

**AMENDED AND RESTATED BYLAWS OF  
PACIFICA FOUNDATION, INC.**

A California Nonprofit Public Benefit Corporation  
(Amended and Restated as of December \_\_\_, 2019)

**ARTICLE I. NAME AND LOCATION**

**Section 1. NAME**

The name of this organization is Pacifica Foundation, Inc. (hereafter “The Foundation”)

**Section 2. LOCATION**

The principal office for the transaction of the business of the corporation is located at 1929 Martin Luther King Jr. Way, Berkeley, Alameda County, California. The Directors may change the principal office from one location to another. Any change of location shall be noted by the Secretary in these Bylaws.

**ARTICLE II. PURPOSE**

**Section 1. NON-PROFIT PURPOSE**

The Foundation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Corporation Law of California (“California Nonprofit Corporation Law”) for public purposes.

**Section 2. SPECIFIC PURPOSES**

The specific purposes of the Foundation, as stated in Article II of the Articles of Incorporation, are as follows:

“To establish a Foundation organized and operated exclusively for educational purposes no part of the net earnings of which inures to the benefit of any member of the Foundation.

“To establish and operate for educational purposes, in such manner that the facilities involved shall be as nearly self-sustaining as possible, one or more radio broadcasting stations licensed by the Federal Communications Commission (“Commission”) and subject in their operation to the regulatory actions of the Commission under the Federal Communications Act of 1934, as amended.

“In radio broadcasting operations to encourage and provide outlets for the creative skills and energies of the community; to conduct classes and workshops in the writing and producing of drama; to establish awards and scholarships for creative writing; to offer performance facilities to amateur instrumentalists, choral groups, orchestral groups and music students; and to promote and aid other creative activities which will serve the cultural welfare of the community.

“In radio broadcasting operations to engage in any activity that shall contribute to a lasting understanding between nations and between the individuals of all nations, races, creeds and

colors; to gather and disseminate information on the causes of conflict between any and all of such groups; and through any and all means compatible with the purposes of this Foundation to promote the study of political and economic problems and of the causes of religious, philosophical and racial antagonisms.

“In radio broadcasting operations to promote the full distribution of public information; to obtain access to sources of news not commonly brought together in the same medium; and to employ such varied sources in the public presentation of accurate, objective, comprehensive news on all matters vitally affecting the community.”

### **ARTICLE III. MEMBERSHIP**

#### **Section 1. MEMBERS DEFINED**

There shall be two classes of members: (A) "Listener-Sponsor Members" and (B) "Staff Members", who shall collectively be referred to as "Members."

**A. Listener-Sponsor Members.** "Listener-Sponsor Members" shall be any natural persons who within the preceding 12-month period: (1) have contributed a minimum of \$50 to any Foundation radio station, or such minimum amount as the Board of Directors may from time to time decide; or (2) have volunteered a minimum of fifteen (15) hours of service to any Foundation radio station. Said contribution shall be considered non-refundable. Said volunteer work shall be performed under the supervision of the Foundation radio station management and shall be recorded in a volunteer logbook maintained by station management. Where a contribution is made jointly by two individuals and the contribution is in an amount equal to or more than the annual membership contribution required for two memberships (as set by the Board from time to time), then each of the joint donors shall be considered an individual and separate Listener-Sponsor Member. (For example, if John and Mary Smith jointly contribute \$100.00 or more, then John Smith and Mary Smith will each be Members and will each have individual and separate Membership rights. However, if John and Mary Smith jointly contribute \$90.00, then they shall jointly share one membership.)

**B. Staff Members:** "Staff Members" shall be: (1) any non-management full-time or part-time paid employee of a Foundation radio station; or (2) any member of a Foundation radio station "Unpaid Staff Organization" or "Unpaid Staff Collective Bargaining Unit" which has been recognized by station management, or, if the station has neither such organization or bargaining unit, then any volunteer or unpaid staff member of a Foundation radio station who has worked for said radio station at least 30 hours in the preceding 3 months, exclusive of fund-raising marathon telephone room volunteer time. Said volunteer work shall be performed under the supervision of the Foundation radio station management. Radio station management employees and Foundation staff employees who are not employed at a Foundation radio station shall not qualify as Staff Members, however, such employees may qualify as Listener-Sponsor Members by contributing the requisite minimum dollar amount as set forth in Section 1(A) of this Article of these Bylaws.

#### **Section 2. TERM**

Membership terms shall be considered "rolling," and calculated forward from the last date of a Member's qualifying act. For example, if a Listener-Sponsor Member makes a qualifying

contribution on January 1, 2019 and does not make any additional contribution or volunteer at least the minimum number of hours within the following 12-month period, said Member's membership would expire on December 31, 2019. If, however, in the same example, said Member makes a qualifying contribution on August 1, 2019, or volunteers for at least the minimum number of hours, then their membership will not expire until July 31, 2020, provided no additional contribution or volunteer time is made after the August 1, 2019 contribution.

A Listener-Sponsor membership term shall expire twelve (12) months from that date on which said Member: (A) contributed such minimum amount as the Board of Directors may from time to time decide; or (B) volunteered the minimum hours of service to any Foundation radio station.

A Staff membership term shall expire: (A) on that date on which they are no longer a member of a radio station Unpaid Staff Organization or Bargaining Unit, or if the radio station has no such organization, then on that date on which they failed to volunteer a minimum of 30 hours in the preceding 3-month period; or (B) upon termination of employment as a non-management employee of a Foundation radio station, as applicable.

