



5277 Manhattan Circle, Suite 210 [FMmedia.org](http://FMmedia.org)  
Boulder, CO 80303 510-761-5560

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**Response to:**

San Mateo County Community College District  
Request for Proposal 86635  
Sale of KCSM-TV

**Submitted by:**

FM Media Inc.  
Contact: Ken Ikeda  
510-761-5560  
[ken@publicmediacompany.org](mailto:ken@publicmediacompany.org)

# FM MEDIA

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Boulder, CO 80303 510-761-5560

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February 13, 2012

Department of General Services  
San Mateo County Community College District (SMCCD)  
3401 CSM Drive  
San Mateo, California 94402

Dear Chancellor Galatolo and the Board of Trustees,

Enclosed, please find FM Media Inc.'s bid proposal in response to RFP 86635 connected with the acquisition of KCSM-TV (the "Station"), lease to Sutro Tower, transmitter and related equipment.

FM Media Inc. (FM Media) is related to Public Media Company (PMC), which was founded in 2011. PMC was launched to offer a new national ownership, management, operating and technology platform to complement, strengthen, and in some cases, redesign local media. PMC is positioned to own and operate radio and television stations and allied media with a core mission of extending and preserving a public service focus for public media.

We look forward to discussing our proposal with you.

Sincerely,



Kiyoshi (Ken) Ikeda

### **The Offer**

This proposal represents an aggregate value to SMCCD of \$7,000,000 (Seven Million). A cash payment of \$6,000,000 (Six Million) will be transferred at Closing by wire from the Public Media Fund to San Mateo Community College District (SMCCD). The value of the on-air, online and communications promotion of KCSM-FM Jazz 91.1, included in this proposal adds an additional value of \$200,000 annually over five years. FM Media does not intend to seek a lease of San Mateo Community College facilities in the ongoing operation of KCSM-TV.

The FM Media proposed acquisition of KCSM will be funded by the recently established Public Media Fund LLC (PMF). The sources of the PMF funds will be disclosed when a letter of intent or APA is signed, or, if required, in a confidential disclosure prior to signing the APA. FM Media will not seek additional financing for the acquisition of KCSM-TV.

### **Governing Board**

The founding Board Directors of FM Media are residents of KCSM-TV's community of license and service areas, reflecting deep expertise and leadership that reach across music, film, broadcast, education and the diverse communities FM Media intends to serve.

- James Kass, Founder and Executive Director, Youth Speaks
- Melanie Walker, former Music Director, The Current, MPR
- Patrice O'Neill, President and CEO, The Working Group & Not In Our Town
- Matthew Meschery, Director of Digital Initiatives, ITVS
- Leo Martinez, Professor of Law, UC Hastings College of the Law
- Marc Hand, Managing Director of Public Media Company
- Ken Ikeda, Managing Director of Public Media Company

The founding Directors hold significant experience with nonprofit governance, organizational management and leadership in broadcast and public service. Two more Director positions will be added for a total of nine Directors, to further engage diverse participant perspectives as well as meet all FCC criteria for local Board composition.

KI (initial if statement is true) There are no adverse findings with respect to violations of the law for the board members which would preclude the entity from purchasing the station.

### **About FM Media Inc.**

FM Media has initiated the steps to register as a California local state nonprofit corporation. FM Media was launched with an emphasis on local, non-commercial television and radio station operations. With an emphasis on introducing new voices and diverse content to the public broadcasting space, engaging a younger demographic and networking national contributors into local markets, FM Media anticipates offering focused channel services that can be characterized as Education, Film and Music oriented.

FM Media's parent not-for-profit, Public Media Company (PMC), is a registered 501(c)3 of

Colorado and began operating in January of 2011. As such, PMC does not have audited financials as of this date. This new public media approach will build national resources and infrastructure in support of strong local stations and multi-sourced content development, with the potential for reaching millions in the next decade. PMC actively seeks to catalyze “market solutions” in communities where redundancy and gaps in media formats, programming and administration falls short of maximizing the public service value of assets and audiences. A focus for this is to partner with existing public broadcasting entities to foster collaboration, organize market services and launch new services. As an example, PMC is partnered with KUSC Radio and its license holder, the University of Southern California through the Classical Public Radio Network, having helped to launch KDFC/KUSF- the classical public radio services in San Francisco. In anticipation of KCSM-TV’s acquisition, PMC has already engaged market leader, KQED-TV, and will commit to a coordinated service effort and partnership to complement their existing efforts and success.

While FM Media and PMC do not have an attributable interest in any radio or TV stations, the leadership of PMC has been involved in a significant range of station transactions and operations. PMC is jointly managed by Marc Hand and Ken Ikeda. Hand co-founded the nonprofit Public Radio Capital, and since 2001, Public Radio Capital has completed transactions totaling more than \$270 million and secured access to public radio services for approximately 60 million people nationwide. PRC has worked with more than 200 public radio stations ranging from first time station owners to the largest, multi-channel public radio operators in the country, helping them to buy and finance new channels, to preserve existing public radio outlets, and to strengthen their organizations and services. In addition to being the country’s leading non-commercial media broker, PRC’s work includes media appraisals, media transactions, business modeling, research and analysis, financial consulting, strategic consulting and national public media project management. PRC is providing PMC with critical data analysis support and expertise in market and station assessment. It is this expertise that informs FM Media’s confidence that a strong and sustainable service to the Bay Area can be developed when the constraint of legacy systems and infrastructure can be relieved.

Ikeda was formerly Executive Director of San Francisco’s Bay Area Video Coalition (BAVC), the city’s public access broadcaster with a 35-year history of serving diverse communities in the realms of community media, technology, digital media training and civic engagement. BAVC holds relationships with thousands of media producers, hundreds of nonprofit organizations, the Bay Area and Silicon Valley’s preeminent technology companies and over fifty public schools. The strong local and national ties that were nurtured while at BAVC inform PMC’s vision for a reinvented public service media and the challenges of delivering a meaningful service to the KCSM-TV service area.

