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October 30, 2018

**VIA U.S. MAIL and EMAIL ([patty@beaubidenfoundation.com](mailto:patty@beaubidenfoundation.com))**

Patricia Dailey Lewis, Esq.  
Executive Director  
Beau Biden Foundation for the Protection of Children  
4601 Concord Pike  
Wilmington, Delaware 19803

Re: **Beau Biden Foundation for the Protection of Children ("BBF")  
Event Planner Position**

Dear Patty:

BBF has asked us to review the BBF Bylaws and Conflict of Interest Policy with respect to: (1) the creation of a new independent contractor position for a full-time event planner ("Event Planner") and (2) the permissibility of hiring an immediate family member of a current director of the BBF Board of Directors ("Board") to fill the Event Planner position. Our understanding is that the Board is contemplating the creation of the Event Planner position to assist in the important fundraising component of BBF, e.g., annual golf tournament, trail race, road race, and frequent fundraising events in Delaware and across the United States. Our further understanding is that the current officers of BBF dedicate extensive hours towards the planning of these events, which will become the responsibility of the Event Planner. As contemplated, this is turn will allow the officers to reallocate more time toward carrying out the tripartite mission of BBF as specified in the Bylaws: Education, Leadership Development and Advocacy.

**BBF Bylaws**

Article II (Purpose) of the Bylaws provides:

The Corporation is organized and shall be operated exclusively for charitable purposes. The specific charitable purpose shall be to continue the work which Joseph R. "Beau" Biden, III loved the most – protecting the most vulnerable among us, the children who are being abused. The Foundation should fill gaps that exist in

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educating adults about child protection, raising awareness of bullying and online safety among school aged children, and expanding across the nation, some of the policy solutions to protecting kids that Beau Biden brought to Delaware while serving as the State Attorney General.

Article IV 2. (Duties and Powers) provides:

The Board of Directors shall be responsible for the setting policies for the Corporation to achieve its charitable goals and may exercise all powers of the Corporation, except such as those stated under Delaware State Law, in the Certificate of Incorporation or in these Bylaws, expressly conferred upon or reserved to the members or any other person or persons named therein.

It is our opinion that pursuant to Articles II and IV of the BBF Bylaws, the creation of the Event Planner position is within the Board's permitted powers – provided that the decision is made pursuant to a properly-convened meeting and majority vote of the Board.<sup>1</sup> If, in the Board's business judgment, the hiring of a qualified event planner (as an independent contractor) will assist BBF in achieving its charitable goals, such decision also appears to fall within the scope of Articles II and IV. Also, although not a conflict of interest, as discussed below, we suggest the Board utilize the BBF Conflict of Interest Policy for general guidance in making its decision.

Article X (Interested Directors) of the Bylaws provides:

Any contract or transaction between the Corporation and one or more of its Directors or Officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or Officers, are Directors or Officers, or have a financial interest, shall comply with the Corporation's Conflict of Interest Policy which is attached hereto as Schedule A.

As noted, the hiring of a qualified Event Planner, who is an immediate family member of an active Board director, does not technically fall within the scope of this section. However, in

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<sup>1</sup> Article IV of the BBF Bylaws provides the requirements for holding regular and special meetings of the Board, quorum, and voting rights.

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our view, the general parameters referenced below are instructive with respect to the Board's consideration of a family-related independent contractor for the Event Planner position. In this context, we note below, several sections of the Conflict of Interest Policy for purposes of providing a framework for the Board.

**BBF Conflict of Interest Policy**

Article I (Purpose) of the Conflict of Interest Policy provides:

The purpose of this conflict of interest policy is to protect BEAU BIDEN FOUNDATION FOR THE PROTECTION OF CHILDREN, INC., (the "Organization") when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction.

Article II (Definitions) provides:

1. **Interested Person**

Any member director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. **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 Organization has a transaction or arrangement;
- (b) A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement; or
- (c) A potential ownership or investment interest in, or compensation arrangement with, any entity or



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individual with which the Organization 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 Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Article III (Procedures) provides:

1. **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 governing board delegated powers considering the proposed transaction or arrangement.

2. **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/she shall leave the governing board of committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board of committee members shall decide if a conflict of interest exists.

3. **Procedures for Addressing the Conflict of Interest**

- (a) An interested person may make a presentation at the governing board of committee meeting, but after the presentation, he/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 governing board of committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.



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- (c) After exercising due diligence, the governing board of committee shall determine whether the Organization 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 governing board of committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization'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.

4. **Violations of the Conflicts of Interest Policy**

- (a) If the governing board 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 governing board of committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

As a suggested framework applied to the contemplated hiring of an immediate family member of a current Board director, our recommendation is that the related Board director (or any other director with a family relationship) disclose to the other directors (and members of any committees with governing board delegated powers considering the proposed transaction or arrangement) the blood relationship with the Event Planner candidate. *See* Article III1. After disclosing the financial interest "and all materials facts," the Interested Person (or Interested Persons) would leave the meeting to allow the Board to discuss and to vote. With Article III providing suggested guidance, the Interested Person(s) would not vote.

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According to the suggested guidelines, if the disinterested members of the Board determine by majority vote to hire the family member as the Event Planner, the disinterested board members would also consider the candidate's qualifications for purposes of compensation.

**Employment Criteria**

With respect to qualifications for the independent contractor Event Planner position, we suggest the following non-exclusive criteria should be considered:

- Depth of experience in event planning and implementation
- Strong organizational and marketing skills, *e.g.*, organizing facilities and event details, including but not limited to, location, invitee list, special guests, equipment, promotional materials, catering, décor, entertainment, transportation, and the like
- Ability to perform efficiently and adhere to timelines
- Strong communication and interpersonal skills, as well as ability to negotiate with third-party vendors
- Ability to plan a budget and adhere to that budget
- Strong problem-solving skills and quick reaction time in event of unforeseen situation
- Ability to work well with BBF's officers and the Board
- Familiarity with BBF's mission and dedication to continue the legacy of Joseph R. "Beau" Biden, III – protecting children from abuse
- Ability to work well under pressure, attention to detail, and completion of projects
- Knowledge of/experience with sporting events BBF traditionally incorporates into its fundraising activities, *e.g.*, golf, running, tennis

**Calculation of Compensation**


If the Board elects to create the independent contractor Event Planner position, the directors should also determine reasonable compensation for the position. The Board may choose to scale compensation up or down, based on the above-mentioned employment criteria, and the compensation should be commensurate with the candidate's experience and familiarity with the operations of BBF, as well as comparable positions for similarly-situated organizations. If the Board decides to hire an Event Planner, and as suggested, a majority of the disinterested directors determines that the candidate related to the non-voting Board member(s) is well-qualified for that position; the voting members may consider setting compensation at a level slightly lower than that for an unrelated individual to minimize the perception of nepotism.

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Also, presumably, an independent contractor will choose to be paid through a corporate entity, *e.g.*, Delaware Limited Liability Company, which is a common selection because of its tax flexibility, simplified operation, and protection from liability. If the Board determines it is in the best interest of BBF to hire an Event Planner, BBF should consult with its accountant as soon as possible to prepare for the onboarding of the independent contractor.

Very truly yours,



Monzack Mersky McLaughlin and Browder, P.A.