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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 THEODORE PARK,

13 Respondent.

FPPC No. 11/58

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Fair Political Practices Commission, and Respondent, Theodore Park, hereby
17 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
18 at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of the Respondent.

22 Provided that the Commission accepts this Stipulation as the final disposition of this matter,
23 Respondent hereby knowingly and voluntarily waives, any and all procedural rights set forth in
24 Government Code sections 83115.5, 11503 and 11523, and in California Code of Regulations, title 2,
25 sections 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at
26 any administrative hearing held in this matter, to be represented by an attorney at Respondent's own
27 expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to

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1 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing
2 officer, and to have the matter judicially reviewed.

3 As described in Exhibit 1, it is further stipulated and agreed that Respondent made a series of
4 governmental decisions in which he knew that he had a financial interest, in violation of Government
5 Code section 87100 (1 count).

6 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
7 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
9 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
10 \$3,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
11 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
12 administrative penalty described above, and same shall be held by the State of California until the
13 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business
15 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
16 Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent further
17 stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary
18 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
19 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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21 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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24 Dated: _____

Theodore Park, Respondent

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Theodore Park,” FPPC No. 11/58,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chairman.

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6 IT IS SO ORDERED.

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8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Theodore Park was the Acting Deputy Director of the Real Estate Services Division of the California Department of General Services, and his wife was a partner with the school advisory firm of Hancock, Gonos & Park. One of the firm's clients, Vanir Construction, was a significant source of income to Respondent (by virtue of Respondent's community property interest in his wife's pro rata share of partnership income attributable to Vanir Construction).

The conflict of interest provisions of the Political Reform Act (the "Act")¹ prohibit a public official from making governmental decisions in which he knows or has reason to know that he has a financial interest. However, in 2010, Respondent made a series of governmental decisions regarding Vanir Construction.

For purposes of this stipulation, Respondent's violation of the Act is set forth as follows:

Count 1: Between approximately February and June 2010, Respondent Theodore Park, in his capacity as Acting Deputy Director of the Real Estate Services Division of the California Department of General Services, made a series of governmental decisions in which he knew himself to have a financial interest, in violation of Section 87100.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violation in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to prevent conflicts of interest by public officials. (Section 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

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 Title 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.

Conflicts of Interest

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

In furtherance of this goal, 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 six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a state government agency.

Second, the official must make, participate in making, or attempt to use his official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has an economic interest in any person from whom he or she has received income, aggregating \$500 or more within 12 months prior to the time when the relevant governmental decision is made, including income promised to the public official, but not yet received. (Regulation 18703.3, subd. (a)(1).) This includes a public official’s community property interest in the income of a spouse. (Section 82030, subd. (a).) Also, this includes a pro rata share of any income of any business entity or trust in which the official or spouse owns at least a ten percent interest. (*Ibid.*)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material. (Regulation 18705.3, 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. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that

² 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.

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 FACTS

As stated above, at all relevant times, Respondent Theodore Park was the Acting Deputy Director of the Real Estate Services Division (“RESD”) of the California Department of General Services (“DGS”), and his wife, Luisa Park, was a partner with the school advisory firm of Hancock, Gonos & Park (the “Firm”). One of the Firm’s clients, Vanir Construction (“Vanir”), was a significant source of income to Respondent (by virtue of Respondent’s community property interest in his wife’s pro rata share of partnership income attributable to Vanir).

Vanir retained the services of the Firm in approximately 2006. Respondent’s wife became a partner at the Firm in approximately 2007. At all relevant times, she retained an ownership interest of 25% or greater in the Firm (which had a fair market value in excess of \$100,000). From 2007 through 2011, her total share of billings/income attributable to Vanir exceeded \$40,000.

Respondent maintains that he was not aware of the Firm’s contract with Vanir until he first reported Vanir on his annual Statement of Economic Interests for calendar year 2009. That statement reported Vanir as a source of income of \$10,000 or more, and it was executed by Respondent on January 25, 2010.

After this date, Respondent signed off on a series of five certifications involving Vanir contracts/projects. This is discussed in more detail below.

Count 1

Effective February 11, 2010, no work was to be initiated, no documents were to be reviewed, and no contracts were to be approved by DGS that would result in expenditure of funds—unless authorized by a written certification, which only could be executed by certain personnel, including, but not limited to, department directors.

Thereafter, in February, March and June 2010, Respondent executed five such certifications for pre-existing contracts/projects involving renovation work to be performed in whole or in part by Vanir. Each certified that the work was vital and mission critical to the agency/department. Four of the five certifications pertained to seismic retrofit renovations. The fifth pertained to fire/life/safety infrastructure improvements and rehabilitation of a circa 1928 library/court building.

As the Acting Deputy Director of the RESD of DGS, Respondent was a public official. His certifications amounted to making governmental decisions that affected one of his sources of income. During the 12 months prior to each certification, Vanir was the source of thousands of dollars of income to Respondent (by virtue of Respondent’s community property interest in his

wife's pro rata share of partnership income attributable to Vanir). Vanir was directly involved in these governmental decisions because the certifications pertained to work to be performed by Vanir and funds to be paid to Vanir. At the time of the certifications, it was reasonably foreseeable that they would have a material financial effect on Vanir, especially considering that the certifications would result in funds being paid to Vanir that otherwise would not have been paid.

In acting as described above, Respondent Theodore Park committed one violation of Section 87100.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000. (Section 83116, subd. (c).)

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, one of the more recent stipulations involving a violation of Section 87100 imposed a penalty in the mid-range. (See *In the Matter of Claudia Chandler*, FPPC No. 10/806, approved Dec. 8, 2011 [\$3,000 penalty imposed per count for two counts of conflict of interest involving the Chief Deputy Director of the California Energy Commission, who had a conflict by virtue of her community property interest in her husband's business].)

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that the governmental decision was a product of a conflict of interest. In this case, Respondent had just filed a Statement of Economic Interests disclosing Vanir as a significant source of income, and he should have known that he had a conflict of interest. Also, the five certifications were made over the course of several months, and there was ample opportunity for Respondent to reflect and realize that he had a conflict of interest. Additionally, Respondent was familiar with the rules regarding conflicts of interest, and he was aware that the FPPC could be contacted for advice.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,500 is justified. A higher penalty is not being sought because Respondent cooperated fully with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, although Respondent admits that he should not have signed the certifications in this case, he maintains that he did not realize that he had a conflict of interest because the contracts already were in place. Additionally, there is no history of prior violations of the Act by Respondent.