THE CAPP STREET FOUNDATION

26 June 1987

TO: Sponsored projects of CSF
FROM: Jane Fischberg JF

CSF has established some new procedures which are necessary to manage the Foundation's hundreds of restricted accounts and to carry out the responsibilities related to management of these funds. The new procedures which govern disbursement of fiscal sponsorship grants are listed below.

1. As you may have noticed, we are requiring that a properly signed grant agreement be returned to CSF for each grant, before the grant check is disbursed. We are aware that this delay may impose a hardship for projects on the East Coast, especially, and we are working on ways to speed up the process.

2. In the event that a grant of $10,000.00 or more is available (made possible either by another foundation or a number of individuals), we will initially disburse $7500.00 or 75% (whichever is less). The remainder of the grant or $7500.00 (whichever is less) will be disbursed following receipt and approval of a narrative and budget report on the first disbursement. This report is due three months from the date of disbursement. The second disbursement will be made no less than three months from the date of the first disbursement.

CSF will write to the granting foundation (if any) to state this policy and request its cooperation. This will take place when the granting foundation announces the grant to CSF. If the granting foundation does not agree to this procedure, and proposes an alternative in writing, its directive will be followed.

This policy will take effect September 1, 1987.

3. No grants will be disbursed to a project which has any grant reports outstanding unless an extension is requested in writing and the extension is granted.

4. CSF must receive a foundation grant check at least five working days before CSF will write a fiscal sponsorship check representing the original grant.

The Foundation's standard Grant Agreement and Fiscal Sponsorship Contract have been updated, and I have enclosed copies of these for your information. Also enclosed for your reference is a set of guidelines for activities which can be carried out with grant funds.

If you have questions about any of the above procedures, please call me (in my absence, you can speak with the staffperson acting as Grants Administrator).

Thank you for your cooperation with these changes in procedures.

211 GOUGH STREET, THIRD FLOOR SAN FRANCISCO, CALIFORNIA 94102 415/552-0860

GUIDELINES RE: PERMISSIBLE ACTIVITY

This is intended to provide some general guidelines about permissible and impermissible uses of tax-exempt funds. It [redacted] is over simplified and certainly not exhaustive, and it should be remembered that there are many gray areas.

The first and most basic premise is that Capp Street is a "charitable" organization. As such, it can take actions to further the following purposes, among others:

(1) Relief of poverty
(2) advancement of education
(3) lessening the burdens of government
(4) promotion of health
(5) promotion of social welfare -
this includes lessening neighborhood tensions, eliminating prejudice and discrimination, defending human and civil rights secured by law (the IRS attempts to limit this to constitutional rights), and combatting community deterioration and juvenile delinquency.

Capp Street can also support projects which are "educational" in nature. "Education" is defined as:

(1) Instruction or training of individuals, or
(2) Instruction of the public on subjects useful to the individual and beneficial to the community.

An organization is <u>not considered educational</u> in nature where it "zealously propagates particular ideas or doctrines without presentation of them in any reasonably objective or balanced matter."

The current test used by the IRS is supposed to focus on the <u>method</u> an organization uses in advocating its position, rather than on the position itself in determining whether an activity is educational.

It may be helpful to note that the IRS Procedures list the following "factors" as indications that the method used by an organization is <u>not</u> educational:

(1) the presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications;
(2) the facts that support a viewpoint are "distorted";

(3) the organizations presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations; and
(4) the approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

It is permissible for a tax-exempt organization to advocate a particular viewpoint. However, there are restrictions imposed by the Internal Revenue Code on activities of tax-exempt organizations, ostensibly unrelated to the viewpoint espoused by the organization, even if material could be considered "educational".

The most relevant regulation reads as follows:

> The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents an opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(3)(3) so long as it is not an "action" organization . . .

There are certain activities which will lead to an organization being considered an "action" organization. Most relevant to Capp Street's current fiscal sponsorship program:

I. No substantial part of the activities of charitable organizations may constitute carrying on propaganda or otherwise attempting to influence legislation.

Propaganda. To avoid characterization as "propaganda," a presentation must be fairly well balanced and state alternative viewpoints and solutions, and be motivated by a desire to educate rather than by a "selfish purpose."

Attempting to influence legislation. This is defined by the code as:
(1) contacting, or urging the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation; OR
(2) advocating the adoption or rejection of legislation.

If a "substantial" part of the organization's activities involve propaganda or attempting to influence legislation, then the organization is deemed an "action" organization and therefore not entitled to continuing tax-exempt status.

Some definitions are helpful:

Legislation: means action by Congress, a state legislative body, a local council or similar governing body, or action by the general public in a referendum, initiative, constitutional amendment or similar procedure. It includes foriegn as well as domestic laws; it supposedly does not include action by the executive branch, such as the promulgation of rules and regulations, nor does it include action by independent regulatory agencies.