FM Media’s strategic framework does not focus on content alone. It is equally important to maximize capacity with a focus on leadership, financial resources, research, diverse perspectives, content development, and distribution platforms- in order to scale sustainable public media services. The challenge will not be based on delivering content the fastest or making it ubiquitous. Instead, FM Media will be committed to a consistent delivery of a media strategy that the audience feels connected to, able to rely on and ultimately, able to shape for themselves.

YES (yes or no) Our Bidder may wish to offer employment to some of the displaced KCSM employees. (The willingness to offer employment to existing KCSM-TV personnel will be a decisional factor only among bids that are of equal value).

FM Media has retained John Crigler, a leading FCC attorney and partner at Garvey Shubert Barer, to meet FCC requirements in anticipation of acquiring and operating KCSM-TV. Through PMC and its sister nonprofit, Public Radio Capital, there is considerable FCC experience ranging from LMA's, license renewals, acquisitions, and sales of stations in which the FCC has regulatory oversight.

**Ability to Meet FCC Requirement to be Broadly Representative of the Community of License, San Mateo, CA**

As noted previously, the assembled board members are residents of KCSM-TV's community of license and service areas, reflecting deep expertise and leadership that reach across music, film, broadcast, education and the diverse communities FM Media intends to serve. FM Media generally interprets the phrase "principal community to be served" as the community of the station license, yet the Bay Area is a singular region, that includes multiple counties whose connection via culture, economy, and identity supersedes geographically distinct cities separated by bridges and water. As such, KCSM's service area is referred to as the 5<sup>th</sup> largest television market nationally. This is inclusive of ten counties, each of which contributes significantly to a shared Bay Area narrative. PMC has extensive experience in the selection and development of strong Community License leadership that is reinforced by its close ties to its sister non-profit, Public Radio Capital and will work with FM Media and its FCC attorney to assure FCC compliance and representative leadership.

**CPB Qualifications**

X I believe we could qualify for CPB financial support.

## Appendix A

**BIDDER INFORMATION AND SIGNATORY PAGE**Bidder Name: FM Media, Inc.Business Address: 5277 Manhattan Circle, Suite 210 Boulder, CO 80303Telephone: (510) 761-5560Fax: (720) 304-8923Email: Ken@publicmediacompany.orgWeb Site: www.fmmedia.org

Type of Firm:

Corporation: X

Proprietorship: \_\_\_\_\_

Partnership: \_\_\_\_\_

Joint Venture: \_\_\_\_\_

Other (please describe): \_\_\_\_\_

Business License Number: pendingNumber of years in business under firm name: 0

Full names of firm's owners (&gt; 5% ownership), officers and managing employees:

view attached document.

Has the firm changed its name within the past 3 years?

YES ☐NO ☒If yes, provide former name(s):  
  
\_\_\_\_\_

If yes, explain:

Have officers or principals of the firm ever had their business license suspended or revoked for any reason? YES ☐ NO ☒

If yes, please explain:

Name and title of person completing responsible for submission of this Proposal and the responses to this questionnaire:

Signature: \_\_\_\_\_

Date: 2/12/12Name & Title: Kiyoshi (Ken) Ikeda, Managing DirectorPhone: (510) 761-5560Email: Ken@publicmediacompany.org



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## **RFP Proposal 86635**

### **Appendix A**

Full names of firm's owners (> 5% ownership), officers and managing employees:

FM Media's founding Board of Directors:

- James Kass
- Melanie Walker
- Patrice O'Neill
- Matthew Meschery
- Leo Martinez
- Marc Hand
- Ken Ikeda

Managing Employees

- To Be Hired

**Appendix B****NON-COLLUSION AFFIDAVIT****STATE OF CALIFORNIA****COUNTY OF** AlamedaI, Kiyoshi Ikeda, being first duly sworn, deposes and says that I am  
(Typed or Printed Name)Board President of FM Media, Inc.,  
Title ("the Bidder").

the party submitting the foregoing Proposal. In connection with the Proposal, the undersigned declares, states and certifies that:

1. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, Bidder, association, organization or corporation.

2. The Proposal is genuine and not collusive or sham.

3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in a sham proposal, or to refrain from submitting a proposal.

4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price, or that of any other Bidder, or to fix any element of the Proposal price or terms or those of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.

5. All statements contained in the Proposal and related documents are true.

6. The Bidder has not, directly or indirectly, submitted the Proposal price or terms or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, bidder, association, organization, Proposal depository, or to any member or agent thereof to effectuate a collusive or sham Proposal.

Executed this 12<sup>th</sup> day of February, 2012 at Oakland, Alameda, CA.  
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature: Date: 2/12/12



**Roecks, Jan**

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**From:** Ken Ikeda [REDACTED]  
**Sent:** Wednesday, February 29, 2012 3:51 PM  
**To:** Roecks, Jan  
**Subject:** Re: Follow up questions to RFP 86635 KCSM-TV  
**Attachments:** KCSM response\_2\_29\_12.pdf; FM Media\_Articles.pdf; FM Media TV Conflict of Interest.pdf; FM Media ByLaws.pdf; FM Media Bylaws p\_17.pdf

Hi Jan- Thank you for the opportunity to provide additional information. The following documents are attached:

- 1) FM Media's Articles of Incorporation
- 2) FM Media's Bylaws (pages 1-16)
- 3) FM Media's Bylaws (page 17 with signature)
- 4) FM Media's Conflict of Interest Policy
- 5) Response to questions from SMCCD to FM Media

Best,

Ken

On Feb 23, 2012, at 11:27 AM, Roecks, Jan wrote:

Re: FM Media response to RFP 86635 KCSM-TV

Dear Ken Ikeda,

Thank you for responding to the San Mateo County Community Colleges Request for Proposal for the sale of KCSMTV. The District needs some additional information from you to fully evaluate your response.

