

# **Bylaws of Montessori of Winter Garden Charter School, Inc.**

## **Article 1**

### **Offices**

#### **Section 1. Principal Office**

The principal office of Montessori of Winter Garden Charter School (referred to hereinafter as “the School”) is located in Orange County, State of Florida.

## **Article 2**

### **Nonprofit Purposes**

#### **Section 1. IRC Section 501(c)(3) Purposes**

This corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code.

#### **Section 2. Specific Objectives and Purposes**

The specific objectives and purposes of this corporation shall be for the purpose of providing and promoting high quality and authentic Montessori public education as a charter school pursuant to Section 1002.33, Florida Statutes, as hereafter amended. The Corporation shall operate for that educational purpose within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Law)(hereinafter the “Internal Revenue code”).

## **Article 3**

### **Directors**

#### **Section 1. Number**

The School shall have no less than three (3) directors and collectively they shall be known as the Board of Directors. The number of Directors may fluctuate, with a preference for ten (10) Directors, but no more than thirteen Directors. The Executive Director, and any former Executive Director, will serve as a non-voting *ex officio* members of the Board of Directors, attending all meetings and reporting to and advising the Board. The Board of Directors may increase the number of directors from time to time, depending on the needs of the School.

## **Section 2. Qualifications**

Directors shall be of the age of majority in this state. The Board of Directors shall choose directors with skill sets that support the mission of the School. The School shall not elect a person as a director if such election violates the School's conflict of interest policy.

## **Section 3. Powers**

Subject to the provisions of the laws of this state and any limitations in the articles of incorporation and these bylaws relating to action required or permitted to be taken or approved by the members, if any, of this corporation, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board of directors.

## **Section 4. Duties**

It shall be the duty of the directors to:

1. Establish and maintain a vision for an authentic and high quality Montessori education for K-8 students in Orange County.
2. Communicate and implement the mission of the school by establishing policies and procedures that provide for the effective operation of an authentic Montessori K-8 public charter school.
3. Exercise fiduciary oversight of the operations of the School to ensure the preservation of the financial and human assets of the School.
4. Review and approve an annual budget for the operation of the School. The Board shall vote on and approve its annual budget no later than the May board meeting for the subsequent fiscal year.

5. Lead, facilitate and participate in fundraising for the School. The Board shall establish fundraising goals for each fiscal year, including capital campaign and funds for general operating expense.
6. Recognize, respect and preserve the executive, administrative, and leadership role of the Executive Director/Principal.
7. Ensure full compliance with all applicable Local, State, and Federal laws, standards and regulations as they pertain to the School.
8. Perform any and all duties imposed on the Board of Directors collectively or individually by law, by the articles of incorporation, by these bylaws, and the approved Orange County School Board Charter.
9. Appoint and remove, employ and discharge, and, except as otherwise provided in these bylaws the Executive Director of the School.
10. Provide fiduciary oversight of the management of all officers, agents, and employees of the School to assure that their duties are performed properly.
11. Meet at such times and places as required by these bylaws.
12. Register their addresses (which may be an e-mail address) with the secretary of the corporation, and notices of meetings mailed or transmitted to them at such addresses shall be valid notices thereof.
13. Provide an annual report to the Orange County School Board, pursuant to section 109.331(9)(k), Florida Statutes.
14. To participate in governance training approved by the Florida Department of Education, which training shall include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

## **Section 5. Term of Office**

Each director shall hold office for a period of three (3) years or until his or her successor is elected and qualifies. Directors are qualified for two successive renewals of their term. After serving three (3) consecutive terms, the Director's term shall end. A former Director may be re-elected to a board position no sooner than one (1) year following the termination of a previous term.

### **Section 6. Compensation**

Directors shall serve without compensation. However, they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties. Any payments to directors shall be approved in advance in accordance with this corporation's conflict of interest policy, as set forth in Article 9 of these bylaws.

### **Section 7. Place of Meetings**

Meetings shall be held at the School, unless otherwise provided by the board or at such other place as may be designated from time to time by resolution of the Board of Directors.

