

## F.M. Kirby Foundation Conflict of Interest Policy

### Purpose

The purpose of this policy is to provide rules and procedures to deal appropriately with circumstances that involve, or may appear to involve, conflict of interest. This policy is intended to supplement but not replace federal and state law prohibiting self-dealing and private inurement, or otherwise dealing with conflicts of interest within nonprofit organizations. It is the Foundation's policy that:

- Foundation members, directors and employees ("Foundation insiders") must promptly and fully disclose any potential conflicts of interest;
- A Foundation insider may not participate in any decision in which he or she has a potential conflict of interest (unless the conflict is resolved pursuant to this policy); and
- The Foundation follow a disciplined, documented process in making decisions about such matters.

### Definitions

1. Conflict of Interest. A potential conflict of interest exists if a Foundation insider:
  - a. is in a position to make or influence the Foundation's decision about a proposed grant, contract or other transaction; and
  - b. he or she has a significant relationship (as described below) with the potential beneficiary of or commercial counterparty on the transaction.A potential conflict of interest may also exist in any other transaction in which there may be an actual or perceived conflict of interest, including any transaction in which the personal interests of a Foundation insider may be seen as competing with the interests of the Foundation, or that could result in the receipt of an impermissible benefit by a Foundation insider, or that calls into question the fairness or propriety of the Foundation's decision-making processes and/or its operations.
2. Significant Relationship. A Foundation insider is considered to have a significant relationship with the potential beneficiary of a Foundation grant, contract or other transaction if:
  - a. the other party is a family member;
  - b. the other party is an entity in which the Foundation insider (or his or her family member) is an officer, director, trustee or employee; or
  - c. the other party is an entity in which the Foundation insider (or his or her family member) has a material financial interest as an owner or investor in the entity.
3. Family Member. Family members include a spouse, parent, grandparent, sibling, in-law, child, grandchild or any other relative living in the same household as the Foundation insider or the family member.
4. Determining Officer. "Determining officer" shall mean the chairperson of the Foundation, unless he or she is the individual involved in the possible conflict, in which case the determining officer

shall be the Foundation's general counsel, or in the case of the chairperson's compensation and the retention of a director's professional firm, the Foundation's board of directors (see attached Appendix A).

### **Other Situations Covered by this Policy**

In addition to decisions about grants, contracts and other transactions, other situations may present risks to impartial decision-making, legal compliance and the Foundation's reputation. The Foundation's policy on several recurring situations are set out below.

1. Acceptance of Gifts. Foundation insiders and their family members may accept gifts, meals, and other benefits of nominal value so long as acceptance would not obligate the Foundation insider to take any action or decision on behalf of the Foundation or call into question the fairness or propriety of the Foundation's decision-making processes. There is no precise definition of what constitutes nominal value but as a general guideline, a gift having a value of less than \$100 is nominal. In all cases, the determination of what constitutes a gift of nominal value depends on the particular circumstances. Where it would be awkward to decline a gift, a Foundation insider may accept such gift, but in the name of the Foundation as the donee.

2. Acceptance of Honoraria. Foundation insiders may not accept honoraria from actual or potential grantees or commercial counterparties.

3. Employment of Relatives. While the Foundation has no general prohibition against the employment of Foundation insiders' family members by grantees or potential grantees or commercial counterparties, such employment shall be viewed as giving rise to a potential conflict of interest and shall be subject to this policy. In all events, such employment shall be for no more than reasonable compensation, and in no event shall Foundation grants be directed to the payment of such compensation.

4. Affiliations with Grantees. The affiliation by way of board memberships or otherwise of Foundation insiders or their family members with grantees or potential grantees will not be deemed to give rise to a conflict of interest, unless the Foundation insider or family member is receiving some sort of impermissible benefit from the grantee or potential grantee as a result of such relationship.

5. Specific Situations. No policy can encompass every situation that presents risks to impartial decisionmaking. In the end, the Foundation's effective management of conflicts depends on the good judgment and integrity of the Foundation insiders and their family members. The Foundation encourages individuals to talk to the determining officer if they have questions or concerns about specific situations.

6. Annual Questionnaire. Each Foundation insider will annually complete, sign, and submit the Foundation's Conflict of Interest Questionnaire (see attached Appendix B) to help to identify those situations that could give rise to a potential conflict of interest.

### **Procedures**

1. Disclosure of Conflicts of Interest. Foundation insiders must promptly and fully disclose any potential conflict of interest to the determining officer before participating in any decision. Any doubt about whether a relationship warrants disclosure should be resolved in favor of disclosure.

2. Abstention from Participation. Foundation insiders must abstain from participating in any decision in which he or she has a potential conflict of interest (other than by providing information requested by the determining officer) unless and until the conflict is resolved pursuant to this policy.

3. Factual Investigation. The determining officer will investigate the nature of the potential conflict of interest as deemed appropriate.

4. Determination. If the determining officer concludes that the proposed grant, contract or other transaction (a) would not provide a benefit to the Foundation insider (or his or her family members as defined herein) that would not otherwise be available to a member of the public on substantially the same terms, or (b) would not inappropriately influence the decisions of the Foundation, then the Foundation insider will not be considered to have a conflict of interest and he or she may participate fully in the development, approval and/or administration of the proposed matter.

