

## **AVOIDANCE OF CONFLICT OF INTEREST/COMMITMENT POLICY**

### **I. PURPOSE**

Midland College Foundation, Inc. (the "Corporation") is a tax-exempt, non-profit corporation organized under the laws of the State of Texas. The purpose of this Avoidance of Conflict of Interest/Commitment Policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a trustee, director, officer, or employee in a leadership role.

### **II. SCOPE**

The scope of this policy includes trustees, directors, officers, and management personnel employed or in leadership roles as volunteers or independent contractors and other employees and agents. Upon appointment or employment, and annually thereafter, affected individuals are required to disclose specific circumstances which may present an actual, perceived, or potential Conflict of Interest or Conflict of Commitment. As a general rule, a person should not only consider the actual fact of a conflict, but the appearance to an unknowing third party who might have occasion to judge or interpret the situation.

Those affected within the organization and their immediate supervisors are responsible for on-going compliance with this policy both annually and in the interim between declaration periods where possible new conflict situations may arise.

### **III. DEFINITIONS/ABBREVIATIONS**

**Conflict of Interest** -- This phrase is not a precise term and, while subject to interpretation and degree, it is recognized that a Conflict of Interest generally arises when one has the opportunity to influence decisions in ways that could lead to personal benefit or improper advantage resulting in the compromise or appearance of compromise of an Interested Person's judgment and ability to carry out professional duties objectively.

**Conflict of Commitment** -- A Conflict of Commitment occurs when external or other activities and undertakings are so substantial or demanding of the Interested Person's time and attention as to interfere, or appear to interfere, with that person's responsibilities to the Corporation.

**Interested Person** -- Any trustee, director, officer, employee, agent, or member of a committee with Board-delegated powers, who has a Conflict of Commitment, Substantial Involvement, or direct or indirect Financial Interest, as defined below, is an Interested Person.

**Financial Interest** -- A person has a Financial Interest if the person (or an immediate family member) has, directly or indirectly:

- 1) An ownership or investment interest of more than five percent (5%) in any Outside/Other Organization with which the Corporation has or plans a transaction or arrangement; or
- 2) A compensation arrangement with the Corporation or with any Outside/Other Organization with which the Corporation has or plans a transaction or arrangement; or
- 3) A potential ownership or potential investment interest of more than five percent (5%) in, or potential compensation arrangement with, any Outside/Other Organization with which the Corporation has or plans a transaction or arrangement.

Compensation includes direct and indirect remuneration, as well as gifts or favors that are substantial in nature.

**Outside/Other Organizations** -- A company, corporation, partnership, firm, trust, third party, or entity, including, without limitation, any organization which is in substantial competition with the Corporation.

**Substantial Involvement** -- A person has Substantial Involvement with an Outside/Other Organization if that person:

- 1) Serves, with or without compensation, as an officer, director, partner, principal, trustee, or consultant for or to said organization; or
- 2) Is an employee of said organization.

**Immediate Family Member** -- This is any relation by blood or marriage and any person residing in the same household.

#### IV. PROCEDURES

**Duty to Disclose** -- In connection with any actual or possible Conflict of Interest, an Interested Person must disclose the existence and nature of his or her Conflict of Commitment, Financial Interest, or Substantial Involvement, as appropriate, to either the trustees, the directors, the chair of a committee with board-delegated powers considering the actual or proposed transaction or arrangement, or that person's immediate supervisor.

## **V. INTERESTED DIRECTORS**

- 1) A contract or transaction between the Corporation and one or more of its directors, officers, or employees, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of the Corporation's directors, officers, or employees are directors, officers, or members, or have a Conflict of Interest, is not void or voidable solely for that reason, solely because the director, officer, or employee is present at or participates in the meeting of the board or committee of the board that authorizes the contract or transaction, or solely because the director's, officer's, or employee's votes are counted for that purpose, if:
  - a) 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 or the committee, and the board or committee in good faith and with ordinary care authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors even though the disinterested directors are less than a quorum;
  - b) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the directors entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by a vote of the disinterested directors; or
  - c) the contract or transaction is fair to the Corporation when it is authorized, approved, or ratified by the board of directors or a committee of the board.
- 2) Interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes the contract or transaction.

