

# Conflict of Interest Policy and Disclosure Statement

March 30, 2011

*(For Directors, Officers and Members of a Committee with Board Delegated Powers)*

## **SECTION 1. Introduction**

CAEDC is a nonprofit, tax-exempt organization. Maintenance of its tax-exempt status is important both for its continued financial stability and for public support. Therefore, the IRS as well as state regulatory and tax officials view the operations of CAEDC as a public trust, which is subject to scrutiny by and accountable to such governmental authorities as well as to members of the public.

The policy is intended to incorporate the IRS sample Conflict of Interest policy and comply with the procedure prescribed in Texas Non-Profit Corporation Act, Article 1396-2.30, (See Section 11), governing Conflicts of Interest for trustees of nonprofit corporations. In the event there is an inconsistency between the requirements and procedures prescribed herein and those in Article 1396-2.30, the statute shall control.

## **SECTION 2. Purpose**

The purpose of the Conflict of Interest policy is to protect CAEDC's tax-exempt interest when it is contemplating entering into a transaction that might benefit the private interests of an officer or director of CAEDC 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 organization.

This policy is also intended to identify "Independent" directors.

### SECTION 3. Definitions

- **“Responsible Person”** is any director, principal officer or member of a committee with governing board delegated powers, who has a direct or indirect financial interest.
- **“Family Member”** is a spouse, domestic partner, parent, child or spouse of a child, brother, sister, or spouse of a brother or sister, of a Responsible Person.
- **“Material Financial Interest”** is a financial interest of any kind, which, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect a Responsible Person’s or Family Member’s judgment with respect to transactions to which the entity is a party.
  - \* A financial interest is not necessarily a Conflict of Interest. A person who has a financial interest may have a Conflict of Interest only if the Board of Directors decides that a Conflict of Interest exists, in accordance with this policy.
- **“Independent Director”** shall be considered “independent” for the purposes of this policy if he/she is “independent” as defined in the instructions for the IRS 990 form or, until such definition is available, the director - -
  - is not, and has not been for a period of at least three years, an employee of CAEDC or any entity in which CAEDC has financial interest;
  - does not directly or indirectly have a significant business relationship with CAEDC which might affect independence in decision-making;
  - is not employed as an executive of another corporation where any of CAEDC’s executive officers or employees serve on that corporation’s compensation committee; and
  - does not have a family member that has a significant financial relationship with CAEDC.
- **“Transaction”** is any contract, agreement or relationship involving the sale or purchase of goods, services, or rights of any kind, the providing or receipt of a loan or grant, the establishment of any other type of pecuniary relationship, or review of a charitable organization by CAEDC. The making of a **GIFT** to CAEDC is not a Transaction.

### SECTION 4. Procedures

- **Duty to Disclose** – In connection with any actual or possible Conflict of Interest, a Responsible Person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board of Directors.
- **Recusal of Self** – Any Responsible Person considering the proposed transaction may recuse him/herself at any time from involvement in any decision or discussion in which a director believes he/she has or may have a Conflict of Interest, without going through the process for determining whether a Conflict of Interest exists.
- **Determining Whether a Conflict of Interest Exists** – After disclosure of the financial interest and all material facts, and after any discussion with the Responsible Person, he/she shall leave the governing Board of Directors meeting while the determination of a Conflict of Interest is discussed and voted upon. The remaining Board of Directors shall decide if a Conflict of Interest exists.

- **Procedures for Addressing the Conflict of Interest**

- A Responsible Person may make a presentation at the Board of Directors meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction involving the possible Conflict of Interest.
- The President or Vice-President shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction.
- After exercising due diligence, the Board of Directors shall determine whether CAEDC can obtain with reasonable efforts a more advantageous transaction from a person or entity that would not give rise to a Conflict of Interest.
- If a more advantageous transaction is not reasonably possible under circumstances not producing a Conflict of Interest, the Board of Directors shall determine by a majority vote of the disinterested directors whether the transaction is in CAEDC'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.

## **SECTION 5. Violations of the Conflicts of Interest Policy**

- If the Board of Directors 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.
- If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board of Directors determines the member has failed to disclose an actual or possible Conflict of Interest, it shall take appropriate disciplinary action which may include, but not limited to termination or removal in accordance with CAEDC By-Laws, Article II, Section 3 and Article III, Section 3.

## **SECTION 6. Records of Proceedings**

- The minutes of the Board of Directors and all committees with board delegated powers shall contain:
  - 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.
  - The names of the persons who were present for discussions and votes relating to the transaction;
    - The content of the discussion;
    - Any alternatives to the proposed transaction; and
    - A record of any votes taken in connection with the proceedings.

