

April 21, 2014

Lisa Rodman  
1580 Cannon Road  
Carlsbad, CA 92008

Re: Your Request for Informal Assistance  
**Our File No. I-14-049**

Dear Ms. Rodman:

This letter responds to your request for advice regarding conflict of interest restrictions that may apply to you if you become a city councilmember for the City of Carlsbad (the “City”) but also remain the Executive Director of the Agua Hedionda Lagoon Foundation (the “Foundation”).

Please note that we only provide conflict of interest advice under the Political Reform Act (the “Act”)<sup>1</sup> and Government Code Section 1090. We do not provide advice on other conflict of interest restrictions, if any, that could arise such as those governed by the common law. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are accurate. If this is not the case, then our advice could be different.

Since you ask only general questions about potential government decisions that could pose conflict of interest issues under the Act and Section 1090, we offer only informal assistance. For purposes of the Act, informal assistance does not provide the requestor with the immunity set forth in Sections 83114(a) or (b). (See Regulation 18329(b)(8)(C) and (c)(1) and (3).) Also, for purposes of Section 1090, because your request does not provide specific information regarding a future government contract and your possible financial interest in the contract, we are only providing informal assistance and do not deem this letter to meet the requirements to permit the requester to offer the letter into evidence in a Commission

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<sup>1</sup> 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 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.

enforcement proceeding or criminal prosecution regarding Section 1090. (See Section 1097.1(c)(5).)

Finally, pursuant to Section 1097.1(c)(4), we have forwarded your request to the Attorney General's Office and the San Diego County District Attorney's Office concerning potential issues raised under Section 1090 and we did not receive a written response from either entity.

### **QUESTIONS**

1. Would your election to the Carlsbad City Council present any conflict of interest issues under the Act or Section 1090 related to a 2006 grant issued by the City to the Foundation, for which you work as Executive Director and oversee expenditure of funds under the grant?

2. Would your election to the Carlsbad City Council present any conflict of interest issues under the Act or Section 1090 concerning periodic grants the City provides to the Foundation to provide city-related services and marketing for special events?

### **CONCLUSIONS**

1 and 2. Should you be elected to the Carlsbad City Council, any existing grants from the City to the Foundation, and your employment by the Foundation and work on the grants, would not void the grants or prevent you from serving on the council.

However, unless some exception applies, you would likely be prohibited under the Act's conflict of interest provisions from making, participating in making or using your official position to influence any future City decision that has a reasonably foreseeable material financial effect on the Foundation.

Under Section 1090, to the extent that any decision by the City involving contracting for grants to the Foundation would bestow a direct or indirect financial benefit or detriment upon you, and unless an exception applies, the city council would be prohibited from extending, amending or renegotiating any existing grant with the Foundation or issuing a new grant or other types of contract to the Foundation. Based upon the facts you have provided, we cannot determine whether any specific decision would trigger this prohibition. But assuming the prohibition is triggered due to your having a financial interest in the contracting decision, we provide examples of some exceptions below that, depending on the circumstances at the time the City considers the contract, could apply and permit both you and the city council, or just the city council without your participation, to make contracts involving the Foundation and not violate Section 1090.

## **FACTS**

You are the Executive Director of the Foundation, which is located in Carlsbad California. According to the Foundation's web site, the Foundation was established in 1990 as a non-profit 501(c)(3) corporation. Generally, the Foundation serves as an advocate for the Agua Hedionda Lagoon and strives to preserve its natural healthy ecosystem and habitat including wildlife and marine life, while at the same time balancing the need for public access, trails and recreational opportunities.

You are running for an elected position on the city council of the City. The City's Municipal Code establishes provisions for the conversion of agricultural land within the coastal zone to urban uses. To convert agricultural land to urban uses, the loss of agriculture must be mitigated. One of the mitigation options specified by the City Municipal Code is the payment of an Agricultural Conversion Mitigation Fee (ACMF). The ACMF fees are deposited into a fund and, subject to recommendations by a city-formed committee, the city council awards the funds for various mitigation projects and purposes. The City awarded a grant of ACMF funds to the Foundation for capital improvements in 2006. As Executive Director of the Foundation, you currently oversee the expenditure of these funds under the grant. None of these funds are used to pay for any of the Foundation's operations.

In addition, you indicate that the City provides a grant for special events and that the grant has been awarded to the Foundation to provide various city-related services and marketing for the special events.

