

# COMMUNITY FOUNDATION SONOMA COUNTY

## *AMENDED & RESTATED CONFLICT OF INTEREST POLICY*

### PREAMBLE

The Community Foundation Sonoma County, a California nonprofit public benefit corporation (the "Foundation"), strives to maintain the highest ethical standards in the pursuit of its mission of matching philanthropic interests with community needs. As an organization dependent on volunteers who are active in a variety of other community organizations, the Foundation is aware that conflicts of interest may arise as the result of members being connected with organizations or individuals seeking grant or scholarship support. While wishing to avoid conflicts or even the appearance of a conflict of interest, the Foundation fully supports and encourages the many contributions members make through their involvement with other charitable organizations. Further, the guiding principle of this policy is disclosure by insiders of relevant relationships and transactions, and the appropriate due diligence and process, prior to any decision concerning a transaction where the interests of the Foundation and an insider or related entity might be in conflict. Adherence to the policy will help to ensure the Foundation's compliance with its legal obligations as a tax-exempt charitable organization. It is within this context that the Board of Directors adopts the following policies below.

### ARTICLE 1 PURPOSE

1.1 The purpose of this Amended & Restated Conflict of Interest Policy (the "Policy") is to protect the interests of the Foundation when it contemplates entering into a transaction or arrangement that might benefit the private interest of a "disqualified person," or might result in a possible "excess benefit transaction" under Section 4958 of the Internal Revenue Code of 1986, as amended, or a "self-dealing transaction" under Section 5233 of the California Corporations Code.

### ARTICLE 2 POLICY

2.1 **Transactions with Disqualified Persons and Interested Directors.** The Foundation shall not enter into any transaction with a "disqualified person" or an "interested director," except in conformance with the Due Diligence Procedure attached to this Policy as Exhibit A.

2.2 **Serving Other Charitable Organizations in Sonoma County.** A potential conflict of interest exists when any Director, principal officer and key employee of the

Foundation and each member of a committee with Board-delegated powers, (each, a “Member”) or the immediate family of any such individuals, serves as staff, an officer, director, trustee, advisor or consultant to any charitable organization serving the people of Sonoma County.

(a) When such a relationship exists and the Foundation is considering making a grant or scholarship to the charitable organization, or any other action with respect to the charitable organization that is before the Board, the individual having such potential conflict of interest shall call it to the attention of the Board or applicable committee and that member shall not vote on the matter and shall not use his or her personal influence on any Board member with respect to such decision; provided, however, that such member may answer pertinent questions as requested by the Board or committee.

(b) The Foundation’s Chief Executive Officer and program and donor relations staff are prohibited from serving on boards, committees or advisory groups of other charitable organizations that serve Sonoma County, unless such individual requests that the Executive Committee grant an exception to this policy, after a determination that no material conflict of interest is determined to exist and allowance of the exception is in the best interests of the Foundation.

2.3 **Scholarships.** Members and their spouses, siblings, and descendants are ineligible for any scholarships granted by the Foundation.

### ARTICLE 3 DEFINITIONS

3.1 **Disqualified Persons.** For purposes of this Policy, a “disqualified person” is any of the following persons:

- (a) A member of the Board of Directors of the Foundation (the “Board”);
- (b) A member of any committee of the Board;
- (c) The Foundation's President, Chief Financial Officer, or anyone holding the powers or responsibilities of these offices, regardless of title;
- (d) A key employee (hereinafter defined) of the Foundation;
- (e) Any other individual who is in a position to exercise substantial influence (as further explained in Appendix I) over the affairs of the Foundation, or who has been in such position at any time during the five-year period ending on the date of a transaction proposed to be entered into between that individual and the Foundation;

(f) The spouse, ancestors, brothers, sisters, children, grandchildren, and great grandchildren of any individual described in subparagraphs (a) through (e) above, and the spouses of the brothers, sisters, children, grandchildren and great grandchildren; and

(g) Any legal entity in which more than 35% of the combined voting power (in the case of a corporation), profits interest (in the case of a partnership), or beneficial interest (in the case of a trust) is owned by persons described in subparagraphs (a) through (f).

**3.2 Interested Directors.** For purposes of this Policy, an "interested director" is a director who has a material financial interest in a transaction or arrangement to which the Foundation is proposed to be a party. If a director's spouse has a material financial interest in the transaction or arrangement, that director is an "interested director."