### **Section 3. MEMBERSHIP AFFILIATION BY RADIO STATION**

All Members shall be members of the Foundation. For purposes of voting and exercising their rights hereunder, Members shall be affiliated with one of the Foundation's five radio stations: KPFA in Berkeley, California, KPFK in North Hollywood, California, WBAI in New York, New York, KPFT in Houston, Texas, or WPFW in Washington, D.C. Members shall be affiliated with that Foundation radio station: (A) in the case of a Listener-Sponsor Member, to which said member made a contribution or volunteered time in the preceding 12 months; or (B) in the case of a Staff Member, by which said member is employed or for which said member volunteers and/or serves as unpaid staff. Each Foundation radio station shall maintain a register of its Listener-Sponsor Members and Staff Members. If a person qualifies for membership affiliation with more than one Foundation radio station, they shall be entitled to only one membership and shall notify the Foundation and each applicable Foundation radio station of which radio station they wish to be affiliated as a Member. If a Member does not notify the Foundation of which radio station they wish to be affiliated, they shall be deemed to be affiliated with that radio station to which said Member last contributed or volunteered. If a person qualifies as both a Listener-Sponsor Member and as a Staff Member, such person shall be deemed to be a Staff Member.

### **Section 4. RIGHTS**

All Members shall have all rights granted to them by law or by these Bylaws, including without limit the right to vote, on the terms and in the manner set forth in these Bylaws, on the election and removal of the Station Representative Director for the radio station to which their membership is affiliated, on the sale, exchange, transfer or disposition of all or substantially all of the Foundation's assets; on the sale, exchange, transfer or disposition of any of the Foundation's broadcast licenses; on any merger, its principal terms and any amendment of its principal terms; on any election to dissolve the Foundation; on any amendment to these Bylaws for which Member approval is required or permitted as set forth in Section \_\_ of Article \_\_ of these Bylaws; and on any amendment to the Articles of Incorporation.

## **ARTICLE IV. MEMBERSHIP MEETINGS**

## **Section 1. MEMBERSHIP MEETINGS**

Meetings of Members for any lawful purpose may be called by the Board, the Chair of the Board, or the Executive Director. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

Meetings of the membership may be held by video conference pursuant to section 5510 of the California Nonprofit Public Benefit Corporation Law.

A quorum for a membership meeting shall be 5% of the members.

## **Section 2. ACTION BY MEMBER VOTE**

The Board of Directors, the Foundation's Executive Director, the Chairperson of the board, or one (1%) or more of the Members may call for any lawful action by the Members by vote. The members may call for action by submitting a petition signed by one percent (1%) of the Members, or one percent (1%) of the Members of the affected station as may be applicable, stating the action to be taken in the form of a resolution to be voted upon by the Members. The only instances in which Members would vote separately by station affiliation would be in the election or recall of their Station Representative Director. The Foundation shall make available a written or electronic ballot to every Member entitled to vote on the matter. Such written or electronic ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, provide a reasonable time within which to return the written ballot to the Foundation. Said ballots shall also be accompanied by brief written arguments in favor of and against the proposed action, which arguments may be prepared and submitted by the Board of Directors or by 10 or more Members, if they are provided no later than fifteen (15) days prior to the date of the making available of said ballot.

## **Section 3. QUORUM FOR ACTION BY VOTE**

A quorum for any action by membership vote shall be 5% of the members, or 5% of the members associated with that station.

## **Section 4. RECORD DATE**

The record date for purposes of determining the Members entitled to vote or entitled to exercise any other lawful membership action, shall be set by the Executive Director, or by an Election Supervisor appointed by the Executive Director, and shall be 45 to 60 days before the day on which the first written or electronic ballot is distributed or made available to the Members.

## **Section 5. NO PROXIES**

The voting rights of the Members shall be exercised by the Member personally and may not be exercised by alternates, by proxy, or the like.

# **ARTICLE V. NOMINATION AND ELECTION OF DIRECTORS**

## **Section 1. ELIGIBILITY**

To be eligible for nomination and election as Station-Representative director an individual must be a listener-sponsor member, as defined in Article III, Section 1.A, above, of the Pacifica radio station they are nominated to represent

An At-Large director nominee shall not be required to be a member prior to nomination but shall donate at least the minimum membership donation either to a Pacifica radio station or to the foundation at the time of their nomination.

No staff member, as defined in Article III, Section 1.B, above, nor any station or Foundation employee, nor any person who hosts or helps to produce a program regularly aired on any Pacifica radio station shall be eligible for service on the Foundation Board of Directors as an At-Large or Station Representative Director.

No two members of the Board of Directors related by blood or marriage/domestic partnership within the second degree of consanguinity or affinity may serve on the Board of Directors at the same time.

No person who holds an elected office at any level of government, federal, state, or local, or is running for election for such an office, shall be eligible for nomination, election, or service on the Foundation Board of Directors. In this context "elected" means chosen by a vote of eligible citizens by means of a publicly conducted official balloting.

## **Section 2. TERM AND TERM LIMITS**

Each Director shall hold office for a three-year term. Directors' terms will commence on April 1<sup>st</sup> and expire on March 31<sup>st</sup> three years later, or as soon thereafter as their successor can be elected. A Director may serve up to two (2) consecutive terms, after which they must take a one-year hiatus, before being eligible for reelection. If a Director came on to fill a mid-term vacancy, for purposes of determining whether a term has been served and should be counted towards the term limit, service of 18 months or more, counted from the 1<sup>st</sup> day of the month when the Director took office, shall constitute a term. Service of less than 18 months shall not be considered a term.

