

RECORD RETENTION POLICY DRAFT

As of August 18, 2020

ARTICLE I - PURPOSE

S. D. Bechtel, Jr. Foundation (the “Foundation”) has determined that it will benefit the Foundation to amend and restate its policy regarding the retention of records. It is the policy of the Foundation to maintain, preserve and manage records that are needed to comply with regulatory requirements, to meet management and operational needs, and to protect the interests of the Foundation and its Directors, Officers and employees, as required by law, contract and/or prudent business practices.

The purposes of this Policy (the “Policy”) include:

1. Retention and maintenance of Records necessary to meet the Foundation’s legal, tax, and operational requirements;
2. Destruction of Records which no longer need to be retained;
3. Providing guidance for the Foundation with respect to allocating responsibility concerning Records retention and destruction; and
4. Ensuring all Records that pertain to any pending litigation, dispute, or government audit or investigation are not destroyed without the consent of the Foundation’s legal counsel.

Accordingly, the Foundation has adopted this Policy. All Directors, Officers, committee members, and employees of the Foundation are directed to comply with this Policy in order to retain, protect and efficiently manage records within his or her area of responsibility to ensure compliance with federal, state and local laws, regulations, contracts, and prudent business practices.

ARTICLE II - RULES AND PROCEDURES

2.01 DEFINITIONS. This Policy applies to all Foundation records.

1. Records. “Records” mean information presented in any medium, including, but not limited to, paper or electronic documents and files, written communications, emails, scanned images, maps, data files, and spreadsheets. The definition of “Records” includes not only documents in paper form, but email messages and all other forms of electronically stored information. Thus, Records to be retained under this Policy must be retained regardless of

whether they are in paper or electronic form. Records are to be retained for the period required to comply with all applicable federal, state and local laws, as described in the Retention Schedules in Appendix A.

2. Unofficial Records. “Unofficial Records” mean paper or electronic documents that have no historical significance or are not core to the Foundation’s grantmaking and operational activities. Examples include draft documents, personal emails, calendars, meeting reminders, requests for information, etc., and should be disposed of as soon as they are no longer useful. “Unofficial Records” are not “Records.”

3. Retention Schedules. “Retention Schedules” mean the period of time that Records will be maintained by the Foundation. At the conclusion of that period Records will be destroyed. Retention periods are determined by the content, nature, and purpose of the Records, and are set based on their legal, fiscal, and administrative value, regardless of the format in which they reside. There is no single retention period that applies to all of the Foundation’s emails (with and without attachments or documents). Electronic mail, as with Records in other formats, can have a variety of purposes and relate to a variety of program functions and activities. The retention of any particular electronic mail message or electronic document will generally be the same as the retention for Records in any other format that documents the same program function or activity. Emails that meet the definition of Unofficial Records should not be retained beyond their period of usefulness.

2.02 GENERAL RETENTION OBLIGATIONS. Directors, Officers, committee members and employees must retain the Records listed in the Record Retention Schedules for the periods of time set forth on that schedule. Record Retention Schedules reflect the Foundation’s legal obligations and business reasons for record retention. If a Director, Officer, committee member or employee is aware of any other reason why particular types of information in any medium should be retained, such person shall retain them and inform the President about the need and reason for such retention. This will allow the Foundation to improve this Document Retention Policy, if needed.

2.03 LAWSUITS OR GOVERNMENT INVESTIGATIONS: RETAIN ALL RELEVANT DOCUMENTS. If a Director, Officer, committee member or employee personally becomes aware of a reasonable possibility that the Foundation will be involved in any manner in a lawsuit or a government investigation, or such persons are informed of this by the President, no Records relevant to the subject matter of the lawsuit or investigation shall be discarded. Rather, all Records relevant to the subject matter of the lawsuit or investigation, including emails subject to the procedure set forth below, must be retained in accordance with Article VI. The obligation to retain relevant Records applies regardless of where the Records are located; for example, it includes electronic Records stored on computers and other electronic devices provided by the Foundation for business use, regardless of whether those computers or devices are used on Foundation premises.

