

RESOLUTION NO. 2013-002

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE ANAHEIM TRANSPORTATION NETWORK
ADOPTING A CONFLICT OF INTEREST POLICY**

WHEREAS, the prior Conflict of Interest Code, previously adopted by the Anaheim Transportation Network (ATN) in 2011 as Resolution No. 11-003 is no longer applicable in light of recent determinations by the California Fair Political Practices Commission (FPPC) that ATN is not a "local agency" under the Political Reform Act; and

WHEREAS, notwithstanding the FPPC's determination, both state and federal law contain conflict of interest provisions applicable to ATN as a nonprofit and tax exempt entity. For this reason, as well as to maintain good corporate governance practices, the Board desires to adopt a conflict of interest policy to establish best practices for its Board of Directors and "key employees" (as defined in the attached Conflict of Interest Policy).

NOW, THEREFORE, THE BOARD OF DIRECTORS OF ATN DOES HEREBY RESOLVE, FIND, DETERMINE AND ORDER AS FOLLOWS:

Section 1: Resolution No. 11-003 and the Conflict of Interest Code adopted by that resolution are hereby repealed; further, this Resolution repeals any other conflict of interest codes or policies previously adopted by ATN.

Section 2: The Conflict of Interest Policy attached to this Resolution is hereby adopted and shall remain in full force and effect until such time as the Board of Directors otherwise amends or repeals this policy.

Section 3: All Interested Persons, as defined in the Conflict of Interest Policy shall annually be provided a copy of the policy by the Executive Director and shall acknowledge receipt of such policy on an annual basis, including, if applicable, the completion of the disclosure form attached to the policy.

Adopted, signed and approved this 23 day of January 2013.



Chairman

[Certification contained on next page.]

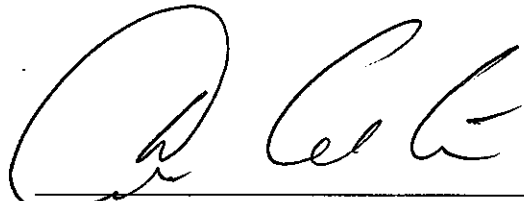
Attest:



Diana Kotler, Executive Director

I Diana Kotler, Executive Director of the Anaheim Transportation Network, do hereby certify that the foregoing Resolution No. 2013-002 of the Board of Directors was duly adopted by the Board of Directors of the Anaheim Transportation Network, a California nonprofit public benefit corporation, at a regular meeting of the Board on 23, January 2012, and that it was so adopted by the following vote:

YEAS: 9
NEAS: 0
ABST: 4



Diana Kotler, Executive Director



CONFLICT OF INTEREST POLICY

1. **Purpose.** The purpose of the conflict of interest policy ("Policy") is to protect this tax-exempt organization, the Anaheim Transportation Network, a nonprofit public benefit corporation ("ATN"), when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director of the Corporation and "Key Employees" of the organization (termed "Interested Persons," as defined below). This policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations or organizations receiving federal assistance.

2. **Policy Statement.** Each Interested Person (defined below) should avoid conflicts of interest that would interfere with their ability to discharge their fiduciary responsibilities to ATN. The ATN encourages Interested Persons to follow ethical standards, to be in compliance with all laws and to avoid any conflict of interest. In addition to conflict of interest, ATN prohibits Interested Persons having their titles or affiliation used to publicize personal or company activities, programs, or events (especially those conducted for private profit) unless first approved by ATN.

3. **Interested Person Defined.** Any Director, principal officer (Chair, Vice Chair, Secretary, Treasurer and Executive Director), a Key Employee (defined below) or member of a committee with governing board delegated powers is an "Interested Person." A "Key Employee" means an employee whose total annual compensation (including benefits) from the organization and its affiliates is more than \$150,000 and who (a) has responsibilities or influence over the organization similar to that of officers, directors, or trustees; or (b) manages a program that represents 10% or more of the activities, assets, income, or expenses of the organization; or (c) has or shares authority to control 10% or more of the organization's capital expenditures, operating budget, or compensation for employees.

