

# **RED STRING FOUNDATION CONFLICT OF INTEREST POLICY**

## **Article I: Purpose**

The purpose of the conflict of interest policy is to protect the Red String Foundation's, a tax-exempt corporation, interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director or other interested person of the corporation or might result in a possible excess benefit transaction. 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.

## **Article II: 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 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 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,
  - c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the corporation is negotiating a transaction or arrangement.
  - d) Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest isn't necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Article III: Procedures**

- a. **Duty to Disclose:** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

- b. **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, he/she shall leave the governing 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. To help with the investigation, Appendix A provides a checklist covering requirements for Section 5233 of the California Nonprofit Public Benefit Corporation Law and Federal Tax Law under Internal Revenue Code Section 4941.
  
- c. **Procedures for Addressing the Conflict of Interest:**
  - a) An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
  - b) The chairperson of the governing board or 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 governing board or committee shall determine whether the corporation can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
  - d) If a more advantageous transaction or arrangement isn't reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the corporation best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
  
- d. **Violations of the Conflict of Interest Policy**
  - a) If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
  - b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **Article IV: Records of Proceedings**

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

- a) 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 governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b) 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 with the proceedings.

#### **Article V: Compensation**

- a) A voting member of the governing board who receives compensation, directly or indirectly, from the corporation for services is precluded from voting on matters pertaining to that member's compensation.
- b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the corporation for services is precluded from voting on matters pertaining to that member's compensation.
- c) No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### **Article VI: Statements and Reviews**

- A. **Annual Statements:** Each director, principal officer, and member of a committee with governing board delegated powers shall annually sign a statement (Appendix B) which affirms such person:
  - a) Has received a copy of the conflict of interest policy,
  - b) Has read and understands the policy,
  - c) Has agreed to comply with the policy,
  - d) Disclosed potential conflict of interests; and
  - e) Understands the corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.
- B. **Periodic Reviews:** To ensure the 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:

- a) Whether compensation arrangements and benefits 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 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.

### **Article VIII: Use of Outside Experts**

When conducting the periodic reviews, as provided for in Article VII, the Organization may, but is not required, 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.

**APPENDIX A**  
Interested Person Transaction  
Decision Analysis Checklist

This Guide is intended primarily as a tool for officials charged with compliance reviews.

Step 1: Collect, analyze and understand all pertinent transaction facts. Retain all transaction documents.

Step 2: Determine compliance to California Corporate Law

A: Determine if Section 5233 provisions apply. Section 5233 does not apply to any of the following:

- (1) An action of the board fixing the compensation of a director as a director or officer of the corporation.
- (2) A transaction which is part of a public or charitable program of the corporation if it:
  - i. is approved or authorized by the corporation in good faith and without unjustified favoritism; and
  - ii. results in a benefit to one or more directors or their families because they are in the class of persons intended to be benefited by the public or charitable program.
- (3) A transaction, of which the interested director or directors have no actual knowledge, and which does not exceed the lesser of one (1) percent of the gross receipts of the corporation for the preceding fiscal year or one hundred thousand dollars (\$100,000).

B. Determine if the transaction permitted under Section 5233 of the California Nonprofit Public Benefit Corporation Law.

- 1) The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or
- 2) The following facts are determined
  - a) It was in the Foundation's best interest,
  - b) It was being entered into for the Foundation's own benefit, and
  - c) At the time of the transaction, it was on terms that are fair and reasonable to the Foundation; or
- 3) The following facts are determined
  - a) A committee or person authorized by the board approved the transaction
  - b) It was not reasonably practicable to obtain approval of the board prior to entering into the transaction; and

- c) The board, after determining in good faith that the conditions of (a) and (b) listed above were satisfied, ratified the transaction at its next meeting by a vote of the majority of the directors then in office without counting the vote of the interested director or directors

If the Board or Committee is able to determine that the transaction is permitted under California corporate law, it must next determine whether the transaction is prohibited under federal tax law, specifically IRC Section 4941's prohibition of self-dealing.