You ask if elected to the city council, whether you would have a conflict of interest if you continued to oversee, in your capacity as Executive Director of the Foundation, the expenditure of the ACMF funds awarded pursuant to the Foundation's 2006 contract with the City. Also, you ask, if elected to the city council, whether the City could continue to provide grants to the Foundation for the special events.

## **ANALYSIS**

Your questions raise potential issues under both the standard conflict of interest provisions set forth in Section 87100 of the Act and Section 1090's specific prohibition against public officials making contracts in which they are financially interested. Since your questions are prospective in nature and do not involve specific government decisions or contracts, we offer general guidance below to assist you in determining if you may have an issue under Section 87100 or Section 1090, in the event you are elected to the Carlsbad City Council. Please note that the provisions of the Act and Section 1090 apply separately, meaning that even if an exception applies under one of these provisions there may not be a similar exception under the other.

## **I. Holding Public Office or Employment**

Neither the Act nor Section 1090 prevents any individual from being elected to public office or otherwise being employed by a government agency. As explained below, these provisions only prohibit the individual, once in public office or employment, from participating in certain types of government decisions and, in some circumstances under Section 1090, preventing the public body on which the individual serves from taking action on contracts.<sup>2</sup>

## **II. Conflicts of Interest under the Act**

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has an interest specified in Section 87103. A public official has a “financial interest” in a government decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a conflict of interest under Section 87100.

### **Step One - Is the individual a public official? (Section 87100; Regulation 18700(b)(1).)**

If you are elected to the city council of the City, you will be a public official for purposes of Section 87100. (Sections 82003, 82041 and 82048(a).)

### **Step Two - Will the public official be making, participating in making, or using his or her official position to attempt to influence a government decision? (Section 87100; Regulation 18700(b)(2).)**

As stated above, a public official is subject to Section 87100 if he or she makes, participates in making, or uses his or her official position to attempt to influence a government decision.

Under Regulation 18702.1, an official “makes” a government decision when he or she, among other things, votes on a matter, enters into a contract<sup>3</sup> on behalf of his or her agency, or obligates or commits his or her agency to any course of action. (Regulation 18702.1(a).) Under Regulation 18702.2, an official “participates” in a government decision when, generally, he or she negotiates, without significant substantive review, regarding a government decision, or advises or makes recommendations to the decisionmaker directly or without significant

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<sup>2</sup> However, violations of Section 87100 or Section 1090 can, in addition to imposition of criminal, civil or administrative penalties and forfeiture of rights under the contract, result in an official forfeiting office and being banned from seeking future office. (See Sections 91002 and 1097.)

<sup>3</sup> Since a grant issued by a public agency involves the requisite elements of consideration, we consider a grant to be a contract for purposes of this analysis, particularly the parts applicable to Section 1090. Also see *People v. Honig* (1996) 48 Cal.App.4th 289, 351.

substantive review. (Regulation 18702.1(a) and (b).) Under Regulation 18702.3, an official “uses his or her official position to influence” a government decision when he or she contacts, appears before or otherwise attempts to influence a member, officer, employee or consultant of the official’s own agency or, when appearing before another government agency, the official acts or purports to act on behalf of his or her own agency. (Regulation 18702.3(a) and (b).)

Therefore, if, in your capacity as city councilmember, you take any of the actions described above, you will be making, participating in making, or using your official position to influence a government decision for purposes of Section 87100.

**Step Three – Identify the public official’s interests that may be affected by the government decision. (Sections 87100 and 87103; Regulation 18700(b)(3).)**

Section 87103 sets forth several types of interests held by a public official that, when affected by a government decision, may expose the official to a possible conflict of interest. As pertinent to the facts you present, the issue is whether the Foundation is a source of income to you and thus is an interest that may be affected by government decisions in which you might participate. Section 87103(c) provides that, for purposes of Section 87100, an official has an interest in any source of income of \$500 or more provided or promised to, or received by the official during any 12-month period prior to the official’s participation in a government decision. Since you indicate that you are employed by the Foundation, it is presumably a source of income to you of \$500 or more in any 12-month period.