2.04 SPECIAL PROCEDURES FOR E-MAILS. In order to retain any e-mail message required to be retained under this Policy, a Director, Officer, committee member or employee must move

or copy that message from the Inbox or Sent folder to the appropriate storage folder, as directed by the President.

2.05 EXCEPTIONS. Requests for exceptions from this Policy should be directed to the President. Exceptions will be granted if the proposed exception ensures compliance with the purposes of this Policy stated above, and serves a Foundation business purpose.

2.06 EMERGENCY PLANNING. Records shall be stored in a safe, reliable and accessible manner. Records which are necessary for continual operation of the organization during an emergency shall be regularly duplicated or backed up and maintained in an off-site location. The President shall develop reasonable procedures for document retention in the case of an emergency.

ARTICLE III - COMPLIANCE

3.01 ADMINISTRATION. The President shall be in charge of the administration of this Policy. The President's responsibilities shall include supervising and coordinating the retention and destruction of Records pursuant to the Policy, and particularly the adoption, amendment and maintenance of the Record Retention Schedules in Appendix A. Further, the President shall also have the authority and discretion to direct the retention of Unofficial Records on certain matters or grants, on a case-by-case basis. The President shall also be responsible for documenting the actions taken to maintain and/or destroy Records, and for retaining such documentation. The President may also modify the Record Retention Schedules from time to time as necessary to comply with the purposes stated above and the law pursuant to the advice of the Foundation's counsel, and/or include additional or revised Record categories as may be necessary to reflect the Foundation's policies and procedures. The President is also authorized and directed to periodically review this Policy and Policy compliance with legal counsel and to report to the Board of Directors as to compliance. The President may delegate to one or more employees the authority to carry out the President's responsibilities under this paragraph, but shall retain the ultimate responsibility for the administration of this Policy.

3.02 AUDIT. Directors, Officers, committee members and employees should expect that from time to time the Foundation will review compliance with the Policy. For example, the Foundation may check to see if an employee has retained copies of contracts or other Documents. Violation of the Policy may result in disciplinary action, up to and including termination. The Foundation may determine during the course of an audit that an employee is retaining too many Unofficial Records that are *not* necessary to conduct business or perform his or her job, or that interfere with the Foundation's ability to find the Documents that *are* subject to this Policy. If the Foundation determines this, it should direct the employee to discard Unofficial Records and to improve his or her compliance with this Policy.

3.03 ANNUAL STATEMENTS. Each Director, Officer, committee member, and employee shall annually sign a statement which affirms such person:

1. Has received a copy of the Policy;
2. Has read and understands the Policy;
3. Agrees to comply with the Policy; and
4. Report any non-compliance with this Policy to the Foundation.

ARTICLE IV - RECORD RETENTION SCHEDULES

4.01 GENERAL RULES.

1. Records of the Foundation shall be retained for the period set forth in the applicable Retention Schedule, unless it is determined that a longer period of time is required by applicable law. Thereafter, each Record (and all copies of such Records) will be destroyed.
2. Unofficial Records may be retained as needed for operational purposes. Thereafter, they should be destroyed. The Foundation will establish a procedure for periodic review of all Unofficial Records and create department-specific guidelines for the destruction of Unofficial Records.
3. In the event of pending, imminent, or reasonably foreseeable litigation, notwithstanding the provisions of paragraphs 1 and 2, above, all Records relating to said litigation must be retained as required by ARTICLE VI, PROCEDURE FOR SUSPENSION OF REGULAR DESTRUCTION OF RECORDS, below.