- 1) Please respond more fully to Section 1- Request for Proposal; subsection 1- Responsible bidder proposal; "responsible bidder is a bidder that has the financial resources, personnel, facilities, integrity and overall capacity to consummate the contract successfully. Please specifically provide an outline of your operational plans and overall capacity to run the television station.
- 2) The proposal was an aggregate for \$7,000,000 for the sale of the TV station and for on-air, online and communications promotion on KCSM-FM for 5 years. Is the offer of \$6,000,000 for KCSM-TV exclusive of the promotion on KCSM-FM, or must we consider them together? As a follow up question, please clarify what you would expect to receive for that \$200,000 per year of promotion.
- 3) The District needs to have a better understanding of the source of your funding. Please supply any audited financials that might be able to support your funding.
- 4) Please submit a copy of your business' bylaws.

Please let me know if you have any questions regarding this request. I look forward to receiving this additional information, in writing, by March 1, 2012.

Regards,

Jan Roecks

Jan Roecks  
Director of General Services

1) Please respond more fully to Section 1- Request for Proposal; subsection 1- Responsible bidder proposal; "responsible bidder is a bidder that has the financial resources, personnel, facilities, integrity and overall capacity to consummate the contract successfully. Please specifically provide an outline of your operational plans and overall capacity to run the television station.

Public Media Company and its sister organization, Public Radio Capital, have spent the past two years analyzing public television operations nationally and formalizing an operations infrastructure to support KCSM's operations. Our operating and financial model is built upon an extensive knowledge of the financial reporting by all the CPB qualified public television stations. We believe we have established an efficient and scalable operating structure that will allow us to develop and deliver local content and to partner nationally for significant new content to serve the local San Francisco bay area audience.

Our staffing structure will meet CSG-eligibility requirements. This will include development and production staff as well as a top-5 market broadcasting and systems engineer. We have assembled partner resources to manage the station's operations and development efforts. These conversations have included other local public broadcasters, such as KQED, as well as other national groups within and outside of the public broadcasting system. We have built contacts across local municipalities to support innovative IP-delivery of services. The proposed management and board have in-depth experience with developing and delivering daily television services into markets. We have been in discussions with over forty potential local and national content partners, as well as existing broadcasters with deep archives and matching interests to assure a swift ramp-up of programming. As a local nonprofit with established relationships with philanthropy, we have initiated conversations to secure ongoing support for KCSM-TV's operations and have received positive feedback on our vision of a film and music-focused format that will emphasize short-term exclusive and non-exclusive content licensing agreements. FM Media will also invest in metrics for both broadcast and online, to inform our ongoing programming and services, and will emphasize the accessibility of these metrics back to our audience. We believe that by sharing our development process with the audience, we will have a stronger basis for implementing a membership model that is unique and distinct from traditional pledge and membership efforts currently favored by public broadcasters. FM Media is prepared to support an operating loss over the first two years to establish a self-sustaining operation over time. Using the existing CPB funded public television station data we have developed an extensive financial model to guide our investment and growth objectives. We are confident in our direct management and operational experience and in the assembled Board's capacity to provide strategic guidance and governance. These combined management, content, operational and financial resources will ensure that FM Media will be successful as the operators of a re-envisioned KCSM-TV.

2) The proposal was an aggregate for \$7,000,000 for the sale of the TV station and for on-air, online and communications promotion on KCSM-FM for 5 years. Is the offer of \$6,000,000 for KCSM-TV exclusive of the promotion on KCSM-FM, or must we consider

them together? As a follow up question, please clarify what you would expect to receive for that \$200,000 per year of promotion.

The total value being presented to SMCCD is \$7,000,000 (seven million). The \$6,000,000 (six million) offer for KCSM-TV is exclusive of the promotional value for KCSM-FM and can be considered as a separate offer. The \$1,000,000 (one million) of on-air, online and communications promotion for KCSM-FM over five years is an estimated value for services provided by FM Media that can be used by KCSM-FM or the San Mateo Community College District for promotion of district events, services and public announcements as well as KCSM-FM services and programming. The \$200,000 per year of promotion is our estimate of the market value of the on-air promotional spots provided to SMCCD and KCSM-FM. FM Media would not receive, nor expect any material compensation from SMCCD or KCSM-FM for the promotional spots provided.

3) The District needs to have a better understanding of the source of your funding. Please supply any audited financials that might be able to support your funding.

PRC intends to finance its acquisition of KCSM with a loan from the Marty and Dorothy Silverman Foundation and FJC, a 501(c)3 public charity, which have expressed an interest in financing FM Media's acquisition of KCSM-TV (pending further due diligence and the signing of an asset purchase agreement). FJC manages donor-advised investment funds and grant-making programs, which include a mission-driven Agency Loan Fund. For more information, please visit: <http://www.fjc.org/programs-ALF-overview.shtml>. The Marty and Dorothy Silverman Foundation has frequently participated with FJC on various loans to non profits. FJC's 2010 Audited Financials are attached below. While PMC's relationship with FJC is new, PMC's sister agency, Public Radio Capital, has an extensive history with FJC, having jointly structured more than \$26.8 million in public broadcasting loans to Colorado Public Radio, KERA in Dallas, WESA-FM in Pittsburgh, KOSN in Tulsa, KXOT in Seattle, and KOCE-TV in Los Angeles.

FJC Audited Financials: <http://fjc.org/pdf/2011auditedfinancials.pdf>

4) Please submit a copy of your business' bylaws.

The Articles of Incorporation, Bylaws and Conflict of Interest form are attached.

# **ARTICLES OF INCORPORATION**

**OF**

**FM MEDIA TV**

**A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

## **ARTICLE I**

The name of this corporation is FM Media TV.

## **ARTICLE II**

(a) This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes.

(b) The purpose of this corporation is to operate noncommercial television stations that will primarily serve the educational needs of San Mateo, California and surrounding areas; to advance educational programs; to furnish a nonprofit and noncommercial television broadcast service; and to provide educational, informational, entertainment, and cultural programming to audiences, through broadcast, digital and internet-based media and the ownership and operation of related assets.

## **ARTICLE III**

The name and address of this corporation's initial agent for service of process are Larry Baskin, 999 5<sup>th</sup> Street, Suite 200, San Rafael, CA 94901.


