Fund except as a distribution from the Foundation for its charitable purposes, and no such distribution may be used to discharge or satisfy a legally enforceable pledge or obligation of any person, including the Donor.

(c) A Donor shall have the privilege of making recommendations as to distributions out of the corpus of a Fund. It is the general policy of the Trustees, however, that a substantial part of a Fund shall remain as a permanent endowment of or be used for the Foundation or its beneficiary agencies.

(d) Neither a Donor nor any other person may receive any benefit or privilege in return for a distribution from a Fund.

#### 4.5 Procedures:

(a) Recipients of distribution: Recommendations to distribute funds will be accepted for organizations described in Section 509(a)(1),(2), or (3) and Section 170 (c)(1) or (2) of the IRC or any successor provisions. The uses of all funds distributed must be in keeping with the general charitable purposes of the Foundation as described in its Articles of Incorporation and Bylaws. The Staff of the Foundation shall thereupon make an investigation as described in Section 4.5(b).

(b) Staff Investigation: With respect to each recommendation by a Donor, the Staff of the Foundation will prepare a report of the charitable status of the proposed recipient organization and a determination whether the recommendation is consistent with specific charitable needs deserving of support by the Foundation. The degree of formality employed by the Staff in making an evaluation will depend upon the nature and category of the grantee organization and information already available to Staff with respect to the grantee and the purposes of the grant. Where necessary for its evaluation Staff may request an organization to submit appropriate information. If Staff determines that the charitable status is inappropriate or that the recommendation is not consistent with the charitable needs of the Foundation, the Donor shall be advised that the recommendation does not meet the standards for distributions. If the Donor believes the request has merit the Donor may request that the recommendation be referred to the Distribution Committee, as described in 4.5(c).

(c) Distribution Committee (the Committee): A favorable report by Staff following its investigation, or a request by a donor that an unfavorable report be given further consideration, shall be referred to the Committee selected by the Chair in accordance with the Bylaws. The Committee shall meet from time to time and shall review each Staff report. Should the Committee require further information it may request Staff to obtain such. A report of advice shall be forwarded promptly to the Chair. The Committee may, from time to time, provide Staff with a list of organizations, recommendations to which may be approved without further Committee action. Said list shall first be approved by the Committee and the Trustees.

(d) Board of Trustees of the United Way of South Hampton Roads Foundation (the Trustees): The Trustees shall act upon all Staff reports and Committee determinations as presented and shall allocate funds from Philanthropic Funds in accordance with these established policies and procedures. The Trustees shall meet regularly to facilitate distributions. Emergency requests may be expedited by polling of the Trustees with formal approval obtained at the next meeting. A quarterly report shall be forward to the Board of Directors of the United Way of South Hampton Roads in accordance with Article X of the Bylaws.

(e) Notification to Grantees: Distributions from a Fund, unless otherwise requested by the Donor, shall identify to the grantee organization the name of the Fund from which the distribution is made.

(f) Confidentiality: Inasmuch as the decision to distribute or not distribute is dependent on the charitable needs of the United Way and its affiliates and the suitability of the grantee to receive such funds, Staff, in forwarding to the Committee the distribution requests shall not identify the Donor(s). Nor shall the Trustees be privy to the identity of the requesting Donor during its deliberations.

(g) General: The general premise underlying the creation of Philanthropic Funds is that there is a charitable need for the output of such funds, thus it is expected that there will be reasonably regular distributions from the Funds. The Trustees recognize, however, that it may be the intent of the Donor to accumulate funds within the Fund in order to accomplish a specific long range objective. Such accumulation is generally limited to a reasonable period of time (usually not in excess of five years). Any such designation or specification shall be consistent with the charitable purposes of the Foundation and shall be subject to the authority of the Foundation to modify it, as provided similarly in Section 1.4 (Designated Funds).

## SECTION 5 - REPORTS AND EDUCATIONAL PROGRAMS

### 5.1 Annual Report

A report of all distributions from Philanthropic Funds shall be included in the annual report of the Trustees. The name of individual Funds from which distributions have been made shall be included at the discretion of the Trustee. Additional reports of Philanthropic Funds may be made as prescribed by the Trustees.

### 5.2 Educational Program

The Trustees shall conduct an educational program publicizing to Donors and other interested persons in the community these procedures and the categories of specific charitable needs supported or to be supported by Philanthropic Funds. Such educational programs may be part of the total program of the Foundation. As an integral part of this program, these procedures, including the List of Charitable Needs, shall be disseminated in order to encourage additional contributions to Endowment Funds. The Staff of the Foundation and the Trustees shall always be alert to the views of Donors and others who call attention to charitable needs of organizations which may not have been served in the past but which are currently most deserving of support.

## SECTION 6 - CONTINUITY OF FUNDS

### 6.1 Upon Termination of Privilege

Upon termination, by death, or otherwise, of the privilege of a Donor of a Philanthropic Fund to make recommendations, as provided in Sec. 4.2 above, the Fund shall continue as part of the Unrestricted Endowment Funds of the Foundation.

## 6.2 Memorial Funds

If the corpus of such Fund equals the sum of \$10,000, or such sum as shall from time to time be determined by the Trustees, when the aforesaid privilege terminates, the Fund will continue, in the Unrestricted Endowment Fund, as an identified Memorial Fund named for the Donor (or for such other person or designation as the Donor may have requested).