## **Section 3. STAGGERED TERMS.**

The Directors' terms shall be staggered so that no more than four Directors' terms expire each year. Two (2) of the six (6) At-Large Directors' terms shall expire each year, and one (1) or two (2) of the five (5) Station Representative Directors' terms shall expire each year. The Station-Representative elections shall rotate around the five stations, with two stations electing their representative directors in years 1 and 2, and one station electing their representative director in year 3. This three-year election cycle rotating through the five stations shall then commence again at the beginning.

## **Section 4. NOMINATION AND ELECTION OF STATION REPRESENTATIVE DIRECTORS**

Nominations shall open on December 15th and close on January 15th each year at those Pacifica-owned stations where their representative director's terms expire on March 31<sup>st</sup>.

Any Listener-Sponsor Member in good standing may be nominated for election to the Station Representative Director seat for the radio station with which they are affiliated by the nominating signatures of fifteen (15) Members in good standing who are also affiliated with that radio station. Nominees shall complete nomination form or forms which shall be made available on the Foundation web page, and they must submit them as directed on the web page and/or the form by the closing date of nominations. Nominees may also submit a statement of up to 500 words stating the reasons for their candidacy and may include one supporting statement of up to 200 words signed by up to 3 members in good standing supporting their nomination.

A Record Date shall be set between 45 and 60 days before the first ballots shall be made available. Listener-Sponsor Members and Staff Members in good standing on the Record Date shall be eligible to vote.

The Executive Director may appoint an Election Supervisor to conduct and oversee the election, or the election may be conducted under the supervision of the Foundation Secretary, in the discretion of the Executive Director.

The election shall be conducted as an Instant Runoff election, where each voter shall have one vote but may rank their choices on their ballots according to their preferences from first choice up to and including ranking as many of the candidates as the voter desires to rank.

If a Station-Representative Director election fails to reach the 5% quorum, then that Director's seat shall be filled by the Board of Directors for that term by instant-runoff voting, including the vote of the Station-Representative Director whose seat is being filled if there is one.

#### **Section 5. NOMINATION AND ELECTION OF AT-LARGE DIRECTORS**

Any member of the Board of Directors or the Executive Director may nominate any eligible person to serve as an At-Large Director. The board may appoint a recruitment committee to assist in locating qualified individuals to serve as At-Large Directors. The Foundation Secretary shall verify each nominee's eligibility. In the nomination and election of At-Large Directors, the board shall consider skills and experience which are needed on the board and/or background and accomplishments in fields related to the Foundation's core "Peace and Justice" mission,

Nominee's names and nomination packages shall be submitted to the full board no later than February 15<sup>th</sup> each year.

The nomination package will include, without limit, (1) a Curriculum Vitae or Resume, (2) a statement of up to 500 words by the nominee of any special skills or knowledge he or she brings, and (3) supporting statements from the Board Recruitment Committee and/or the Executive Director or Board member who nominated the candidate.

The ballots will be distributed to the board by electronic means on March 1<sup>st</sup>, or the first business day thereafter, and will be returned to the Secretary no later than March 10<sup>th</sup> for counting. The count shall be maintained as a secret ballot.

The ballots shall be counted, and the results announced no later than March 15<sup>th</sup>.

Those elected will serve terms commencing on April 1<sup>st</sup> following their election and expiring on March 31<sup>st</sup> three (3) years later, or as soon thereafter as a successor can be elected.

As there will normally be two At-Large Director seats open, each Director will have two votes. If for any reason there are more At-Large Director seats open (such as death, disability, resignation, removal) then each director will have the same number of votes as there are vacancies. Votes may not be cumulated, i.e., a Director may not cast more than one vote for the same candidate, although a Director may choose to only cast one vote and only vote for one candidate.

Ties will be resolved by the electronic equivalent of drawing straws.

If there is a vacancy being filled for a partial term, the two highest vote getters shall win 3-year terms, and the next highest vote-getter shall complete the term left by the vacancy.

If a vacancy is being filled at some other time during the calendar year (and not at the same time as the regular terms expiration), then the vote to fill the remainder of the term shall be by Instant Runoff Vote.

## **ARTICLE VI. BOARD OF DIRECTORS**

### **Section 1. NUMBER OF DIRECTORS**

There shall be Eleven (11) Directors, including five (5) Station-Representative Directors and six (6) At-Large Directors. The Executive Director shall be a non-voting member of the Board.

### **Section 2. GENERAL POWERS AND DUTIES**

All corporate powers shall be exercised by the Board, except as otherwise expressly provided by law, by The Foundation's Article of Incorporation, or in these Bylaws. The Board shall delegate the management of the Foundation to the Executive Director, subject to the ultimate control of the board. The duties of the Board shall include, but not be limited to, the following:

1. To hire, fire and supervise an Executive Director who shall be the President and CEO of The Foundation; the Board shall enter into an employment agreement setting forth goals and objectives to be obtained by the Executive Director and specifying powers delegated to her or him.
2. To create such standing committees as may be appropriate. The Board may appoint to its committees members in good standing of The Foundation, provided however, that a majority of the committee members must be Directors and members appointed will be chosen for needed skills and experience related to the tasks of the committee.
3. To approve the plans of work of the Executive Director and standing committees.
4. To approve the Foundation budget.
5. To appoint a Finance Committee to monitor the budget and financial status of the Foundation on a regular basis and to report to the full board at least quarterly. The Finance Committee shall determine appropriate policies and procedures for controlling Foundation and Station expenses and financial reporting.
6. To take necessary and appropriate steps to secure the financial stability of the Foundation.
7. To appoint an Audit Committee and retain the services of a duly qualified auditor.