### **Section 8. Annual Meeting**

An annual meeting of the Board of Directors for the election of Directors and Officers, and adoption of an annual budget, and such other business as may come before the Board. During the annual meeting, the Executive Director/Principal of the School shall provide a report to the Board, to advise the board on the budget, performance, and operations of the School during the previous school year. The meeting shall be held during May of each year.

Written notice shall be given not less than thirty (30) days, nor more than sixty (60) days of the time, place, and purposes of the meeting. The meeting shall be held at the School, or such other place as shall be specified in the meeting notice.

### **Section 9. Regular Meetings**

In addition to the Annual Meeting, Regular meetings of the Board of Directors shall be held once a month from September through June,

excepting in the month of the Annual Meeting, and at such other times as the Board may, from time to time, determine.

### **Section 10. Special Meetings**

Special meetings of the Board of Directors may be called by the president, the vice president, the secretary, by any two directors, or, if different, by the persons specifically authorized under the laws of this state to call special meetings of the board. Such meetings shall be held at the School or, if different, at the place designated by the person or persons calling the special meeting.

### **Section 11. Notice of Meetings**

Notice for all meetings of the Board of Directors will comply with section 286.011, Florida Statutes. Adequate notice of all meetings subject to section 286.011, Florida Statutes, shall be published on the School's website not less than forty-eight (48) hours before any such meeting.

### **Section 12. Quorum for Meetings**

A quorum shall consist of the majority of the members of the board of directors.

Except as otherwise provided under the articles of incorporation, these bylaws, or provisions of law, no business shall be considered by the board at any meeting at which the required quorum is not present, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

### **Section 13. Majority Action as Board Action**

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors, unless the articles of incorporation, these bylaws, or provisions of law require a greater percentage or different voting rules for approval of a matter by the board.

### **Section 14. Conduct of Meetings**

Meetings of the board of directors shall be presided over by the President, or in his or her absence, by the vice president of the corporation, or in the absence of each of these persons, by a chairperson chosen by a majority of the directors present at the meeting.

The secretary of the corporation shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

Meetings shall be governed by Roberts Rules of Order, insofar as such rules are not inconsistent with or in conflict with the articles of incorporation, these bylaws, or with provisions of law.

Pursuant to section 286.011, Florida Statutes, all meetings of the Board of Directors at which official acts are to be taken shall be public meetings open to the public at all times and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

The board may adopt additional policies and procedures regarding the conduct of its meetings.

### **Section 15. Vacancies**

Vacancies on the board of directors shall exist (1) on the death, resignation, or removal of any director, (2) expiration of a director's three-year term; and (3) whenever the number of authorized directors is increased.

Any director may resign effective upon giving written notice to the chairperson of the board, the president, the secretary, or the board of directors, unless the notice specifies a later time for the effectiveness of such resignation. No director may resign if the corporation would then be left without a duly elected director or directors in charge of its affairs, except upon notice to the office of the attorney general or other appropriate agency of this state.

Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of this state, and these bylaws. The removal of any director shall only be made upon the vote of two thirds (2/3) of the number of directors.

Unless otherwise prohibited by the articles of incorporation, these bylaws, or provisions of law, vacancies on the board may be filled by approval of the board of directors. If the number of directors then in office is less than a quorum, a vacancy on the board may be filled by approval of a majority of

the directors then in office or by a sole remaining director. A person elected to fill a vacancy on the board shall hold office until the next election of the board of directors or until his or her death, resignation, or removal from office.

#### **Section 16. Meeting Attendance.**

Directors are expected to attend all Board Meetings. It shall be the duty of the Secretary of the Board to communicate with any Director who shall have three (3) consecutive absences to ascertain the Director's interest in retaining Board membership. Failure to provide an adequate response may qualify as sufficient cause for removal from the Board of Directors.

