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7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA

9 In the Matter of

10 NELSON E. OLIVA,

11 Respondent.

FPPC No. 11/863

12 DEFAULT DECISION AND ORDER

(Gov. Code, §§ 11506 and 11520)

13 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
14 Order for consideration at its next regularly scheduled meeting.

15 Respondent Nelson E. Oliva is represented in this matter by attorney Richard Ewaniszyk, and has
16 been advised as to his rights to a probable cause hearing and administrative hearing under the Political
17 Reform Act, Administrative Procedure Act, and all other relevant laws, and he has chosen to waive all
18 such rights to a probable cause hearing and administrative hearing and to allow this matter to proceed to
19 a default decision.

20 In this case, Respondent Nelson E. Oliva violated the Political Reform Act as described in Exhibit
21 1, which is incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
22 summary of the law and evidence in this matter.

23 This Default Decision and Order is submitted to the Commission to obtain a final disposition of
24 this case.

25 Dated: _____

26 _____
27 Gary S. Winuk, Chief of Enforcement
28 Fair Political Practices Commission

1
2 **ORDER**

3 The Commission issues this Default Decision and Order and imposes an administrative penalty of
4 \$70,000 against Respondent Nelson E. Oliva. This penalty is payable to the “General Fund of the State
5 of California.”

6 IT IS SO ORDERED, effective upon execution below by the Vice Chair of the Fair Political
7 Practices Commission at Sacramento, California.

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9 Dated: _____

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11 Sean Eskovitz, Vice Chair
12 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Nelson E. Oliva (“Respondent”) was the founder of NEO Consulting Inc., d.b.a. Affordable Housing Solutions Group (“NEO”) and its Chief Executive Officer from its incorporation on July 20, 2005. In early 2007, the City of Hercules (the “City”) offered Respondent the position of City Manager, but required that he first fully divest himself of any interest in NEO to avoid conflicts of interest in decisions he made, participated in, or attempted to influence as City Manager, and any appearance of impropriety since the City had several contracts with NEO.

On April 9, 2007, Respondent transferred all his interests in NEO to his then twenty-year-old daughter, Taylor N. Oliva, who assumed the position of Chief Executive Officer, Chief Financial Officer, and Secretary of NEO. On April 15, 2007, the City, based on Respondent’s assurance that he no longer had any interest, role or involvement in NEO, appointed him to City Manager, and continued to enter into contracts with NEO.

During his time as City Manager, Respondent accepted gifts from NEO, totaling \$234,775.96 in value, failed to disclose those gifts on his statements of economic interests (“SEI”), and made, participated in making, or attempted to influence seventeen decisions by the City to award contracts, totaling \$2,889,000, to NEO.

Respondent violated the Political Reform Act (the “Act”)¹ as follows:

COUNT 1: Respondent Nelson E. Oliva, the City Manager of the City of Hercules from April 1, 2007, through January 9, 2011, failed to report gifts he accepted in 2007, 2008, 2009, and 2010 from NEO Consulting Inc., d.b.a. Affordable Housing Solutions Group, by April 1, 2008, April 1, 2009, and April 1, 2010, and February 9, 2011, respectively, in violation of Government Code sections 87200, 87203, and 87204.

COUNT 2: In 2008, 2009, and 2010, Respondent Nelson E. Oliva, the City Manager of the City of Hercules from April 1, 2007, through January 9, 2011, accepted gifts from NEO Consulting Inc., d.b.a. Affordable Housing Solutions Group, in excess of the respective annual gift limit of \$390, \$420, and \$420, in violation Government Code section 89503, subdivision (a).

COUNT 3: On April 22, 2008, and again on June 24, 2008, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Article 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- COUNT 4: On June 24, 2008, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence two governmental decisions in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 5: On July 22, 2008, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 6: On July 22, 2008, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 7: On June 23, 2009, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence two governmental decisions in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 8: On June 23, 2009, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence two governmental decisions in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 9: On or about June 23, 2009, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 10: On or about June 22, 2010, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 11: On or about June 22, 2010, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.
- COUNT 12: On or about June 22, 2010, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence two governmental decisions in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 13: On or about June 22, 2010, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence two governmental decisions in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 14: On or about June 22, 2010, Respondent Nelson E. Oliva, in his capacity as the City Manager of the City of Hercules, made, participated in making, or attempted to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

PROCEDURAL HISTORY

Respondent has been informed of the charges set forth herein. He has consulted with his attorney Richard Ewaniszyk about his rights to a probable cause hearing and an administrative hearing under the Act, the Administrative Procedure Act, and all other relevant laws. Respondent has agreed to waive these rights and is aware that by doing so the Fair Political Practices Commission's (the "Commission") Enforcement Division will proceed with this default recommendation to the Commission, which, if approved by the Commission, will result in Respondent being held liable for the penalty amount of \$70,000.

