

Adoption Date: 12-6-2019

Binghamton Auxiliary Services Corporation
CONFLICT OF INTEREST POLICY

Article I PURPOSE

The purpose of the conflict of interest policy is to protect the interest of Binghamton Auxiliary Services Corporation (the “Corporation”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer, committee member or Key Person (a “Covered Person”) of the Corporation 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 organizations.

Article II DEFINITIONS

1. Interested Person

Any Covered Person of the Corporation or any Affiliate of the Corporation, who has a direct or indirect financial interest, as defined below, is an interested person. Such individuals are subject to the provisions regarding conflicts set forth in this conflict of interest policy.

2. Financial Interest

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

- a. An ownership or investment interest in any entity with which the Corporation or an Affiliate of the Corporation has a transaction or arrangement;
- b. A compensation arrangement with the Corporation, an Affiliate of the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation or an Affiliate of the Corporation is negotiating a transaction 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, a person who has a financial interest may have a conflict of interest only if the appropriate Board of Directors or a committee decides that a conflict of interest exists.

3. Relative

“Relative” of an individual means (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the New York Public Health Law; (ii) his or her ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren and great-grandchildren.

4. **Affiliate**

An “Affiliate” of the Corporation means any entity controlled by, or in control of, the Corporation.

5. **Key Person**

“Key Person” means any person, other than a director or officer, whether or not an employee of the Corporation, who (i) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers or influence of directors and officers; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation, or (iii) alone or with others controls or determines substantial portion of the Corporation’s capital expenditures or operating budget.

6. **Related Party**

A “Related Party” is (i) any director, officer or Key Person of the Corporation or any Affiliate; (ii) any Relative of any individual described in clause (i) above; or (iii) any entity in which any individual described in clauses (i) and (ii) above has a thirty-five percent 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 five percent.

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 Board or authorized committee thereof. Such disclosures shall be forwarded to Audit Committee.

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, he/she shall leave the Board of Directors 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; provided, however, that if a transaction would constitute a related party transaction under Article V of this policy, a conflict of interest will be deemed to exist.

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

a. An interested person may make a presentation at the Board of Directors or committee meeting, but after the presentation, he/she shall leave the meeting during the deliberation of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The chairperson of the Board of Directors 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 of Directors or committee shall determine whether the Corporation 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 of Directors or committee shall determine by a majority vote of the disinterested directors 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.

e. In no event shall a person with a conflict of interest attempt to improperly influence the deliberation or voting on the matter giving rise to such conflict.

f. No Covered Person shall participate in consideration of a transaction with an entity (other than an Affiliate of the Corporation) of which such person is a director or officer.

4. Violations of the Conflicts of Interest Policy

a. If the Board of Directors or committee has reasonable cause to believe a Covered Person has failed to disclose actual or possible conflicts of interest, it shall inform the Covered Person of the basis for such belief and afford the Covered Person an opportunity to explain the alleged failure to disclose.

b. If, after hearing the Covered Person's response and after making further investigation as warranted by the circumstances, the Board of Directors or a committee determines the Covered Person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

5. Administration

The Board of Directors of the Corporation shall oversee the Corporation's implementation of and compliance with this policy.

Article IV RECORDS OF PROCEEDINGS

The minutes of the Board of Directors 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 of Directors' or committee's decision as to whether a conflict of interest in fact existed; and

b. 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.

Article V RELATED PARTY TRANSACTIONS

An interested person shall disclose and the Corporation shall address and document potential related party transactions in accordance with Section 715 of the New York Not-for-Profit Corporation Law (NPCL) and this policy. Specifically, a related party transaction is any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the Corporation or any Affiliate is a participant; provided, however, that a transaction shall not be a related party transaction if (i) the transaction or the related party's financial interest in the transaction are *de minimis*, (ii) the transaction would not customarily be reviewed by the Corporation's Board of Directors or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the Corporation intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

The Board of Directors shall, to the extent the Corporation enters into a related party transaction, in addition to ensuring compliance with this conflict of interest policy, determine that the transaction is fair, reasonable and in the best interests of the Corporation after due consideration of alternative transactions. This determination shall be documented in accordance with this policy.

Article VI COMPENSATION

a. A voting member of the Board of Directors who receives compensation, directly or indirectly, from the Corporation 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 the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

c. No voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

d. Notwithstanding the foregoing, nothing shall prohibit a Board member from deliberating or voting concerning compensation for service on the Board that is to be made available or provided to all Board members of the Corporation on the same or substantially similar terms.

Article VII ANNUAL STATEMENTS

Prior to election Directors shall and each Covered Person annually shall sign a statement that confirms such Covered Person:

- a. Has received a copy of the conflict of interest policy;
- b. Has read and understands the policy;
- c. Has agreed to comply with the policy; and

d. Understands that the Corporation is a tax exempt 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.

Such statement shall identify to the best of each such person's knowledge, all entities of which such person is an officer, director, trustee, member, owner (either as a sole proprietor or a partner) or employee and any transaction in which the Corporation is a participant in which such person may have a conflicting interest. Such statement shall be submitted to the secretary of the Corporation who shall provide it to the chairperson of the Board of Directors. Any person who is obligated to complete such statement shall be obligated to advise the secretary of the Corporation of any changes or reasonably foreseeable changes to the information provided in such person's most recent statement.

Article VIII PERIODIC REVIEWS

To ensure the Corporation operates in a manner consistent with tax exempt 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:

a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and

b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further tax exempt purposes and do not result in inurement, impermissible private benefit or an excess benefit transaction.

Article IX USE OF OUTSIDE ADVISORS

When conducting the periodic reviews as provided for in Article VIII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring that periodic reviews are conducted.

CONFLICT OF INTEREST POLICY

ACKNOWLEDGMENT AND AFFIRMATION

To: Secretary, for distribution to Audit Committee

The undersigned, a director, officer, committee member or Key Person of the Corporation hereby affirms that:

a. I have received a copy of the conflict of interest policy;

b. I have read and understand the policy;

c. I have agreed to comply with the policy, and

d. I understand that the Corporation is a tax-exempt organization and that in order to maintain its federal tax exemption as such, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

e. I am an officer, director, trustee, member, owner (either as a sole proprietor or a partner) or employee of the following:

f. I may have a conflicting interest with respect to the following transactions in which the Corporation is a participant:

Date: _____, 20__

Signature: _____

Name: _____

Title: _____