

CONFLICT OF INTEREST POLICY OF THE CITY COLLEGE AUXILIARY ENTERPRISES CORPORATION

1.0 SCOPE

This policy applies to each director and officer of The City College Auxiliary Enterprises Corporation (“Corporation”), as well as to each other person who is in a position to exercise substantial influence over the affairs of the Corporation (“key employee”).

2.0 PURPOSE

Directors, officers, and key employees of the Corporation serve the public trust and have an obligation to fulfill their responsibilities in a manner consistent with this fact. They have the responsibility of administering the affairs of the Corporation honestly and prudently, and of making decisions solely on the basis of a desire to promote the best interests of the Corporation, The City College of New York, and the public good, and not to generate a personal benefit.

The purpose of this conflict of interest policy is to protect the Corporation when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer, or key employee, 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.

3.0 CIRCUMSTANCES THAT MAY GIVE RISE TO CONFLICTS OF INTERESTS

3.1 A director, officer, or key employee of the Corporation may have a conflict of interest if that person, either directly or through a relative¹:

3.1.1 has a 35% or greater ownership or beneficial interest, or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%, in any entity with which the Corporation has or is negotiating a transaction or arrangement²;

¹ “Relative” of an individual means (i) his or her spouse, domestic partner (as defined in § 2994a of NYS Public Health Law), ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great grandchildren.

² Ownership of equity in a publicly traded entity with which the Corporation has or is negotiating a transaction or arrangement will not be considered a conflict of interest unless a person holds more than 5% of the equity of that publicly traded entity.

EXAMPLE: The Corporation is reviewing bids for yearbook printing services. The brother of the Secretary of the Corporation is a partner in one of the companies bidding on the contract.

- 3.1.2 holds a position as director, officer, or other position of managerial responsibility in an entity with which the Corporation has or is negotiating a transaction or arrangement;

EXAMPLE: The Corporation is considering licensing space to a company whose CEO is a director of the Corporation.

- 3.1.3 holds a position as director, officer or other position of managerial responsibility in, or receives compensation from, an entity whose budget is subject to Corporation review and approval; or

EXAMPLE: The Corporation is reviewing the budget for the College's student newspaper. One of the directors is editor-in-chief of the newspaper.

- 3.1.4 Receives compensation³ from the Corporation or from any entity or individual with which the Corporation has or is negotiating a transaction or arrangement, or would or might receive compensation as a result of such transaction or arrangement.

EXAMPLE: One of the Corporation's directors has experience in writing software for accounting transactions. The Corporation wants to pay the director to design custom software.

- 3.2** The fact that one of the circumstances described in subsection 3.1 exists does not necessarily mean that a conflict exists, or that the conflict, if it exists, is material enough to be of importance or is necessarily adverse to the Corporation's interests. The Corporation's Audit Committee⁴ shall make these determinations pursuant to the procedures set forth in Section 4.0.
- 3.3** The circumstances described in subsection 3.1 are not exhaustive. Conflicts may arise in other areas or through other relations. It is assumed that the directors, officers, and key employees will recognize such other circumstances by analogy.

³ Compensation includes direct and indirect remuneration, including that received in-kind, as well as gifts or favors that are not insubstantial.

⁴ If the Corporation has no Audit Committee, all references in this policy to "Audit Committee" shall mean the Board of Directors of the Corporation.

- 3.4** Directors, officers, and key employees of affiliates⁵ of the Corporation who engage with the Corporation in the transactions described in subsection 3.1, either directly or through a relative, are participating in a related party transaction with the Corporation pursuant to § 715 of the NYS Not-for-Profit Corporation Law. While these individuals have no duty to disclose these transactions to the Corporation, the Corporation does have an obligation to review these transactions pursuant to Section 4.3.

EXAMPLE: The College Provost is a key employee of an affiliate of CUNY. The Corporation would like to engage her daughter to play harp at Commencement. This is a related party transaction that must be reviewed by the Corporation pursuant to Section 4.3.

4.0 PROCEDURES

- 4.1 Duty to Disclose.** It is the duty of each director, officer, and key employee to fully disclose to the Corporation the existence of any of the circumstances described in Section 3.0 before the transaction or arrangement is consummated by the Corporation. The Corporation shall give the individual with the actual or potential conflict of interest the opportunity to make a presentation or otherwise disclose all material facts to the Audit Committee.