4.02 GRANT RECORDS.

1. Official Grant Records. Official Grant Records shall be retained in accordance with the applicable Retention Schedule set forth in Appendix A. Any grantmaking records not listed in the Retention Schedule are Unofficial Records, which shall be retained as provided for Informal Grant Records, immediately below.
2. Unofficial Grant Records. Most of the Foundation's grantmaking and related support staff retain files (in electronic and/or hard copy) that pertain to their grants and grantees. These files may contain informal correspondence, grant concept, planning, and strategy notes, email exchanges, project updates, media clips, publications from grantees, maps, databases, work products, and meeting, telephone or other notes. Informal Grant Records may be integral to the planning, monitoring, evaluation and success of the Foundation's grantmaking activities. However, because these records are not needed to comply with the purposes of this Policy, they are Unofficial Records as defined in Section 2.01(2) and should be destroyed when no longer needed, as set forth in the Foundation's separate Informal Grant Document Protocol.

3. Retention Schedule. The Official Grant Records shall be maintained by Grants Administration (“GA”) and Program Staff (“PS”) according to the applicable Retention Schedule set forth in Appendix A.

4.03 CORPORATE AND LEGAL RECORDS.

1. General Principle. All Records relating to the formation, corporate governance and dissolution of the Foundation, and meetings of the Board of Directors and Board Committees, will be kept for 10 years after the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service. Additionally, all Records that may be legally required or that may have business significance shall be retained in accordance with the Retention Schedule.

2. Retention Schedule. The Corporate and Legal Records listed below shall be maintained by the President according to the Retention Schedule set forth in Appendix A.

4.04 TAX RECORDS.

1. General Principle. Private foundations are subject to the penalty tax regime imposed by Chapter 42, subtitle D of the Internal Revenue Code. All parties liable for federal tax, including foundations, must keep complete and detailed records as are sufficient to enable the IRS to accurately determine the amount of any liability under Chapter 42. Such Records must be sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such parties in any such return. These Records must be kept for as long as the contents thereof may become material in the administration of an Internal Revenue law, which generally is 10 years after the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service. Work papers for each of the Tax Records listed on the Retention Schedule should be kept for the corresponding periods.

2. Retention Schedule. The Tax Records shall be maintained by the Treasurer (but in some cases managed by the Human Resources Department as noted below) according to the schedule set forth in Appendix A.

4.05 ACCOUNTING AND FINANCE RECORDS.

1. General Principle. Accounting and finance Records must be maintained in a manner consistent with general accepted accounting practices, which for California nonprofit organizations is generally 10 years after the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service.

2. Retention Schedule. The Accounting and Finance Records shall be maintained by the Treasurer and Director of Finance, as appropriate, according to the Retention Schedule set forth in Appendix A.

4.06 PAYROLL RECORDS.

1. General Principle. Payroll Records and supporting data must be kept in such a manner as to demonstrate the Foundation's compliance with its responsibilities under the Wage and Hour Rules of the Department of Labor.
2. Retention Schedule. The Payroll Records shall be maintained by the Human Resources Department according to the Retention Schedule set forth in Appendix A.

4.07 EMPLOYEE BENEFIT PLAN RECORDS AND SUPPORTING EMPLOYEE DATA.

1. General Principle. Employee benefit plan Records and supporting employee data must be kept in such manner and for such periods that the Foundation can establish at all times whether or not any benefit is payable to any person, and if so the amount of such benefit.
2. Retention Schedule. The Employee Benefit Plan Records shall be maintained by the Human Resources Department according to the Retention Schedule set forth in Appendix A.

4.08 PERSONNEL RECORDS.

1. General Principle. Personnel Records must be kept in such manner consistent with standard HR practices and legal retention requirements.
2. Retention Schedule. The Personnel Records shall be maintained by the Human Resources Department according to the Retention Schedule set forth in Appendix A.
3. Records to be Retained Apart from Personnel File. In addition to the retention periods set forth on the Retention Schedule, the following categories of Personnel Records must be stored separate from employees' personnel files:
 - Form I-9 and any other related immigration status related documents
 - Records related to DFEH and/or EEOC charges
 - Records related to investigations of discrimination or harassment
 - Records related to worker's compensation claims
 - Records containing any medical/disability information
 - Records related to medical leave, including sick leave, disability leave, FMLA, CFRA, and PDA
 - Records containing any voluntary employee disclosure of ethnicity such as for surveys or other reports

4.09 INVESTMENT RECORDS.

1. General Principle. Investment Records must be kept in such a manner consistent with this Policy and standard investment practices, which for California nonprofit organization

is generally 10 years after the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service.