A copy of Respondent's written waiver in this regard is attached as Exhibit A and incorporated herein by reference as if in full.

NATURE OF DEFAULT PROCEEDINGS

In this situation, where Respondent has waived his rights to a probable cause and administrative hearing, the Commission may take action based upon the Respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to Respondent. (Regulation 11520, subd. (a).)

SUMMARY OF THE LAW

The Commission is charge with the duty to administer, implement, and enforce the provisions of the Act. By enacting the Act, California voters specifically found and declared that previous laws regulating political practices had suffered from inadequate enforcement, and that it was their purpose to ensure that the Act be vigorously enforced. (Sections 81001, subd. (h), and 81002, subd. (f).)

Disclosure Requirements

Every person who holds an office specified in Section 87200, which includes a city manager, shall, each year at a time specified in the Commission regulations and within 30 days of leaving office, file a SEI disclosing his investments and sources of income that may foreseeably be affected materially by any decision made or participated in by the public official by virtue of his position. (Sections 87203 and 87204.) Regulation 18723 requires every city manager to file a SEI for each calendar year by April 1 of the following year.

Income that must be disclosed includes, but is not limited to, any gifts accepted by the official. (Section 82030.) A “gift” is any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. (Section 82028, subd. (a).) A gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift. (Regulation 18941.) A gift confers a personal benefit on the official when the official enjoys direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift. (Regulation 18944.) The value of a gift is the fair market value as of the date of receipt or promise of the gift. (Regulation 18946.)

When a gift is required to be disclosed, the SEI must include: 1) the name and address of each source of any gift or gifts aggregating \$50 or more in value in a single calendar year, and a general description of the business activity, if any, of each source, 2) a statement whether the aggregate value of gifts from each source was at least \$500 but did not exceed \$1,000, whether it was in excess of \$1,000 but was not greater than \$10,000, whether it was greater than \$10,000 but not greater than \$100,000, or whether it was greater than \$100,000, 3) the description of the consideration, if any, for which the gift was received, and 4) the amount and the date on which the gift was received. (Section 87207, subd. (a).)

Gift Limit

Section 89503, subdivision (a), states that “No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than \$250.” The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2008, the applicable gift limit from a single source was \$390. (Regulation 18940.2, subd. (a).) For 2009 and 2010, the applicable gift limit from a single source was \$420. (*Id.*)

Conflict of Interest

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are several analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.¹

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include “every member, officer, employee or consultant” of a local government agency. Section 82041 defines “local government agency” to include a city.

¹ The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

Second, the official must make, participate in making, or attempt to use her official position to influence a governmental decision. (Section 87100 and Regulation 18700.) A public official “makes a governmental decision” when the official, acting within the authority of his office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his agency to any course of action; (4) Enters into any contractual agreement on behalf of his agency; or (5) Determines not to act, unless such determination is made because of his financial interest. (Regulation 18702.1, subd. (a).) A public official “participates in making a governmental decision” when, acting within the authority of his position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Regulation 18702.2.) A public official “attempts to use his or her official position to influence a governmental decision” of his or her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. (Regulation 18702.3.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) In 2008, a public official had a financial interest in any donor of a gift or gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.) In 2009 and 2010, a public official had a financial interest in any donor of a gift or gifts aggregating \$420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (*Id.*)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.) A source of a gift is directly involved in a decision if he or she is the “subject of the proceeding.” (Regulation 18704.1.) A person is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person. (Regulation 18704.1, subd. (a)(2).)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. (Regulation 18705.4, subd. (a).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect on the economic interest. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

SUMMARY OF THE EVIDENCE

In 2007, 2008, 2009, and 2010, Respondent, while City Manager, made purchases with three NEO credit cards totaling \$25,719.41, \$79,704.68, \$86,668.49, and \$42,683.38, respectively. Respondent used the three NEO credit cards to purchase, among other things, airline tickets, groceries, meals at restaurants, parking, hotel rooms, and to rent cars. The bills of all three credit cards were received by and paid for by NEO.

