

**ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**  
**CONFLICT OF INTEREST AND CONFIDENTIALITY POLICY**

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**ARTICLE I**  
**PURPOSE**

The purpose of the conflict of interest and confidentiality policy is to protect the interest of the Oneida County Industrial Development Agency (hereinafter, "AGENCY"), a tax-exempt organization, when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director or committee member of AGENCY or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace, supersede or negate any provisions of AGENCY's Bylaws, and/or any applicable local, state and federal laws governing conflict of interest applicable to not-for-profit and industrial development organizations. This policy is also intended to serve as a guideline for addressing conflicts of interest; it is not intended to cover every possible situation that may arise.

**ARTICLE II**  
**DEFINITIONS**

**1. Interested Person**

Any director, officer, or member of a committee with Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person. A conflict of interest will be deemed to exist whenever an interested person is in the position to approve, disapprove or influence AGENCY policies or actions which involve or could ultimately harm or benefit financially:

- a. said interested person;
- b. any member of his or her immediate family (which shall be defined as: spouse, parents, grandparents, children, brothers or sisters, and spouses of these individuals); and/or
- c. any organization in which he or she or an immediate family member is a director, trustee, officer, member, partner or shareholder or has a substantial financial interest.

**2. Financial Interest**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or immediate family:

- a. An ownership or investment interest in any entity with which AGENCY has a transaction or agreement,
- b. A compensation arrangement with AGENCY or with any entity or individual with which AGENCY has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which AGENCY is negotiating a contract or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2 herein, a person who has a financial interest may have a conflict of interest only if the Board or appropriate committee decides that a conflict of interest exists.

### **ARTICLE III** **PROCEDURES**

#### **1. 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 the committees with Board delegated powers considering the proposed transaction or arrangement.

#### **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 and, if requested by the Chairperson or any other Board or committee member present, he/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 of interest exists.

#### **3. Procedures for Addressing the Conflict of Interest**

- a. An interested person may, with the prior consent of the Board or committee, make a presentation at a meeting of the Board or committee, but after the presentation and, if requested by the Chairperson or any other Board or committee member present, 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 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 Board or committee shall determine whether AGENCY 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 is not reasonably possible under circumstances not producing 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 AGENCY'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. Validity of Actions**

No contract or other transaction between AGENCY and one or more of its Board or committee members or officers, or between AGENCY and any other corporation, firm, association or other entity in which one or more of its Board or committee members or officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such Board or committee member(s) or officer(s) are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, or that his or her or their votes are counted for such purpose, if the material facts as to such Board or committee member's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested Board members or officers. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or committee which authorizes such contract or transaction. At the time of the discussion and decision concerning the authorization of such contract or transaction, the interested Board or committee member or officer should not be present at the meeting.

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

- a. If the 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 be heard 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 Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it may

take appropriate disciplinary and corrective action, which may include, but is not limited to, termination and removal from the Board, committee or AGENCY membership, restitution and/or termination of the underlying agreement in question, if feasible.

#### **ARTICLE IV** **RECORDS OF PROCEEDINGS**

The minutes of the 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 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 of arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any notes taken in connection with the proceedings.

#### **ARTICLE V** **COMPENSATION**

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

#### **ARTICLE VI** **ANNUAL STATEMENTS**

Each director, officer and member of a committee with Board delegated powers shall annually sign an Acknowledgement of AGENCY Conflict of Interest and Confidentiality Policy, which affirms such person:

- a. Has received a copy of the Conflict of Interest and Confidentiality Policy;
- b. Has read and understands the policy;
- c. Has agreed to comply with the policy; and
- d. Understands that AGENCY is a not-for-profit organization and in order to maintain the state and federal tax exemption it must engage primarily in activities, which accomplish one or more of its tax-exempt purposes, and is further prohibited from engaging in activities which may jeopardize its tax-exempt status.

The refusal or failure to complete a policy form by any current or prospective director, officer and/or member of a committee with Board delegated powers may result in the termination, removal or discipline of such person from his/her position. No such corrective or disciplinary action shall be taken without giving such person a fair opportunity to be heard regarding said refusal or failure to complete the requisite form.