2. Retention Schedule. The Investment Records shall be maintained by the Director of Finance according to the schedule set forth in Appendix A.

ARTICLE V - PROCEDURE FOR REGULAR DESTRUCTION OF RECORDS

5.01 GENERAL PRINCIPLE. All Unofficial Records and copies of Records that are not required to be kept or maintained by this Policy should be destroyed when they are no longer needed or are no longer required to be kept. The Foundation will establish a procedure for periodic review of all Unofficial Records and create department-specific guidelines for the destruction of Unofficial Records. All Records that are covered by this Policy and exist in hard copy only may be destroyed following the expiration of the applicable Retention Period pursuant to the Retention Schedules set forth in Appendix A. Electronically archived Records may be periodically destroyed in accordance with this Policy.

5.02 RECORD RETENTION DAY. The President may periodically establish a “Record Retention Day.” On (or before) the established Record Retention Day, each employee, under the supervision of his or her supervisor, is responsible for examining his or her files (both hard copy and electronic) and maintaining or discarding Records, and discarding Unofficial Records, as applicable under this Policy.

ARTICLE VI - PROCEDURE FOR SUSPENSION OF REGULAR DESTRUCTION OF RECORDS

6.01 GENERAL PRINCIPLE. There may be instances where the Foundation is required to suspend part or all of its routine destruction of some or all Records in accordance with this Policy, such as when the Foundation receives a subpoena calling for certain documents or becomes involved in pending, imminent, or reasonably foreseeable litigation.

6.02 ACTION REQUIRED. Should a situation described in 6.01 occur, the Foundation shall comply with the following procedures for suspension of the routine destruction of Records:

1. Upon receipt of a subpoena calling for Foundation documents or other notice that litigation is pending, imminent, or reasonably foreseeable, the President will issue a memorandum to all applicable Directors, Officers, committee members and employees providing a Notice of Suspension of Regular Destruction of Records In Accordance with Records Retention Policy.

2. The Notice of Suspension will contain at a minimum the following information:

(a) The reason for the suspension of the regular destruction of Records;

- (b) The categories of Records required to be preserved;
- (c) The period of time for which the suspension will remain in effect; and
- (d) The date the suspension goes into effect.

3. Upon issuance of a Notice of Suspension, all applicable Directors, Officers, committee members and employees are required to preserve and maintain the categories of Records covered by the Notice. Failure by a Director, Officer, committee member or employee to preserve a Record covered by the Notice may result in disciplinary action.

4. The suspension of destruction of Records will remain in effect until the President issues a notice that such suspension has ended and routine destruction of Records may recommence.

Appendix A

<u>RETENTION SCHEDULES</u>		
Grant Records¹	Responsible Party	Retention Period
Grant Award Letter and/or Grant Agreement	GM	10
Grant Amendment	GM	10
Documents related to Grantee's Tax Status at Time of Grant	GM	10
Documentation of any Returned Grant Funds, including evidence of receipt, reason for return, etc.	GM	10
Reports from any Audit or Investigation of Grantees	GM	10
Legal Opinions with respect to a Grant	GM	10
Staff Evaluation/Analysis of a Grant	PS/GM	10
Expenditure Responsibility Grants (may include some or all of these Records): <ul style="list-style-type: none"> • Pre-grant Inquiry documents • Grant Agreement • Legal sign-off • Documents related to efforts to correct taxable expenditures 	PS/GM	10

Corporate and Legal Records²	Retention Period
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¹ Retention Period begins in the FY that the Records were established.

