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

11
12 In the Matter of) FPPC No. 10/1084
13)
14 MARK MOSES,) STIPULATION, DECISION and
15 Respondent.) ORDER
16)
17)

18 Complainant, the Fair Political Practices Commission, and respondent Mark Moses
19 (“Respondent”) agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the

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

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by making,
4 participating in, or attempting to influence a governmental decision directly related to a person with
5 whom he was negotiating, or had an arrangement concerning, prospective employment, in violation of
6 Government Code section 87407 (2 counts).

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

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
11 of \$8,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of
12 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
13 to be held by the State of California until the Commission issues its decision and order regarding this
14 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
15 become null and void, and within 15 business days after the Commission meeting at which the
16 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be
17 reimbursed to Respondent. Respondent further stipulate and agree that in the event the Commission
18 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
19 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
20 consideration of this Stipulation.

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23 Dated: _____

Gary Winuk, Enforcement Chief,
On behalf of the
Fair Political Practices Commission

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27 Dated: _____

Mark Moses, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Mark Moses” FPPC No. 10/1084,
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 Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Mark Moses (“Respondent”) was the Chief Financial Officer of the City of Stockton (the “City”) from April 2004 through July 2010. As a public official, Respondent was prohibited by Government Code section 87407 of the Political Reform Act (the “Act”)¹ from making, participating in making, or attempting to use his official position to influence any governmental decision directly related to any person with whom he was negotiating, or had any arrangement concerning, prospective employment.

On or about June 2, 2010, Respondent began discussing future employment opportunities with Innoprise, Inc., with the company’s CEO. Subsequently, he provided input, in his capacity as CFO of the City, in contract negotiations between the City and Innoprise and drafted a staff report, at the request of the City’s Deputy City Manager, recommending to the City Council that it award Innoprise, Inc., a no-bid contract to update and maintain the City’s software system for \$1,141,260. On June 29, 2010, the City Council adopted the staff report’s recommendation and awarded a \$1,141,260 no-bid contract to Innoprise, Inc.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: Respondent Mark Moses, in his capacity as the Chief Financial Officer of the City of Stockton, made, participated in making, or attempted to influence a governmental decision directly related to a person with whom he was negotiating, or had an arrangement concerning, prospective employment, by participating in the contract negotiations between the City of Stockton and Innoprise, Inc., while negotiating prospective employment with Innoprise, Inc., in violation of Government Code section 87407.

COUNT 2: Respondent Mark Moses, in his capacity as the Chief Financial Officer of the City of Stockton, made, participated in making, or attempted to influence a governmental decision directly related to a person with whom he was negotiating, or had an arrangement concerning, prospective employment, by participating in the City of Stockton’s decision to award Innoprise, Inc., a \$1,141,260 no-bid contract while negotiating prospective employment with Innoprise, Inc., in violation of Government Code section 87407.

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 violations.

¹ The Political Reform 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 (the “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.

When the 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.

The primary purpose for 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 87407 prohibits public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision directly related to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

Section 82048 defines “public official” to include an officer or employee of a local government agency. Section 82041 defines “local government agency” to include a city.

A governmental decision “directly relates” to a prospective employer when, among other things, the proceeding involves the issuance, renewal, approval, denial or revocation of any contract with the prospective employer.

A “prospective employer” is a person, including a business entity, with whom an official is negotiating with, or has an arrangement concerning, prospective employment. (Regulation 18747, subd. (c).) A public official is “negotiating” employment when he or she interviews or discusses an offer of employment with an employer. (Regulation 18747, subd. (c)(1).)

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.)

SUMMARY OF THE FACTS

At all relevant times, Respondent was the Chief Financial Officer of the City. In January 2010, Dennis Harward (“Harward”), owner and CEO of Innoprise, Inc. (“Innoprise”), contacted Respondent and offered Innoprise’s software system as an alternative to the software system the City was using at the time. On February 1, 2010, Harward visited the City and met personally with Respondent to discuss potential products and services that Innoprise could provide the City. Throughout the next few months, Harward and Respondent often discussed, by email, phone and

in person, how Innoprise could procure a no-bid contract from the City to update and maintain the City's software system.

