

CONFLICT OF INTEREST AND ETHICS POLICY

OF

HYDROGEN FUEL CELL PARTNERSHIP

A California Nonprofit Public Benefit Corporation

ARTICLE I. INTRODUCTION AND PURPOSE

Hydrogen Fuel Cell Partnership (the “Corporation”) requires its directors, officers, employees and volunteers to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. The Board of Directors (the “Board”) of the Corporation, recognizing that it is entrusted with resources devoted to charitable purposes, has adopted this Conflict of Interest and Ethics Policy (the “Policy”). The purpose of this 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 director, officer or other person in a position of authority within the Corporation. The Corporation strives to avoid conflicts of interest to ensure that it continues to operate in accordance with its tax-exempt purpose. This Policy is intended to supplement but not replace any state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

ARTICLE II. DEFINITIONS

Section 1. Duty of Loyalty of Interested Persons. Conflicts of interest can place personal interests at odds with the fiduciary “duty of loyalty” owed to the Corporation. The duty of loyalty requires that a director, manager, principal, officer, or member of a committee with governing board-delegated powers (each, an “Interested Person”), refrain from using his or her position for personal gain and avoid acting on issues in which his or her personal or financial interests could conflict with the interests of the Corporation.

Section 2. Direct and Indirect Conflicts of Interest. Conflicts of interest arise from personal relationships or from a financial interest. Conflicts can arise either directly or indirectly. A direct conflict can arise where an Interested Person has a personal or financial interest in any matter involving the Corporation or has a financial or agency relationship (i.e., is a director, officer, manager, partner, associate, trustee or has a similar agency relationship) with an entity involved in a transaction or other business with the Corporation. An indirect conflict can arise where someone related to an Interested Person by business affiliation, or a “Family Member” (spouse, parents-in-law, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children,

grandchildren, and great-grandchildren) of the Interested Person has dealings with the Corporation. By way of example, an Interested Person has a financial interest if such person has, directly or indirectly, through business, investment or a Family Member:

- (a) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;
- (b) a compensation arrangement with 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 is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

Section 3. Potential and Actual Conflicts of Interest. Acts that mix the personal or financial interests of an Interested Person with the interests of the Corporation are indicative of a conflict of interest. Not every potential conflict is an actual conflict, however. An Interested Person who has a financial interest in a matter involving the Corporation may have a conflict of interest requiring application of the mitigating procedures described in this Policy only if the appropriate party designated in Article III, Section 3 decides that such a potential conflict of interest is actual or material. However, acts that even have the appearance of a conflict of interest can be damaging to the reputation of the Corporation. Consequently, the Corporation seeks to avoid potential and actual conflicts of interest, as well as the appearance of conflicts.

Section 4. Activities that May Present a Conflict of Interest. The following is a non-exclusive list of the types of activities that may present a conflict of interest and should be disclosed in accordance with Article III.

- (a) **Adverse Interest.** Participation by an Interested Person in decisions or negotiations related to a contract, transaction or other matter between the Corporation and: (i) the Interested Person; (ii) an entity in which the Interested Person or a Family Member of such person has financial interest; or (iii) an entity with which the Interested Person has an agency relationship.
- (b) **Competing Interests.** Competition by an Interested Person, either directly or indirectly, with the Corporation in the purchase or sale of property or property rights, interests, or services, or, in some instances, competition directly for the same donor or external resources.
- (c) **Use of Resources.** Use of the Corporation's resources (for example, staff, contracts, donor lists, or name) for personal purposes of the Interested Person or a Family Member of such person.

- (d) **Inside Information.** Disclosure or exploitation by an Interested Person of information pertaining to the Corporation's business for the personal profit or advantage of such person or a Family Member of such person or a person/entity with whom the Interested Person has an agency relationship.

Section 5. Disclosure. The primary obligation of any person subject to this Policy who may be involved in a conflict of interest situation is to bring it to the attention of those designated under the disclosure procedures in Article III so that the potential conflict can be evaluated and addressed. An Interested Person should not make the decision about whether a conflict of interest exists unilaterally.

ARTICLE III. PROCEDURES TO DISCLOSE AND RESOLVE CONFLICTS

Section 1. Duty to Self-Disclose.

- (a) An Interested Person shall make an appropriate disclosure of all material facts, including the existence of any financial interest, at any time that any actual or potential conflict of interest or ethical question arises. This disclosure obligation includes instances in which an Interested Person who is a director knows of the potential for a self dealing transaction as described in Section 4, or a transaction involving common directorship as described in Section 7, related to his or her interests. It also includes instances in which the Interested Person plans not to attend a meeting of the Board or a Board committee with governing board-delegated powers (a "Committee") at which he/she/they has/have reason to believe that the Board or Committee will act regarding a matter about which he/she/they may have a conflict. Depending on the circumstances, this disclosure may be made to the Leadership Team reporting to the Board of Directors or, if the potential conflict of interest first arises in the context of a Board or Committee meeting, the entire Board or the members of the Committee considering the proposed transaction or arrangement that relates to the actual or possible conflict of interest [*or ethical question*].
- (b) In addition, Interested Persons shall, in accordance with Article VI, make an annual disclosure of on-going relationships and interests that may present a conflict of interest.