In 2008, 2009, and 2010, Respondent, while receiving hundreds of thousands of dollars in gifts from NEO by charging personal purchases on the NEO credit cards, and in his capacity as City Manager, recommended to the City's City Council (the "City Council") and the City's Redevelopment Agency (the "RDA"), via staff reports and proposed resolutions, that they authorize him to execute seventeen contracts with NEO. The City Council and the RDA passed Respondent's proposed resolutions, and subsequently Respondent, in his capacity as City Manager and on behalf of the City, executed seventeen contracts with NEO totaling \$2,889,000.

In an attempt to hide his disqualifying economic interest in NEO and his conflict of interest in the decisions to award the seventeen contracts to NEO, Respondent deliberately failed to report any of the gifts he received from NEO on his 2007, 2008, and 2009 Annual SEIs, and on his Leaving Office SEI.

Accordingly, Respondent committed the following violations of the Act:

COUNT 1

Failure to Report Gifts

Respondent was the City Manager from April 1, 2007, through January 9, 2011. As such, Respondent was required to disclose all gifts he received in 2007 by April 1, 2008, all gifts he received in 2008 by April 1, 2009, all gifts he received in 2009 by April 1, 2010, and all gifts he received between January 1, 2010, and January 9, 2011, by February 9, 2011.

Respondent failed to disclose the gifts he received from NEO in 2007, totaling \$25,719.41, by April 1, 2008, in 2008, totaling \$79,704.68, by April 1, 2009, in 2009, totaling \$86,668.49, by April 1, 2010, and between January 1, 2010, and January 9, 2011, totaling \$42,683.38, by February 9, 2011, in violation of Sections 87200, 87203, and 87204.

COUNT 2

Acceptance of Gifts in Excess of the Gift Limit

Respondent was the City Manager from April 1, 2007, through January 9, 2011. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2008, and in excess of the \$420 annual gift limit in 2009 and 2010.

Respondent accepted gifts from NEO totaling \$79,704.68 in value in 2008, \$86,668.49 in 2009, and \$42,683.38 in 2010, in violation of Section 89503.

COUNT 3

Conflict of Interest

Between April 22, 2007, and April 22, 2008, Respondent accepted gifts from NEO totaling \$46,409.339 in value, and therefore on April 22, 2008, Respondent had disqualifying economic interest in NEO.

At the April 22, 2008, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for provision of portfolio administration under the Affordable Housing Program and the Business Development and Financial Assistance Loan Program for the 2008/2009 fiscal year for an amount not to exceed \$10,500. On the same day, the City Council passed Respondent's proposed resolution, and on or about April 23, 2008, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$10,500 for provision of portfolio administration under the Affordable Housing Program and the Business Development and Financial Assistance Loan Program for the 2008/2009 fiscal year.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$10,500, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

Between June 24, 2007, and June 24, 2008, Respondent accepted gifts from NEO totaling \$47,893.79 in value, and therefore on June 24, 2008, Respondent had a disqualifying economic interest in NEO.

At the June 24, 2008, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the provision of the Business Development Loan Program for an amount not to exceed \$50,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about June 25, 2008, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$50,000 for provision of the Business Development Loan Program for the 2008/2009 fiscal year.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$50,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 4

Conflict of Interest

At the June 24, 2008, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the administration of the Affordable Housing Program, the Portfolio Administration and Compliance Program, and the Sycamore Street North Project for an amount not to exceed \$630,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about June 25, 2008, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$630,000 for the administration of the Affordable Housing Program, the Portfolio Administration and Compliance Program, and the Sycamore Street North Project for the 2008/2009 fiscal year.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$630,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 5

Conflict of Interest

Between July 22, 2007 and July 22, 2008, Respondent accepted gifts from NEO totaling \$48,385.34 in value, and therefore on July 22, 2008, Respondent had a disqualifying economic interest in NEO.

