I. Introduction
The goal of the San Marcos University Corporation (hereinafter “University Corporation”) is to provide services that aid, supplement and advance the educational purposes of California State University, San Marcos (hereinafter “University”). Integral to the achievement of this goal is the University Corporation’s commitment to the involvement of students, faculty and University administration in the governance of the University Corporation through its Board of Directors (hereinafter “Directors”).

In order to achieve this goal, each Director has a general affirmative duty to know and understand certain standards of conduct. This duty also brings with it possibilities for conflicts of interest (referred hereinafter as “conflicts”). Conflicts may arise from the different but related positions that individual Directors may hold on the University campus and in other organizations or entities.

A University Corporation Director may find him or herself in a position where the Director may be called on to vote on matters that affect an organization or entity that he or she represents in another capacity. This conflict includes not only voting on such matters, but taking part in discussions, or being present during deliberations or other actions that may benefit the other organization entity or that may harm the University Corporation.

In addition, a University Corporation Director may find that he or she has access to information held by the University Corporation that could be used to negatively affect the future operations, goals or status of the University Corporation or to benefit another organization or entity. Conversely, a University Corporation Director may find that he or she has access to information held by another organization that could be used to negatively affect the future operations, goals or status of the University Corporation.
To address the concerns surrounding possible conflicts, and to prevent conflicts from hindering the participation of Directors in the governance process, the University Corporation has looked to the California Education Code and the California Corporations Code for guidance. The result is a policy that seeks to define conflicts of interest and standards of conduct so that Directors are better able to structure their relationships with other organizations and entities in view of their fiduciary responsibilities to the University Corporation, as well as provide a mechanism by which Directors can assess their activities within the University Corporation and with other organizations and entities.

It is not the intent of this policy to regulate or eliminate all conflicts, but rather to enable Directors to recognize situations that may be subject to question and ensure that such situations are properly disclosed and, if necessary, reviewed and resolved. Thus, an integral part of the policy is a disclosure mechanism whereby Directors regularly review their roles on other boards and their activities with their responsibilities to the University Corporation clearly in mind.

II. Policy Statement
It is the policy of San Marcos University Corporation that all members of the Board of Directors shall adhere to the provisions of the California Education Code, Sections §89906 through §89909, and The California Corporations Code, Sections §5230 through §5233.

III. Terms and Definitions
Financial Interest – A director is considered to have a conflict of interest when he or she, any family member or any associated entity possesses a financial interest in an activity that involve his or her responsibilities as a Director of the University Corporation. No member of the governing board of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he or she is a member, and any contract or transaction entered into in violation of this section is void. (CA Educ. Code 89906)

No contract or other transaction entered into shall be void, nor shall any director be disqualified or deemed guilty of misconduct if:
a. The fact of such financial interest is disclosed or known to the governing board and noted in the minutes, and the governing board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested director or directors, and;
b. The contract or transaction is just and reasonable as to the University Corporation at the time it is authorized or approved. (CA Educ. Code 89907(a)(b))

These exceptions, however, will not apply if one of the following circumstances exists:

a. The contract or transaction is between the University Corporation and a member of the governing board of the University Corporation.
b. The contract or transaction is between the University Corporation and a partnership or unincorporated association of which any member of the governing board of the University Corporation is a partner or in which he or she is the owner or holder, directly or indirectly, of a proprietorship interest.
c. The contract or transaction is between the University Corporation and a corporation in which any member of the governing board of the University Corporation is the owner or holder, directly or indirectly, of 5 percent (5%) or more of the outstanding common stock.
d. A member of the governing board of the University Corporation is interested in a contract or transaction within the meaning of Section 89906, and without first disclosing such interest to the governing board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction. (CA Educ. Code 89908 (a)(b)(c)(d))

Utilization of Public Information – It is unlawful for any person to utilize any information, not a matter of public record, which is received by him or her by reason of his or her membership on the governing board of the University Corporation, for personal pecuniary gain, regardless of whether he or she is or is not a member of the governing board at the time such gain is realized. (CA Educ. Code 89909)
Standards of Conduct – A Board of Directors of public benefit corporations, such as the University Corporation are held to general standards of conduct. These standards require that a director follow the “prudent person” rule. A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented.
2. Counsel, independent accountants, or other persons as to matters which the director believes to be within that person’s professional or expert competence or:
3. A committee upon which the director does not serve, as to matters within the committee’s designated authority, which committee the director believes to merit confidence, so long as, in any case, the director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances, and without knowledge that would cause that reliance to be unwarranted.

Directors should use this standard to gauge their involvement in other organizations or entities. Most important is the legal requirement to act in the best interest of the University Corporation. (CA Corp. Code 5231(a)(b)(1)(2) (3))

Self-Dealing Transactions – Directors are prohibited by law from engaging in self-dealing transactions to which the University Corporation is a party and in which one or more of its directors has a material financial interest. A mere common directorship is not in itself a material financial interest. (CA Corp. Code 5233(a))

There are exceptions from the definition of self-dealing transactions and they are:

1. An action of the board fixing the compensation of a director
as a director or officer of the corporation.

2. A transaction which is part of a public or charitable program that:
   (i) is approved or authorized by the corporation in good faith and
       without unjustified favoritism; and;
   (ii) results in a benefit to one or more directors or their families because
       they are in the class of persons intended to be benefited by the
       public or charitable program.

3. A transaction, of which the interested director or directors have no
   actual knowledge, and which does not exceed the lesser of 1 percent
   (1%) of the gross receipts of the corporation for the preceding fiscal
   year or one hundred thousand dollars ($100,000). (CA Corp. Code
   5233(b)(1)(2)(3))

Directors are thus liable to the University Corporation for self-dealing
transactions unless the transaction was approved by one of the following:

1. The Attorney General, or by the court in an action in which the
   Attorney General is an indispensable party, and approved the
   transaction either before or after it was consummated.