Section 2. Disclosure of Conflicts of Others. If an Interested Person becomes aware of any potential self dealing or common directorship transaction or other conflict of interest involving another Interested Person, he/she/they should report it in accordance with the requirements of this Article III.

Section 3. Evaluation of Potential Conflict.

- (a) After disclosure of all material facts and any follow-up discussion with the Interested Person with a potential conflict of interest, a determination must be made about whether a material financial interest, self dealing transaction or other kind of actual conflict exists. If the potential conflict is first disclosed during a Board or Committee meeting at which the Interested Person with the potential conflict is in attendance, the Interested Person shall leave the meeting while the determination of whether a conflict of interest exists is either discussed and voted upon or referred to Committee for further consideration. In either event, the decision-making body will evaluate the disclosures by the Interested Person, and will determine on a case-by-case basis whether the disclosed activities constitute an actual conflict of interest. If the disclosure is made outside of the context of a meeting, then the determination of whether a conflict exists will be referred to the Leadership Team reporting to the Board of Directors for decision and action. Factors the decision-making body may consider when determining whether an actual conflict exists include (i) the proximity of the Interested Person to the decision-making authority of the other entity involved in the transaction, (ii) whether the amount of the financial interest or investment is *de minimis* relative to the overall financial situation of the Corporation, and (iii) the degree to which the Interested Person might benefit personally if a particular transaction were approved.
- (b) If it is determined that an actual conflict of interest exists which also constitutes a “self dealing” transaction as described in Section 4, then the transaction or matter in question can only be authorized if approved by the vote described in Section 6(a) after the Corporation has followed the procedures set forth in Section 5.
- (c) If it is determined that an actual conflict of interest exists which is not a “self dealing” transaction, but involves participation by the Interested Person in decisions or negotiations related to a material contract, transaction or other matter between the Corporation on the one hand and (i) the Interested Person, (ii) an entity in which the Interested Person or a Family Member of such person has financial interest, or (iii) an entity with which the Interested Person has an agency relationship on the other hand, then the matter in question can only be authorized if approved by the vote described in Section 6(b) after the Corporation has followed the procedures set forth in Section 5.
- (d) In all other circumstances where it is determined that an actual conflict of interest exists, the decision-making body will recommend an appropriate course of action to protect the interests of the Corporation. All disclosures and the outcome of the deliberation about whether a conflict of interest exists will be recorded in the minutes of the appropriate deliberative meeting.

Section 4. “Self Dealing” Transactions of Directors.

- (a) Section 5233 of the California Corporations Code requires that certain procedures be followed in order for the Board to approve any specific transaction that involves “self dealing” on the part of a director. Section 5233 defines self dealing as a transaction in which a director has a material financial interest (an “interested director”). Section 5233 requires that self dealing transactions be approved by a greater vote than other Board actions, as described in Section 6(a).
- (b) The following are exempt from the approval requirements of section 5233 (and therefore the Corporation need not obtain the vote described in Section 6(a)): (i) approval of an action fixing the compensation of a director as a director or officer; (ii) good faith approval, without unjustified favoritism, of a charitable program of which a director or a director’s Family Member(s) are among the intended beneficiaries; and (iii) a transaction about which an interested director had no actual knowledge involving an amount that does not exceed the lesser of one percent of the gross receipts of the Corporation for the preceding fiscal year or \$100,000.

Section 5. Procedures for Addressing a Conflict of Interest. Prior to voting on a contract, transaction or matter in which an actual conflict of interest is found to exist, the Board or Committee will follow the procedures described in this Section 5.

- (a) The Interested Person may make a presentation at the Board or Committee meeting at which such transaction is being considered, but after the presentation, he/she/they shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- (b) The Chairperson of the Board 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 or Committee shall determine whether the Corporation could 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 or Committee shall determine 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, the Board shall make its decision as to whether to enter into the transaction or arrangement by the vote described in Section 6.

Section 6. Vote Required for Approval of Conflict Transaction.

- (a) A self dealing transaction must receive prior approval by a vote of a majority of the directors in office, without counting the vote of any interested director, and with knowledge of the material facts of the transaction and the involved director's interest.
- (b) A transaction in which an actual conflict of interest exists but is not a self dealing transaction must receive prior approval by a majority vote of the disinterested directors or Committee members present at a meeting at which a quorum is present.

Section 7. Interlocking Directorships.