Lobbying: There are two types of lobbying (both impermissible):

Grassroots lobbying: appeals to the general public to contact legislators or take other specific action regarding legislative matters; and

Direct lobbying: communication with any member or employee of a legislative body or any other government official or employee who participates in the formulation of legislation.

II. Another type of organization will also be considered an "action organization" and not be entitled to tax-exempt status. This is an organization with main or primary objective or objectives which may only be attained by legislation or the defeat of proposed legislation AND the organization advocates or campaigns for the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study or research and making the results available to the public.

III. The other major relevant limitation is that a charitable organization must not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

However, it appears that open criticism of an elected public official does not violate this proscription, unless the criticism is done in the context of a political campaign.

CAPP STREET FOUNDATION GRANT AGREEMENT

On ________________________, the Board of Trustees of Capp Street Foundation granted to:

(hereinafter known as the Grantee), the amount of . By acceptance of the check, the Grantee agrees and consents to the following condition of the grant:

1. The Grantee shall use the grant solely for the purposes stated in the accompanying Grant Letter, and Grantee shall repay to the Foundation any portion of the amount granted which is not used for the purposes of the grant within the time period of the grant or within one year, whichever is sooner. Grantee also agrees to return any sum expended for other than the purposes stated in the accompanying grant letter.

2. Grantee shall submit a report to the Foundation on or before __________________, or when it has spent all of the granted funds, whichever comes first. Such report shall describe the progress that the Grantee has made toward achieving the purposes for which the grant is made, and shall detail all expenditures made from the granted funds.

3. Grantee shall show these granted funds separately on its books and records. All expenditures made in furtherance of the purposes of the grant shall be charged off against the grant and shall appear on those books. Grantee shall keep records to substantiate such expenditures. Grantee shall make such books and records available for review and copying by the Foundation, or its designated representatives, at reasonable times. Grantee shall keep copies of all books and records, and all reports to the Foundation, for at least four years after completion of the use of the grant funds.

4. Grantee shall not use any portion of the funds granted for any purpose other than those specified in the Grant Letter and shall not carry on propaganda or otherwise attempt to influence legislation, either by direct or indirect means or grassroots lobbying, nor to influence the outcome of any specific public election, nor to carry on, directly or indirectly, a voter registration drive, nor to make grants to individuals, nor to use the funds for any non-charitable or non-educational purpose.

5. Grantee agrees that if any funds are provided to any individual in the nature of payment for services rendered to Grantee organization, then that payment must be in the form of salary, with all appropriate taxes and FICA withheld, and not as an independent contractor, except for specific instances when permission, in writing, is obtained directly from the Foundation. The Foundation reserves the right to obtain from the Grantee organization proof that such withholding has been done, by requesting submission of copies of quarterly Federal payroll tax returns, and the corresponding state tax form, from any period during which the Grantee has been a sponsored project of the Foundation. Failure to comply with the provisions of this part shall be sufficient reason for immediate termination of the sponsorship relationship and impounding of any funds held in the name of the Grantee to cover any potential taxes and penalties likely to be assessed.

6. If not already available, Grantee agrees to obtain and utilize a Federal Employer Identification Number under its own name and to use such number for purposes of opening a bank account and maintaining all Grantee's financial and payroll records. Grantee must have this Number before any grant funds are disbursed.

IN WITNESS WHEREOF, this Grant Agreement is executed this ______

day of ______________________, 198____, by ________________________________
(print name)

the______________________________ of Grantee organization.
(title)

____
(sign name)

This copy is ___ to be returned to the CSF office.
Other copy is for your files.

FISCAL SPONSORSHIP CONTRACT

THE CAPP STREET FOUNDATION

1. ___________________________ (hereafter Grantee) understands that fiscal sponsorship is not the same as independent tax-exempt status. Grantee has this privilege through the fiscal sponsorship of the Capp Street Foundation (hereafter CSF), and only for restricted purposes. Any funds donated directly to Grantee are not tax-exempt.

2. If Grantee does not already have a Federal Employer Identification Number, Grantee will obtain one. Grantee will use this number to open a bank account.

3. Grantee agrees to report to the Foundation on the expenditure of grant funds in a timely manner. Reports are due six months from the date the grant is disbursed, or when the funds are spent, whichever comes first.

4. Grantee understands that the Foundation will deduct a service charge of 7% or $35.00, whichever is greater, from all grants disbursed. Special processing may require an extra charge, according to written and distributed Foundation policies, and negotiated in advance.

5. Grantee agrees not to submit proposals, under CSF's fiscal sponsorship, to other foundations without prior approval by CSF. Each new funding proposal must be authorized in advance.