## **ARTICLE IV**

(a) This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") or the corresponding section of any future federal tax code, and such related purposes as described in Article II.

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

(c) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.






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Kiyoshi Ikeda, Director

### Acknowledgement

I declare that I am the person who executed the Articles of Incorporation of FM Media TV which execution is my act and deed.

Dated: 2/29/12

  
Kiyoshi Ikeda  
Director

**BYLAWS**  
**OF**  
**FM MEDIA TV**

A California Nonprofit Public Benefit Corporation  
(Without Members)

**ARTICLE I**  
**OFFICES**

**Section 1. Principal Office.** The corporation's principal office shall be fixed and located at such place as the Board of Directors shall determine. The principal office of the corporation shall initially be located at San Mateo, California.

**Section 2.** The corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

**ARTICLE II**  
**PURPOSES**

**Section 1. Objectives and Purposes.** The primary objectives, purposes and activities of this corporation shall be limited to the objectives, purposes and activities described in its Articles of Incorporation.

**ARTICLE III**  
**DIRECTORS**

**Section 1. Number.** The corporation shall have nine directors, and collectively they shall be known as the "Board of Directors." The number may be changed by amendment of this Bylaw, or by repeal of this Bylaw and adoption of a new Bylaw, as provided in these Bylaws. Regardless of the number of directors, the corporation shall at all times satisfy the eligibility requirements established by the Federal Communications Commission for licensees of noncommercial educational television stations. In particular, the officers and directors of the corporation's governing board shall be broadly representative of the educational, cultural and civic segments of San Mateo, California.

**Section 2. Powers.** Subject to the provisions of the California Nonprofit Public Benefit Corporation law and the limitations of the Articles of Incorporation and these Bylaws, the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors. The Board of Directors may



delegate the management of the activities of the corporation to any person or persons, a management company or committees, however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board of Directors shall have the following powers in addition to the other powers enumerated in these Bylaws:

- (a) perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;
- (b) to select and remove all officers, agents and employees of the corporation, prescribe powers and duties for them as may not be inconsistent with law, the Articles of Incorporation or these Bylaws, fix their compensation and require from them such security, if any, for faithful service as the Board of Directors may deem appropriate.
- (c) supervise all officers, agents and employees of the corporation to assure that their duties are performed properly;
- (d) to conduct, manage and control the affairs and activities of the corporation, and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation or these Bylaws, as they may deem appropriate;
- (e) to borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor;
- (f) to buy, sell and lease real and personal property or any interest therein;
- (f) meet at such times and places as required by these Bylaws; and
- (g) register their addresses with the Secretary of the corporation and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

**Section 3. Selection, Qualification and Term of Office.** Except for the initial director appointed in the Articles of Incorporation, directors shall be elected at each annual meeting of the Board of Directors. Not more than four of the members of the Board of Directors shall be selected from the current members of the Board of Directors, officers or employees of Public Media company. At least five of the members of the Board of Directors shall be broadly representative of the educational, cultural, and civic group in the community in which the corporation operates any noncommercial television station or other media. Each elected director shall take office upon election and shall hold office until a successor has been elected and qualified. All directors shall be elected by plurality vote of the directors in office immediately prior to the annual meeting at which directors are to be elected.

**Section 4. Compensation.** Directors, as such, shall not receive any stated salaries for their services as members of the Board of Directors, but by resolution of the Board, reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting

of the Board. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

**Section 5. Place of Meetings.** Meetings shall be held at the principal office of the corporation unless otherwise provided by the Board of Directors or at such place within or without the State of California which has been designated from time to time by resolution of the Board of Directors. In the absence of such designation, any meeting not held at the principal office of the corporation shall be valid only if held on the written consent of all directors given either before or after the meeting and filed with the Secretary of the corporation or after all members of the Board of Directors have been given written notice of the meeting as hereinafter provided for special meetings of the Board of Directors.

Any meeting, regular or special, may be held by telephone conference, electronic video screen communication, or other communications equipment. Participation in a meeting through use of telephone conference constitutes presence in person at that meeting so long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than telephone conference) constitutes presence in person at that meeting if all of the following apply:

- (a) each director participating in the meeting can communicate with all of the other directors concurrently;
- (b) each director is provided the means of participating in all matters before the Board of Directors, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation;
- (c) the corporation adopts and implements some means of verifying (i) that all persons participating in the meeting are directors of the corporation or are otherwise entitled to participate in the meeting, and (ii) that all actions of, or votes by, the Board of Directors are taken and cast only by directors and not by persons who are not directors.

**Section 6. Regular and Annual Meetings.** The Board of Directors shall hold an annual meeting for the purposes of organization, selection of directors and officers and the transaction of other business. Annual meetings of the Board of Directors shall be held on such dates and at such times as may be fixed by the Board of Directors. Regular meetings of the Board of Directors may be held without call or notice on such dates and at such times as may be fixed by the Board of Directors.

**Section 7. Special Meetings.** Special meetings of the Board of Directors may be called by the Chairperson of the Board of Directors, the President, the Vice President, the Secretary, or by any two directors, and such meetings shall be held at the place, within or without the State of California, designated by the person or persons calling the meeting, and in the absence of such designation, at the principal office of the corporation.

**Section 8. Notice of Meetings.** Annual and special meetings of the Board of Directors shall be held upon at least four days' notice by first-class mail or 48 hours' notice given personally or by telephone, electronic mail or other similar means of communication.

Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the corporation or as may have been given to the corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place where the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

**Section 9. Contents of Notice.** Notice of meetings not herein dispensed with shall specify the place, day and hour of the meeting. If the meeting is to be conducted by telephone conference or other electronic means, the notice shall include all necessary instructions for participation. The purpose of any Board of Directors meeting need not be specified in the notice.

**Section 10. Waiver of Notice and Consent to Holding Meetings.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, are as valid as though the meeting had been duly held after proper call and notice, provided a quorum, as hereinafter defined, is present and provided that either before or after the meeting each director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 11. Quorum for Meetings.** A quorum shall consist of a two-thirds majority of the members of the Board.

