

## Conflicts of Interest & Code of Ethics – General Information

When a Director assumes office, the law requires that the best interest of the organization prevail over the Director's personal or business interests. A conflict of interest can arise in many situations including leasing property, buying goods and services, and borrowing or lending money. Conflicts can also arise with employees and family members of Directors. Conflicts of interest have both legal consequences and public perception consequences. Nonprofits should adopt policies and procedures to ensure that those with decision-making power in the organization do not take actions that could benefit themselves, their families, or their business interests.

### Prohibited Transactions

- **Loans to Directors.** There is an absolute prohibition on paying dividends or lending the money of a nonprofit to a Director. Directors who allow the making of a loan to a co-Director will be personally liable for the full amount of the loan until it is repaid.
- **Private Inurement.** There is also an absolute prohibition against "private inurement." In order for an organization to be recognized as a public charity by the IRS, no part of the net earnings of the organization may inure to the benefit of a private individual. Private benefits may occur when the nonprofit pays more for goods and services than they are worth. Violations of this restriction may result in severe penalties and substantial legal problems for the nonprofit and Directors approving the transaction.

### Permitted Transactions

- **Reasonable Compensation for Services.** A nonprofit may pay reasonable compensation to a Director for services the Director provides on behalf of the nonprofit. The key qualification is "reasonable," which will be determined by the IRS, the Attorney General, donors, and the public on the basis of all the facts and circumstances of the situation.
- **Interested Director Transactions.** Texas law permits transactions with Directors under certain circumstances. The three things to remember with regard to an interested Director transaction are:
  - Disclose material facts;
  - Ensure that the transaction is fair to the nonprofit; and
  - Document the decision-making process.

The material facts of the Director's interest in the transaction should be disclosed to the board before a vote on the transaction, and a majority of disinterested Directors should approve the transaction in good faith and with ordinary care. A transaction may be approved only if it is fair to the nonprofit when it is authorized. Any transaction with an interested Director should be carefully documented in the minutes of a meeting at which the transaction is considered.



# CONFLICTS OF INTEREST & CODE OF ETHICS POLICY

## I - PURPOSE

It is imperative to the success of Corporation that there be a fully informed and responsive Board of Directors. To accomplish this end, all Directors shall conduct themselves at all times in the best interest of the Corporation. When a Director assumes office, the law requires that the best interest of the Corporation prevail over the Director's personal or business interests. A conflict of interest can arise in many situations including leasing property, buying goods and services, and borrowing or lending money. Conflicts can also arise with employees and family members of Directors. Conflicts of interest have both legal consequences and public perception consequences. To this end, Directors of Corporation agree to abide by the following policies and procedures. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

## 2 - DEFINITIONS

1. **Interested Person.** Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
2. **Financial Interests.** Financial interests include, but are not limited to:
  - a. An ownership, investment interest, or compensation arrangement with any entity with which the Corporation has a transaction or arrangement;
  - b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
  - c. A potential ownership, investment interest, or compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement, including a commission or fee, share of the proceeds, the prospect of promotion or profit, or any other form of financial reward.

## 3 – PROCEDURES

1. **Duty to Disclose.** In connection with the actual or potential conflict of interest, an interested person must disclose the existence of his financial interest and all material facts to the Directors and members of committees with board-delegated powers considering the proposed transaction or arrangement and shall abstain from voting on such matters.
2. **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested party shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
3. **Procedures for Addressing the Conflict of Interest**
  - a. An interested person may make a presentation at the board or committee meeting, but after such presentation, he shall leave the

meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

- b. The President or Chair of a committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation. The Corporation shall make its decision as to whether to entering to transaction or arrangement in conformity with such determination.

#### **4. Violations of the Conflict of Interest Policy**

- a. If the board or committee has reasonable cause to believe that a person has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

### **4 – RECORDINGS AND PROCEEDINGS**

The minutes of the board and committees with board- delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed; and
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

### **5 – GIFTS, COMPENSATION**

1. A voting member of the governing board who receives compensation, directly or indirectly, from Corporation for services is precluded from voting on matters pertaining

to that member's compensation.

2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from Corporation for services is precluded from voting on matters pertaining to that member's compensation.

3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

4. Directors and employees of the Corporation may not receive a gift, or a series of gifts, valued at more than \$25 from contractors or businesses who have performed services for the Corporation within the past 12 months without prior approval of a majority vote of disinterested Directors. Directors and employees of the Corporation shall also gain approval by majority vote of disinterested Directors to personally employ contractors and businesses that have performed services for the Corporation within the past 12 months.

## **6 – ADDITIONAL PROVISIONS**

1. Directors shall put forth their best effort to attend all meetings and constructively participate in the meetings.
2. Directors shall be responsible for insuring that adequate and correct information is presented to their constituents and the public.
3. Directors shall exercise good judgment in the control and use of confidential information that may from time to time come into their possession. No Director shall use confidential information gained by reason of being a member of the Board for personal gain to the detriment of the Corporation.
4. Each Director shall serve as a public relations agent for the Corporation and therefore shall work diligently and properly to promote its goals and objectives while keeping abreast with its overall progress.
5. Except for voting at properly called meetings of the Board, Directors shall refrain from entering into the direct day-to-day administration of the program unless they are doing so upon express authority given to them by Resolution of the Board.
6. The Officers shall be charged with the responsibility of reviewing any allegations of Directors violating this code or acting in any way which is detrimental to the success of the Corporation and make recommendations to the full Board for final action.