Section 5234 of the California Corporations Code permits transactions between corporations having common directors so long as all material facts regarding the transaction and the relevant directorships are known to the respective boards of directors, and the matters are approved in good faith by a vote sufficient without counting the vote of the common director(s). Such transactions are not self dealing transactions subject to Section 4.

Section 8. Violations of the Conflict of Interest Policy.

- (a) If the Board has reasonable cause to believe that an Interested Person has failed to disclose actual or possible conflicts of interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.
- (b) If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the Board determines the Interested Person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV. RECORDS OF PROCEEDINGS

The minutes of the Board or Committee meeting convened to consider a transaction subject to the mitigating procedures described in Article III shall contain:

- (a) The names of the Interested Persons who disclosed or whom otherwise were found to have a financial or other interest in connection with an actual or possible conflict of interest, the nature of the financial or other interest, any action taken to determine whether a conflict of interest was present, and the 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.

ARTICLE V. COMPENSATION

Section 1. A voting member of the Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

Section 2. 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.

Section 3. No voting member of the 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.

ARTICLE VI. ANNUAL STATEMENTS

Each person subject to this Policy shall annually sign a statement on the conflict of interest disclosure form ("Conflict of Interest Disclosure Form," attached as **Schedule 1**) or such other form as the Board adopts, which at a minimum affirms that such person:

- (a) has received a copy of the 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.

In addition, Interested Persons shall make an annual disclosure of on-going relationships and interests that may present a conflict of interest. Disclosures should address current affiliations, as well as past affiliations for the prior two years. Conflict of interest disclosure forms will be submitted to the, Chairperson of the Board and the Chairperson of the Membership Committee annually, and when appropriate, at or prior to action on relevant business transactions.

ARTICLE VII. 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; and

- (b) Whether partnerships, joint ventures and arrangements with management companies 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.

This periodic compensation review shall be in addition to the Board's statutory obligation to periodically review the fairness of compensation, including benefits, paid to the President and Chief Financial Officer of the Corporation (i) once such officer is hired; (ii) upon any extension or renewal of the officer's term of employment; and (iii) when the officer's compensation is modified (unless all employees are subject to the same general modification of compensation).

ARTICLE VIII. USE OF OUTSIDE EXPERTS

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

ARTICLE IX. CODE OF ETHICS

Section 1. Code of Ethics. In conducting business and activities which are connected with the Corporation, an Interested Person shall follow these guidelines:

- (a) **Ethical Conduct.** Be honest and ethical in his or her conduct, including ethical handling of actual or apparent conflicts of interest between personal and professional relationships. An Interested Person should not engage in activities which have or may have the appearance of impropriety or conflict of interest, or that may call into question the actions or integrity of the Corporation, or of the Interested Person as he/ she/they relate(s) to the Corporation.
- (b) **Legal Compliance.** Comply with applicable laws and regulations, including the California Nonprofit Integrity Act of 2004, and report his or her concerns to the appropriate person listed in Article III if it appears that any other director, officer, employee or contractor of the Corporation is not complying with applicable laws or regulations with respect to the Corporation's business.
- (c) **Confidentiality.** Maintain the confidentiality of all internal information about the Corporation, including its donors, clients and beneficiaries, except when authorized or otherwise legally obligated to disclose such information.
- (d) **Fair Dealing.** Deal fairly with the Corporation's staff, donors, volunteers, beneficiaries and suppliers.
- (e) **Protect Assets.** Protect and ensure the proper use of the Corporation's assets, including, its name, goodwill, donor community and reputation.

- (f) **Personal Influence.** Be mindful of the interaction between his or her relationships inside and outside of the Corporation, and not allow inappropriate personal influence over the affairs of the Corporation.
- (g) **Commitments.** Do not “speak for” the Corporation or make or imply commitments by the Corporation without proper internal authorization and communication.
- (h) **Loans.** The Corporation should not make loans to Interested Persons except to induce persons who have been offered a position to join the Corporation, as approved by the Board.]

CONFLICT OF INTEREST AND ETHICS POLICY

SCHEDULE 1: CONFLICT OF INTEREST DISCLOSURE FORM

The undersigned, as a director, manager, principal, officer, or member of a committee with governing board-delegated powers, of the **Hydrogen Fuel Cell Partnership** (the “Corporation”), acknowledges that:

1. He/she/they has/have received a copy of the Corporation’s Conflict of Interest Policy (the “Policy”);
2. he/she/they has/have read and understands the Policy;
3. he/she/they has/have agreed to comply with the Policy;
4. he/she/they understand(s) 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; and
5. the following on-going relationships and interests may present a conflict of interest: *(disclosures should address current affiliations, as well as past affiliations for the prior two years, and should include all of the following: the undersigned’s employer, all corporations (nonprofit and for-profit) of which the undersigned is a board member or officer, and the names of such of the undersigned’s Family Members or business affiliates or any other relationships the undersigned has which the undersigned believes may present a potential conflict)*

Name: _____

Title: _____

Signature: _____

Date: _____