**CONFLICT DISCLOSURE AND AUTHORIZATION**

This policy requires Elkton School District Officials to disclose interests in, or direct benefits from a District contract, when the amount of interest or benefit is more than $5,000 within a 12 month period. Additionally, such direct benefits are prohibited unless the board authorizes a waiver.

**Definitions:**

1. “District Official” refers to a board member, business manager, administrator, or other person with the authority to enter into a contract or spend money in an amount greater than $5,000.

2. “Interest in a contract” is when a District Official, the spouse of a District Official, or any other person with whom the District Official lives and commingles assets

a. is employed by a party of any contract with the district; or

b. receives more than nominal compensation or reimbursement for actual expenses for serving on

the board of an entity that derives income or commission directly from the contract or acquires property under the contract.

3. “Direct benefit from a contract” is when a District Official, the spouse of a District Official or any other person with whom the District Official lives and commingles assets

a. is a party to or intended beneficiary of the contract between the district and a third party;

b. has more than a five percent ownership interest in an entity that is a party of the District contract;

c. acquires property under the contract with the Distrirct; or

d. receives compensation, commission, promotion, or other monetary benefit directly from

the contract.

**Exceptions:**

If any of the following apply, disclosure (and authorization, if a direct benefit) is not required:

1. when the person’s relationship to the contract is based solely on the value associated with the person’s publicly-traded investments or holdings;

2. when the person’s relationship to the contract is due to participating in a vote or a decision in which the person’s only interest arises from an act of general application;

3. when the person does not receive compensation or a promotion directly attributable to the contract and is not employed in an area related to the contract;

4. when the contract is for the sale of goods or services, or for maintenance or repair services, in the regular course of business at or below a price offered to all customers;

5. when the contract is subject to a public bidding process;

6. when the contract is with the official depository as set forth in SDCL 6-1-3;

7. when the person only receives nominal income or compensation, a per diem authorized by law, or reimbursement for actual expenses incurred; or

8. when the contract or multiple contracts with the same party within a twelve-month period with whom the cooperative contracts in an amount less than five thousand dollars.

**DISCLOSURE REQUIREMENT:**

District Officials must disclose any interests and direct benefits received from contracts. However, waivers are only required for authorizing direct benefits. (Mere interests in a contract do not require board authorization.)

Conflicts of interest which extend into consecutive fiscal years must also be disclosed at the annual reorganization meeting.

All conflict of interest disclosures must be documented in the official board minutes.

**BASIS FOR A WAIVER:**

A waiver may be granted by the board to authorize ~~board member, administrator or business manager~~ Cooperative Officials to receive a direct benefit from the Cooperative’s contract with a person or entity (public, private, for-profit, non-profit) if the following conditions are met:

1. That person provides a full written disclosure to the board. Written disclosure must include the following information.

a. all parties to the contract

b. the Cooperative Official’s role in the contract

c. the purpose or objective of the contract

d. the consideration or benefit agreed to be conferred upon each party

e. the duration of the contract

2. To the extent that circumstances allow, disclosure must be given prior to entering into any contract that requires a waiver. If circumstances do not permit disclosure prior to entering into the contract, then the details must be disclosed within forty-five days after entering into it. If the contract extends into consecutive fiscal years, then disclosure shall also be made at the annual board meeting.

1. The board determines that the transaction and terms of the contract are fair and reasonable and not contrary to the public interest.~~; and~~

The public records laws (SDCL Ch. 1-27) apply to all requests for a waiver.