#### **Section 17. Non-liability of Directors**

The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

#### **Section 18. Indemnification by Corporation of Directors and Officers**

The directors and officers of the corporation shall be indemnified by the corporation to the fullest extent permissible under the laws of this state.

#### **Section 19. Insurance for Corporate Agents**

Except as may be otherwise provided under provisions of law, the board of directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the corporation (including a director, officer, employee, or other agent of the corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the articles of incorporation, these bylaws, or provisions of law.

### **Article 4 Officers**

### **Section 1. Designation of Officers**

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The School may change such titles as may be determined from time to time by the board of directors.

### **Section 2. Qualifications**

Any person who is an elected member of the Board of Directors may serve as officer of this corporation.

### **Section 3. Election and Term of Office**

Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office for a term of one (1) year, or until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

### **Section 4. Removal and Resignation**

Any officer may be removed, either with or without cause, by the Board of Directors, at any time. Any officer may resign at any time by giving written notice to the Board of Directors or to the president or secretary of the corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the corporation.

### **Section 5. Vacancies**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be immediately filled by the Board of Directors. In the event of a vacancy in any office other than that of president, such vacancy may be filled temporarily by appointment by the president until such time as the board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the board may or may not be filled as the board shall determine.



## **Section 6. Duties of President**

The president shall exercise leadership over the affairs and business of the Board of Directors. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the articles of incorporation, or by these bylaws, or which may be prescribed from time to time by the Board of Directors. The president shall preside at all meetings of the Board of Directors.. Except as otherwise expressly provided by law, by the articles of incorporation, or by these bylaws, he or she shall, in the name of the corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

## **Section 7. Duties of Vice President**

In the absence of the president, or in the event of his or her inability or refusal to act, the vice president shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions on, the president.

The vice president shall have other powers and perform such other duties as may be prescribed by law, by the articles of incorporation, or by these bylaws, or as may be prescribed by the Board of Directors.

## **Section 8. Duties of Secretary**

The secretary shall:

Certify and keep at the School the original, or a copy, of these bylaws as amended or otherwise altered to date.

Keep at the School or at such other place as the board may determine, a book of minutes of all meetings of the directors, and, if applicable, meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

Ensure that the minutes of meetings of the corporation, any written consents approving action taken without a meeting, and any supporting documents

pertaining to meetings, minutes, and consents shall be contemporaneously recorded in the corporate records of this corporation. "Contemporaneously" in this context means that the minutes, consents, and supporting documents shall be recorded in the records of this corporation by the later of (1) the next meeting of the board, committee, membership, or other body for which the minutes, consents, or supporting documents are being recorded, or (2) sixty (60) days after the date of the meeting or written consent.

See that all notices are duly given in accordance with the provisions of these bylaws or as required by law, including, but not limited to notices of Special and Regular Meetings of the Board of Directors.

To send requests for agenda items before each Regular Meeting of the Board of Directors, no less than seven (7) days before the meeting.

Be custodian of the records and of the seal of the corporation and affix the seal, as authorized by law or the provisions of these bylaws, to duly executed documents of the corporation.

Exhibit at all reasonable times to any director of the corporation, or to his or her agent or attorney, on request therefore, the bylaws, the membership book, and the minutes of the proceedings of the directors of the corporation.

In general, perform all duties incident to the office of secretary and such other duties as may be required by law, by the articles of incorporation, or by these bylaws, or which may be assigned to him or her from time to time by the board of directors.

## **Section 9. Duties of Treasurer**

The treasurer shall:

Maintain oversight of the management of the financial affairs of the School. The Treasurer shall work closely with the Executive Director and the School's accountant to ensure the financial integrity of the financial affairs of the School.

Ensure that all funds and financial assets of the corporation shall be deposited in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

Disburse, or cause to be disbursed, the funds of the corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

Ensure that the School keeps and maintains adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses.

Exhibit at all reasonable times the books of account and financial records to any director of the corporation, or to his or her agent or attorney, on request therefore.