4. **Conflict of Interest Defined.** The term "conflict of interest" includes, but is not limited to, circumstances where an Interested Person has, directly or indirectly, through business, investment or family members (defined to mean a spouse, domestic partner, ancestor, sibling grandchildren, great grandchildren, as well as any spouse or domestic partner of any ancestor, sibling, grandchild or great grandchild):

- a. Ownership or investment interests in any entity with which the ATN has a transaction or arrangement;
- b. Receipt of a substantial benefit from a third party resulting from that party's past, present, or future business relationship with the ATN;
- c. Receipt of any substantial financial benefit from a pending decision of ATN;



- d. Served as an officer, director or committee member of any competing organization, i.e., any nonprofit or business enterprise whose purposes, products, and/or services compete with those of the ATN, or whose interests may or do overlap with the interests of the ATN and thus create competing interests with respect to an issue(s);
- e. A compensation arrangement with the ATN or with any entity or individual with which the ATN has a transaction or arrangement; or
- f. A potential ownership or investment interest in, or compensation arrangement with, an entity or individual with which ATN is negotiating a transaction or arrangement

If laws and regulations of the Federal Transit Administration (FTA) impose more restrictive conflict of interest obligations on Interested Persons (or others) in connection with a federally funded transaction then those more restrictive federal laws and regulations shall control and an Interested Person shall comply with those provisions. The FTA's conflict of interest provisions, as of the date of this Policy's adoption, are attached hereto for reference.

Unless otherwise prohibited by law, a conflict of interest does not exist if a transaction or arrangement that is part of a program relating to the social welfare purpose of ATN if the transaction or arrangement (1) is approved or authorized by ATN in good faith and without unjustified favoritism and (2) results in a benefit to one or more Interested Persons or their families because they are in the class of persons intended to be benefited by the social welfare program of ATN.

All determinations of whether a conflict of interest precludes participation of the Interested Person shall be made by the Board of Directors pursuant to Section 6 based on whether the transaction is such that it reduces the likelihood that the Interested Person's influence can be exercised impartially in the best interests of ATN.

5. **Disclosure of the Existence of a Conflict.** In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of the interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

6. **Procedures and Effect of the Existence of a Conflict of Interest.** After disclosure of the conflict of 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, and whether the officer or director has made full disclosure of the facts surrounding the conflict. Thereafter, the remaining Board of Directors shall determine whether the Interested Person may nevertheless fully participate in the deliberations and vote on the proposed transaction.

As part of determining whether an Interest Person has a conflict of interest and/or whether the ATN should enter a transaction in which an Interested Person has a conflict of interest, the Board of Directors and/or committee shall determine whether ATN 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 Board of Directors or committee shall determine by a majority vote of disinterested directors whether the transaction or arrangement is in ATN's 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.

In the unlikely event that there are multiple Interested Persons and the Board would otherwise be deprived of sufficient non-conflicted Directors to render a decision, then the Board Secretary shall select, at random (i.e., by blind draw), the minimum number of interested persons to allow the Board to act.

7. **Compensation.** A voting member of the Board of Directors, or of any committee whose jurisdiction includes compensation matters, and who receives compensation, directly or indirectly, from ATN for services is precluded from discussing and voting on matters pertaining to that member's compensation or the compensation of a member of that Board member's family (as defined above). However, such a person is not prohibited from providing information to the Board of Directors or any committee regarding compensation of similarly situated persons.

8. **Record of Proceedings.** The minutes of the Board of Directors and all committees with Board delegated powers shall contain:

a. The names of the person who disclosed or otherwise were found to have conflicts of interests, the nature of the conflict of 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 persons who were present for discussions and votes related 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.

9. **Annual Statements.** Each Director, principal officer, Key Employee and member of a committee with governing Board delegated powers shall annually sign a statement which affirms such person: (1) 1. Has received a copy of the conflict of interest policy; (2) Has read and understands the



policy; (3) Has agreed to comply with the policy; and(4) Understand ATN is a social welfare organization 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.

10. **Interpretation of Policy.** The Board of Directors has the authority to review a particular transaction or circumstance to determine whether it constitutes a conflict of interest as more fully described elsewhere in this policy.

ACKNOWLEDGEMENT FORM

I have reviewed the ATN's Conflict of Interest Policy and agree to be bound by and comply with its provisions for the duration of my appointed or elected term.

Name (please print)

Signature

ATN Position

Date

Attachment: Current FTA Conflict of Interest Provisions for Federal Funded Projects

APPENDIX B.10
DISCLOSURE OF CONFLICTS OF INTEREST
(OCT 1994)

It is the Department of Transportation's (DOT) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

- (a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.
- (b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.
- (c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.
- (d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.
- (e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.