### **Section 3. FILLING OF VACANCIES**

A vacancy arising for any reason in the Board shall be filled by majority vote of the Board. However, if a vacancy remains unfilled for six (6) months and a quorum cannot be obtained as a consequence, the Executive Director may appoint a Director to fill such a vacancy. A Director elected or appointed to fill a vacancy shall hold office for the duration of the term of the Director whose place had become vacant.

### **Section 4. RESIGNATION**

Any Director may resign, at any time, by giving written notice to the President or Secretary, unless such resignation shall have the effect of compromising the Foundation's tax-exempt status. Any such resignation shall take effect at the time specified therein and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

### **Section 4. REMOVAL**

If a Director is absent from three (3) consecutive regular meetings of the Board without good cause, the Board by a vote of the majority, may declare the place of that Director vacant.

The board 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 order or judgment of any court to have breached any duty under the standards of conduct set out in Article 3 of the California Nonprofit Public Benefit Corporation Law (commencing with section 5230).

Any At-Large Director may be removed with or without cause by a 2/3rds majority vote of all the Directors then serving, excluding the affected Director, provided that 30 days' written notice is given to the Director of the reasons and provided that the Director is given an opportunity to be heard.

Any At-Large Director may be removed by a majority vote of the Foundation members from all five stations. A petition for removal must be submitted to the Foundation Secretary signed by 1% of the members. A written ballot will then be taken. A statement by the affected Director(s) plus up to three (3) arguments in favor and three (3) arguments in opposition to the removal shall accompany the written ballots.

### **Section 6. RECALL**

A Station-Representative Director may be recalled by a majority vote of the members affiliated with the station represented by the affected Station-Representative Director. A petition for recall must be submitted to the Foundation Secretary signed by 1% of the members affiliated with that station. A written ballot will then be taken. A statement by the affected Director plus up to three (3) arguments in favor and three (3) arguments in opposition to the recall shall accompany the written ballots.

### **Section 7. COMPENSATION**

Members of the Board of Directors shall not receive any compensation for their services as Directors. They may be reimbursed for appropriate expenses incurred on behalf of the Foundation or in connection with their service on the Board.

## **ARTICLE VII. MEETINGS OF THE BOARD**

## **Section 1. REGULAR AND SPECIAL MEETINGS**

The Board shall endeavor to hold regular meetings approximately quarterly, including in April each year when newly elected Directors will be seated and at which meeting the board officers for the coming year shall be elected; in September when the annual budget for the fiscal year beginning October 1st will be presented by the Executive Director, the CFO, and the Finance Committee for review and approval by the Board; in January and July; and at such additional times as may be fixed from time to time by resolution of the Board.

A special meeting of the board may be called by the Board Chair, the Executive Director, or any two (2) Directors. Notice of a special meeting shall state the purpose of the meeting.

## **Section 2. TELEPHONIC AND VIDEO MEETINGS**

The Board may hold regular and special meetings by telephone conference, video screen communication or other communications equipment. Participation in a meeting under this Section shall constitute presence at the meeting if all the following apply: a. Each Director participating in the meeting can communicate concurrently with all other Directors. b. Each Director is provided the means of participating in all matters for the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Foundation. c. The Board has a means of verifying that the person participating at the meeting is a Director and that all votes cast during said meeting are cast only by Director. The Board shall hold public meetings as required by applicable law by public internet streaming.

## **Section 3. NOTICE TO DIRECTORS**

Regular meetings of the board may be held without additional notice to the Board if the time and place of the meeting was fixed by a resolution of the board. Special meetings of the board shall be held upon seven (7) days' notice delivered by telephone, including a voice messaging system, or by electronic or email transmission to the email address or telephone number given to the Foundation's Secretary for such notice by each Director. The Foundation Secretary shall give the list of telephonic and email notice information, as it may be updated from time to time, to all Directors for purposes of contacting and giving notice of special meetings to the other Directors. Directors shall be responsible for informing the Secretary of any changes in their telephone or email notice addresses, and notice shall be deemed given provided it is sent to a Director's most recent contact information. Notice of a special meeting shall state the purpose of the meeting.

## **Section 4. PUBLIC NOTICE**

Public notice of Board and Board Committee meetings shall be given in accordance with the rules and requirements of the Corporation for Public Broadcasting, whether or not the stations of The Foundation are CPB qualified at the time.

## **Section 5. QUORUM**

The presence, in person or by phone or other electronic means of communications, of at least fifty percent (50%) of the voting members of the Board shall constitute a quorum, but a lesser number shall have power to adjourn to a specified later date.

## **ARTICLE VIII. OFFICERS**

The officers of The Foundation shall be a chair of the Board (the “Chair”), a president and chief executive officer who shall be called the executive director (the “Executive Director”), a secretary (the “Secretary”), a treasurer (the “Treasurer”), a chief financial officer (the “CFO”), and a vice-chair (the “Vice-Chair”). Neither the Executive Director nor the Chair may serve concurrently as the CFO, the Secretary, or the Treasurer.

### **Section 1. ELECTION AND TERM OF OFFICERS**

The board shall elect for one-year terms the Chair, the Vice Chair, and the Treasurer at the first meeting of the new Board in April of each year, or as soon after the elections are completed and a meeting can be held. Their terms shall continue for one year or until their successors are elected. The Chair and the Treasurer are required to be At-Large Directors.