#### **ARTICLE VII** **PERIODIC REVIEWS**

To ensure AGENCY operates in a manner consistent with its industrial development purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at 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 business, development or management organizations conform to AGENCY's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further not-for-profit 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 herein, AGENCY may, but need not, use outside advisors to accomplish this purpose. If outside advisors are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

#### **ARTICLE IX**

## CONFIDENTIALITY

Confidential and proprietary information is crucial to the operation of AGENCY. Such information includes, but is not limited to, grant or donor information, financial information belonging to AGENCY and/or to companies or individuals with whom AGENCY is doing business, economic development proposals, criteria or decisions made with regard to the business of AGENCY. AGENCY, its officers, employees and committee members have an ethical and legal obligation to protect confidential and proprietary information obtained in the course of their duties, and to preserve the restricted nature of this information except where it becomes publicly available, is authorized pursuant to Court Order or by operation of law, or is otherwise lawfully obtained.

- a. Best efforts shall be made by the Board ensuring that Conflict of Interest Disclosure Statements containing personal, financial and/or vocational information shall be kept confidential and access to such statements shall be limited to persons who have a reasonable need to know their contents.
- b. Board members, officers and committee members shall be prohibited from utilizing any confidential information acquired in connection with that person's work for AGENCY, for their personal benefit or to the detriment of AGENCY. If it is discovered that such confidential information has been disclosed for personal benefit or to the detriment of AGENCY, appropriate disciplinary and corrective action may be taken, including, but not limited to, termination, removal and/or restitution, after giving such member a fair opportunity to be heard on the matter. Notwithstanding the foregoing, Board members, non-employee officers and committee members shall not be prohibited from utilizing confidential information for their personal benefit after such confidential information becomes publicly available provided, however, that such confidential information did not become publicly available because it was improperly disclosed by AGENCY or any of its Board members, committee members, officers, employees, agents or representatives (collectively, the "AGENCY Parties") or otherwise became publicly available through some misconduct or wrongdoing on the part of any of the AGENCY Parties.
- c. Nothing in this Article shall be deemed to restrict or prohibit the release of information pursuant to a lawful Court Order or as required by local, state or federal laws.

**ACKNOWLEDMENT OF AGENCY CONFLICT OF INTEREST  
AND CONFIDENTIALITY POLICY**

**ORIGINAL – TO BE RETURNED TO AGENCY**

During the time that I serve on the Board of Directors and/or any of its committees, or as an officer of Oneida County Industrial Development Agency (hereinafter, “AGENCY”), I realize that I will gain access to information that is considered to be confidential and/or proprietary. Such information includes, but is not limited to, grant or donor information, financial information belonging to AGENCY and/or to companies or individuals with whom AGENCY is doing business, economic development proposals, criteria or decisions made with regard to the business of AGENCY.

Since confidential and proprietary information is crucial to the operation of AGENCY, and because AGENCY in some instances has the obligation to protect such information, I agree that I will not use, publish or disclose such information during or subsequent to my participation on the Board of Directors and/or any of its committees, or as an officer, and that I will preserve the restricted nature of this information except to the extent that it becomes publicly available, is otherwise lawfully obtained outside the scope of this agreement from third parties, or is required to be disclosed pursuant to a Court Order or by operation of law.

Additionally, as a member of the Board of Directors and/or any of its committees or as an officer, I realize that I have an obligation to disclose and eliminate (if necessary) any potential or actual duality of interest or conflict of interest.

I hereby acknowledge and certify that I have received, read, understand and voluntarily agree to comply with AGENCY’s Conflict of Interest and Confidentiality Policy.

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

\_\_\_\_\_  
Name (printed or typed)

\_\_\_\_\_  
Signature

**ACKNOWLEDGEMENT OF AGENCY CONFLICT OF INTEREST  
AND CONFIDENTIALITY POLICY**

**DUPLICATE – TO BE RETAINED BY SIGNER**

During the time that I serve on the Board of Directors and/or any of its committees, or as an officer of Oneida County Industrial Development Agency (hereinafter, "AGENCY"), I realize that I will gain access to information that is considered to be confidential and/or proprietary. Such information includes, but is not limited to, grant or donor information, financial information belonging to AGENCY and/or to companies or individuals with whom AGENCY is doing business, economic development proposals, criteria or decisions made with regard to the business of AGENCY.

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Additionally, as a member of the Board of Directors and/or any of its committees or as an officer, I realize that I have an obligation to disclose and eliminate (if necessary) any potential or actual duality of interest or conflict of interest.

I hereby acknowledge and certify that I have received, read, understand and voluntarily agree to comply with AGENCY's Conflict of Interest and Confidentiality Policy.

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

\_\_\_\_\_  
Name (printed or typed)

\_\_\_\_\_  
Signature