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**INTERORGANIZATION MEMORANDUM**

**DATE:** July 17, 2019  
**TO:** Barbara Gray; Steve McGrath  
**FROM:** Matthew M. O'Leary, *Esq.*  
**RE:** Community Health District Charitable Trust vs. Private Foundation

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I have done some research regarding the viability of the District creating its own foundation versus creating its own charitable trust. As you will see below, I believe a charitable trust suits the District's needs the best, though a private foundation (or public charity) may still be an option.

**Establishing a Trust.**

Mr. Minnery suggested a trust because it is specifically authorized in the law (Health & Safety Code Section 32121). The section says each local district can "establish one or more trusts for the benefit of the district . . . to receive by gift, devise, or bequest, and hold in trust or otherwise. . . . dispose of . . . for the benefit of the district."

My partner and I were concerned initially that donors may not be able to receive a tax deduction for their contribution to a charitable trust. However, after further research and analysis, we believe your donors would. Per IRC 4947(a)(1), which allows for "non-exempt charitable trusts", donations to the trust would be treated like donations made to private foundations or public charities so long as the trust meets the qualifications of 509(a)(3) (it a charitable trust established for the district should as it will get more than 1/3rd of its revenue from gifts, grants, contributions or membership fees and the only beneficiary will be a charity or governmental entity.)

The costs of a charitable trust are the attorneys fees to prepare it, CPA or attorney fees to prepare and file certain forms with the IRS within the first 15 months, and CPA fees to prepare and file annual state and federal tax returns.

**Establishing a Foundation.**

**MATTHEW O'LEARY**  
matthew@olearywallace.com

**JANET WALLACE**  
janet@olearywallace.com

IRC Section 501(c)(3) generally defines two types of charitable organizations: public charities and private foundations. All §501(c)(3) organizations are presumed to be private foundations unless they can demonstrate to the IRS that they are a public charity.

An organization qualifies as a "public charity" if it receives enough financial support to pass the IRS "public support" test, which means it receives one-third of its annual support from the general public [citation omitted].

A private foundation is a tax-exempt §501(c)(3) charitable organization that does not qualify as a public charity under the public support test because the private foundation is created and controlled by a small number of people (usually an individual, family, or a business). The activities of private foundations are focused on making charitable grants, or in some circumstances, operating their charitable programs [citation omitted].

Not to be too confusing but a private foundation can be organized from either a charitable trust or corporation under state law.

The minimum reasonable initial funding of a foundation is \$250,000 according to several resources. Suntrust, a national organization recommends an initial investment of \$1-2 million but acknowledges it could be formed with a less if one foresees imminent substantial donations.

The foundation is much more expensive than a charitable trust because:

1. A private foundation must distribute at least 5% of the fair market value of its investment assets each year for charitable purposes.
2. There is an annual excise tax of 1-2%
3. There are initial tax filings + annual tax filings that are time intensive.
4. In addition to tax filings, establishing the foundation includes creating bylaws, a board of directors, and officers.

Because of these tax and distribution rules, charitable organizations often try to avoid status as a "private foundation".

#### **Attorney Fees Proposal.**

It is difficult to give an estimate of attorney fees -- for either entity our office would charge an hourly rate (\$300/hour for attorney time and \$150 for paralegal). We would cap our fees so that they would not exceed \$3,000 if we established a trust and \$6,000 for a foundation without your express authorization to exceed to these figures.

If you have follow-up questions, please do not hesitate to contact us.

Best regards,  
Matt O'Leary