If the determining officer concludes that the proposed matter will provide such a benefit and/or have such an influence, then the Foundation insider may not participate in the matter, but the Foundation may still proceed if the determining officer concludes that the proposed transaction (i) is consistent with the Foundation's charitable purposes, (ii) is in the Foundation's best interest and for its benefit, and (iii) is fair and reasonable to the Foundation.

5. Documentation and Record Keeping. The determining officer will document the decision, and the Foundation will maintain a record of the decision.

#### **Violations of this Policy**

If any Foundation insider has cause to believe that another Foundation insider failed to disclose a potential conflict of interest, he or she should inform the determining officer.

## **Appendix A**

### **Present Conflicts of Interest**

The chairperson of the Foundation is also a director. She presently serves without compensation. Nevertheless, should she come to be compensated at some point, her compensation will be determined formally and annually by the board of directors during times when the chairperson will be excused from the meetings. Each of those determinations will be considered to be a possible conflict of interest.

The law firm in which a Foundation director is a partner is also, from time to time, receiving compensation for its legal services rendered to the Foundation. This is considered to be a possible conflict of interest. And so, the board of directors will formally and annually make a separate determination that this arrangement is fair and reasonable and in the best interests of the Foundation after careful and thorough consideration of the extent and fairness of such fees as compared to the fees of other similarly situated law firms (such determination will be made by the board members other than such director and while such director is not present).

In the event any other Foundation member or director (or an entity in which he or she has a significant relationship, as defined in the Conflict of Interest Policy) shall be considered to receive compensation or other fees ("remuneration") for services, or the remuneration or rate of remuneration of such person or entity shall be adjusted, the board of directors will follow similar procedures to determine if such remuneration (or additional remuneration) should be paid, and the appropriate amount of such remuneration (or additional remuneration).

Appendix B

**F.M. KIRBY FOUNDATION CONFLICT OF INTEREST QUESTIONNAIRE**

Your Name \_\_\_\_\_

**As part of your annual compliance with our Conflict of Interest Policy, you are required to answer each of the following questions as fully as you believe necessary to make a complete disclosure of all possible conflicts of interest.**

Definitions: For purposes of this questionnaire:

- (a) The "Foundation" means the F.M. Kirby Foundation, Inc.
- (b) A "family member" means your spouse, parent, grandparent, sibling, in-law, child, grandchild or any other relative living in the same household as you or a family member.
- (c) A "grantee" is a charitable organization that the Foundation supports through monetary donations or otherwise.

**1. In the last fiscal year, have you or any of your family members had a financial or other relationship (e.g., employee, significant investor or owner, creditor, borrower, governing board member (with voting rights), fiduciary relationship, advisor, officer, consultant, etc.) with a vendor, supplier, prospective grantee, or actual grantee of the Foundation or any other organization or person with which the Foundation conducts or, to your knowledge, is seeking to conduct business?**

**YES \_\_\_\_\_ NO \_\_\_\_\_**

If the answer to the foregoing question is "YES", please supply the following information:

The names of the organizations (or persons); the nature and extent of the financial interest or other relationship; and (in the case of an interest or relationship of a family member) the family member's name and relationship to you. (You need not report any ownership interest of less than 5% unless that interest is substantial in relation to your assets or those of a family member, and you need not report borrowing from any financial institution that is authorized by law to lend to the general public.)

---

---

---

---

---

2. **Did you or any family member receive, in the past twelve months, any gifts, entertainment, rewards or other benefits, including tickets to events and/or fundraisers, of more than nominal value (greater than \$100) from an actual or prospective grantee or any other organization or person with which the Foundation conducts business or, to your knowledge, is seeking to conduct business?**

**YES \_\_\_\_\_ NO \_\_\_\_\_**

If the answer to the foregoing is "YES", please supply the following information:

The names of the organizations (or persons); the item provided and approximate value of the item provided; and (in the case of a benefit to a family member) the family member's name and relationship to you.

---

---

---

---

---

3. **Did you or any family member receive, in the past twelve months, any gifts, entertainment, rewards or other benefits, including tickets to events and/or fundraisers, of more than nominal value (greater than \$100) from the Foundation (excluding (i) compensation as a Foundation employee; (ii) reimbursement of expenses incurred in the transaction of Foundation business; and (iii) tickets to events where the primary purpose was to undertake Foundation business).**

**YES \_\_\_\_\_ NO \_\_\_\_\_**

If the answer to the foregoing is "YES", please supply the following information:

The item provided and approximate value of the item provided; and (in the case of a benefit to a family member) the family member's name and relationship to you. (Note that family members who are not employees, officers, members or directors of the Foundation should not be deemed to be undertaking Foundation business.)

---

---

---

---

---

4. Do you know of any interest or activity of yourself or any family member not listed above, which may possibly be regarded as constituting a conflict of interest as described in the Foundation's Conflict of Interest Policy?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the answer to the foregoing is "YES", please describe the nature of the conflict and the circumstances under which it could arise.

---

---

---

---

---

**Annual Statement**

I have:

1. Received a copy of the Conflict of Interest Policy.
2. Read and understood the policy.
3. Agreed to comply with the policy, and to update the information provided in this questionnaire in the event of any changes.
4. Indicated my understanding that the Foundation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

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

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

Printed Name: \_\_\_\_\_