## **SECTION 7. Compensation**

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

### **Prohibited gifts, gratuities and entertainment**

- Except as approved by the Board of Directors or for items of nominal or insignificant value less than \$50 which could not be refused without discourtesy, no Responsible Person or Family Member shall accept gifts, gratuities, entertainment or other favors from any person or entity which:
  - does or seeks to do business or competes with CAEDC or,
  - has received, is receiving, or is seeking a Transaction with CAEDC.

## **SECTION 8. Annual Review of Policy & Statement**

- Conflict of Interest Policy
  - Each Responsible Person and new Responsible Person shall annually review the policy and sign a statement which affirms such person:
    - has received a copy of the Conflict of Interest policy;
    - has read and understands the policy;
    - has agreed to comply with the policy; and
    - understands CAEDC is nonprofit (501, C, 3) and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.
- Independent Director
  - Each voting member of the Board of Directors shall annually sign a statement which declares whether such person is an independent director.
  - If at any time during the year, the information in the annual statement changes materially, the director shall disclose such changes and revise the annual disclosure form.
  - The Board of Directors shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and taking such other actions as are necessary for effective oversight.

## **SECTION 9. Periodic Reviews**

To ensure CAEDC operates in a manner consistent with nonprofit 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:

- Whether compensation arrangements and benefits are reasonable, based on competent survey information (if reasonably available), and the result of arm's length bargaining.
- Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to CAEDC's written policies:
  - are properly recorded;
  - reflect reasonable investment or payment for goods and services;
  - further charitable purposes; and
  - do not result in Inurement or Impermissible private benefit or in an excess benefit transaction.
    - **Inurement**, the illegal use of one's influence over a non-profit organization for personal profit.
    - **Impermissible**, not allowed or permitted : not permissible.

## **SECTION 10. Use of Outside Experts**

When conducting the periodic reviews, CAEDC may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

## **TEX CV. CODE ANN. § 1396-2.30 : Texas Statutes - Article 1396-2.30: INTERESTED DIRECTORS**

### **Search TEX CV. CODE ANN. § 1396-2.30 : Texas Statutes - Article 1396-2.30: INTERESTED DIRECTORS**

A. A contract or transaction between a corporation and one or more of its directors, officers, or members, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors, officers, or members are directors, officers, or members, or have a financial interest, is not void or voidable solely for that reason, solely because the director, officer, or member is present at or participates in the meeting of the board or committee of the board or of the members that authorizes the contract or transaction, or solely because the director's, officer's, or member's votes are counted for that purpose, if:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors, the committee, or the members, and the board, committee, or members in good faith and with ordinary care authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors or members, even though the disinterested directors or members are less than a quorum;

(2) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by vote of the disinterested members; or

(3) the contract or transaction is fair to the corporation when it is authorized, approved, or ratified by the board of directors, a committee of the board, or the members.

B. Common or interested directors or members may be counted in determining the presence of a quorum at a meeting of the board of directors, of a committee, or of the members that authorizes the contract or transaction.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 16, eff. Jan. 1, 1994.

*Date of Review by Board of Directors:* \_\_\_\_\_ *(Annually or as needed)*

# Annual Conflict of Interest Disclosure Statement

April 2011

1. **Name:** \_\_\_\_\_ (print)      **Date:** \_\_\_\_\_

**2. Position:**

Are you a voting Director?      Yes      No

Are you an Officer?      Yes      No

If you are an Officer, which Officer position do you hold: \_\_\_\_\_

**3. I affirm the following:**

I have received a copy of the CAEDC Conflict of Interest policy.      \_\_\_\_\_ (initial)

I have read and understand the policy.      \_\_\_\_\_ (initial)

I agree to comply with the policy.      \_\_\_\_\_ (initial)

I understand that CAEDC is a nonprofit (501 C 3) and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of tax-exempt purposes.      \_\_\_\_\_ (initial)

**4. Disclosures:**

Do you have a financial interest (current or potential), including a compensation arrangement, as defined in the Conflict of Interest policy with CAEDC?      Yes      No

If yes, please describe it: \_\_\_\_\_

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If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy?

Yes      No

In the past, have you had a financial interest, including a compensation arrangement, as defined in the Conflict of Interest policy with CAEDC?                      Yes      No

If yes, please describe it, including when (approximately): \_\_\_\_\_

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If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy?

Yes      No

5. **Are you an independent director, as defined in the Conflict of Interest policy?**                      Yes      No

If you are not independent, why? \_\_\_\_\_

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***I HEREBY CERTIFY*** that I have read, understood, received a copy of and shall comply with the CAEDC's Conflict of Interest Policy and that my responses to the above questions are complete and correct to the best of my information and belief. I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with the Conflict of Interest policy, I shall notify a member of the Board of Directors immediately.

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

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

Date of Review by Board of Directors: \_\_\_\_\_ (Annually or as needed)