**BOARD ACTION ON A REQUEST FOR WAIVER:**

* 1. The Cooperative will have an agenda item at the beginning of ~~the~~ each board meeting agenda when the board will address conflict of interest disclosures and requests for a waiver.
  2. Disclosures and requests for a waiver submitted before the conflict of interest agenda item is acted on will receive action during the scheduled meeting.
  3. Disclosures and requests received after the conflict of interest agenda item has been acted on will be deferred to the next scheduled meeting.
  4. If the board believes the request form information is incomplete, the board must ask the person requesting the waiver for additional information. The board may receive the needed information from the requesting party at the board meeting when the waiver request is being addressed.
  5. When considering a waiver request, the school should be able to determine the requesting party's relationship to the contract, the requesting party's relationship to the outside contracting party, whether the contract terms are reasonable and in the public interest, and any other factors the board believes will help establish the relevant facts and circumstances surrounding the contract (s) and the request for waiver.
  6. At the meeting when the waiver request will be considered by the board, the District Official submitting the waiver request should be present and prepared to answer questions from the board.
  7. The request and the Board's determination must be included in the minutes of the meeting.
  8. If the authorization is granted, a written authorization shall be prepared following the meeting and signed by the President/Chair of the Board or other authorized Board Member, and filed with the Auditor General.

**MISCELLANEOUS:**

1. Knowingly violating the conflict of interest laws set forth in SDCL 3-23 is a criminal act. Cooperative Officials who do so will be removed from office or employment and are disqualified from holding any public office, elective or appointive. Additionally, any contract made in violation of this policy may be voided by the board of directors, and any benefits gained thereby are subject to forfeiture.
2. The cooperative attorney may answer general questions about the applicability of SDCL Ch. 3-23 or about the other laws that address conflicts of interest. However, the cooperative attorney represents the cooperative and its board of directors, not Cooperative Officials in their individual capacities. Cooperative Officials should consult with their private attorneys if they have specific questions as to how conflict of interest laws and this policy apply to their individual interests and contracts.

**Conflict of Interest Disclosure**

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

Name of the District Official submitting the disclosure:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This disclosure is for the purpose of notifying the board of directors about:

\_\_\_ an interest in a contract

\_\_\_ a direct benefit from a contract (requires board action)

Identify the following:

1. all parties to the contract
2. the person's role in the contract or transaction
3. the purpose(s)/objective(s) of the contract
4. the consideration or benefit conferred or agreed to be conferred upon each party
5. the length of time of the contract
6. any other relevant information

If this disclosure relates to the Cooperative Official deriving a direct benefit from a contract, how the terms of the contract are fair, reasonable, and not contrary to the public interest such that authorization should be granted by the board.

Signature of Cooperative Official:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THIS IS A PUBLIC DOCUMENT**

# **WAIVER AUTHORIZATION PURSUANT TO SDCL 3-23-3**

A conflict of interest disclosure of a direct benefit, dated \_\_\_\_\_\_

was received from .

This request was considered by the members of the Northeast Educational Services Cooperative Board of Directors during a meeting held on

\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_ The request for authorization was denied because the terms of the contract were not considered fair and reasonable, or contrary to the public interest.

\_\_\_ The request for waiver was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest such that a waiver should be granted.

\_\_\_ The request for waiver was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest such that a waiver should be granted, subject to the following conditions:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Signature of Board President/Chairperson or Authorized Member

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date:

Date Mailed to Auditor General:

**STAFF CONFLICT OF INTEREST**

Employees of the Cooperative will not engage, directly or indirectly, in any activity that conflicts (or raises a reasonable question of conflict) with their duties and responsibilities performed for the Cooperative.

Employees will not engage in work of any type where information concerning customer, client, or employer originates from any information available to them through Cooperative sources.

Employees will not sell textbooks, instructional supplies, equipment, reference books, or any other educationally related products to the schools in the Cooperative*.*

In order that there is no conflict of interest in the supervision and evaluation of employees, at no time may any administrator be responsible for the supervision and/or evaluation of an employee who is the spouse, the parent or step-parent, child or step-child, grandparent or grandchild, aunt, uncle, cousin, niece or nephew of that administrator.

Employees must disclose actual or potential conflicts to the Director as soon as they become aware of them. Failure to make required disclosures or resolve conflicts of interest satisfactorily can result in discipline up to and including termination of employment.