Except as otherwise provided in these Bylaws or in the Articles of Incorporation, or by law, no business shall be considered by the Board of Directors at any meeting at which a quorum, as defined above, is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn. However, a majority of the directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors.

When a meeting is adjourned for lack of a quorum, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted at such meeting, other than by announcement at the meeting at which the adjournment is taken, except as provided in Section 10 of this Article.

The directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of directors from the meeting, provided that any action thereafter taken must be approved by at least a majority of the required quorum for such meeting or such greater

percentage as may be required by law, or the Articles of Incorporation or Bylaws of this corporation.

**Section 12. Majority Action as Board Action.** Every act or decision done or made by a two-thirds majority of the current members of the Board of Directors at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation or Bylaws of this corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212 of the California Corporations Code), approval of contracts or transactions in which a director has a material financial interest (Section 5233 of the California Corporations Code) and indemnification of directors (Section 5238(e) of the California Corporations Code), require a greater percentage or different voting rules for approval of a matter by the Board of Directors.

**Section 13. Conduct of Meetings.** Meetings of the Board of Directors shall be presided over by the Chairperson of the Board of Directors, or, if no such person has been so designated or, in his or her absence, the President of the corporation 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 of Directors, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

**Section 14. Action by Unanimous Written Consent Without Meeting.** Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board of Directors shall individually or collectively consent in writing to such action. For the purposes of this Section only, "all members of the Board of Directors" shall not include any "interested director" as defined in Section 5233 of the California Corporations Code. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as the unanimous vote of the directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by unanimous written consent of the Board of Directors without a meeting and that the Bylaws of this corporation authorize the directors to so act, and such statement shall be prima facie evidence of such authority. For this purpose, faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

**Section 15. Vacancies.**

(a) Subject to the provisions of Section 5226 of the California Corporations Code, any director may resign effective upon giving written notice to the Chairman of the Board of Directors, the President, the Secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective.

(b) Vacancies on the Board of Directors shall be filled in the same manner as the director whose office is vacant was selected, provided that any vacancy to be filled by

election by directors may be filled by a majority of the remaining directors, although less than a quorum, or by a sole remaining director at any regular or special meeting of the Board of Directors. If there are no remaining directors, the successor director shall be elected by majority vote of the then acting officers of the corporation at a special meeting called for the purpose of electing a director. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified.

(c) A vacancy on the Board of Directors shall be deemed to exist in case of the death, resignation or removal of any director, an increase in the authorized number of directors, or in the case of a director who has been declared of unsound mind by a final order of court.

(d) The Board of Directors may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final court or judgment of any court to have breached any duty arising under Sections 5230 through 5238 of the California Corporations Code. Subject to Section 5222(f) of the California Corporations Code, the Board of Directors may also remove any director without cause if the removal is approved by a majority of the directors then in office.

(e) No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

**Section 16. Non-Liability of Directors.** The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

**Section 17. Indemnification by Corporation of Directors, Officers, Employees and Other Agents.** To the extent that a person who is, or was, a director, officer, employee or other agent of this corporation has been successful on the merits in defense of any civil, criminal, administrative or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the corporation, or has been successful in defense of any claim, issue or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by this corporation but only to the extent allowed by, and in accordance with the requirements of, Section 5238 of the California Corporations Code.

**Section 18. Insurance for Corporate Agents.** 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 any liability other than for violating provisions of law relating to self-dealing (Section 5233 of the California Corporations Code) 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 provisions of Section 5238 of the California Corporations Code.

## **ARTICLE IV**

### **OFFICERS**

**Section 1. Number of Officers.** The officers of the corporation shall be a President, a Secretary, and a Treasurer. In addition, the corporation may have one or more Vice Presidents. The corporation may also have, as determined by the Board of Directors, a Chairperson of the Board of Directors, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, or such other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve concurrently as the President or Chairperson of the Board of Directors.

**Section 2. Qualification, Election, and Term of Office.** Any person may serve as officer of this corporation. Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office 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 3. Subordinate Officers.** The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors.

**Section 4. Removal and Resignation.** Any officer may be removed, either with or without cause, by the Board of Directors, at any time. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer. 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, but without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. 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.

**Section 5. Vacancies.** Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be 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 of Directors shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board of Directors may or may not be filled as the Board of Directors shall determine.

**Section 6. Duties of President.** The President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the corporation and the activities of the officers. 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. Unless another person is specifically appointed as Chairperson of the Board of Directors, he or she 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 Presidents.** In the absence of the President, or in the event of his or her inability or refusal to act, the Vice Presidents, if any be appointed, in order of their rank as fixed by the Board of Directors, or, if not ranked, the Vice President designated by the Board of Directors, 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:

(a) Certify and keep, or cause to be kept, at the principal office of the corporation the original, or a copy of these Bylaws as amended or otherwise altered to date;

(b) Keep, or cause to be kept, at the principal office of the corporation or at such other place as the Board of Directors may determine, a book of minutes of all meetings of the directors, and, if applicable, meetings of committees of directors, 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;

(c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(d) Be custodian of the records and of the seal of the corporation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the corporation under its seal is authorized by law or these Bylaws;

(e) Exhibit at all reasonable times to any director of the corporation, or to his or her agent or attorney, on request therefor, the Bylaws and the minutes of the proceedings of the Board of Directors of the corporation; and

(f) 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.** Subject to the provisions of these Bylaws relating to the "Execution of Instruments, Deposits and Funds," the Treasurer shall:

(a) Have charge and custody of, and be responsible for, all funds and securities of the corporation, and deposit all such funds in the name of the corporation in

such banks, trust companies, or other depositories as shall be selected by the Board of Directors;

(b) Receive, and give receipt for, monies due and payable to the corporation from any source whatsoever;

(c) 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;

(d) Keep and maintain adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses;

(e) 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;

(f) 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;

(g) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports; and

(h) 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, 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 salaries of the officers, if any, shall be fixed from time to time by resolution of the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation. In all cases, any salaries received by officers of this corporation shall be reasonable and given in return for services actually rendered for the corporation which relate to the performance of the charitable or public purposes of this corporation.