Certificate of Incorporation and Amendments	P/10
Bylaws and Amendments	P/10
IRS Determination Letter	P/10
Board Minutes and Unanimous Written Consents	P/10

Appendix A

<u>RETENTION SCHEDULES</u>	
Corporate and Legal Records (continued)	Retention Period
Board Committee Minutes, Charters, Policies <ul style="list-style-type: none"> • Audit Committee • Investment Committee 	P/10
Management/Executive Committee Minutes	P/10
Conflict of Interest Policy Annual Disclosures	10
Conflict of Interest Policy Determinations	10
Foundation Policies, Procedures, Handbook	P/10
Foundation Strategic Plans	P/10
Independent Contractor Agreements	10 years after expiration
Contracts	10 years after expiration
Real Property documents	P/10
Trademarks, copyrights, patents	P/10

Tax Records³	Retention Period
Non-payroll related Federal and state tax filings, including returns	P/10
Payroll related Federal and state tax filings, including returns (HR)	P/10
Tax bills and statements	P/10
Social security tax records (HR)	P/10
Sales and use tax records	10
Excise tax records	10
Correspondence with tax agencies	P/10

² Certain Records Retention Periods labeled “P/10” will be kept permanently, until the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service, at which time the Retention Period of 10 years begins on such date.

³ Retention Period begins in the FY that the Records were established. Treasurer maintains hard copies of permanent tax records. Further, certain Records Retention Periods labeled “P/10” will be kept permanently, until the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service, at which time the Retention Period of 10 years begins on such date.

<u>RETENTION SCHEDULES</u>	
Accounting and Finance Records⁴	Retention Period
Accounts payable and receivable	10
All electronic ledgers	10
Annual Financial Statements, including balance sheet, income statement, statement of cash flows and related matters	P/10
Estimates, projections, planning, memos, etc.	10
Banking records, including deposit, withdrawal records and bank statements	10
Checking records, including account statements, check register, and canceled checks	10
Expense reports, approvals, petty cash records, etc.	10
Insurance policies, binders, and certificates	P/10
Agency audits and related records	P/10
Finance Department Reports to Board and Executive Committee	10
Vendor Agreements and related documentation	10
Payroll Records⁵	Retention Period
Payroll registers ⁶	While employed + 10
FICA contribution records, including Social Security and Medicare contributions	While employed + 10
Form W-2s, Form W-4s, etc. ⁷	While employed + 10
Form 1099s, W-8BEN, W-8 EXP, etc.	While employed + 10
Unemployment insurance records, including any information necessary to enable the Foundation to determine an employee's total remuneration in each week.	While employed + 10
Records needed for the preparation of the California Employer	While employed

⁴ Retention Period begins in the FY that the Records were established except insurance policies and loan and related security agreements for which the retention period begins in the FY that the Records terminate or expire. Further, certain Records Retention Periods labeled "P/10" will be kept permanently, until the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service, at which time the Retention Period of 10 years begins on such date.

⁵ Retention Period begins in the FY that the Records were established, except in the case of W-4s for which the Retention Period begins in the FY that the Records are no longer in effect.

⁶ 29 C.F.R. Section 516.5(a).

⁷ IRS Publication 15.

Information Report (CEIR)	+ 10
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Appendix A

<u>RETENTION SCHEDULES</u>	
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Employee Benefit Plan & Supporting Employee Data Records	Retention Period
ERISA Plan documents and all amendments thereto (except 401K records) ⁸	While employed + 10
Records of employee service and eligibility for benefits (including hours worked and any breaks in service)	While employed + 10
Records of plan enrollment forms and benefit changes (except 401K plans records, see below)	While employed + 10
Required personal information on employees and former employees (name, address, social security number, period of employment, pay)	While employed + 10
Records of plan administrator setting forth authority to pay	While employed + 10
Records of benefits paid to employees or their beneficiaries after death of payee	While employed + 10
Plan documents and supporting documentation (such as actuarial calculations) filed with the IRS, Department of Labor, etc.	While employed + 10
Certificates of creditable coverage (available to health benefit plan participants and dependents upon request)	While employed + 10
ERISA records, including benefit entitlement records (except related to 401K plans/retirement plans)	While employed + 10
HIPPA and COBRA records	While employed + 10
Pension Plan and Retirement Records	P/10