## **VI. VIOLATIONS OF THE CONFLICT OF INTEREST POLICY**

If a Board or committee member or manager has reasonable cause to believe that an Interested Person has failed to disclose an actual or possible Conflict of Interest, he or she shall inform the chairperson of the Board or committee, and the chairperson or manager shall inform the individual of the basis for such belief and afford the individual an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the Interested Person and making such further investigation as may be warranted under the circumstances, the Board or committee chairperson or manager determines that the individual has in fact failed to disclose an

actual or possible Conflict of Interest, the Board shall take appropriate disciplinary and corrective action.

## **VII. RECORDS OF PROCEEDINGS**

The minutes of the Board and all committees with Board-delegated powers shall contain:

- 1) The names of the persons who disclosed or otherwise were found to have a Conflict of Commitment, Financial Interest, or Substantial Involvement in connection with an actual or possible Conflict of Interest, the nature of the Conflict of Commitment, Financial Interest, or Substantial Involvement, any action taken to determine whether a Conflict of Interest was present, and Board's or committee's decision as to whether a Conflict of Interest in fact existed.
- 2) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussions, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

## **VIII. COMPENSATION COMMITTEES**

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.

Employees who receive compensation, directly or indirectly, from the Corporation, whether as employees or independent contractors, except the President and Chief Executive Officer of the Corporation, are precluded from membership on any committee whose jurisdiction includes compensation matters.

## **IX. ANNUAL STATEMENTS**

Each director, trustee, officer, or manager either employed or in leadership roles as volunteers or independent contractors, other employees or agents, and members of a committee with board-delegated powers shall annually sign a Certification and Disclosure Questionnaire which affirms, at a minimum, that such person:

- 1) Has received a copy of this Avoidance of Conflict of Interest/Commitment Policy;
- 2) Has read and understands the Policy;
- 3) Has agreed to comply with the Policy; and

- 4) Understands that the Corporation 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 exempt purposes.

**X. ANNUAL STATEMENTS**

To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted by management. Management shall report at least annually to the board on the results of its reviews. The periodic reviews by management shall, at a minimum, include the following subjects:

- 1) Whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining;
- 2) Whether partnership and joint venture arrangements and arrangements with management service organizations conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further the Corporation's charitable purposes and do not result in inurement or impermissible private benefit; and
- 3) Whether agreements with any outside organizations further the Corporation's charitable purposes and do not result in inurement or impermissible private benefit.

**XI. USE OF OUTSIDE EXPERTS**

In conducting the periodic reviews provided for in Article X, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the board of its responsibility for ensuring that periodic reviews are conducted.

**XII. ATTACHMENTS**

Certification and Disclosure Questionnaire

**XIII. DISTRIBUTION**

Bylaws and Administrative Policy Manual

**XIV. APPROVAL**

  
\_\_\_\_\_  
Signature

President  
Title

10/29/2009  
Date

<u><i>[Signature]</i></u>	<u>Vice President</u>	<u>10/29/09</u>
Signature	Title	Date
<u><i>[Signature]</i></u>	<u>Secretary</u>	<u>10/29/2009</u>
Signature	Title	Date

**XV. POLICY RESPONSIBILITY**

**IN COORDINATION WITH:**

Office of the President & CEO

Human Resources-Administrators  
 Legal Counsel-Interprets

**XVI. REVISIONS**

Statement of Rights As Follows:

Midland College Foundation, Inc. reserves the right unilaterally to revise, modify, review, rescind, or alter the terms and conditions of this policy within the constraints of the law by giving reasonable notice.

**XVII. DATE**

Origination: April 28, 1998

Last Policy Review: October 29, 2009

Next Policy Review: October 2011  
 (Every Two Years)