## **ARTICLE V**

### **COMMITTEES**

**Section 1. Executive Committee.** The Board of Directors may, by a majority vote of directors, designate two or more of its members (who may also be serving as officers of this corporation) to constitute an Executive Committee and delegate to such Committee any of the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, except with respect to:

(a) the approval of any action which, under law or the provisions of these Bylaws, requires the approval of the Board of Directors;



- (b) the filling of vacancies on the Board of Directors or on any committee which has the authority of the Board of Directors;
- (c) the fixing of compensation, if any, of the directors for serving on the Board of Directors or on any committee;
- (d) the amendment or repeal of Bylaws or the adoption of new Bylaws;
- (e) the amendment or repeal or any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (f) the appointment of committees of the Board of Directors or the members thereof;
- (g) the expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected;
- (h) the approval of any transaction to which this corporation is a party and in which one or more of the directors has a material financial interest, except as expressly provided in Section 5233(d)(3) of the California Corporations Code.

By a two-thirds majority vote of its members then in office, the Board of Directors may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two the number of the Committee's members, and fill vacancies therein from the members of the Board of Directors. The Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the Board of Directors from time to time as the Board of Directors 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. Such other committees may consist of persons who are not also members of the Board of Directors. These additional committees shall act in an advisory capacity only to the Board of Directors and shall be clearly titled as "advisory" committees.

**Section 3. Meetings and Action of Committees.** Meetings and action 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 meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The time for special meetings of committees may also be fixed by the Board of Directors. The Board of Directors may also 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 VI**

### **EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

**Section 1. Execution of Instruments.** The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation 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.

**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 Treasurer and countersigned by the President of the corporation.

**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 and Grants.** The Board of Directors may accept on behalf of the corporation any contribution, gift, grant, bequest, or devise for the charitable or public purposes of this corporation.

## **ARTICLE VII**

### **CORPORATE RECORDS, REPORTS AND SEAL**

**Section 1. Maintenance of Corporate Records.** The corporation shall keep at its principal office in the State of California:

- (a) minutes of all meetings of directors, committees of the Board of Directors, 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; and
- (c) a copy of the corporation's Articles of Incorporation and Bylaws as amended to date.

**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.

**Section 4. 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 includes the right to copy and make extracts.

**Section 5. Annual Report.** The Board of Directors shall cause an annual report to be furnished not later than 120 days after the close of the corporation's fiscal year to all directors of the corporation, which report shall contain the following information in appropriate detail:

- (a) the assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;
- (b) the principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) the revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- (d) the expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year; and
- (e) any information required by Section 7 of this Article.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

**Section 6. Annual Statement of Specific Transactions to Directors.** This corporation shall mail or deliver to all directors a statement within 120 days after the close of its fiscal year which briefly describes the amount and circumstances of any indemnification or transaction of the following kind:

- (a) any transaction in which the corporation, or its parent or its subsidiary, was a party, and in which either of the following had a direct or indirect material financial interest:
  - (i) any director or officer of the corporation, or its parent or subsidiary (a mere common directorship shall not be considered a material financial interest); or
  - (ii) any holder of more than 10% of the voting power of the corporation, its parent or its subsidiary.

The above statement need only be provided with respect to a transaction during the previous fiscal year involving more than FIFTY THOUSAND DOLLARS (\$50,000) or which was one of a number of transactions with the same persons involving, in the aggregate, more than FIFTY THOUSAND DOLLARS (\$50,000).

Similarly, the statement need only be provided with respect to indemnifications or advances aggregating more than TEN THOUSAND DOLLARS (\$10,000) paid during the previous fiscal year to any director or officer.

Any statement required by this Section shall briefly describe the names of the interested persons involved in such transactions, stating each person's relationship to the corporation, the nature of such person's interest in the transaction and, where practical, the amount of such interest, provided that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

## **ARTICLE VIII**

### **FISCAL YEAR**

**Section 1. Fiscal Year of the Corporation.** The fiscal year of the corporation shall begin on the First of January and end on the Thirty-first of December in each year.

## **ARTICLE IX**

### **AMENDMENT OF BYLAWS**

**Section 1. Amendment.** Subject to any provision of law applicable to the amendment of Bylaws of public benefit nonprofit corporations, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted by approval of the Board of Directors.

## **ARTICLE X**

### **AMENDMENT OF ARTICLES**

**Section 1. Amendment.** Subject to any provision of law applicable to the amendment of Articles of Incorporation of public benefit nonprofit corporations, the Articles of Incorporation may be amended by the approval of a two-thirds majority of the Board of Directors.

**Section 2. Certain Amendments.** Notwithstanding the above section of this Article, this corporation shall not amend its Articles of Incorporation to alter any statement which appears in the original Articles of Incorporation of the names and addresses of the first directors of this corporation, nor the name and address of its initial agent, except to correct an error in such statement or to delete such statement after the corporation has filed a "Statement by a Domestic Non-Profit Corporation" pursuant to Section 6210 of the California Corporations Code.

## **ARTICLE XI**

### **PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS**

**Section 1. Prohibition Against Sharing Corporate Profits and Assets.** No director, officer, employee, or other person connected with this corporation, or any private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the corporation, provided, however, that this provision shall not prevent payment to any such person of reasonable compensation for services performed for the corporation in effecting any of its public or charitable purposes, provided that such compensation is otherwise permitted by these Bylaws and is fixed by resolution of the Board of Directors; and no such person or persons shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets on dissolution of the corporation.

**Section 2. Conflict of Interest Policy.** Each director, officer or committee member with board delegated powers shall annually received a copy of the Corporation's Conflict of Interest Policy, attached hereto as Exhibit A, and shall sign a statement affirming that such person (i) has received a copy of the Policy, (ii) has read and understood the Policy, (ii) agrees to comply with the Policy, and (iv) understands that the Corporation is a nonprofit corporation and, to maintain its status, must engage primarily in activities that further its charitable purpose.