## **7 – ANNUAL STATEMENT**

Each Director, officer, and committee member with board-delegated powers shall annually sign a statement that affirms that such person:

1. Has received a copy of the Conflicts of Interest policy;
2. Has read and understands the policy;
3. Has agreed to comply with the policy; and

4. Understands that the Corporation is a charitable Corporation and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

#### **8 – PERIODIC REVIEWS**

To ensure Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
2. Whether partnerships, joint ventures, and arrangements with management organizations conform to Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.
3. When conducting the periodic reviews, Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

## Conflict of Interest Disclosure Questionnaire

To be completed by officers, directors, key employees, and members of Board committees

The Conflict of Interest Policy adopted by the Board of Directors of the Corporation requires disclosure of certain Interests. It is not uncommon to have these interests, but it is very important to make them known to the Corporation.

Use this questionnaire to disclose where you or your *Family Members* have certain affiliations, interests or relationships, and/or have taken part in transactions that, in light of your relationship to the Corporation, might possibly give rise to an actual, apparent, or potential conflict of interest.

**NAME:** \_\_\_\_\_

In accordance with the purposes and intent of the Conflict of Interest Policy adopted by the Board of Directors of the Corporation, a copy of which has been furnished to me, I hereby disclose that I or *my Family Members* have the following affiliations, interests or relationships, and/or have taken part in the following transactions:

### 1. BACKGROUND

I hold the following positions(s) and/or have the following relationship(s) with the Corporation:

\_\_\_\_\_

### 2. OUTSIDE INTERESTS

Do you or any Family Member hold, directly or indirectly:

An ownership or investment interest in a company that does or may do business with, or that competes with, the Corporation?

No  Yes – Explain below

\_\_\_\_\_

A compensation arrangement with any Company that does or may do business with, or that competes with, the Corporation? Examples: compensation for employment or independent contractor services, consulting fees, board stipends or fees, advisory committee fees, honoraria, etc.

No  Yes – Explain below

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A director, trustee, officer or board committee position with any other Company that does or may do business with, or that competes with the Corporation (including competition for grants or donations)?

No  Yes – Explain below

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Any personal loans, advances or other indebtedness to or from anyone who also does or may do business with any the Corporation? (Note: You may exclude charge cards and personal or mortgage loans at market rates from financial institutions)

No  Yes – Explain below

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Do you or any Family Member compete, directly or indirectly, with the Corporation in the purchase or sale of property rights, interests or services?

No  Yes – Explain below

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Do you or any Family Member provide managerial, consultative or other services to or on behalf of any other Company that does or may do business with, or that competes with, the services of the Corporation?

No  Yes – Explain below

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Do you or any Family Member employ or otherwise retain any Corporation personnel for work on non-Corporation business done outside of the Corporation?

No  Yes – Explain below

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Have you or any Family Member used Corporation property to conduct business that is not Corporate business, without prior approval of an executive of the Corporation?

No  Yes – Explain below

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If you are employed by the Corporation, have you accepted assignments outside of the Corporation, either as an employee or as an independent contractor, over and above your primary or full-time assignment with any Corporation?

No  Yes – Explain below

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Do you or any Family Member hold an elected or appointed office or other position of public responsibility that serves residents in the Corporation's service area?

No  Yes – Explain below

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Have you or any Family Member been a party to any action, suit or proceeding during the past five years that might be deemed material to evaluating your ability, your integrity or your interests with respect to the Corporation?

No  Yes – Explain below

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Do you or any Family Member know of any recent or pending actions, suit or proceeding in which you have an interest adverse to the interests of, or are a party adverse to any the Corporation?

No  Yes – Explain below

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### **3. INSIDE ACTIVITIES**

In your area of direct responsibility within the Corporation, do you employ or supervise anyone with whom you have a business or personal relationship?

No  Yes – Explain below

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Have you or any Family Member attempted to influence the Corporation concerning the employment or retention of any immediate family member or other individual with whom you have a business or personal relationship?

No  Yes – Explain below

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### **4. GIFTS, GRATUITIES AND ENTERTAINMENT**

Have you or any Family Member accepted gifts, or other favors from any person or company under circumstances from which someone might think that such action was intended to influence you in the performance of your duties on behalf of the Corporation? *Note: This does not prohibit the acceptance of reasonable items of nominal value that are clearly tokens of respect or friendship and not related to any particular transaction or activity when the value of such entertainment or items does not exceed One Hundred Dollars (\$100.00).*

No  Yes – Explain below

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Have you or any Family Member accepted any gifts, favors or benefits valued in excess of One Hundred Dollars (\$100.00) from customers, suppliers or agents of the Corporation?

No  Yes – Explain below

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**5. OTHER**

In the space below, please disclose any other interest, activities, investments or involvement that you think might be relevant for full disclosure of all actual, apparent or possible conflicts of interest. If none, indicate "none." **[Use additional pages as necessary.]**

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## AFFIRMATION

I acknowledge that:

- (1) I have received a copy of the Board's Conflict of Interest Policy and Code of Ethics;
- (2) I have read and understand the Policy;
- (3) I agree to comply with the Policy;
- (4) I understand that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes;
- (5) I agree to report to the appropriate person (a) any change in the responses to each of the foregoing questions that may result from changes in circumstances or (b) any further financial interest, situation, activity, interest or conduct that may develop before completion of my next annual Questionnaire, and
- (6) The information contained in this Questionnaire is true and accurate to the best of my knowledge and belief as of the date below.

Signed:

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Director

Date