2. Approval before consummation of the transaction by a disinterested
   board under the following circumstances;
   a. The University Corporation entered into the transaction for its own
      benefit.
   b. The transaction was fair and reasonable to the University
      Corporation at the time the corporation entered into the transaction.
   c. Prior to consummating the transaction or any part thereof, the board
      authorized or approved the transaction in good faith by a vote of a
      majority of the directors then in office without counting the vote of the
      interested director or directors, and with knowledge of the material
      facts concerning the transaction and the director's interest in the
      transaction.

3. Interim approval by a committee or person authorized by the board,
   where immediate action was needed and action by the full board was
   not feasible, and ratification occurred by the full board at its next
   meeting, under the circumstances listed in 2. a.-c., above. (CA Corp.
   Code 5233(d)(1)(2)(3))

IV. Policy Guidelines and Procedures

Guidelines
A. With the acceptance of an appointment to the Board of Directors of the University Corporation, an individual makes a commitment to the University Corporation that is understood to be a commitment in the most inclusive sense. Directors are expected to act with professional loyalty within their roles as Directors of the University Corporation. Accordingly, they should arrange outside activities, loyalties and financial interest so as not to interfere with this responsibility.

B. Outside Directorships and Activities
The University Corporation recognizes that its Directors may participate as officers and Directors of other campus and outside organizations and entities. To the extent that these activities serve the University Corporation’s interest, as well as those of the participant, the University Corporation encourages such involvement. In addition, the University Corporation recognizes the valuable educational opportunities associated with serving on the University Corporation Board of Directors, as well as other campus and outside organizations and entities. In an effort to ensure that these educational opportunities are available to the largest number of students, as well as to address concerns regarding the inherent conflict of commitment which may exist, the University Corporation Board of Directors has determined that:

No student employed in any capacity by the University Corporation or related to any employee of the University Corporation may concurrently hold a voting position on the University Corporation Board of Directors.

C. Participation in Decisions Affecting Other Interests
Each Director must be aware that situations may arise where he or she may be asked by the University Corporation to participate in a decision that may affect an organization or entity which that Director represents in another capacity. Likewise, the Director may be asked by another organization to participate in a similar decision affecting the University Corporation. This includes participation in discussions, voting or the mere presence during deliberations, discussions, or voting on such matters. In such cases, the Director must act in a manner consistent with his or her professional loyalty and fiduciary obligation to the
University Corporation. If uncertain if a conflict exists, the Director should recuse him or herself from discussions, deliberations and voting on the matter or follow the disclosure procedures under Disclosure and Review.

D. Additionally a Director has a duty to present to the board information the Director may obtain that potentially hurts the University Corporation including, but not limited to, its current and future operations, goals or status, even if it involves another Director (e.g., that a vendor recommended by a fellow Director is a relative of a Director, or that a fellow Director has submitted a fraudulent expense report). All Directors shall maintain the confidentiality of any and all sensitive or confidential matters discussed by the board or its subcommittees, as well as issues that are discussed in closed session of the board.

Procedures
A. Disclosure and Review
   If a Director finds that he or she is faced with a possible conflict, the Director shall inform, the Chair of the Board, who shall have an affirmative duty to advise the appropriate Subcommittee of the conflict as soon as possible.

   The Subcommittee, with advice as needed from the University Corporation’s legal counsel, shall make a determination as to whether an actual conflict exists. If a conflict is found to exist, the subcommittee shall present the information to the Director, with a recommendation that the Director recuse him or herself from any further discussions, deliberations, voting or presence on the matter to alleviate or avoid the conflict or potential conflict, or take other appropriate action as required.

B. If a Director has knowledge of a possible or actual conflict involving another Director of the board, the Director who has acquired the information has an affirmative duty to disclose, in writing, such information to the Chair of the Board. Procedures as outlined above shall be followed. In such cases where a possible or actual conflict
involves the Chair of the Board, such disclosure shall be made, in writing, to at least one member of the appropriate Subcommittee, who shall then follow the procedures above and inform the Chair if a conflict is determined to exist, with a recommendation as described above.

C. In such cases where the Subcommittee determines that a Director has knowingly violated this Conflict of Interest/Standards of Conduct Policy by failing to disclose a possible conflict of interest, by ignoring the board’s directive to cease or modify such activities or conduct, or in any other manner knowingly and purposefully acts in a way that violates the spirit or purpose of this policy, the Subcommittee shall recommend disciplinary action to the board. Such action shall include, but not be limited to; a notice to the Director’s appointing constituency or body of the specific activities or conduct which constitute the violation, of this policy, with a recommendation for an appropriate sanction or sanctions by that constituency or body.

D. At the beginning of each fiscal year, all members of the San Marcos University Corporation Board of Directors shall be required to sign an Annual Certificate of Compliance with the Conflict of Interest/Standards of Conduct Policy for Board of Directors.

V. Adoption and Review
A. The San Marcos University Corporation’s Board of Directors has adopted this Conflict of Interest/Standards of Conduct Policy-Board of Directors, dated December 7, 2012.

B. Any proposed amendments or variations of this policy would require a majority approval by the San Marcos University Corporation Board of Directors.

VI. Related Documents
A. The California State University, Financing and Treasury, Compilation of Policies and Procedures for California State University Auxiliary Organizations, Appendix C – Title 5, California Code of Regulations, Sections §89906, 89907, 89908, 89909
B. California Corporation Code, Chapter 2. Directors and Management, Article 3. Standards of Conduct, Sections §5231-5234