Therefore, the Foundation is a source of income to you, and thus is an interest that may be affected by government decisions for purposes of Section 87100.<sup>4</sup>

**Steps Four, Five and Six – Is the public official’s interest directly or indirectly involved in the government decision (Sections 87100 and 87103; Regulation 18700(b)(4)) and is it reasonably foreseeable that the decision will have a material financial effect on that interest (Sections 87100 and 87103; Regulation 18700(b)(4), (5) and (6)).**

As mentioned above, an official does not have a conflict of interest under the Act unless the government decision in which he or she participates has a “reasonably foreseeable material financial effect” on his or her interests. (Sections 87100 and 87103.) Steps 4, 5, and 6 assist in making this determination by first classifying the government decision at issue as “directly” or “indirectly” involving the official’s interest and, based on that classification, determining whether it is “reasonably foreseeable” that the decision’s financial effect on the official’s interest is “material.”

Under Regulation 18704.1, when the public official’s interest is a source of income, such as the Foundation, the source is deemed “directly” involved in the government decision when it

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<sup>4</sup> Five other types of interests that could expose a public official to a conflict of interest under Section 87100 are set forth in Section 87103 and explained in more detail in Regulations 18703 – 18703.5. Since none of these other interests are raised by your question, we do not address them here.

either initiates a proceeding before the agency by filing an application, claim, appeal, or similar request or is a named party or the subject of the decision. (See Regulation 18704.1(a).) For example, if the Foundation initiated or was the subject of a contract (such as a grant) with the City, it would be “directly” involved in the government decision and the analysis in Step 5 below would be the level of “materiality” the government decision must have for directly involved entities.

However, under Regulation 18704(a), when an official’s interest is not “directly” involved in the decision it is deemed “indirectly” involved and the analysis under Step 5 below would be the level of “materiality” the government decision must have for indirectly involved entities. For example, if the Foundation was not directly involved in a particular City decision but it is foreseeable (see discussion of Step 6) that it would be financially affected by the decision, the indirect analysis for “materiality” will apply.

Under Step 5, when an official’s source of income is “directly” involved in a government decision, the decision is deemed to have a “material” financial effect when it is reasonably foreseeable that the decision will have any financial effect on that source. (Regulations 18705(a)(3) and 18705.3(a).) Thus, even a one-penny effect on a “directly” involved source of income is “material” for purposes of this analysis.

If, however, the source of income is “indirectly” involved in the government decision and the source of income, like the Foundation, is a nonprofit entity, whether the decision’s effect is “material” depends on factors such as the entity’s gross annual receipts and the effect of the decision (regardless of increase or decrease) on those receipts or the entity’s expenses in a fiscal year, or on the value of the entity’s assets or liabilities. (See Regulation 18705.3(b)(2).) For example, if the Foundation has annual gross receipts of \$100,000 to \$1,000,000, an “indirect” decision would be “material” if it resulted in at least a \$50,000 fiscal-year increase or decrease in the entity’s gross revenues, a \$12,500 fiscal-year increase or decrease in the entity’s expenses, or a \$50,000 increase or decrease in the value of the entity’s assets or liabilities. (Regulation 18705.3(b)(2)(E).)

In addition, a government decision is deemed to have a “material” financial effect on a source of income to a public official if the official is promised or receives income to achieve a goal or purpose that would be achieved, defeated, aided or hindered by the decision and the decision has any reasonably foreseeable financial effect on that source of income. (Regulation 18705.3(c); known as the “nexus” rule.) For example, if part of your duties as Executive Director of the Foundation is to preserve the ecological viability of the Agua Hedionda Lagoon, a decision before the City affects the Lagoon’s ecological viability and it is reasonably foreseeable that the decision could have any financial impact on the Foundation, you may not participate in the City’s decision.

If it is determined that a government decision may, based on the discussion above, have a “material” financial effect on the Foundation, the next step in the analysis (Step 6) is to determine whether that effect is “reasonably foreseeable.” (Regulation 18700(b)(6).) Under

Regulation 18706(a)<sup>5</sup>, a financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in or the subject of a government decision before the official or the official's agency. Thus, for example, if there is a decision before the City on whether to issue a new grant to, or modify or amend an existing grant with, the Foundation, the decision would be presumed to have a reasonably foreseeable financial effect on the Foundation and you would likely be prohibited from participating in the decision. By contrast, when the official's economic interest is not a named party in or the subject of a government decision, Regulation 18706(b) establishes a different test. Under this provision, the financial effect of the decision is reasonably foreseeable only if the effect is "a realistic possibility and more than hypothetical or theoretical." Note that, under this test, the financial effect does not have to rise to the level of being "likely" before it is "reasonably foreseeable." On the other hand, if "the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable." (*Ibid.*) To assist in applying this test, Regulation 18706(b) also contains a list of several factors that can be considered. Obviously, since, as mentioned above, there is no government decision pending at this point, we cannot make this determination but merely provide guidance for you in the event future issues arise.