## **ARTICLE XII**

### **MEMBERSHIP**

**Section 1. Members.** This corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of a two-thirds majority of the Board of Directors.

**Section 2. Associates.** Nothing in this Article XII shall be construed as limiting the right of this corporation to refer to persons associated with it as "members" even though such persons are not members, and no such reference shall constitute anyone a member within the meaning of Section 5056 of the California Corporations Code. This corporation may confer by amendment of its Article of Incorporation or of these Bylaws some or all of the rights of a member, as set forth in the law, upon any person or persons who do not have the right to vote for the election of directors or on a disposition of substantially all of the assets of this corporation or on a merger or on a dissolution or on changes to this corporation's Articles of Incorporation or Bylaws, but no such person shall be a member with in the meaning of Section 5056 of the California Corporations Code.

## **ARTICLE XIII**

### **CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions of the California Nonprofit Corporation Law and

in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

**EXHIBIT A**  
**CONFLICT OF INTEREST POLICY**

1

## CERTIFICATE

I, Kiyoshi Ikeda, Director of FM Media TV, hereby certify that the attached Bylaws and Conflict of Interest Policy were duly adopted by the Board of Directors as of Feb 29, 2012, 2012.

By \_\_\_\_\_





# **CONFLICT OF INTEREST POLICY**

## **ARTICLE I**

### **PURPOSE**

The purpose of this Conflict of Interest Policy (the "Policy") is to protect the interest of FM Media TV ("Corporation") 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 might result in a possible excess benefit transaction as defined in Section 4958(c) of the Internal Revenue Code of 1986, as amended. 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.

## **ARTICLE II**

### **DEFINITIONS**

**Section 2.01. Interested Person.** Any director, principal officer, or member of a committee with powers delegated by the Board of Directors, who has a direct or indirect financial interest, as defined below, is an Interested Person.

**Section 2.02. Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

- (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.

A Financial Interest is not necessarily a conflict of interest. Under Section 3.02 hereof, a person who has a Financial Interest may have a conflict of interest only if the board of directors or committee, as appropriate, decides that a conflict of interest exists.

## **ARTICLE III**

### **PROCEDURES**

**Section 3.01. 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 board delegated powers considering the proposed transaction or arrangement.

**Section 3.02. 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 or 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.

**Section 3.03. Procedures for Addressing the Conflict of Interest.**

(a) An Interested Person may make a presentation at the board of directors or committee meeting, but after the presentation, he or she 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 of directors or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(c) After exercising due diligence, the board of directors or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the board of directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

**Section 3.04. Violations of the Policy.**

(a) If the board of directors 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.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the board of directors or committee

determines the member 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 of directors and all committees with board delegated powers shall contain:

(a) the names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed; and

(b) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **ARTICLE V**

##### **COMPENSATION**

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

(b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

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

#### **ARTICLE VI**

##### **ANNUAL STATEMENTS**

Each director, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms 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 nonprofit corporation and, in order to maintain its status, it must engage primarily in activities which accomplish one or more of its charitable purposes.

## **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 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.

## **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 governing board of its responsibility for ensuring periodic reviews are conducted.

**Roecks, Jan**

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**From:** Roecks, Jan  
**Sent:** Monday, March 12, 2012 12:14 PM  
**To:** [REDACTED]  
**Subject:** KCSM-TV Sale RFP 86635

Ken Ikeda

**Importance:** High  
**Sensitivity:** Private

Dear Ken,

At Section 7 of the above-referenced Request for Proposal, the District reserved the right to negotiate with and/or request best and final offers from selected bidder(s), as the District may deem appropriate in its sole and absolute discretion. We are pleased to inform you that based upon our review of the six bids submitted we have determined that your bid is one of two closely competitive bids that are in contention for selection. We are therefore requesting some additional information. Your response should include your best and final financial offer.

We sent you an inquiry on February 23, 2012 with respect to various matters. On February 29 you sent responsive materials, in part addressing your corporation's status and funding.

With respect to corporate status, you sent us copies of Articles of Incorporation and by-laws for FM Media TV, Inc. dated February 29, 2012. Has the corporation been chartered by the California Secretary of State, and, if so, when?

Your supplementary materials state that "PRC intends to finance its acquisition of KCSM with a loan from the Marty and Dorothy Silverman Foundation and FJC, a 501(c)3 public charity, which have expressed an interest in financing FM Media's acquisition of KCSM-TV (pending further due diligence and the signing of an asset purchase agreement). We are not prepared to negotiate and enter into an asset purchase agreement prior to your demonstration that FM Media TV has the financial wherewithal to close the proposed transaction. We have provided a "due diligence" period, including full disclosure of all information related to the station, a pre-bid meeting with station tour, and an opportunity to ask for additional information. We have responded to all questions and information requests by all entities submitting proposals. Can you arrange for your prospective financiers to express their commitment (rather than merely "an interest") to finance the acquisition as proposed conditioned solely only the signing of an asset purchase agreement. If so, when can that commitment be furnished?

Please keep in mind that a form of Asset Purchase Agreement is part of the RFP, so we assume that you and others submitting proposals are prepared to enter into an agreement that closely tracks that form. Please respond to this request in writing no later than Monday, March 26, 2012 with the requested information and your best and final financial offer. If you have any questions concerning this letter, please address them to Jan Roecks by Wednesday, March 21, 2012 at [roecksj@smccd.edu](mailto:roecksj@smccd.edu), with a copy to Marilyn Lawrence at [marilyn@kcsn.net](mailto:marilyn@kcsn.net).

The content of this email will be forthcoming in a certified letter sent to you today.

Best Regards,  
Jan

Jan Roecks  
Director of General Services  
San Mateo County Community College District  
(650) 358-6879 - Office



Please consider the environment before printing this email.