4.2 Determining Whether a Conflict of Interest Exists.

- 4.2.1 After disclosure of a potential conflict of interest and due consideration of the facts, the Audit Committee shall determine whether or not a conflict of interest exists.
- 4.2.2 The individual with the potential conflict of interest shall not participate in, nor be present during, any discussion or vote regarding the potential conflict of interest, except to make a presentation or otherwise disclose material facts and to respond to questions.
- 4.2.3 The individual with the potential conflict of interest shall not attempt to influence improperly the deliberation or voting on the matter giving rise to such potential conflict.
- 4.2.4 A director of the Corporation or a member of any committee whose jurisdiction includes compensation matters, who receives compensation, directly or indirectly, from the Corporation for services, is always deemed to have a conflict of interest and is precluded from voting on matters pertaining to his or her compensation. However, no such director or

⁵ An “affiliate” of the Corporation means any entity controlled by, in control of, or under common control with the Corporation. CUNY is an affiliate of the Corporation.

committee member shall be prohibited from providing information to any committee regarding compensation.

4.3 Procedures for Addressing the Conflict of Interest. If the Audit Committee determines that a conflict of interest exists, it shall follow these procedures for addressing the conflict:

4.3.1 The Chair of the Audit Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

4.3.2 After exercising due diligence, the Audit Committee shall determine whether the Corporation can obtain with reasonable efforts an equally or more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

4.3.3 If an equally or more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Audit Committee shall determine by a majority vote of its members whether the transaction or arrangement is in the Corporation's 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.

4.4 Violations of the Conflict of Interest Policy

4.4.1 If the Audit Committee has reasonable cause to believe a director, officer, or key employee has failed to disclose one or more actual or possible conflicts of interest, it shall inform that individual of the basis for such belief and give him or her an opportunity to explain the alleged failure to disclose.

4.4.2 If, after hearing the explanation and after making further investigation as warranted by the circumstances, the Audit Committee decides that the director, officer, or key employee has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

5.0 RECORDS OF PROCEEDINGS

The minutes of the Audit Committee shall contain:

5.1 The names of the persons who disclosed or otherwise were found to have a potential conflict of interest, the nature of the interest, any action taken to determine whether a conflict of interest was present, and the Audit Committee's decision as to whether a conflict of interest in fact existed.

- 5.2** 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 with the proceedings.

6.0 GIFTS

No director, officer, or key employee of the Corporation shall accept or solicit any gift of more than nominal value from any individual or entity that does or is seeking to do business with the Corporation or under any other circumstances where it could be reasonably inferred that the gift was intended to influence or could be reasonably expected to influence the director, officer, or key employee in the performance of his or her duties for the Corporation.

EXAMPLE: A committee of the Corporation is evaluating proposals for a food service contract. A vendor would like to provide the committee with transportation to its facility in Connecticut and take them to dinner at a local restaurant after the committee has completed its visit of the vendor's facility. The committee must decline the transportation and the meal.

7.0 WRITTEN STATEMENTS

- 7.1** Prior to his or her initial election or appointment to the Board of the Corporation, each potential director shall complete and sign a written statement in the form of Exhibit A to this policy.
- 7.2** Each director, officer, and key employee shall annually and at any time there is a change to the last statement given, complete, sign, and submit to the Secretary of the Corporation a written statement in the form of Exhibit A to this policy.

8.0 PERIODIC REVIEWS

- 8.1** To ensure that 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 whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.

Adopted by the Corporation's Board of Directors at its Meeting on December 2, 2016.

EXHIBIT A

**THE CITY COLLEGE AUXILIARY ENTERPRISES CORPORATION
CONFLICT OF INTEREST POLICY
ANNUAL STATEMENT**

To be completed annually and at any time there is a change to the last statement given, by each potential director, director, officer, and key employee.

I hereby certify as follows:

1. I have received a copy of the Corporation's Conflict of Interest Policy and I have read and understand the Policy.

2. I agree to comply with the Policy.

3. I understand that the Corporation is a charitable organization that operates for the public good and that in order to maintain its tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

4. I have read and signed the attached notice concerning NYS Not-for-Profit Corporation Law § 716 prohibition against loans to officers and directors and entities with which they have a relationship.

5. COMPLETE ONE:

___ I have no potential conflicts of interest to report.

___ I have the following potential conflict(s)-of-interest to report: (Include the name of any entity of which you are an officer, director, trustee, member, owner, or employees and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant in which you have a potential conflict of interest.)

Printed Name

Date

Signature