At the July 22, 2008, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the administration of the Community Beautification Program for an amount not to exceed \$150,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about July 23, 2008, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$150,000 for the administration of the Community Beautification Program for the 2008/2009 fiscal year.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$150,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 6

Conflict of Interest

At the July 22, 2008, RDA meeting, Respondent, in his capacity as City Manger, presented a resolution to the RDA to authorize him to execute a contract with NEO for general

administrative support services to the Executive Director for an amount not to exceed \$120,000. On the same day, the RDA passed Respondent's proposed resolution, and on or about July 23, 2008, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$120,000 for general administrative support services to the Executive Director for the 2008/2009 fiscal year.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$120,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 7

Conflict of Interest

Between June 23, 2008, and June 23, 2009, Respondent accepted gifts from NEO totaling \$84,786.89 in value, and therefore on June 23, 2009, Respondent had a disqualifying economic interest in NEO.

At the June 23, 2009, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for an amount not to exceed \$60,000 for portfolio administration and compliance program services for an amount not to exceed \$60,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about June 24, 2009, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$60,000 for portfolio administration and compliance program services from July 1, 2009, through June 30, 2010.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$60,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

At the June 23, 2009, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for an amount not to exceed \$120,000 for general administrative support services to the Office of the City Manager/Executive Director from July 1, 2009, through June 30, 2010. At the meeting, the City Council passed Respondent's proposed resolution, and on or about June 24, 2009, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$120,000 for general administrative support services to the Office of the City Manager/Executive Director from July 1, 2009, through June 30, 2010.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$120,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 8

Conflict of Interest

At the June 23, 2009, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for an amount not to exceed \$50,000 for general administrative services to implement the City's Business Development and Financial Assistance Program from July 1, 2009, through June 30, 2010. At the meeting, the City Council passed Respondent's proposed resolution, and on or about June 24, 2009, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$50,000 for general administrative services to implement the City's Business Development and Financial Assistance Program from July 1, 2009, through June 30, 2010.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$50,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

At the June 23, 2009, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for an amount not to exceed \$150,000 for the administration of the Community Beautification Program from July 1, 2009, through June 30, 2010. At the meeting, the City Council passed Respondent's proposed resolution, and on or about June 24, 2009, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$150,000 for administration of the Community Beautification Program from July 1, 2009, through June 30, 2010.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$150,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 9

Conflict of Interest

At the June 23, 2009, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for an amount not to exceed \$430,000 for the administration of the City's Affordable Housing Program from July 1, 2009, through June 30, 2010. At the meeting, the City Council passed Respondent's proposed resolution, and on or about June 24, 2009, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$430,000 for the administration of the City's Affordable Housing Program from July 1, 2009, through June 30, 2010.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$430,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 10

Conflict of Interest

Between June 22, 2009, and June 22, 2010, Respondent accepted gifts from NEO totaling \$79,911.13 in value, and therefore on June 22, 2010, Respondent had a disqualifying economic interest in NEO.

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for an amount not to exceed \$408,500 for the administration of the City's Affordable Housing Program from July 1, 2010, through June 30, 2011. At the meeting, the City Council passed Respondent's proposed resolution, and on or about July 18, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$408,500 for the administration of the City's Affordable Housing Program from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$408,500, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 11

Conflict of Interest

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with

NEO for an amount not to exceed \$240,000 for the oversight and administration of the Sycamore Main Street North Project from July 1, 2010, through June 30, 2011. At the meeting, the City Council passed Respondent's proposed resolution, and on or about July 28, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$240,000 for the oversight and administration of the Sycamore Main Street North Project from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$240,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 12

Conflict of Interest

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the administration and annual compliance monitoring of restrictions related to the City's affordable housing programs for an amount not to exceed \$60,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about July 28, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$60,000 for administration and annual compliance monitoring of restrictions related to the City's affordable housing programs from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$60,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the administration of the Wastewater Treatment Plant Development Service for an amount not to exceed \$90,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about July 28, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$90,000 for the administration of the Wastewater Treatment Plant Development Service from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$90,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 13

Conflict of Interest

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for general administration support to the Executive Director for an amount not to exceed \$120,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about July 28, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$120,000 for general administration support to the Executive Director from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$120,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the administration of the Business Development Loan Program for an amount not to exceed \$50,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about July 28, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$50,000 for the administration of the Business Development Loan Program from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$50,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

COUNT 14

Conflict of Interest

At the June 22, 2010, City Council meeting, Respondent, in his capacity as City Manager, presented a resolution to the City Council to authorize him to execute a contract with NEO for the administration of the Community Beautification Program for an amount not to exceed \$150,000. On the same day, the City Council passed Respondent's proposed resolution, and on or about July 28, 2010, Respondent, in his capacity as City Manager and on behalf of the City, executed a contract with NEO that required the City to pay NEO \$150,000 for the

administration of the Community Beautification Program from July 1, 2010, through June 30, 2011.