**3.3 Key Employees.** For purposes of this Policy, a "key employee" is an employee of the Foundation who (i) has responsibilities, powers or influence over the Foundation as a whole that is similar to those of officers, directors or trustees, or (ii) manages a discrete segment or activity, assets, income, or expenses of the Foundation, as compared to the Foundation as a whole, or (iii) has or shares authority to control or determine 10% or more of the Foundation's capital expenditures, operating budget, or compensation for employees; and

**3.4 Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (a) an ownership or investment interest in any entity with which the Foundation has a transaction or arrangement;
- (b) a compensation arrangement with the Foundation;
- (c) a compensation arrangement with any entity or individual with which the Foundation has a transaction or arrangement;
- (d) a potential ownership or investment interest in any entity or individual with which the Foundation is negotiating a transaction or arrangement; or
- (e) a potential compensation arrangement with any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors. A financial interest is not necessarily a conflict of interest. A conflict of interest exists only upon a determination of its existence by the Board in accordance with the Due Diligence Procedure.

ARTICLE 4  
**COMPENSATION**

4.1 Any Director who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to his or her compensation.

4.2 Any member of a committee of the Board whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to his or her compensation.

4.3 Directors and committee members described in Sections 4.1 and 4.2 above shall not be prohibited from providing information to any committee regarding compensation.

ARTICLE 5  
**DISCLOSURES**

Each Director, principal officer and key employee of the Foundation and each member of a committee with Board-delegated powers shall: (a) annually sign the Conflict of Interest Statement and Disclosure Form attached to this Policy as Exhibit B, and (b) promptly report to the Board any changed circumstances since the last annual disclosure that could give rise to a conflict of interest.

ARTICLE 6  
**PERIODIC REVIEWS**

6.1 To ensure the Foundation 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:

(a) Whether compensation arrangements (including benefits) with disqualified persons and interested directors are reasonable, based on competent survey information, and the result of arm's length bargaining.

(b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation'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, in an excess benefit transaction, or in a self-dealing transaction.

6.2 When conducting the periodic reviews as above provided, the Foundation may, but need not, use outside experts. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.

ARTICLE 7  
**VIOLATIONS OF THE CONFLICTS OF INTEREST POLICY**

7.1 If the Board has reasonable cause to believe that a disqualified person or interested director has failed to disclose actual or possible conflicts of interest, it shall inform such person of the basis for such belief and afford him or her an opportunity to explain the alleged failure to disclose. If, after hearing the response of the disqualified person or interested director and after making further investigation as warranted by the circumstances, the Board determines that such person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

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## Exhibit A

### DUE DILIGENCE PROCEDURE

#### ***Board or Committee Meeting to Determine Whether Conflict of Interest Exists***

1. The disqualified person or interested director shall disclose the existence of his or her financial interest (as defined in Section 3.4 of the Policy) in the proposed transaction or arrangement to the Board or to a committee with Board-delegated powers (“Committee”). The disqualified person or interested director shall be given an opportunity to disclose all material facts to the Board (or Committee, as applicable) respecting the proposed transaction or arrangement.

Alternatively, staff shall identify the disqualified person or the interested director and the proposed transaction or arrangement. Staff shall also gather facts for disclosure to the Board (or Committee) about the proposed transaction or arrangement and the interest of the disqualified person or interested director in the proposed transaction or arrangement.

2. After disclosure of the financial interest and all material facts, and after any discussion with the disqualified person or interested director, he or she 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 exists.

3. If a conflict of interest exists, the Board (or Committee) shall appoint an independent committee or staff to investigate possible reasonable alternatives to the proposed transaction or arrangement for report to the Board (or Committee). For example, if the services proposed to be rendered to the Foundation by the disqualified person are also available from independent third-parties, such alternatives shall be investigated and reported to the Board (or Committee). The independent committee or staff shall also contact legal counsel for assistance with reviewing the proposed transaction or arrangement and formulating steps for compliance with the applicable legal requirements.