Render to the president and directors, whenever requested, an account of any or all of his or her transactions as treasurer and of the financial condition of the corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of treasurer and such other duties as may be required by law, by the articles of incorporation of the corporation, or by these bylaws, or which may be assigned to him or her from time to time by the board of directors.

#### **Section 10. Compensation**

The officers shall serve without compensation. Provided, however, the Board may approve reimbursement of out-of-pocket expenses incurred by an officer for the benefit of the school. Such reimbursement shall be made in accordance with a written reimbursement policy adopted and approved by a majority of the members of the Board.

### **Article 5 Committees**

#### **Section 1. Executive Committee**

The Board of Directors may, by a majority vote of its members, designate an Executive Committee consisting of the Officers and Executive Director. The Board may delegate to such committee the powers and authority of the board in the management of the business and affairs of the corporation, to the extent permitted, and, except as may otherwise be provided, by provisions of law.

By a majority vote of its members, the board may at any time revoke or modify any or all of the executive committee authority so delegated,

increase or decrease but not below two (2) the number of the members of the executive committee, and fill vacancies on the Executive Committee from the members of the board. The executive committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the board from time to time as the board may require.

## **Section 2. Other Committees**

The corporation shall have such other committees as may from time to time be designated by resolution of the board of directors. These committees may consist of persons who are not also members of the board and shall act in an advisory capacity to the board.

## **Section 3. Meetings and Action of Committees**

Meetings of committees shall be governed by, noticed, held, and taken in accordance with the provisions of these bylaws concerning meetings of the board of directors, with such changes in the context of such bylaw provisions as are necessary to substitute the committee and its members for the board of directors and its members, except that the time for regular and special meetings of committees may be fixed by resolution of the board of directors or by the committee.

The conduct of business by committees of the board shall be fact finding in nature. No action shall be taken by any committee that is binding on the board of the School. Committees of the board shall report back to the board with recommendations for board action regarding the subject of the committee meetings. The Board of Directors shall take action upon any and all such recommendations during its Regular or Special meetings.

The board of directors may adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these bylaws.

# **Article 6**

## **Execution of Instruments, Deposits, and Funds**

### **Section 1. Execution of Instruments**

**Commented [JB1]:** Not sure about this provision. It says that all of the procedures for board meeting apply to committee meetings. Do we really want that degree of formality for committee meetings?

Also, I've made changes here to exempt committee meetings from the requirements of the sunshine laws.

Your thoughts?

The Board of Directors, except as otherwise provided in these bylaws, may by resolution authorize any officer or agent of the corporation, including the Executive Director, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

The board may adopt policies that govern the authority of the Executive Director in the execution of contracts and binding legal obligations of the School.

## **Section 2. Checks and Notes**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by the Executive Director, or by the treasurer, or by the president of the corporation.

The board may adopt policies that govern and limit the authority of the Executive Director in expenditure of funds of the corporation.

**Commented [JB2]:** I don't think we're doing this. We should probably get MC's input about how we want to do this...

## **Section 3. Deposits**

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

## **Section 4. Gifts**

The board of directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the nonprofit purposes of this corporation.

## **Article 7**

### **Corporate Records, Reports, and Seal**

## **Section 1. Maintenance of Corporate Records**

The corporation shall keep at its principal office:

- a. Minutes of all meetings of directors, committees of the board, and, if this corporation has members, of all meetings of members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- b. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains, and losses;
- c. A record of its members, if any, indicating their names and addresses and, if applicable, the class of membership held by each member and the termination date of any membership;
- d. A copy of the corporation's articles of incorporation and bylaws as amended to date, which shall be open to inspection by the members, if any, of the corporation at all reasonable times during office hours.

## **Section 2. Corporate Seal**

The board of directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

## **Section 3. Directors' Inspection Rights**

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation, and shall have such other rights to inspect the books, records, and properties of this corporation as may be required under the articles of incorporation, other provisions of these bylaws, and provisions of law.