Because the decision was to award a contract to NEO, NEO was directly involved in the decision. And because the decision entitled NEO to \$150,000, the decision had a reasonably foreseeable material financial effect on NEO.

By making, participating in making or influencing the decision to award NEO the aforementioned contract, Respondent violated Section 87100.

CONCLUSION

This matter consists of 14 counts of violating the Act, which carries a maximum administrative penalty of \$70,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

SEI Non-Disclosure: Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

In December 2012, the Commission fined a city councilmember \$1,000 for each year that he failed to report less than a \$1,000 in gifts received from a developer and a bond underwriter that regularly had business with the city. The respondent had no history of violating the Act, cooperated with the investigation, and agreed to an early settlement of the matter. (*In the Matter of Andres Herrera*, FPPC No. 12/027.)

In August 2012, the Commission fined a city manager \$1,000 for each year that he failed to report less than a \$1,000 in gifts received from a developer and a bond underwriter that regularly had business with the city. The respondent had no history of violating the Act, and amended his SEI's once he realized that he was required to disclose the gifts and before he was contacted by the Commission, cooperated in the investigation, and agreed to an early settlement of the matter. (*In the Matter of Edmund Sotelo*, FPPC No. 12/029.)

In this matter, Respondent deliberately failed to disclose \$234,775.96 in gifts from a single source, and he did so to hide his conflict of interest in seventeen governmental decisions

he made, participated in making, or attempted to influence, to award a total of \$1,788,500 in City contracts to the source of the undisclosed gifts. Additionally, Count 1 includes four years of failing to report gifts, whereas in the comparable cases cited the respondent was charged a count for each year for which he failed to report gifts. Therefore a \$5,000 penalty for Count 1 is recommended.

Over-the-limit Gifts: Accepting gifts in excess of the legal gift limit is a serious violation of the Act.

In December 2012, the Commission fined a city councilmember \$2,000 for each year in which he accepting gifts over the gift limit. The respondent received gifts over the gift limit by a few hundred dollars and from a developer and a bond underwriter who regularly had business with the city. The respondent had no history of violating the Act, paid down the gifts received to the amount of the gift limit, and settled the matter with the Commission. (*In the Matter of Andres Herrera*, FPPC No. 12/027.)

In August 2012, the Commission fined a city manager \$2,000 for each year in which he accepted gifts over the gift limit. The respondent received gifts over the gift limit by a few hundred dollars and from a developer and a bond underwriter who regularly had business with the city. The respondent had no history of violating the Act, paid down the gifts he received to the amount of the gift limit, and settled the matter with the Commission. (*In the Matter of Edmund Sotelo*, FPPC No. 12/029.)

In this matter, the value of the gifts that Respondent accepted was tens-of-thousands of dollars more than the gift limit. Additionally, Count 2 includes Respondent's failure to adhere to the gift limit for three years, whereas in the comparable cases cited the respondent was charged a count for each year in which he failed to adhere to the gift limit. Also, Respondent's violations were deliberate, and led to multiple conflict of interest violations. Therefore a \$5,000 penalty for Count 2 is recommended.

Conflict of Interest: Making a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict of interest, and is a serious violation of the Act.

In December 2012, the Commission fined a city councilmember \$3,500 per count for conflict of interest violations stemming from gifts he had received over the gift limit. The respondent had no prior violations of the Act, was cooperative in the investigation, and agreed to an early settlement of the matter. (*In the Matter of Andres Herrera*, FPPC No. 12/027.)

In August 2012, the Commission fined a city manager \$3,500 per count for conflict of interest violations stemming from gifts he had received over the gift limit. The respondent had no prior violations of the Act, was cooperative in the investigation, and agreed to an early settlement of the matter. (*In the Matter of Edmund Sotelo*, FPPC No. 12/029.)

In Counts 3 through 14, Respondent deliberately violated the Act by executing seventeen contracts with NEO, totaling \$2,889,000, while accepting \$234,775.96 in gifts from NEO. Therefore a \$5,000 penalty per count for Counts 3 through 14 is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$70,000 penalty on Respondent is recommended.

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