**Roecks, Jan**

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**From:** Roecks, Jan  
**Sent:** Wednesday, March 21, 2012 4:58 PM  
**To:** Ken Ikeda [REDACTED]  
**Subject:** Due date extended for SMCCCD KCSM TV best and final  
**Attachments:** CEO CTEW Information Request.pdf  
  
**Importance:** High

Dear Ken,

On March 13th the Chief of the FCC's Video Division issued a letter addressing a number of questions concerning the Commission's noncommercial educational broadcasting rules, Letter to Robert L. Olender from Barbara A. Kreisman, Chief, with respect to Stations WMFE-TV and KDWY(TV). The letter is attached for your information. The San Mateo County Community College District is therefore extending the due date for the bidders response to the best and final request from March 26th to April 6th, 2012 at 2pm in order for the bidder to review the most recent FCC ruling regarding noncommercial education broadcasting rules.

The request for a response "in writing" can be met by submitting a signed PDF document electronically via email by 2:00PM PST on April 6th, 2012. The email should be sent to Jan Roecks at [roecksj@smccd.edu](mailto:roecksj@smccd.edu).

Please confirm that you have received this email.

Regards,  
Jan

Jan Roecks  
Director of General Services  
San Mateo County Community College District



## PUBLIC MEDIA COMPANY

5277 MANHATTAN CIRCLE, SUITE 210 BOULDER, CO 80303 510-761-5560 PHONE 720-304-8923 FAX

4/6/12

To: Jan Roecks , Director of General Services  
San Mateo County Community College District

From: Ken Ikeda, Managing Director  
Public Media Company

Re: **KCSM-TV Sale RFP 86635**  
Response to March 12, 2012 email

Please note our response to an email sent on March 12, 2012.

*At Section 7 of the above-referenced Request for Proposal, the District reserved the right to negotiate with and/or request best and final offers from selected bidder(s), as the District may deem appropriate in its sole and absolute discretion. We are pleased to inform you that based upon our review of the six bids submitted we have determined that your bid is one of two closely competitive bids that are in contention for selection. We are therefore requesting some additional information. Your response should include your best and final financial offer.*

The total value being presented to SMCCD is \$7,000,000 (seven million). The \$6,500,000 (six million five hundred thousand) cash offer for KCSM-TV is exclusive of the promotional value for KCSM-FM and can be considered as a separate offer. The \$500,000 (five hundred thousand) of on-air, online and communications promotion for KCSM-FM over five years is an estimated value for services provided by FM Media that can be used by KCSM-FM or the San Mateo Community College. We reiterate our interest in being able to match or exceed any verified competing bids.

*With respect to corporate status, you sent us copies of Articles of Incorporation and by-laws for FM Media TV, Inc. dated February 29, 2012. Has the corporation been chartered by the California Secretary of State, and, if so, when?*

FM Media TV anticipates to be chartered by the California Secretary of State the second week of April. The articles were submitted March 16<sup>th</sup>.

*Can you arrange for your prospective financiers to express their commitment (rather than merely "an interest") to finance the acquisition as proposed conditioned solely only the signing of an asset purchase agreement. If so, when can that commitment be furnished?*

FM Media TV is prepared to sign the APA without a finance contingency.



SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT

Cañada College, Redwood City  
College of San Mateo, San Mateo  
Skyline College, San Bruno

April 10, 2012

Mr. Kiyoshi Ikeda  
Managing Director  
Public Media Company  
5277 Manhattan Circle, Suite 210  
Boulder, Colorado 80303

Re: San Mateo Community College District  
Station KCSM-TV  
Request for Proposal 86635

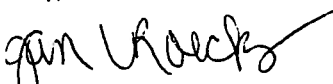
Dear Mr. Ikeda:

At Section 7 of the above-referenced Request for Proposal, the District reserved the right to negotiate with selected bidder(s), as the District may deem appropriate in its sole and absolute discretion. We have reviewed your response of April 6, 2012 on behalf of FM Media TV, Inc. to our letter requesting its best and final offer and other specified information. After comparing your organization's current proposal with that of the other most competitive bidder, we are hereby raising three points with you. If those points are resolved satisfactorily, we intend to recommend to the District Board acceptance of the FM Media TV bid.

1. Are you prepared to place ten percent of the total cash purchase price in escrow upon signing of the Asset Purchase Agreement, to be forfeited if your organization materially breaches its warranties and representations and does not cure such breach within a reasonable period, consistent with current industry practice in such transactions?
2. Are you prepared to sign the form of Asset Purchase Agreement attached to the RFP without material change? If not, please specify the provisions that you would propose to change materially and in what manner you would propose to change them.
3. Are you prepared to provide at this time documentation of financial capability to pay the Purchase Price, to be submitted to our counsel under a pledge of confidentiality?

We would appreciate it if you would respond to these questions by the end of this week. Please let me know if you need any clarification or if that timing presents a problem.

Sincerely,

  
Jan Roecks



**Roecks, Jan**

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**From:** Ken Ikeda [REDACTED]  
**Sent:** Friday, April 13, 2012 10:47 AM  
**To:** Roecks, Jan  
**Cc:** Marc Hand  
**Subject:** Re: FM Media Best and Final

**Importance:** High

Hi Jan-

At this time we can respond in the affirmative to questions 1 and 2. Could you please clarify what documentation you will need re: question 3? We will need to review what is required and then discuss this with our financing sources to verify that they are prepared to provide the documentation that is required.

I am traveling back to the Bay Area today and will do my best to check messages when I am able to.

Best,

Ken

Ken Ikeda  
Managing Director | PMC & PRC  
m: 510.604.4858  
[publicmediacompany.org](http://publicmediacompany.org) | [publicradiocapital.org](http://publicradiocapital.org)

On Apr 11, 2012, at 8:31 AM, Roecks, Jan wrote:

Dear Ken,

Please find attached my letter to you regarding your best and final offer regarding the KCSM-TV Sale and next steps. Please confirm that you have received this and can open the PDF. Please let me know if you have any questions or need clarification.

I would greatly appreciate a response to this letter by the end of this week.

Best regards,  
Jan

Jan Roecks  
Director of General Services  
San Mateo County Community College District  
(650) 358-6879 - Office