The Executive Director (President), Chief Financial Officers (CFO), and Secretary shall serve under contracts of employment under terms to be negotiated and agreed upon by the parties.

Officers shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment.

If a vacancy occurs in the office of the Chair, the Board shall elect a new Chair as quickly as possible. If a vacancy occurs in the office of the Executive Director, the Chair shall serve as interim Executive Director until a new Executive Director can be hired. If a vacancy occurs in the office of the Secretary, the Board shall appoint a member of the Board to serve as interim Secretary until a new Secretary can be hired. If a vacancy occurs in the office of the CFO, the Treasurer shall serve as interim CFO until a new CFO can be hired. If a vacancy occurs in the office of the Vice-Chair, the Board shall elect a new Vice-Chair as soon as possible.

### **Section 2. REMOVAL OF OFFICERS**

The Board may remove any person from their position as an officer at any time, with or without cause, by majority vote of all the voting members of the Board, not including the officer who is the subject of the vote, without prejudice to any rights of an officer under any contract of employment. In the event that the affected officer is the Chair, Vice-Chair, or Secretary, they shall be given thirty (30) days’ written notice of the reasons and an opportunity to be heard before a vote is taken.

### **Section 3. RESIGNATION**

Any officer may resign at any time by notifying in writing the Chair, the Executive Director, the Secretary, or all Directors of the Board. Any such resignation shall take effect at the time therein specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective, unless such resignation shall have the effect of compromising the Foundation’s tax-exempt status. Any resignation shall be without prejudice to the rights, if any, of The Foundation under any contract to which the officer is a party.

### **Section 4. CHAIR OF THE BOARD: POWERS AND DUTIES**

The Chair shall preside at all meetings of the Board, if present, and shall exercise and perform such other powers and duties as the Board or these Bylaws may prescribe.

In the absence or lack of an Executive Director, the Chair shall serve as the interim Executive Director until a new Executive Director can be hired, with all the powers and authority granted to that office by these bylaws.

#### **Section 5. VICE CHAIR: POWER AND DUTIES**

The Vice-Chair shall have such powers and perform such duties as the Board or these Bylaws may prescribe. In the absence of the Chair, the Vice-Chair shall preside at Board meetings, but shall not serve as an interim Executive Director without a specific resolution of the Board making such an appointment.

#### **Section 6. EXECUTIVE DIRECTOR AND PRESIDENT: POWERS AND DUTIES**

The Executive Director shall be the President and Chief Executive Officer of the Foundation as contemplated by section 5213 of the California Public Benefit Nonprofit Corporation Law. They shall be the general manager of The Foundation and shall be responsible for the day-to-day management of all the Foundation's activities and affairs. The Executive Director shall have such other powers and duties as the Board or these Bylaws may prescribe. Unless otherwise directed by the Board or relevant Board Committee, or unless the Board determines to meet in an executive session, the Executive Director, may attend all Board and Board Committee meetings.

The Executive Director shall supervise the activities of the Chief Financial Officer and the Secretary and, although those officers serve at the pleasure of the Board, shall make hiring and firing recommendations to the Board concerning those officers.

#### **Section 7. SECRETARY: POWERS AND DUTIES**

The Secretary shall give notice of the meetings of the Board as provided by these Bylaws, record the Minutes of their proceedings, maintain, or cause to be maintained, an accurate list of Members of the Foundation with their names, mailing addresses, email addresses, telephone numbers, other contact information, and perform such other duties as may be assigned by the Executive Director, the Board Chair, or the Board.

#### **Section 8. TREASURER: POWERS AND DUTIES**

The Treasurer shall be the Chair of the Board's Finance Committee and shall lead the Board's oversight of the Foundation's budgeting and financial planning processes, financial performance, and financial condition. The Treasurer shall have such other powers and duties as the Board may prescribe from time to time and shall make specific recommendations to the board concerning approval of budgetary and other financial matters, as well as performance review of the CFO together with the Executive Director.

#### **Section 9. CHIEF FINANCIAL OFFICER: POWERS AND DUTIES**

The CFO shall be the Foundation's chief financial officer as contemplated by section 5213 of the California Public Benefit Nonprofit Corporation Law. The CFO shall:

- a. keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account, including accounts of the Foundation's properties and transactions, and shall send or cause to be given to the directors such financial statements and additional reports as are required to be given by law, by these Bylaws, by the Board or the Board Finance Committee including, without limitation, monthly reports to the Board Finance Committee, and quarterly reports to the board presenting income and expenses and a balance sheet within 45 days after the close of each quarter prepared in accordance with accepted accounting practices for non-profit organizations;
- b. deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Foundation with such depositories as the Board may designate;
- c. disburse or cause to be disbursed the Foundation's funds as the Executive Director or Board may order;
- d. render to the Board, Treasurer and Executive Director, when requested by any of them, an account of all transactions and of the financial condition of The Foundation; and
- e. shall have such other powers and perform such other duties as the Board, these Bylaws or the Executive Director may prescribe.

#### **Section 10. COMPENSATION REVIEW**

The Board shall take such actions to review, approve, and document the approval process for officer and key employee compensation as may be required under the Nonprofit Integrity Act and other applicable law, which may include adoption of a written policy setting forth guidelines for such actions.

### **ARTICLE IX. COMMITTEES**

#### **Section 1. FORMATION**

The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office. The board may appoint one or more directors as alternate members of such committee, who may replace any absent member at any meeting of the committee.