### Step 3: Determine Compliance with Federal Tax Law

Determine whether the transaction is prohibited under federal tax law, IRC Section 4941 prohibition of self-dealing. Because IRC Section 4941 is broad in scope, covering both direct and indirect transactions with or benefits to interested persons, is strict in its application, and imposes harsh penalties for even inadvertent violations, the Board or Committee may elect to consult legal counsel whenever it is in doubt regarding the application of IRC Section 4941 to a particular transaction.

- A. *Was the transaction a sale, exchange, or a lease?* If the transaction is a sale, exchange, or a lease with an interested person, it is generally an act of self-dealing and the Foundation must NOT approve it. Even a below market sale (the Foundation buying \$100 property from an interested person for \$10) is an act of self-dealing. The only situation in which the Foundation could approve a transaction akin to a sale, exchange, or lease with an interested person without violating IRC Section 4941 is if the interested person is leasing space or donating property at no cost to the Foundation and without the Foundation assuming any obligations (e.g., a mortgage).
- B. *Is the transaction a loan or other extension of credit?* If the transaction is a loan or other extension of credit to or from an interested person, it is generally an act of self-dealing and the Foundation must NOT approve it. The only exception from this prohibition is that an interested person may lend money *to* the Foundation, but only at a zero-interest rate and if the proceeds are used exclusively for IRC Section 501(c)(3) purposes. The Foundation may not loan money to an interested person under any circumstances.
- C. *Is the transaction a provision of goods, services, or facilities?* If the transaction involves the provision of goods, services, or facilities between the Foundation and an interested person, it is generally an act of self-dealing that the Foundation must NOT approve, unless one of two exceptions applies.
  - a. if the interested person is providing goods, services, or facilities *to* the Foundation for free; or
  - b. if the Foundation is providing goods, services, or facilities to the general public and the interested person receives such goods, services, or facilities on a basis that is no more favorable than the general public (e.g., the interested person attends a seminar or downloads a report on a charitable or educational topic provided by the Foundation to the general public).

- D. *Is the transaction the payment of compensation or reimbursement of expenses?* If the transaction involves the payment of compensation to, or reimbursement of expenses of, an interested person, it is generally an act of self-dealing that the Foundation must NOT approve, unless two conditions are met.
- a. First, the compensation must be for “personal services”<sup>1</sup> which are reasonable and necessary to carrying out the Foundation’s exempt purposes; and
  - b. Second, the amount of compensation, payment, or reimbursement must be reasonable and not excessive under the circumstances.

If the Board or Committee determines that the answer to all of the above questions is clearly “NO”, then it may reach the determination that the transaction does not violate IRC Section 4941.

#### Step 4: Board or Committee Determination of the Transaction

After the Board or Committee, as applicable, has determined that the transaction either (a) does not violate or (b) does violate one or both California Nonprofit Public Benefit Corporation law Section 5233 or Federal IRC Section 4941, the Board or Committee may

- a. If transaction was permitted, the transaction may be approved by the Board or Committee by majority vote of those present at a meeting for which quorum requirements have been met.
- b. If transaction was not permitted, proceed to Article III, Section (d) of this Conflict of Interest Policy.

## **APPENDIX B:**

### **RED STRING FOUNDATION CONFLICT OF INTEREST POLICY ACKNOWLEDGMENT AND INTEREST DISCLOSURE STATEMENT**

Red String Foundation (the “Foundation”) follows a conflict of interest policy designed to foster public confidence in our integrity and to protect our interest when we are contemplating entering a transaction or arrangement that might benefit the private interest of an officer, director, trustee or other foundation manager, any of our employees, or other interested persons.

Following this conflict of interest policy is not only critical to maintaining the Foundation’s reputation in the community, it is also essential to protecting the Foundation’s directors and officers from significant liability. As a private foundation, the Foundation is subject to a strict set of regulations under Internal Revenue Code Section 4941 that prohibit certain transactions known as “self-dealing.” Under these rules, if the Foundation enters into a transaction with an interested person that does not fit within certain limited exceptions, the Foundation will violate the self-dealing rules and the Internal Revenue Service may impose significant excise taxes against the interested person and, in limited circumstances, against the directors that approved the transaction. A prohibited transaction is an act of self-dealing and results in tax penalties even if the violation was unintentional and even if the Foundation was not harmed as a result.