### **Steps Seven and Eight -- "Public Generally" and "Legally Required Participation" (Regulation 18700(b)(7) and (8)).**

These last two parts of the conflict of interest analysis under the Act are essentially exceptions that would be analyzed if it is found that you have a conflict of interest. If you are elected to the city council and, in the future, you believe you may have a conflict of interest, you can, of course, write for additional advice and we can determine whether either of these exceptions applies.

### **Manner of Disqualification**

Section 87105, as interpreted in Regulation 18702.5, sets forth the manner in which a public official who sits on a public body whose members, such as city councilmembers, file Statements of Economic Interests under Section 87200 and who has a Section 87100 conflict of interest must disqualify him- or herself when the matter comes before the official at a public meeting of the body held pursuant to either the Bagley-Keene Act (Section 11120 et seq.) or Brown Act (Section 54950 et seq.). These provisions require the official to publicly identify his or her financial interest, disqualify him- or herself from participating in the matter, and leave the room during any discussion of the matter.

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<sup>5</sup> Regulation 18706 was recently amended by the Commission and will be submitted to the Office of Administrative Law for posting in the California Code of Regulations. Although not currently effective, the regulation, as amended, expresses the Commission's policy concerning application of the conflict of interest rules of the Act. Therefore, staff is advising consistent with the Commission's policy.

Therefore, if you are elected to the city council, you must follow the disqualification rules set forth in Section 87105 and Regulation 18702.5 if you have a conflict of interest under Section 87100 in a matter that comes before the city council at a public meeting subject to the Brown Act (Section 54950 et seq.).

### **Conclusion – Political Reform Act Conflicts**

For purposes of the Act, if you are elected to the city council, you have an interest in the Foundation if it is a source of income to you of \$500 or more during the 12 months before you participate in any type of government decision. In those circumstances, you may not make, participate in making, or use your official position to influence that government decision if it will have a reasonably foreseeable material financial effect on the Foundation, as explained above. If you are required to disqualify yourself at a public meeting of the city council, you must follow the procedures set forth under “Manner of Disqualification” above.

### **III. Application of Section 1090**

You indicate that the Foundation currently receives grants from the City. Your election to the city council would not void these contracts or, as mentioned, otherwise prevent you from serving on the council. (*Beaudry v. Valdez* (1867) 32 Cal. 269; 85 Ops.Cal.Atty.Gen. 176 (2002); 84 Ops.Cal.Atty.Gen. 34 (2001).) However, if you are elected, issues could arise for you and the city council under Section 1090 if any of these grants are extended, amended or renegotiated, or if there is a proposal for a new grant or other type of contract with the Foundation.

As for future Section 1090 issues on contracts, as stated above, since there are no government contracts to be specifically analyzed at this time in which you may have a financial interest, we can only provide general information that you can follow to determine whether you have an issue under Section 1090 and your duties if you have such an interest.

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig, supra*, at 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

We employ the following six-step analysis to determine whether an official has a disqualifying conflict of interest under Section 1090.

**Step One: Is the official subject to the provisions of Section 1090?**

Section 1090 provides, in part, that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” Councilmembers of the City are plainly covered by this prohibition. (See, e.g., *Thomson, supra*, at p. 645; *City Council v. McKinley* (1978) 80 Cal.App.3d 204, 213.)

**Step Two: Does the decision at issue involve a contract?**

To determine whether a contract is involved in the decision, one may look to general principles of contract law (84 Ops.Cal.Atty.Gen. 34, 36 (2001);<sup>6</sup> 78 Ops.Cal.Atty.Gen. 230, 234 (1995)), while keeping in mind that “specific rules applicable to Sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of ‘contract.’” (*People v. Honig, supra*, at p. 351 citing *Stigall, supra*, at pp. 569, 571.) Grants are generally considered contracts for purposes of Section 1090. (*People v. Honig, supra*, at p. 351.)