A committee exercising the authority of the board shall not include as members persons who are not directors. However, the board may create other committees that do not exercise the authority of the board and these other committees may include persons regardless of whether they are directors.

#### **Section 2. FINANCE COMMITTEE**

The board shall establish a Finance Committee, chaired by the board Treasurer, and consisting of at least 2 other Directors. The Finance Committee shall oversee the management of the Foundation's financial affairs, including budgeting, financial planning, and financial reporting, and shall develop such policies and procedures as shall be prudent and necessary from time to

time both to insure that the books and records are maintained in accordance with standard nonprofit accounting procedures and to assure that accurate and timely financial information and reports are available to the Board and to Foundation management. The Finance Committee shall meet monthly with the Chief Financial Officer and may meet more frequently or on an emergency basis if circumstances warrant it.

### **Section 3. AUDIT COMMITTEE**

The board shall establish an Audit Committee, as required by the California Nonprofit Integrity Act of 2004, as it may be amended from time to time.

The Audit Committee shall not include paid or unpaid staff or employees of the Foundation, including the Executive Director or the Chief Financial Officer. Members of the finance committee shall constitute less than 50% of the membership of the Audit Committee and the chairperson of the Audit Committee shall not be a member of the finance committee. Subject to the supervision of the Board, the Audit Committee shall:

- a. make recommendations to the Board on the hiring and firing of the CPA;
- b. confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- c. approve non-audit services by the CPA and ensure such services conform to standards in the Yellow Book issued by the United States Comptroller General; and
- d. if requested by the Board, negotiate the CPA's compensation on behalf of the Board.

### **Section 4. BOARD RECRUITMENT COMMITTEE**

The Board may establish a Recruitment Committee to seek out qualified persons to nominate for At-Large Director positions on the Board of Directors as vacancies occur for any reason. Non-Directors may serve on this committee, provided that the majority of the committee members shall be Directors. The Foundation Secretary shall serve as a non-voting member of this committee, provided however, that if a Board member is serving as interim Secretary, they shall be a voting member of this committee.

The Recruitment Committee shall also seek out qualified persons to fill mid-term vacancies among the Station Representative Directors if they occur.

The Board Recruitment Committee shall have the power to nominate At-Large Directors for election to the board and to nominate persons to fill vacancies should they arise midterm among the Station Representative Directors.

### **Section 5. OTHER COMMITTEES**

The Board may designate additional standing committees as it deems necessary and appropriate to the functioning of the organization and may appoint ad hoc committees to serve for a specified period and to accomplish a specific task or tasks. The Chair or other appropriate officer may appoint to board committees non-board members who are members in good standing of the Foundation, provided however that a majority of members of each committee shall be Board members.

## **ARTICLE X. COMMUNITY ADVISORY BOARDS (“CABS”) AND TERMINATION OF FORMER LOCAL STATION BOARDS**

Upon adoption of these Bylaws the Local Station Boards authorized under the previous Bylaws shall be terminated, and their members shall be merged with their station’s Community Advisory Board.

Each Pacifica radio station shall have a Community Advisory Board (“CAB”) which shall meet and conduct its affairs in accordance with the requirements of the Corporation for Public Broadcasting for radio stations receiving CPB funding, as those requirements may be amended from time to time, whether or not that station is at that time receiving CPB funding.

## **ARTICLE XI. INDEMNIFICATION AND INSURANCE**

### **Section 1. INDEMNIFICATION.**

The Foundation shall indemnify any present or former director or officer for expenses (including attorneys' fees) incurred in defending claims or actions brought against them as such, unless they shall have been guilty of willful misconduct in the matter. By specific order of the Board, the Foundation may likewise indemnify its employees and agents.

### **Section 2. INSURANCE**

The Foundation shall have the right to purchase and maintain insurance on behalf of any agent against any liability asserted against or incurred by the Agent in such capacity or arising out of the agent’s status as such, whether or not The Foundation would have the power to indemnify the agent against such liability under this Article, provided that The Foundation shall not have the power to purchase and maintain such insurance to indemnify any agent of The Foundation for fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the Foundation or breach of any duty arising under the California Nonprofit Law setting out Standards of Conduct (California Corporations Code sections 5223-5239). For the purposes of this section, “agent” means any person who is or was a director, officer, employee or other agent of the Foundation.

## **ARTICLE XII. AMENDMENTS**

The Board of Directors may amend these Bylaws by a 2/3rds majority vote of all the Directors at a regular or special meeting, *provided however that* written notice setting forth the amendment or summary of the changes to be effected thereby shall be given to each director and shall be posted on the Foundation website and each Pacifica radio station website at least thirty (30) days prior to the vote. Members shall be provided with a means to electronically submit written comments to the Board on the proposed amendments prior to the meeting.

Members may propose Amendments by a petition signed by 1% of the total membership. The proposed Amendments may be adopted by a 2/3rds majority vote of all the Directors, and if they fail to adopt them, then by a vote of approval of the members.

No amendment that changes the number of Directors of either class, or the manner of nomination or election of any class of Directors may be adopted without the vote of approval of the members. No amendment that adversely affects the rights of the members, or any class of

members, as specified in these Bylaws or under the California Nonprofit Corporation Law may be adopted without the vote of approval of the members, or the affected class of members, as the case may be. The Bylaws may not be restated without a majority vote of the Members.