Personnel Records⁹	Retention Period
Recruiting Records, including job postings, applications, background checks, resumes, assessment tests, etc.	While employed + 10
Offer Letters	While employed + 10
Attendance, time cards & PTO Records ¹⁰	While employed + 10

⁸ 29 U.S.C. Section 1027.

⁹ Retention Period begins in the FY that the Record was established. Regardless of the designated Retention Period, any administrative claim has to be retained until the final disposition of the claim. In the event Record does not relate to hiring of specific employee, the Record is retained 10 years beyond final use date.

¹⁰ 29 C.F.R. Section 516.6

Job descriptions	While employed +10
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Appendix A

<u>RETENTION SCHEDULES</u>

Personnel Records (continued)	Retention Period
Performance Reviews, including any promotion, selection for training, demotion, transfer, disciplinary	While employed + 10
Separation and Severance Agreements	While employed + 10
Incentive payments, bonuses, awards, etc.	While employed + 10
Earnings records	While employed + 10
Sexual harassment training compliance records	While employed + 10
Employee Handbook (all versions)	P/10
Safety Reports, including Cal/OSHA Form 300 and annual summaries of occupational injuries and illnesses	While employed + 10
Safety training records, including OSHA training	While employed + 10
Records relating to compliance with the Family and Medical Leave Act, including records of leave taken, employer policies related to leave, and notices and other communications relating to the taking of leave	While employed + 10
Records of accommodation to any disabled employee	While employed + 10
Claims filed for worker's compensation or civil lawsuit, including denied claims ¹¹	P/10
Claim log of all work-injury claims	While employed + 10
Records of employee exposure to hazards such as toxic chemicals, high levels of noise, airborne contaminants, or bloodborne pathogens	P/10
Backup documentation for any reports filed with the Secretary of Labor under the Labor-Management Reporting and Disclosure Act	While employed + 10
Unemployment Insurance Records, including any information necessary to enable the Foundation to determine an employee's total remuneration in each week	While employed + 10

¹¹ 29 C.F.R. Section 1910.1020

Form I-9s	While employed + 10
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Appendix A

<u>RETENTION SCHEDULES</u>	
Investment Records¹²	Retention Period
Investment Reports to Board and Board Committees	10
Investment Overview – Prospectus	10
Legal documentation for each Investment	10 or duration of investment, whichever is longer
Investment Management Committee Minutes, Charter, Policies, and Materials (Legal)	P/10
Investment contracts with fund managers	10
Capital calls	10
Investment team authorizations	P/10

¹² Certain Records Retention Periods labeled “P/10” will be kept permanently, until the later date of final acceptance of dissolution documents by the Office of the California Attorney General, or acceptance of termination by the Internal Revenue Service, at which time the Retention Period of 10 years begins on such date.

RECORD RETENTION POLICY – ANNUAL STATEMENT

Date:

Name:

Position

(Director/Officer/employee):

The Board of Directors of the S. D. Bechtel, Jr. Foundation determined that it is in the best interest to adopt and enforce a formal policy regarding the retention of records.

It is the policy of the Foundation to maintain, preserve, and manage records that are needed to comply with regulatory requirements, meet management and operational needs, and to protect the interest of the Foundation. The Record Retention Policy is available on the Foundation's SharePoint folder and a hard copy will be made available upon request.

I have received, read, understood, and will comply with the Foundation's Record Retention Policy.

Signature

Date