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## **ARTICLE 8 – ETHICS IN PUBLIC CONTRACTING**

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### **8.1 GENERAL STANDARDS OF ETHICAL CONDUCT**

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of a County Employee's duties is a breach of a public trust. Any effort to influence any public employee to breach the standards of ethical conduct is also a breach of ethical standards.

In addition to the provisions of this section, the Employees and Officials of the County, as well as non-county individuals and companies who deal with the County through the procurement process, shall comply with the provisions of Article XXIX of the Constitution of the State of Colorado, Ethics in Government.

### **8.2 EMPLOYEE CONFLICT OF INTEREST**

It shall be a breach of ethical standards for any County Employee to participate directly or indirectly in the procurement process when the Employee knows that:

1. The Employee or any member of the Employee's immediate family has a financial interest pertaining to the procurement; or
2. A business or organization in which the Employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
3. Any other person, business, or organization with whom the Employee or any member of the Employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Where an Employee or any member of the Employee's immediate family holds a financial interest in a blind trust, the Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the County Attorney.
5. A Garfield County employee or any member of a Garfield County employee's immediate family owns a minority ownership interest in a publicly traded company shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, unless the combined ownership interests of the County employee and the immediate family in the publicly traded company represent a majority interest in such publicly traded company.
6. Upon discovery of an actual or potential conflict of interest, an Employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

### **8.3 EMPLOYEE DISCLOSURE REQUIREMENTS**

1. Any Employee who has, or obtains any benefit from any County contract with a business in which the Employee or member of an Employee's immediate family has a financial interest shall report such benefit to the County Attorney and Chief Procurement Officer.
2. Any Employee who knows or should have known of such benefit, and fails to report such benefit to the County Attorney and Chief Procurement Officer, is in breach of the ethical standards of this Section.

### **8.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It is prohibited for any County Employee who participates directly or indirectly in the procurement process to be contemporaneously employed by any person or entity that seeks to contract with Garfield County.

### **8.5 WAIVER OF CONFLICTS AND PROHIBITION ON EMPLOYMENT.**

The County Manager may waive application of the conflict of interest provisions (§ 8.2) or the prohibition of contemporaneous employment (§ 8.4) upon making a determination that:

1. The Employee timely disclosed the financial interest or contemporaneous employment;
2. The Employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and
3. Waiver is in the best interests of the County.

### **8.6 PROHIBITION OF USE OF CONFIDENTIAL INFORMATION**

It is unethical for any current or former County Employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

### **8.7 PROHIBITION OF GRATUITIES AND KICKBACKS**

1. **Gratuities.**
  - a. It is unethical for any person to offer, give, or agree to give, any County Employee a gift or gratuity of any pecuniary benefit, a substantial economic benefit, or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a procurement request.
  - b. It is similarly unethical for any County Employee to solicit, demand, accept, or agree to accept from another person, a gift or gratuity of any pecuniary benefit, a

substantial economic benefit, or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a procurement request.

**2. Kickbacks.**

- a. It is unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- 3. Contract Clause.** The prohibition against gratuities and kickbacks shall be set forth in every Standard and Simplified Purchase contract and solicitation.

**8.8 PROHIBITION OF CONTINGENT FEES**

It is a breach of ethical standards for a person to retain, or to be retained, to solicit or secure a contract with the County upon agreement for a commission, percentage, brokerage or contingent fee, except for the retention of a bona fide employee or established commercial selling agency for the purpose of securing business.

**8.9 REMEDIES AND CONSEQUENCES OF BREACH**

All procedures under this Section shall be exercised in accordance with due process requirements and existing law. Notice and an opportunity for a hearing shall be provided prior to imposition of any employment consequence.

**1. Recovery of Value Transferred or Received.**

- a. The value of anything transferred or received in breach of the ethical standards of this Article 8 by a County Employee or a non-employee may be recovered from both. Recovery from one offending party shall not preclude recovery from other offending parties.
- b. Upon a showing that a subcontractor made a kickback to a prime contractor or higher tier subcontractor in connection with a County contract, it shall be conclusively presumed that the amount paid was included in the price of the subcontract and ultimately borne by the County; the amount will, therefore, be recoverable by the County from the recipient. In addition, the amount may also be recovered from the subcontractor paying the kickback. Recovery from one offending party shall not preclude recovery from other offending parties.
- c. The provisions of the preceding two paragraphs shall be set forth in every Standard and Simplified Purchase contract and solicitation.

2. **Supplemental Remedies - Employees.** In addition to any other remedies for breach of the ethical standards of this Article, the County may impose any one or more of the following employment consequences:
  - a. Oral or written warnings or reprimands;
  - b. Suspension with or without pay for a specified period of time; and
  - c. Termination of employment.
  
3. **Supplemental Remedies - Non-Employees.** In addition to existing remedies for breach of the ethical standards of this Article, the County may impose any one or more of the following non-employment related consequences:
  - a. Written warnings or reprimands;
  - b. Termination of transactions; or
  - c. Debarment or suspension from being a contractor or subcontractor under a County contract for a specified period of time.

#### **8.10 CRIMINAL PENALTIES**

To the extent violations of ethical standards of conduct constitute violations of the Colorado Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this part. Criminal, civil, and administrative sanctions against employees and nonemployees, which are in existence on the effective date of this Code, shall not be impaired.