On or about June 2, 2010, Respondent and Harward discussed Respondent's prospective employment with Innoprise. On June 4, 2010, Harward emailed Respondent terms for a potential position with Innoprise that included a \$150,000 salary, the title of "Regional Manager," incentives, Innoprise stock options, and a starting date of August 1, 2010.

On or about June 7, 2010, Respondent informed Harward, via email, that a staff report recommending a no-bid contract with Innoprise, and a proposed contract with Innoprise, would be presented to the City Council at its June 29 or July 13, 2010, meeting. In the same email, Respondent refers to the terms of the potential position with Innoprise that Respondent and Harward discussed on June 2 and June 4, 2010. On the same day, Harward responds to Respondent's email affirming the terms of the potential position with Innoprise.

Subsequently, Respondent discussed with City employees a no-bid contract between the City and Innoprise, and on June 13, 2010, Respondent emailed City officials an agenda item for the June 29, 2010, City Council meeting. The agenda item was a staff report and a proposed contract between the City and Innoprise. The staff report recommended that the City Council execute a no-bid contract with Innoprise in which Innoprise would update and maintain the City's software system in return for \$190,210 for the 2010-2011 fiscal year and a total of \$1,141,260 over six years.

On June 29, 2010, the City Council adopted the staff report recommendation on the consent calendar and awarded Innoprise the \$1,141,260 no-bid contract that Respondent recommended and had participated in negotiating.

COUNT 1

Making, Participaing in, or Attempting to Influence a Governmental Decision Directly Related to a Person with Whom he is Negotiating, or has any Arrangement concerning, Prospective Employment

By participating in the negotiation of the contract between the City and Innoprise, Respondent made, participated in making, or attempted to influence the City's June 29, 2010, decision to award Innoprise a \$1,141,260 no-bid contract, at a time when he was negotiating, or had an arrangement concerning, prospective employment with Innoprise, in violation of Section 87407.

COUNT 2

Making, Participaing in, or Attempting to Influence a Governmental Decision Directly Related to a Person with Whom he is Negotiating, or has any Arrangement concerning, Prospective Employment

By drafting a staff report that recommended to the City Council that they award the proposed contract to Innoprise, Respondent made, participated in making, or attempted to influence the City's decision on June 29, 2010, to award Innoprise, a \$1,141,260 no-bid contract, at a time when he was negotiating, or had an arrangement concerning, prospective future employment with Innoprise, in violation of Section 87407.

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total of \$10,000.

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 the 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.

The following are recent fines approved by the Commission for comparable violations:

In the Matter of Louie Martinez, FPPC No. 09/261: In June 2011, the Commission fined a city project manager \$4,000 for approving an \$86,000 invoice to a landscaping company within twelve months of receiving gifts aggregating over the gift limit from the landscaping company. The respondent cooperated with the Enforcement Division's investigation, did not have a history of violating the Act, and agreed to an early settlement of the matter.

In the Matter of Joni Gray, FPPC No. 12/286: In June 2013, the Commission fined a county supervisor \$3,000 for voting to approve a \$50,000 loan to a non-profit organization that was a source of income to her. The respondent cooperated with the Enforcement Division's investigation, had no history of violating the Act, and agreed to an early settlement of the matter.

In this matter, Respondent has no history of violating the Act, and states that the violations were inadvertent as he believed that his discussions with Innoprise had not advanced to a point that required his recusal and that his participation in decisions relating to Innoprise were ministerial. Although Respondent eventually agreed to provide consulting services to Innoprise, he was never hired as an employee and he did not financially benefit from the city's contract with Innoprise. Finally, Respondent, in his capacity as CFO of the City, recused himself from any involvement with the Innoprise after the June 29, 2010, City Council decision because he had decided to pursue employment with Innoprise.

However, the contract that was awarded to Innoprise as a result of staff report recommendation was for \$1,141,260, a much higher amount than in either of the comparable cases. Additionally, Respondent initially denied discussing employment terms with Harward at any time before the June 29, 2010, City Council decision to execute the no-bid contract with Innoprise. Respondent explained that he did not recall the precise timing of these discussions, but that they had never led to an offer of employment. Therefore a \$4,000 fine for each count is recommended.

PROPOSED PENALTY

Accordingly, the imposition of a total administrative fine of \$8,000 is recommended.

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