## **Section 5. Right to Copy and Make Extracts**

Any inspection under the provisions of this article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

## **Section 6. Periodic Report**

The board shall cause an annual or periodic report required under law to be prepared and delivered to an office of this state or to the members, if any, of this corporation, to be so prepared and delivered within the time limits set by law.

## **Article 8**

### **IRC 501(c)(3) Tax Exemption Provisions**

#### **Section 1. Limitations on Activities**

No substantial part of the activities of this corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code), and this corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

Notwithstanding any other provisions of these bylaws, this corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

#### **Section 2. Prohibition Against Private Inurement**

No part of the net earnings of this corporation shall inure to the benefit of, or be distributable to, its members, directors or trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of this corporation.

#### **Section 3. Distribution of Assets**

Upon the dissolution of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation, shall

be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of this state.

#### **Section 4. Private Foundation Requirements and Restrictions**

In any taxable year in which this corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code, the corporation 1) shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Internal Revenue Code; 2) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; 3) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; 4) shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Internal Revenue Code; and 5) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

### **Article 9**

#### **Conflict of Interest and <sup>SEP</sup> Compensation Approval Policies**

**Commented [JB3]:** This section is required by statute. However, much of it will not apply to us because directors do not receive compensation pursuant to our bylaws.

##### **Section 1. Purpose of Conflict of Interest Policy**

The purpose of this conflict of interest policy is to protect this tax-exempt corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the corporation or any "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations and which might result in a possible "excess benefit transaction" as defined in Section 4958(c)(1)(A) of the Internal Revenue Code and as amplified by Section 53.4958 of the IRS Regulations. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

##### **Section 2. Definitions**



- a. Interested Person.** Any director, principal officer, member of a committee with governing board delegated powers, or any other person who is a "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations, who has a direct or indirect financial interest, as defined below, is an interested person.
- b. Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
1. An ownership or investment interest in any entity with which the corporation has a transaction or arrangement;
  2. A compensation arrangement with the corporation or with any entity or individual with which the corporation has a transaction or arrangement; or
  3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which 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 Section 3, paragraph B, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

### **Section 3. Conflict of Interest Avoidance Procedures**

- a. 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 committees with governing board delegated powers considering the proposed transaction or arrangement.
- b. 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 governing 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.

- c. Procedures for Addressing the Conflict of Interest.** An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the governing board 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.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board 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.

- d. Violations of the Conflicts of Interest Policy.** If the governing 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 explain the alleged failure to disclose.

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

#### **Section 4. Records of Board and Board Committee Proceedings**

The minutes of meetings of the governing 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

governing 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 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.

### **Section 5. Compensation Approval Policies**

A voting member of the governing board who receives compensation, directly or indirectly, from the corporation for services is precluded from voting on matters pertaining to that member's compensation.

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.

No voting member of the governing board 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.

When approving compensation for directors, officers and employees, contractors, and any other compensation contract or arrangement, in addition to complying with the conflict of interest requirements and policies contained in the preceding and following sections of this article as well as the preceding paragraphs of this section of this article, the board or a duly constituted compensation committee of the board shall also comply with the following additional requirements and procedures:

- a. the terms of compensation shall be approved by the board or compensation committee prior to the first payment of compensation;
- b. all members of the board or compensation committee who approve compensation arrangements must not have a conflict of interest with respect to the compensation arrangement as specified in IRS Regulation Section 53.4958-6(c)(iii), which generally requires that each board member or committee member approving a compensation arrangement between this organization and a "disqualified person" (as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations):

1. is not the person who is the subject of the compensation arrangement, or a family member of such person;
  2. is not in an employment relationship subject to the direction or control of the person who is the subject of the compensation arrangement;
  3. does not receive compensation or other payments subject to approval by the person who is the subject of the compensation arrangement;
  4. has no material financial interest affected by the compensation arrangement; and
  5. does not approve a transaction providing economic benefits to the person who is the subject of the compensation arrangement, who in turn has approved or will approve a transaction providing benefits to the board or committee member.
- c. the board or compensation committee shall obtain and rely upon appropriate data as to comparability prior to approving the terms of compensation. Appropriate data may include the following:
1. compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions. "Similarly situated" organizations are those of a similar size, purpose, and with similar resources;
  2. the availability of similar services in the geographic area of this organization;
  3. current compensation surveys compiled by independent firms;
  4. actual written offers from similar institutions competing for the services of the person who is the subject of the compensation arrangement;

