

October 28, 2014

Rebecca J. Olson  
Miller & Olson, LLP  
400 Capitol Mall, Suite 1545  
Sacramento, CA 95814-4434

Re: Your Request for Advice  
**Our File No. A-14-179**

Dear Ms. Olson:

This letter responds to your request for advice on behalf of Peter Ingram regarding his duties under the provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), this advice is based solely on the facts presented.

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code section 1090.

### QUESTIONS

(1) Under the conflict of interest provisions of the Act, is Mr. Ingram considered a “public official”?

(2) If so, is there any potential conflict of interest created by his employment by CSG Consultants, Inc. (“CSG”) and/or his own consulting firm?

### CONCLUSIONS

(1) and (2). Under the facts provided, Mr. Ingram does not qualify as a “consultant” and is therefore not a public official under the Act.

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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.

## FACTS

Mr. Ingram is a Senior Project Manager for the consulting firm CSG. The City of Belmont intends to retain CSG to provide project management services for their general plan update, a downtown specific plan, and an accompanying environmental impact report (EIR). CSG intends to assign Mr. Ingram exclusively to the Belmont project for 18 months. His role will be to facilitate, coordinate, and expedite the work of the other consultants, provide status reports and updates to the City's staff, and review and comment on draft work products. He anticipates working on this project approximately 10 hours per week.

*Proposal to the City of Belmont for project management services for general plan update downtown planning and zoning:* According to CSG's proposal, CSG will exclusively assign Mr. Ingram as the project manager, and he shall be the City's point of contact for the duration of the contract, from September 1, 2014 through February 2016. Mr. Ingram's hours worked will be invoiced monthly to the City at an hourly rate of \$175 and CSG proposes that the City authorize up to 720 total hours across the 18-month project duration, or an average of up to 40 hours per month, not to exceed a value of \$126,000. Under the proposal, Mr. Ingram will:

- Provide daily access to team members and project stakeholders and respond promptly to questions, issues and problems;
- Convene weekly, monthly and/or quarterly project team coordination meetings;
- Compile and distribute meeting notes and decisions within 24 hours following each session;
- Coordinate problem-solving throughout the project;
- Design and support topic-specific meetings, workshops and/or outreach events;
- Provide the City's Project Executive with on-going updates and information in desired format and frequency;
- Allocate and schedule on-site work hours as needed to ensure high level of connection to City team members and other project consultants;
- Review and comment on drafts of all project work products and manage flow of final drafts to City team members. Provide final document concerning quality assurance and quality control and direction to other consultants pursuant to City's internal review processes;
- Review and sign off on project consultant's invoices and enter final approval requests into City's AP system;

- In concert with the Director, serve as “the face” of the project for the City by taking on the responsibility for delivering successful outcomes such that the City’s overarching priorities and goals are met;
- Provide best professional advice to City to maintain schedule, meet budget limitations, solve process problems, and engage the public respectfully and appropriately throughout the duration of the project; and
- Assist City staff and Dyett & Bhatia (“D&B”), a separate contractor, in collaborating and coordinating the City’s Housing Element update process (commenced in June 2014), including preparing Task Completion Reports for the following phases (1) Project Initiation, (2) Research/Options, (3) Preferred Plan / Goals, (4) the Draft General Plan, (5) the Draft / Final EIR, and (6) Hearings / Adoption General Plan.

Mr. Ingram is also a sole proprietor consultant doing business as Peter Ingram Consulting. One of his clients is the commercial division of a large real estate development company (the “Client”). Mr. Ingram is providing services to them on one specific, private-sector project in Silicon Valley. The Client’s residential division has an interest in the City of Belmont’s General Plan. The Client is seeking entitlements from the City for two proposed developments within Belmont’s city limits.

## ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. The first step at issue for Mr. Ingram is whether he qualifies as a public official.

The Act defines “public official” in Section 82048 to include “every member, officer, employee or consultant of a state or local government agency.” In addition, the Act defines the term “designated employee” to include “any officer, employee, member or consultant” of any agency. The Act further recognizes two ways that a contractor maybe considered a “consultant” subject to the rules of the Act.

### *Making a Governmental Decision*

First, the term “consultant” is defined in Regulation 18701(a)(2)(A) as an individual who, pursuant to a contract with a government agency:

“Makes a government decision whether to:

“(i) Approve a rate, rule, or regulation;

“(ii) Adopt or enforce a law;

“(iii) Issue, deny, suspend, or revoke any permit license, application, certificate, approval, order, or similar authorization or entitlement;

“(iv) Authorize the agency to enter into, modify or renew a contract provided it is the type of contract that requires agency approval;

“(v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

“(vi) Grant agency approval to a plan, design, report, study, or similar item;

“(vii) Adopt or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

Your facts indicate that Mr. Ingram will not be making any governmental decision, let alone those decisions specified in Regulation 18701.

*Serves in a Staff Capacity.*

Second, the Act defines the term “consultant” in Regulation 18701(a)(2)(B) as an individual who, pursuant to a contract with a government agency:

“Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency’s Conflict of Interest Code under Government Code section 87302.”

The phrase “serves in a staff capacity” in Regulation 18701(a)(2)(B) has been construed by the Commission to include only those individuals who are performing substantially all the same tasks that normally would be performed by one or more staff members of a governmental agency. Arguably the project management tasks described above could be performed by internal staff.

However, also implicit in the notion of service in a staff capacity is an ongoing relationship between the contractor and the public agency. We have advised that a contractor serves in a staff capacity when the contract calls for work to be performed “over more than one year” on “high level” projects (*Ferber Advice Letter*, No. A-98-118). We have further advised that a contractor does not act in a staff capacity where the work is to be performed on one project or a limited number of projects over a limited period of time (*Sanchez Advice Letter*,

No. A-97- 438). For example, in the *Harris* Advice Letter, No. A-02-239, we looked at the following facts in determining that a contractor did not serve in a staff capacity:

“The Department plans to utilize Mr. Otto during the RFP development for an *average of 50 to 100 hours per month*. Therefore, you would not consider Mr. Otto a full time staff member on the project; nor has he or will he work on other projects in the foreseeable future for the Department.”

Your facts are similar to those in *Harris*. In your case, while the contract will be performed over an 18 month period, the total amount of time worked is the equivalent of 18 weeks (40 hours a month), far less than a year, and far less than full-time. The limited performance hours, even less than those in the *Harris* letter, further support the conclusion that Mr. Ingram would not be serving in a staff capacity under the proposal. Therefore, Mr. Ingram would not qualify as a “consultant” under the Act.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

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