**Step Three: Is the official making or participating in making a contract?**

Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft, supra* at p. 569.) Notably, in relation to a public body such as a city council, when members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract. (*Thomson v. Call* (1985) 38 Cal.3d 633, 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).)

Thus, if a particular contract comes before the City in which the Foundation is involved, you will have to seek advice on whether you have a financial interest in the contract and to what extent, if any, you can participate in the making of the contract. Also, on contracts before the city council itself, unless an exception applies (see “noninterest” exceptions (Section 1091.5) and “remote interest” exceptions (Section 1091)), if you are financially interested in a contract, the entire city council is prohibited from making the contract even if you disqualify yourself from

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<sup>6</sup> It is noteworthy to point out that opinions issued by the Attorney General’s Office are entitled to considerable weight (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17), especially where, as here, it has regularly provided advice concerning a particular area of law. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655, 662; *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829.)

participation in making the contract. We discuss these exceptions in more detail under Step Five below.

#### **Step Four: Does the official have a financial interest in the contract?**

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest” (*People v. Honig, supra*, at p. 333), and officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 nowhere specifically defines the term “financial interest,” case law and Attorney General Opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson, supra*, at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

More recently, in *Eden Township Healthcare Dist. v. Sutter Health* (2011) 202 Cal.App.4th 208, the court of appeal held that “to be prohibited under Section 1090, the public official’s financial interest must be related to the contract.... The purpose of the prohibition is to prevent a situation where a public official would stand to gain or lose something *with respect to the making of a contract* over which in his official capacity he could exercise some influence.” (*Id.* at 225 (emphasis in original; internal citation and quotations omitted).) In analyzing the “financial interest” element of Section 1090, the court noted that in prior cases where a prohibited conflict was found, “the party who was found to have had a prohibited financial interest received a tangible benefit that arose out of the contract at issue.” (*Id.* at 226.) Importantly, the court rejected the notion that the “mere *prospect*” that the official’s judgment “will be colored because he or she receives income from the party with whom the official’s agency is contracting” is sufficient to establish a prohibited financial interest under Section 1090. (*Id.* at 227 (emphasis in original).) It is important to first determine “whether the official receives any direct or indirect benefit from the agreement.” (*Id.*) Therefore, the court held that “if the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract....” (*Id.* at 228.)

#### **Step Five: Does either a remote-interest or non-interest exception apply?**

Assuming a prohibited financial interest in a government contract is found, as a general rule, when Section 1090 is applicable to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).) However, the Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a “remote interest,” as defined in Section 1091, or a “noninterest,” as defined in Section 1091.5.

If there is a “remote interest,” the contract may be made if (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a); 88 Ops.Cal.Atty.Gen. 106, 108 (2005); 83 Ops.Cal.Atty.Gen. 246, 248 (2000).) If a “noninterest” is present, the contract may be made without the officer's abstention, and generally a noninterest does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515; 84 Ops.Cal.Atty.Gen. 158, 159-160 (2001).)

Since it is speculative at this point on the types of contracts that may arise if you are elected to the city council, it would be unproductive to recite each of the provisions in which there is either a “noninterest” or “remote interest.” We recommend that you seek further advice should you be elected to the city council and are faced with a decision regarding a contract with the Foundation.

#### **Step Six: Does the rule of necessity apply?**

In limited circumstances, a “rule of necessity” has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (88 Ops.Cal.Atty.Gen. 106, 110 (2005).) Under the rule of necessity, a government agency may acquire an essential service, despite the existence of a conflict, when no source other than that which triggers the contract is available; the rule “ensures that essential government functions are performed even where a conflict of interest exists.” (*Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal.App.3d 311, 322.) Whether the “rule of necessity” would apply would depend upon the circumstances unique to any future contract that may come before the City.

#### **Conclusion – Section 1090 Conflicts**

As a general rule, Section 1090 may prevent you in certain circumstances from participating in government decisions involving contracts with the Foundation in which you have a financial interest. Furthermore, depending on the circumstances, if you have a financial interest in a contract, Section 1090 may also prevent the city council from taking action on contracts relating to the Foundation even if you do not participate in your official capacity in making the contract. Whether exceptions under Section 1090 would apply to you or the city council depends on the specific facts pertinent to the contract at the time it is considered by the City.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Scott Hallabrin  
Counsel, Legal Division

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