### **ARTICLE XIII. INSPECTION RIGHTS**

#### **Section 1. DIRECTORS' INSPECTION RIGHTS**

Every director shall have the absolute right at any reasonable time to inspect The Foundation's books, records, documents, and physical properties, excluding confidential employee records. The inspection may be made in person or by the director's agent or attorney. The right of inspection includes the right to copy and make extracts.

#### **Section 2. MEMBERS' INSPECTION RIGHTS**

Members of the Foundation shall have the following inspection rights, but only for a purpose reasonably related to such person's interests as a Member of the Foundation, and subject to the Foundation's right to provide a reasonable alternative method for achieving the Member's articulated purpose:

A. To inspect and copy the record of all Members' names, mailing and email addresses, and voting rights, at reasonable times, upon five (5) business days' prior written demand on the Foundation, which demand shall state the purpose for which the inspection rights are requested. Where the Foundation reasonably believes that the information will be used for an improper purpose, or where the Foundation provides a reasonable alternative to achieve the Member's articulated purpose, the Foundation may deny the Member access to its membership list and information;

B. To inspect at any reasonable time the books, records, or minutes of proceedings of the Members or of the Board or committees of the Board, upon written demand on the Foundation by the Member, for a purpose reasonably related to such person's interests as a Member, provided, however, that said Member will not be permitted to review sealed Minutes from closed meetings; and

C. To inspect and review copies of reports filed by the Foundation with the Attorney General consistent with Section 6324 of the California Corporations Code.

Any member's inspection may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

### **ARTICLE XIV. MISCELLANEOUS**

#### **Section 1. CONFLICTS OF INTEREST**

Conflict of interest arises whenever the personal or professional interests of a Director, a management-level Foundation employee, or their respective partners, spouses, or immediate family members (each an "Interested Party") is at odds with the best interests of The Foundation. To assure that the best interests of The Foundation are protected, the Board shall develop and implement a Conflict of Interest Policy that:

1. Identifies potential conflicts of interest as they arise
2. Assures that an Interested Party does not participate in Board deliberations or vote of the Board on the matter
3. Requires the Board to hire or contract with the Interested Party only if the Board determines that the Interested Party is the best qualified person, and that the Interested Party will provide the goods or services at the best price.
4. Records in the minutes of the Board meeting that the potential conflict of interest was disclosed to the Board and that the Interested Party did not participate in Board deliberations or vote.

## **Section 2. AUTHORITY TO BORROW, ENCUMBER ASSETS**

No Officer, Agent or employee of this corporation shall have any power or authority to borrow money on its behalf, to pledge its credit or to mortgage or pledge its real or personal property, except within the scope and to the extent of the authority specifically delegated by resolutions adopted from time to time by the Board of Directors. Authority may be given by the Board of Directors by a majority vote for any of the above purposes and may be general or limited to specific instances.

## **Section 3. ELECTRONIC TRANSMISSIONS**

Unless otherwise provided in these Bylaws, and subject to any guidelines and procedures that the Board may adopt from time to time, the terms “written” and “in writing” as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means, and may include electronic transmissions, such as facsimile or e-mail; provided that (a) The Foundation has obtained a valid written consent from the recipient to the use of such means of communication; (b) for electronic transmissions to The Foundation, The Foundation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (c) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible, tangible form.

## **ARTICLE FIFTEEN. TRANSITION BOARD AND ELECTIONS AND MEETINGS**

### **Section 1. APPOINTMENT OF TRANSITION AT-LARGE DIRECTORS.**

By approval of these Restated and Amended Bylaws by the Members, the following individuals are appointed to serve as Transition At-Large Directors: Heidi Boghosian, Judy Graboyes, Robert “Bob” King, Barbara Ransby, Walter Riley, and Norman Stockwell.

Their terms shall commence at the first meeting of the Transition Board which shall occur during the during the last two weeks of January 2020. The terms of the previous Board of Directors shall expire on that date. Until the election of Station Representative Directors is completed at a Board meeting to take place within the first ten (10) days in May 2020, the At-Large Directors shall constitute the full Board of Directors and shall be authorized to take any and all actions they deem necessary for the Board of Directors to take that are not in conflict with law or these bylaws.

If any of the above-named individuals becomes unable to serve prior to the first meeting of the Transition Board, then the remaining Transition At-Large Directors shall choose a replacement or replacements, in the order of their choosing, from the following Alternate Transition At-Large Directors: Terri Burke, Mustafaa Carroll, and Louis Vandenburg.

## **Section 2: FIRST MEETING OF THE TRANSITION BOARD**

The first meeting of the Transition Board shall be held within the last two weeks of January 2020. At that meeting the Transition At-Large Directors shall elect a Chair *pro tem*, a Vice-Chair *pro tem*, a Secretary *pro tem*, and a Treasurer *pro tem*. The Secretary *pro tem* will hold that position until a paid Secretary can be hired. The other *pro tem* Officers will serve until the Station Representative Directors are seated in May 2020, at which time the Chair, Vice-Chair, and Treasurer shall be elected for the remainder of the term ending March 31, 2021, or until their successors shall be elected.

The Executive Director and Chief Financial Officer shall provide the incoming Transition At-Large Directors with a board orientation packet, which shall include the three most recent independent auditors' reports, the most recent three IRS Form 990s, a copy of these Bylaws, any board policies and procedures manual that may exist, the current budgets and most recent financial reports, and such additional reports and information as they deem appropriate and necessary.