4. Staff shall obtain appropriate comparability data. In the case of compensation to be paid to the disqualified person or interested director, comparability data includes, but is not limited to: (a) compensation levels paid by similarly situated organizations, both tax exempt and non-exempt, for functionally comparable positions, (b) actual written offers from similar institutions competing for the services of the disqualified person or interested director, and (c) current compensation surveys compiled by independent firms. Comparable compensation surveys may be surveys of national organizations so long as the survey divides the compensation data by categories (e.g., the size of surveyed organizations, the nature of services provided by the surveyed organizations, revenue amounts, geographic area, the level of experience and specific responsibilities of the comparable positions). If the Foundation elects to have a compensation survey made by an independent firm, that firm must be one that specializes in consulting on issues related to placement and compensation, and the Board (or Committee) must be afforded an opportunity to ask questions of the member of the firm that prepared the survey. In either case, the survey results shall be provided to the Board (or Committee), together with a detailed

written analysis comparing the disqualified person or interested director with those covered by the survey.

In the case of property, comparability data shall consist of either a current independent appraisal of the value of the property to be sold or acquired by the Foundation, or offer(s) received as part of an open and competitive bidding process.

### ***Board Meeting to Consider the Proposed Transaction or Arrangement and the Alternatives***

1. The Board shall hear the report by the Committee, the independent committee or staff, as applicable, regarding possible alternatives to the proposed transaction or arrangement. The disqualified person or interested director may make a presentation to the Board. However, after the presentation, he or she shall leave the meeting during the discussion of, and the vote on, the alternatives and/or proposed transaction or arrangement.

2. The Board shall review the information presented, including comparability data for the proposed transaction or arrangement, and ask questions, as appropriate.

3. The Board shall consider alternatives (if any) to the proposed transaction or arrangement and determine, in good faith, whether the Foundation could not obtain a more advantageous arrangement with reasonable effort from another person or entity that would not give rise to a conflict of interest. If such an alternative exists, the Board shall not authorize the Foundation to enter into the proposed transaction or arrangement.

If a more advantageous transaction or arrangement is not reasonably possible under the circumstances, the Board shall determine, by a majority vote of the Directors then in office (not counting the votes of the disqualified person or interested director or any conflicted directors), whether the proposed transaction or arrangement is in the Foundation's best interests, for its own benefit, and whether the proposed compensation or consideration to be paid/received is fair and reasonable to the Foundation. In conformity with the foregoing determination, the Board shall make its decision as to whether to enter into the proposed transaction or arrangement.

For purposes of this procedure, a "conflicted director" is a director of the Foundation who: (a) is in an employment relationship subject to the direction or control of the disqualified person or interested director; (b) receives compensation or other payments subject to the approval of the disqualified person or interested director; (c) has a material financial interest that is affected by the transaction proposed to be entered into by the Foundation and the disqualified person or interested director; or (d) had or will have his own transaction with the Foundation approved by the disqualified person or interested director.

### ***Records of Board Meeting***

Board meeting minutes shall be prepared to reflect the following:

1. Full disclosure to the Board of the financial interest of the disqualified person or interested director in the transaction or arrangement.
2. Investigation and report to the Board of the terms of the transaction or arrangement and the alternatives.
3. If the Board authorized the Foundation to enter into the transaction or arrangement, the findings of the Board that:
  - (a) The Foundation entered into the transaction or arrangement for its own benefit.
  - (b) The transaction or arrangement was fair and reasonable as to the Foundation at the time it was entered into.
  - (c) The Board approved the transaction or arrangement in advance with knowledge of the financial interest of the disqualified person or interested director.
  - (d) The Board approved the transaction or arrangement by a majority vote (not counting the votes of the disqualified person or interested director or any conflicted directors).
  - (e) The Board considered alternative arrangements and found, in good faith and after reasonable investigation, that the Foundation could not obtain a more advantageous arrangement with reasonable effort from another person or entity that would not give rise to a conflict of interest.
4. The terms of the transaction or arrangement that was approved and the date it was approved.
5. The directors who were present during debate on the transaction or arrangement and those who voted on it.
6. The comparability data obtained and relied upon by the Board.
7. How the comparability data was obtained.
8. If the Board determined that the proposed compensation or consideration was reasonable, even though it fell outside the comparability data range, the minutes shall state the Board's basis for such determination.

Documentation shall be prepared before the next Board meeting or 60 days following date of Board approval of the transaction or arrangement, whichever is later. Documentation shall be reviewed by the Board as reasonable, accurate and complete within a reasonable time period thereafter.

If it is not reasonably practicable to obtain the Board's approval prior to entering into the transaction, a committee authorized by the Board may approve the transaction so long as the

foregoing Due Diligence Procedure is followed, but the Board must ratify the transaction at its next meeting. The ratification must be by a majority of the Directors then in office after determining that it was not practicable to obtain the Board's prior approval and that the committee approved the transaction as above required.