For example, if the Foundation ever purchases certain goods or services from a company that is more than thirty-five percent owned by a director (or a spouse, child, or certain other family members of a director), the Foundation will have engaged in act of self-dealing, regardless of whether the Foundation was aware of the relationship and regardless of whether the Foundation paid a fair price. If that occurred, the Foundation would need to disclose such act to the Internal Revenue Service, the transaction would need to be unwound, and significant tax penalties would be imposed on the director (or his or her family member).

For these reasons, it is important that all interested persons carefully review the conflict of interest policy and comply with all of its requirements, including disclosure of significant interests they or their family members may have in potential counterparties to transactions involving the Foundation.

#### **Part I. Acknowledgment of Receipt**

To promote awareness of and compliance with the policy, we provide each person listed below with a copy of the policy, and ask each to acknowledge receipt of, and agree to comply with, the policy, by completing this Part I.



**Part I** *To be completed by each officer, director, trustee, or other foundation manager, all other Foundation employees, and certain interested persons that the Foundation may identify.*

I hereby acknowledge that I have received a copy of the conflict of interest policy of the Foundation, have read and understood it, and agree to comply with its terms.

By: \_\_\_\_\_  
Printed Name of Individual or Entity Date

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

Title (if applicable): \_\_\_\_\_

**Part II. Disclosure of Interests**

The purpose of this disclosure is to provide the Board of Directors with a meaningful opportunity to determine in advance whether a conflict of interest may exist with respect to a transaction or arrangement. Annually, we ask each officer, director, trustee, or other foundation manager, and certain interested persons (including entities in some cases) that we may identify, to disclose any interest, as such term is defined in the policy, and, in the case of individuals, the interest of any family member that could give rise to a conflict of interest. This Part II may also be used at any time by any interested person or employee of the Foundation, to comply with the duty to disclose set forth in Article III of the policy. Complete, accurate disclosure gives the governing body information it needs to fulfill its fiduciary obligations and to make decisions that are in the best interest of the organization, and help protect insiders from inadvertent violations of the self-dealing rules.

**Part II**

Please check ONE of the following boxes, and sign below:

- I hereby disclose or update my interests, the interest of my family members, or the interests of an entity for which I am reporting that could give rise to a conflict of interest:  
*[Complete the tables below. Use additional pages as needed.]*

**OR**

- None of my interests, the interests of my family members or the interest of the entity for which I am disclosing have changed since my last disclosure of interests.  
*[Check this box only if the organization already has a disclosure of interests form on file for you. Proceed to signature block below. Do not complete the tables.]*

<b>Family Relationships</b>	<b>Names of those presenting a potential conflict of interest</b>
Include spouse/domestic partner, living ancestors, children (whether natural or adopted), grandchildren, great grandchildren, and spouses/domestic partners of children, grandchildren, and great grandchildren	

<b>Description of your significant business and personal financial interests, and the interests of any entity or family member for whom you are disclosing, that could lead to a conflict</b>	
Include significant debt or equity interests you or your company hold(s) in corporations, partnerships, or other business entities; employment relationships; service as a director or officer of a nonprofit, etc.	

I am not aware of any interest involving me or a family member or the entity for which I am reporting that could present a conflict of interest that I have not disclosed either above or in a previous disclosure statement.

By: \_\_\_\_\_  
Printed Name of Individual or Entity

\_\_\_\_\_  
Date

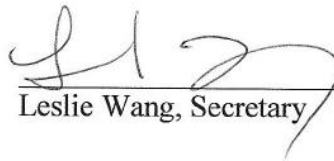
Signature: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

CERTIFICATE OF SECRETARY

I, Leslie Wang, certify that I am presently the duly elected and acting Secretary of Red String Foundation, a California nonprofit public benefit corporation, and that the above Conflict of Interest Policy, consisting of 10 pages, are the Conflict of Interest policy of this corporation as adopted by Action of the Board of Directors, on March 17, 2020.

DATED: 03/17/2020

  
\_\_\_\_\_  
Leslie Wang, Secretary