The Transition At-Large Directors will draw straws or use some other chance procedure to determine which two of them will have terms ending March 31, 2021, which two will have terms ending March 31, 2022, and which two will have terms ending March 31, 2023, to establish a staggering of terms going forward so that 1/3<sup>rd</sup> of their terms expire each year.

The Transition Board may conduct any other business they deem necessary and appropriate at this meeting.

## **Section 3: NOMINATION AND ELECTION OF TRANSITION STATION REPRESENTATIVE DIRECTORS.**

The election of Transition At-Large Directors shall take place under the supervision of the interim Executive Director who shall have the authority to appoint an Election Supervisor, in his sole discretion. If the Board Chair is serving as the interim Executive Director, then the election shall take place under the supervision of the Board Secretary, who shall also have the authority to appoint an Election Supervisor, in his sole discretion.

Nominations for Transition Station-Representative Directors will open at each station on January 15, 2020 and will close on February 15<sup>th</sup>. The ballots will be mailed or emailed to eligible Members on or about March 9<sup>th</sup>, or as soon thereafter as is practicable, and will close 30 days later. The results will be tallied within ten days after the election closes.

A Record Date shall be set between 45 and 60 days before the first ballots shall be made available. Listener-Sponsor Members and Staff Members in good standing on the Record Date shall be eligible to vote.

Any Listener-Sponsor Member in good standing may be nominated for election to the Station Representative Director seat for the radio station with which they are affiliated by the nominating

signatures of fifteen (15) Members in good standing who are also affiliated with that radio station. Nominees shall complete nomination form or forms which shall be made available on the Foundation web page and must submit them as directed on the web page and/or the form by the close of nominations on February 15, 2020. Nominees may also submit a statement of up to 500 words stating the reasons for their candidacy and may include one supporting statement of up to 200 words signed by up to 3 members in good standing supporting their nomination.

The Executive Director may appoint an Election Supervisor to conduct and oversee the election, or the election may be conducted under the supervision of the Foundation Secretary, in the discretion of the Executive Director.

The election shall be conducted as an Instant Runoff election, where each voter shall have one vote but may rank their choices on their ballots according to their preferences from first choice up to and including ranking as many of the candidates as the voter desires to rank.

If a Station-Representative Director election fails to reach the 5% quorum, then that Director's seat shall be filled by the Board of Directors for that term by instant-runoff voting.

#### **Section 4: TRANSITION BOARD MEETING IN EARLY MAY 2020**

A meeting of the full Transition Board, including the At-Large and Station Representative Directors, shall be held within the first ten (10) days in May 2020. At that meeting the Board shall elect the Chair, Vice-Chair and Treasurer who shall serve for the remainder of the term ending March 31, 2021, or as soon thereafter as their successors can be elected. The Chair and the Treasurer are required to be At-Large Directors.

The newly elected Transition Station-Representative Directors' terms will begin when they are seated at this Board. The Station Representative Directors will draw straws or use some other chance procedure to determine which two of them will have terms ending March 31, 2021, which two will have terms ending March 31, 2022, and which one will have a term ending March 31, 2023, provided, however, that no one who served on the 2019 board of directors may draw a term that would extend their service as a Director beyond six consecutive years, including the time served as a Director under the previous bylaws.

The Board shall form a Finance Committee, Audit Committee, and Board Recruitment Committee at this meeting, and shall conduct any other business they deem necessary and appropriate.

The Executive Director and Chief Financial Officer shall provide the incoming Transition Station Representative Directors with a board orientation packet, which shall include the most recent three independent auditors' reports, the most recent three IRS Form 990s, a copy of these Bylaws, any board policies and procedures manual that may (or may not) exist, and such additional reports and information, including the most current budgets and financial reports, as they deem appropriate and necessary.

#### **Section 5: APPLICATION OF TERM LIMITS TO TRANSITION BOARD MEMBERS**

Article V. section 2, above, provides that “[a] Director may serve up to two (2) consecutive terms, after which they must take a one-year hiatus, before being eligible for reelection. If a Director came on to fill a mid-term vacancy, for purposes of determining whether a term has been served and should be counted towards the term limit, service of 18 months or more, counted from the 1<sup>st</sup> day of the month when the Director took office, shall constitute a term. Service of less than 18 months shall not be considered a term.”

In parallel with that provision, a Transition Director who in the future may wish to run for re-election for a three-year term will be eligible to do so if their continuous service as a Director (whether under the previous bylaws or these new bylaws) will have been less than 54 months at the expiration of their then current term counting from the first day of the month when they first took office. If they will have served 54 or more consecutive months as a Director (whether under the previous bylaws or these new bylaws) at the expiration of their then current term counting from the first day of the month when they first took office, then they shall not be eligible for re-election.

#### **ARTICLE SIXTEEN. SAVINGS CLAUSE**

In the event that any provision of these Bylaws is or becomes illegal, unenforceable or invalid in whole or in part for any reason, the Board of Directors shall have the right to amend said provision, pursuant to Article XII of these Bylaws and in a time-frame shorter than that set forth in Article XII, to bring said provision into conformity with applicable law.

**ADOPTION OF AMENDED AND RESTATED BYLAWS**, the undersigned, is the secretary of this corporation, certifies that by lawful action of the Members of the Foundation, these Amended and Restated Bylaws, consisting of \_\_\_\_\_ pages have been adopted and constitute, the restated Bylaws of this corporation, subject to the Provisos Concerning Transition Elections and Board appended hereto.

Certified on this \_\_\_\_\_ day of December, 2019.

\_\_\_\_\_ [insert name], Secretary of The Foundation

Signature required