Exhibit B

DISQUALIFIED PERSONS INCLUDING KEY EMPLOYEES

CONFLICT OF INTEREST STATEMENT AND DISCLOSURE FORM

I hereby acknowledge that I have read and understand the Conflict of Interest Policy of the Community Foundation Sonoma County (the "Foundation"), a California nonprofit public benefit corporation, and agree to abide by it. I understand that the Foundation is a charitable organization and, in order to maintain its tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

I hereby inform the Board of Directors of the Foundation that:

1. **Financial Relationship with Foundation.**

- I and/or my family members, or entities in which I and/or family members hold ownership interests have a business relationship with the Foundation as described below.
- I am an officer, director, trustee, employee, partner or member of the following entities, which do business with the Foundation, as described below.

For purposes of this Statement, family members include my spouse, ancestors, brothers, sisters, children, grandchildren, and great grandchildren, and the spouses of those brothers, sisters, children, grandchildren and great grandchildren.

List Name of Person, Entity  
and Role/Title in or Ownership  
Interest in Entity (as applicable)

Business Relationship Between Person/Entity & Foundation

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. **Fiduciary Relationship with Other Charitable Organizations.** I, my spouse, and/or my children play a fiduciary or leading role with the following charitable organization(s) which have (i) received support or are seeking support from the Foundation, (ii) or might be entering into a transaction with the Foundation, or, (iii) serve and/or benefit Sonoma County:

<u>Person</u>	<u>Organization</u>	<u>Role</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. **Relationship with Other Directors or Employees.** I have a business or family relationship with the following directors, officers or employees of the Foundation:

<u>Name of Other Person</u>	<u>Business or Family Relationship</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix I

### “Substantial Influence”

For purposes of Section 3.1(e) of this Policy, whether a person exercises “substantial influence” over the affairs of the Foundation, or had done so at any time during the preceding five-year period, depends upon all relevant facts and circumstances. Facts and circumstances tending to show substantial influence include, but are not limited to, the following:

(i) During the current and preceding 4 years, the person contributed a total amount of more than \$5,000 to the Foundation and such amount is also more than 2 percent of the total contributions and bequests received by the Foundation during the same period.

(ii) The person's compensation is primarily based on revenues derived from activities of the Foundation (or of a particular department or function of the Foundation) that the person controls.

(iii) The person has (or shares) authority to control or determine a substantial portion of the Foundation’s capital expenditures, operating budget, or compensation for employees.

(iv) The person manages a discrete segment or activity of the Foundation that represents a substantial portion of the activities, assets, income, or expenses of the Foundation, as compared to the Foundation as a whole.

(v) The person is a non-stock organization controlled, directly or indirectly, by one or more disqualified persons.

On the other hand, facts and circumstances tending to show that a person does not have substantial influence over the affairs of the Foundation include, but are not limited to, the following:

(i) The person is a contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the Foundation is providing professional advice (without having decision-making authority) with respect to transactions from which the contractor will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered).

(ii) The person’s direct supervisor is not a disqualified person.

(iii) The person does not participate in any management decisions affecting the Foundation as a whole or a discrete segment or activity of the Foundation that represents a substantial portion of the activities, assets, income, or expenses of the Foundation.

(iv) If the person is a donor to the Foundation, any preferential treatment such person receives based on the size of his or her contribution is also offered to all other donors making a comparable contribution as part of a solicitation intended to attract a substantial number of contributions.

## Appendix II

### Guidelines For Ascertaining “Business Relationships”

When completing the Conflict of Interest Statement and Disclosure Form, the following guidelines may be used to ascertain whether a “business relationship” exists between two persons:

- i. One person is employed by the other person in a sole proprietorship.
- ii. One person is employed by an organization with which the other person is associated as a trustee, director, officer, key employee, or greater-than-35% owner.
- iii. One person is transacting business with the other person, directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the Foundation’s tax year. Indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater-than-35% owner.

Notwithstanding the foregoing text in this paragraph iii:

- a. a "business relationship" does not arise out of a transaction entered into by two persons in the ordinary course of either person’s business on the same terms as are generally offered to the public; and
  - b. a "business relationship" does not include a relationship between an attorney and client, a medical professional and patient, or a priest/clergy and penitent/communicant.
- iv. The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity. Ownership is measure by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership.