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9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
10 **STATE OF CALIFORNIA**

11 In the Matter of:

12 CHARLES GRACE,

13 Respondents.

FPPC Case No. 2020-00416

14 STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Charles Grace (“Grace”) provides general manager services for the San Simeon Community
17 Services District (“District”), pursuant to a professional services contract between the District and Grace
18 Environmental Services, LLC. (“GES”), a business entity in which Grace is the sole manager. Grace
19 violated Government Code Section 1090 by negotiating in, participating in, and ultimately making a 2016
20 contract between the District and GES, an entity in which he had a financial interest.

21 **SUMMARY OF THE LAW**

22 **Need for Liberal Construction and Vigorous Enforcement of Conflict-of-Interest Laws**

23 In 2013, the Legislature approved AB 1090, granting the Fair Political Practices Commission
24 (“Commission”) jurisdiction to commence administrative action against an officer or person prohibited by
25 Section 1090 from making or being interested in contracts.¹ The Commission shall not have jurisdiction to
26 commence such an administrative action except upon written authorization from the district attorney of the
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¹ Government Code Section 1097.1. See also Stats. 2013, Ch. 650, Sec. 5. (AB 1090).

1 county in which the alleged violation occurred.² In regard to this determination, this decision applies only
2 to proceedings brought by the Commission and this decision is not admissible in any proceeding other than
3 a proceeding brought by the Commission.³ An administrative action shall be commenced no more than
4 five years after the date on which the violation occurred.⁴

5 **Prohibited Conflicts of Interest Under Section 1090**

6 Government Code section 1090 states: “Members of the Legislature, state, county, district, judicial
7 district, and city officers or employees shall not be financially interested in any contract made by them in
8 their official capacity, or by any body or board of which they are members. . . .”

9 This prohibition applies to various government officials, including independent contractors. Also,
10 this prohibition applies to the making of contracts. It is not necessary for the prosecution to show that the
11 official participated personally in the execution of the questioned contract. It is enough to show that the
12 official, regardless of his job classification, had the opportunity to, and did, influence execution directly or
13 indirectly to promote his personal interests. This may be shown by the official’s involvement with respect
14 to one or more of the following activities, which are embodied in the making of a contract: planning,
15 discussions, reasoning, preparation of plans/specifications, solicitation of bids, negotiations, compromises,
16 give and take, etc. Such involvement is in violation of Section 1090 if the resulting contract causes
17 government business and money to go to an entity or person in which the official has an interest.⁵

18 The statute is more concerned with what *might* have happened than with what *actually* happened;
19 Section 1090 prohibits even the *appearance* of impropriety.⁶

20 Section 1090 protects the *actual* integrity of the public treasury—as well as the *perceived* integrity.
21 “As a result, liability—even criminal liability—can accrue without ‘actual fraud, dishonesty, unfairness or
22 loss to the governmental entity.’” (See *People v. Superior Court (Sahlolbei)*, *supra*, 3 Cal.5th at p. 239—
23 citing *People v. Honig* (1996) 48 Cal.App.4th 289, 314.)

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26 ² Government Code Section 1097.1, subdivision (b).

27 ³ Section 1097.1, subd. (d).

28 ⁴ Section 1097.2, referencing Section 91000.5.

⁵ See *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1051-53; *People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th
230, 239-40; and *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 194-97.

⁶ *Thorpe v. Long Beach Cmty. College Dist.* (2000) 83 Cal.App.4th 655, 660; *City of Imperial Beach v. Bailey*, *supra*,
103 Cal.App.3d at p. 197.

1 Under Section 1090, prohibited financial interests are not limited to express agreements and need
2 not be proven by direct evidence. Rather, forbidden interests include indirect interests and future
3 expectations of profit (or loss) by express or implied agreement, which may be inferred from the
4 circumstances. Any financial interest not explicitly excluded by the Legislature (in Sections 1091 and
5 1091.5) as too “remote or minimal” is sufficient to incur even criminal liability.⁷

6 A contract made in violation of Section 1090 “is void, not merely voidable.” (*Thomson v. Call*
7 (1985) 38 Cal.3d 633, 646, fn. 15. Emphasis in original. Also, see *Carson Redevelopment Agency v. Padilla*
8 (2006) 140 Cal.App.4th 1323, 1331 [when Section 1090 is violated, the agency is entitled to recover any
9 compensation that it paid, and the courts will not entertain any rights growing out of the contract—not
10 even *quantum meruit* or *quantum valebat*].)⁸

11 SUMMARY OF THE FACTS

12 This matter was opened pursuant to a referral from the District Attorney’s office for the County of
13 San Luis Obispo and pursuant to a series of sworn complaints filed against Grace, all received by the
14 Enforcement Division in mid-2020. The District Attorney’s office provided written authorization for the
15 Enforcement Division to proceed with a Section 1090 action against Grace in this matter. Since November
16 20, 2020, the statute of limitations that apply to this case have been tolled pursuant to a written tolling
17 agreement that Grace entered into with the Enforcement Division. Under this tolling agreement, the
18 Enforcement Division may prosecute violations of the Act occurring on and after November 22, 2015.

19 The District is a Community Services District located in San Luis Obispo County and serves the
20 San Simeon area, a small unincorporated community on California’s central coast. The District owns a
21 wastewater collection and treatment system with 5 miles of sewer lines, water supply and storage generally
22 consisting of wells, tanks, up to 250 connections, an office building, less than 5 miles of distribution lines,
23 less than 5 miles of local roads, a street lighting system with approximately 50 active streetlights, and the
24 District’s office building. Since approximately 2004, the District has had no employees but instead has
25 contracted out all services.

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27 ⁷ See *People v. Honig, supra*, 48 Cal.App.4th at p. 315; and *People v. Superior Court (Sahlolbei), supra*, 3 Cal.5th at
p. 239.

28 ⁸ The actual legal effect on the contract from an administrative decision has not been determined. In the civil and
criminal contexts, the contract has been found to be void as a matter of law. As noted in this stipulation, the decision is not
admissible outside of Commission proceedings.

1 Grace has a long, nearly continuous history with the District since 2005. In connection with his
2 employment with a company called Eco Resources, Inc., Grace was initially consulted to assist the District
3 to bring it into compliance with state regulators and was later assigned to fill the role of general manager
4 in 2007. From 2011 to 2014, Grace was employed by Ultura Services, LLC (“Ultura”) (previously
5 APTwater Services, LLC) and assigned to the District. Ultura had a professional services agreement with
6 the District in 2011 to provide “certain services for the management, maintenance and operation of” the
7 waste water treatment plant and to receive compensation for those services as described in the contract. As
8 an employee with Ultura, Grace served as the general manager for the services described in the contract,
9 and generally ensured that the contract between Ultura and the District was carried out. In this capacity as
10 an independent contractor hired by Ultura, Grace appeared at the District’s Board of Directors (“Board”) and
11 Sub-Committee meetings, prepared and posted Board packets, participated in the annual budget
12 preparation, staffed and operated the District’s office, etc.

13 **2014 Professional Services Agreement**

14 In 2014, Ultura stopped making payments to vendors on behalf of the District. A special meeting
15 of the Board was called on July 9, 2014 to discuss possible assignment of the District’s professional
16 services agreement with Ultura. At that meeting, a motion was made and approved to direct the District’s
17 Counsel to prepare a Notice of Breach to Ultura for the outstanding invoices that had not been paid by
18 Ultura. On July 15, 2014, District Counsel Heather Whitman with Carmel & Naccasha, LLP (“Whitman”),
19 wrote to Ultura and demanded that Ultura perform under the personal services agreement within 60 days
20 of the notice or risk termination of the contract. On July 31, 2014, Ultura wrote a letter directed to Grace,
21 as the general manager of the District, stating that Ultura was unilaterally terminating the personal services
22 agreement. The next day, Ultura fired all employees who were assigned to the District, including Grace.

23 The Board did not meet until August 13, 2014, at which time, the Board approved an invoice to
24 pay GES for \$47,762, the entire month of August for both work performed and work anticipated being
25 performed under the pending contract. The amount was directly lifted from the pending contract. There
26 was no gap in operational field services. He stepped in immediately, hiring Ultura’s former employees,
27 and continued service to the District, without any formal contract.

1 Subsequently, the Board considered the “Emergency Professional Services Contract” between the
2 District and Charles Grace, doing business as GES, then a sole proprietorship. The contract largely
3 mirrored the prior contract with Ultura and a previous vendor performing similar duties. The emergency
4 contract had a six-month term with a provision that the agreement would automatically extend for one year
5 unless a notice to cancel was received sixty days prior to contract termination. Whitman presented the
6 changes made to the contract. At one point, Whitman explained certain increases to the contract payment
7 terms by remarking that “apparently” the Board had already approved of these changes in prior budgetary
8 discussions. The Board approved the contract at the end of the meeting.

9 **2016 Personal Services Agreement**

10 As noted above, the 2014 contract expired after eighteen months. The minutes for the December 9,
11 2015 Board Meeting indicate that District Counsel Whitman reported to the Board that she had begun
12 negotiations with GES for a new contract. However, per meeting minutes for this time period, there was
13 no agendaized discussion item or vote of the Board that directed her to conduct such a negotiation or any
14 discussion by the Board of alternatives to the contract. The Board did not publicly consider whether to put
15 the personal services agreement out for a competitive bid process.

16 The Board met again on January 20, 2016 and voted to execute a contract between the District and
17 GES (now an LLC, in which Grace is the sole manager.) The agreement was discussed, corrections were
18 made to fix typographical errors, and the agreement was approved by a 5 / 0 vote. At that meeting, Whitman
19 and Grace presented the contract and were in favor of the changes made. The changes included, termination
20 provisions that favored the District, a provision to deduct payments owed to GES in the event that GES
21 reneged on its obligations to subvendors, additional insurance requirements, a provision stating that GES
22 would pay the District’s electricity costs up to a dollar amount and would be reimbursed if the actual cost
23 was higher, and similar to previous contracts with prior companies, a provision regarding an annual
24 increase to the payment owed to GES based on the consumer price index.

25 During the meeting, Grace sat at a table adjacent to Board members and sat in front of a placard
26 that read, “General Manager.” For the discussion item involving his contract, Grace remained in his seated
27 position and did not distinguish that he was acting in his personal, and not his official capacity when the
28 contract was presented for the Board’s consideration. Also, during the meeting, an audience member asked

1 a question about a provision regarding flow rates. The provision in question stated, “Both parties agree that
2 this AGREEMENT is based on FACILITY; (a) treating an annual average of 100,000 gal/day...” Grace
3 responded by explaining the facility’s total capacity and the current average. He stated that if the flow rate
4 increased, the costs to run the facility would increase. Grace’s actions demonstrate that he was responding
5 as the District’s general manager, from his position at the side of the Board Members. For purposes of
6 negotiating, making, and executing this contract, Grace failed to take any steps to distinguish his role from
7 that of the general manager role, such as by hiring his own attorney to negotiate or by stepping down from
8 his ordinary seat at the table or by deferring to the District’s Counsel to discuss the terms and provisions
9 of the contract when advising the Board and the community of the terms.

10 In summary, Grace participated in making the 2016 contract in his capacity as a public official.

11 The contract in question has a five-year period and has an automatic two-year extension, with an
12 option for either party to submit a notice to cancel sixty days prior to the end of the five-year period. The
13 contract essentially sets out that GES will furnish all necessary labor, materials, equipment, and supplies
14 necessary for the management, operations, and maintenance of the District’s wastewater collection and
15 treatment plant, water supply, storage and distribution system, local two-lane roads, a street lighting
16 system, and the District’s office building. In return, the District pays GES a monthly lump-sum payment
17 of \$48,948. According to Grace, GES has earned at least \$393,734 in net revenue from January 2016
18 through December 2020. The agreement requires GES to provide services associated with the District
19 general manager or administrator positions. The contract remains in effect.

20 VIOLATIONS

21 **Count 1: Conflict-of-Interest**

22 Charles Grace was a provider of general manager services for the San Simeon Community Services
23 District. In this capacity, Grace was a public official subject to Government Code section 1090. Grace had
24 a prohibited conflict-of-interest when he participated in the making of the contract between the San Simeon
25 Community Services District and Grace Environmental Services, a limited liability corporation in which
26 Grace is the sole manager, signed on January 20, 2016, in violation of Government Code Section 1090.

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1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per count.⁹

3 This case does not qualify for the Streamline Program because violations of Section 1090 are not
4 included in the Streamline Program.

5 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
6 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
7 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
8 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
9 18361.5 subdivision (e)(1) through (8). (1) The extent and gravity of the public harm caused by the specific
10 violation; (2) The level of experience of the violator with the requirements of the Political Reform Act;
11 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
12 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
13 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
14 other governmental agency in a manner not constituting complete defense under Government Code Section
15 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior
16 record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon learning
17 of a reporting violation, voluntarily filed amendments to provide full disclosure.

18 The first factor is the extent and gravity of the public harm caused by the specific violation.
19 Government Code Section 1090 codifies a prohibition against “self-dealing.” The expectation of public
20 officials is that they be guided solely by the public interest, rather than by personal interest. Eliminating
21 temptation for public officials, avoiding the perception of impropriety, and obtaining their undivided
22 loyalty have been deemed extremely important public policy goals.¹⁰ Here, Grace contends that there is no
23 evidence to suggest that the District was defrauded by this contractual agreement, suffered any actual
24 unfairness or loss, or that Grace was dishonest in his dealings. However, such a finding is not necessary to
25 prove a violation of 1090. Nor would such a finding be sufficient to show that there was no public harm.
26 As stated above, Section 1090 protects the *actual* integrity of the public treasury—as well as the *perceived*
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28 ⁹ See Government Code Section 83116, subdivision (c).

¹⁰ See Thomson v Call (1985) 38 Cal.3d 633, 650 and 648.

1 integrity. “As a result, liability—even criminal liability—can accrue without ‘actual fraud, dishonesty,
2 unfairness or loss to the governmental entity.’” (See *People v. Superior Court (Sahlolbei)*, *supra*, 3 Cal.5th
3 at p. 239—citing *People v. Honig* (1996) 48 Cal.App.4th 289, 314.) There is public harm inherent when a
4 public official is acting on both sides of a transaction, as is the case here. Such actions erode the trust the
5 public has in their governmental officials and contractors. Therefore, a high penalty is appropriate.

6 The second factor is the level of experience of the violator with the requirements of the Political
7 Reform Act.¹¹ In his role as general manager for a public agency, Grace has filed Form 700s, or Statements
8 of Economic Interest, since at least 2011. Grace is or should be familiar with the conflict-of-interest
9 provisions of the Act and of Government Code Section 1090.

10 The third factor is penalties previously imposed by the Commission in comparable cases. The
11 Enforcement Division has not previously prosecuted a case under Section 1090. However, the Enforcement
12 Division enforces another conflict provision, Government Code Section 87100. In this comparable case,
13 the Commission enforced a violation of Section 87100 for facts very similar to the facts at issue here: *In*
14 *the Matter of Linda Fowler*, FPPC No. 15/957 (July 18, 2019). Linda Fowler was a member of the Twin
15 Rivers Unified School District (TRUSD) Board of Trustees and was the TRUSDs representative on the
16 Highlands Community Charter and Technical Schools (HCCTS) Board of Trustees, a nonprofit public
17 benefit corporation operating and controlling a public charter school. While Fowler served as
18 representative on the HCCTS’s Board of Trustees, Fowler influenced a governmental decision regarding a
19 contract between HCCTS and Fowler’s consulting company, a company in which she had a financial
20 interest. By influencing the decision to approve the contract between HCCTS and Fowler’s consulting
21 company, Fowler was held to have had a prohibited conflict of interest in violation of Government Code
22 Section 87100. The Commission imposed a penalty of \$3,500. In that case, the Commission considered
23 that Fowler did not believe she had a conflict where she abstained from voting on the contract, her lack of
24 prior history, and the relative size of the amount paid out to Fowler under the contract, \$13,000, as
25 compared to other comparable cases that involved more contracts and considerably more funds.

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¹¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are
contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to
this source.

1 Here, Grace is not a member of the deciding body, but an independent contractor subject to 1090.
2 According to Grace, GES has earned approximately \$393,734 under the contract executed in 2016, which
3 is significantly higher than the contract amount at issue in *Fowler*. Similar to Fowler, Grace participated
4 in the negotiation and appeared in the Board meeting as the general manager while the Board considered
5 the 2016 contract. He spoke at the meeting and answered clarifying questions about amendments to the
6 contract.

7 The fourth factor is, the presence or absence of any intention to conceal, deceive or mislead. In this
8 matter, there is no evidence that Grace had any intent to conceal, deceive, or mislead with respect to the
9 formation or presentation of the contract at issue. The contracts discussed herein were matters of public
10 record.

11 The fifth factor is whether the violation was deliberate, negligent or inadvertent. In this matter, the
12 District had a long standing practice of hiring contractors to fulfill all government services and it is common
13 that such arrangements would need to be renegotiated. Here, the actions taken by Grace appear to be the
14 result of inadvertence as opposed to deliberateness or negligence. After the item was introduced by Grace,
15 Whitman led the presentation of the contract to the Board. During her remarks, Whitman distinguished the
16 District and GES by using the terms “we” for the District and “them” when referring to GES. At one point
17 while discussing a particular provision, Whitman noted that it could always be amended “if both sides
18 agreed,” suggesting to Mr. Grace that it was clear to the public that he was participating in his personal
19 capacity. The Enforcement Division’s investigation did not find that Grace’s actions were intended or
20 deliberately violative of conflict-of-interest statutes. Nonetheless, during the meeting, Grace failed to step
21 aside in his role as general manager in order to negotiate or present the contract to the Board. Grace failed
22 to hire a separate attorney or agent to negotiate on his behalf. The District failed to solicit competitive bids,
23 even after the original urgent need for the 2014 contract had passed.

24 The sixth factor is whether the violator demonstrated good faith by consulting the Commission staff
25 or any other governmental agency in a manner not constituting complete defense under Government Code
26 Section 83114(b). Here, there is no evidence that Grace sought specific advice about this contract.
27 Subsequent to violations described herein, Grace contacted the Commission’s Legal Division in 2017;
28 however, Legal was not able to render advice for past conduct. Therefore, this factor is not relevant.

1 Additionally, as part of this settlement agreement, Grace has completed the Local Officials Ethics Training
2 Course required by AB 1234.

3 The seventh factor is whether the violation was isolated or part of a pattern and whether the violator
4 has a prior record of violations of the Political Reform Act or similar laws. Grace has no prior history with
5 the Commission.

6 The eighth and final factor is whether the violator, upon learning of a reporting violation,
7 voluntarily filed amendments to provide full disclosure. This factor is not relevant in this matter.

8 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
9 facts, a total penalty of \$4,500 is recommended.

10 CONCLUSION

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
12 Respondent Charles Grace, hereby agrees as follows:

13 1. Respondent violated the Act as described in the foregoing pages, which are a true and
14 accurate summary of the facts in this matter.

15 2. This stipulation will be submitted for consideration by the Fair Political Practices
16 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

17 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
18 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
19 liability of Respondent pursuant to Section 83116.

20 4. Respondent has consulted with his attorney, Amber Maltbie of Nossaman LLP, and
21 understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in
22 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
23 limited to the right to appear personally at any administrative hearing held in this matter, to be represented
24 by an attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the
25 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
26 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

27 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
28 Respondent agrees to the Commission imposing against them an administrative penalty in the amount of

1 \$4,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
2 California—is/are submitted with this stipulation as full payment of the administrative penalty described
3 above, and same shall be held by the State of California until the Commission issues its decision and order
4 regarding this matter.

5 6. If the Commission refuses to approve this stipulation—then this stipulation shall become null and
6 void, and within fifteen business days after the Commission meeting at which the stipulation is rejected,
7 all payments tendered by Respondent in connection with this stipulation shall be reimbursed to
8 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
9 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
10 shall be disqualified because of prior consideration of this Stipulation.

11 7. The parties to this agreement may execute their respective signature pages separately. A
12 copy of any party’s executed signature page, including a hardcopy of a signature page transmitted via fax
13 or as a PDF email attachment, is as effective and binding as the original.

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15 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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18 Dated: _____

Charles Grace

1 The foregoing stipulation in the Matter of “Charles Grace, FPPC Case No. 2020-00416, is hereby
2 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

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9 Richard C. Miadich, Chair
10 Fair Political Practices Commission
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