As allowed by IRS Regulation 4958-6, if this organization has average annual gross receipts (including contributions) for its three prior tax years of less than \$1 million, the board or compensation committee will have obtained and relied upon appropriate data as to comparability if it obtains and relies upon data on compensation paid by three comparable organizations in the same or similar communities for similar services.

- d. the terms of compensation and the basis for approving them shall be recorded in written minutes of the meeting of the board or

compensation committee that approved the compensation. Such documentation shall include:

1. the terms of the compensation arrangement and the date it was approved;
2. the members of the board or compensation committee who were present during debate on the transaction, those who voted on it, and the votes cast by each board or committee member;
3. the comparability data obtained and relied upon and how the data was obtained;
4. If the board or compensation committee determines that reasonable compensation for a specific position in this organization or for providing services under any other compensation arrangement with this organization is higher or lower than the range of comparability data obtained, the board or committee shall record in the minutes of the meeting the basis for its determination;
5. If the board or committee makes adjustments to comparability data due to geographic area or other specific conditions, these adjustments and the reasons for them shall be recorded in the minutes of the board or committee meeting;
6. any actions taken with respect to determining if a board or committee member had a conflict of interest with respect to the compensation arrangement, and if so, actions taken to make sure the member with the conflict of interest did not affect or participate in the approval of the transaction (for example, a notation in the records that after a finding of conflict of interest by a member, the member with the conflict of interest was asked to, and did, leave the meeting prior to a discussion of the compensation arrangement and a taking of the votes to approve the arrangement);
7. The minutes of board or committee meetings at which compensation arrangements are approved must be prepared before the later of the date of the next board or committee meeting or 60 days after the final actions of the board or committee are taken with respect to the approval of the compensation arrangements. The minutes must be reviewed and approved by the board and committee as reasonable, accurate,

and complete within a reasonable period thereafter, normally prior to or at the next board or committee meeting following final action on the arrangement by the board or committee.

### **Section 6. Annual Statements**

Each director, principal officer, and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. has received a copy of the conflicts of interest policy;
- b. has read and understands the policy;
- c. has agreed to comply with the policy; and
- d. understands the corporation is charitable 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.

### **Section 7. Periodic Reviews**

To ensure the corporation operates in a manner consistent with charitable 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.
- 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 charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

### **Section 8. Use of Outside Experts**

When conducting the periodic reviews as provided for in Section 7, the corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

## **Article 10**

**Commented [JB4]:** We need to circulate something for everyone to sign this. We could do this at the next board meeting.

## **Amendment of Bylaws**

### **Section 1. Amendment**

Subject to the power of the members, if any, of this corporation to adopt, amend, or repeal the bylaws of this corporation and except as may otherwise be specified under provisions of law, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted by approval of the board of directors.

### **Article 11**

#### **Construction and Terms**

If there is any conflict between the provisions of these bylaws and the articles of incorporation of this corporation, the provisions of the articles of incorporation shall govern.

Should any of the provisions or portions of these bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these bylaws shall be unaffected by such holding.

All references in these bylaws to the articles of incorporation shall be to the articles of incorporation, articles of organization, certificate of incorporation, organizational charter, corporate charter, or other founding document of this corporation filed with an office of this state and used to establish the legal existence of this corporation.

All references in these bylaws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

**ADOPTION OF BYLAWS**

We, the undersigned, are all of the initial directors or incorporators of this corporation, and we consent to, and hereby do, adopt the foregoing bylaws, consisting of \_\_\_\_\_ preceding pages, as the bylaws of this corporation.

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