6. Grantee will not alter the face of any CSF check. Nor will Grantee endorse any CSF check to any party other than Grantee, or apply the grant funds for purposes other than as stated in the grant letter.

7. If Grantee is a media project, Grantee must consult CSF as to how credit to CSF is to be given on the final product.

8. Grantee is responsible for obtaining insurance when needed. CSF does not cover Grantee's insurance needs for employee health and dental, general liability, events, etc.

9. Grantee must send written request for sponsorship renewal when the initial term of fiscal sponsorship expires, if Grantee wishes to continue the sponsorship relationship.

10. Grantee agrees not to use CSF name in print without prior written authorization.

11. Grantee agrees to place CSF on its mailing list, if it is not already included.

12. If Grantee pays employees, Grantee will follow standard practice of paying payroll withholding tax and will follow these reporting requirements.

13. Grantee agrees to keep CSF funds separate from other fund sources on its books. If Grantee requires assistance in ensuring this, Grantee will request help from CSF or an outside bookkeeper.

14. Grantee will provide CSF with the names of two representatives as contact people, and will inform CSF if these change. Samples of current signatures of these individuals will be submitted to the Foundation and kept on file.

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15. Grantee agrees to make photographs of project activities available to CSF for publication, upon request and at cost to CSF. Credit will be given to the photographer if photographs are used.

16. CSF reserves the right to use the names of all donors to CSF, including donors to Grantees, for its own purposes. Grantee agrees that donor information will be joint property of Grantee and CSF. CSF will not distribute donor information to other organizations, except in special circumstances and with consent of Grantee. Donor confidentiality will be respected.

17. If checks submitted to CSF by Grantee are not made payable to CSF, checks will be returned.

18. CSF will acknowledge in-kind donations worth over $100.00. It is the responsibility of the donor to confirm the value of the deduction for tax purposes (see separate memo).

19. CSF will not pay bills for sponsored projects, unless prior arrangements have been made due to special circumstances. CSF charges an additional service charge for this service.

20. CSF will not accept checks that are payment for goods received. Grantee agrees that it will not submit checks that represent payment for newsletters, magazines, tee-shirts, buttons, bumper stickers, literature, or other goods, to CSF.

21. CSF will not accept donations from any individuals in sponsored projects or their relatives when these donations are intended to supplement travel, salary, or other remuneration of these individuals.

22. If Grantee does not conform to any of the above terms, CSF reserves the right to terminate sponsorship. In this case, the Foundation will ask the original donor(s) to suggest an alternative designation of funds already donated to CSF for Grantee. CSF will demand return of prior grant funds disbursed to Grantee.

I understand and accept these conditions and requirements on behalf of the Grantee organization.

Agreed to this ___ day of _________, 19__, by

____

Signature and role in Grantee organization*

****

*Name of Grantee organization contact person (signer above):

(print name)______________________________

Phone (h)______________ (w)_____________

Address:____

Name of second Grantee organization contact person:

(print name)______________________________

Phone (h)______________ (w)_____________

Address:____

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THE CAPP STREET FOUNDATION

20 July 1987

PLEASE ALSO RETURN SIGNED
GRANT AGREEMENT

Paul Boneberg
Vigil Project/Mob. Against AIDS
2120 Market St. #106
San Francisco, CA 94114

Dear Grantee of the Capp Street Foundation:

In checking our records, we find that your progress/final report on the use of the funds in the amount of $930, granted to you on 20 January 1987, is now due. This report is a requirement of the Grant Agreement, Paragraph #2, and a vital part of our compliance with Internal Revenue Service regulations.

We ask that you promptly submit a report on the grant made to you. A Grant Report Form is enclosed for your convenience. Please be sure to use it, and supply all the information requested.

Note that this report to CSF also serves as a report to the donor(s) or other foundation(s) that made the grant possible. Keep this in mind as you prepare the report, and send CSF extra copies as requested. For your convenience, we are enclosing any report forms sent by the other funders who made this grant possible.

To refresh your memory, we require at the time the funds granted to you are expended, or at the end of a six month period, whichever comes first, the following information: "...the progress that the Grantee has made towards achieving the purposes for which the grant was made, and ... all expenditures from the granted funds".

Please describe the purposes and activities for which the funds were expended, with information as to whether such purposes were achieved. You also need to provide expenditure information in the form of total amounts spent under obvious categories, such as: legal fees, printing costs, travel, telephone, and other administrative expenses. You should create categories most appropriate to the grant you received, of course. If the grant was used to publish printed materials, please enclose copies of these.

Please contact the Foundation office should you have any questions or need any assistance. Thank you for your cooperation.

Sincerely,

Jane Fischberg
Program Manager

/jf

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