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CITY OF SAN DIEGO
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July 17, 2008

Mr. Artie M. "Chip" Owen
1415 Savoy Circle
San Diego, CA 92107

**Re: Financial Relationship with PDP Imperial Partners, LLC and Violation of
Government Code Section 1090.**

This office has reviewed your Statement of Economic Interests Form 700 filed for calendar years 2006 and 2007. In both instances, you state under Schedule C (Income, Loans & Business Positions) that you received in 2006 and in 2007 gross income between \$10,001 and \$100,000 for brokerage services rendered in real estate development earned in calendar year 2002 from PDP Imperial Partners, LLC ("PDP"). In other words, the money you receive from PDP is for work performed in 2002 but paid over a series of years in installments.

California Government Code Section 1090 states in relevant 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." As a member, let alone Chair, of the Southeastern Economic Development Corporation ("SEDC") Board, you are subject to the provisions of section 1090. *The City Council of the City of San Diego v. McKinley*, 80 Cal.App.3d 204.

Because PDP has been paying you annually since 2002 for services rendered that year, you are financially interested in every contract made between PDP and SEDC, or between PDP and the Redevelopment Agency of the City of San Diego which comes before the SEDC Board because the more money that PDP makes from projects results in the greater likelihood of you continuing to receive your installment payments. The provisions of section 1091 (b) (6) and (8) do not appear to be applicable.

When section 1090 is applicable to one member of the governing body of a public entity (in this case the SEDC Board), the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. *Thomson v. Call*, 38 Cal.3d 633, 647-649 (1985); *Stigall v. City of Taft*, 58 Cal.2d 565,569 (1962). A contract that violated section 1090 is void and unenforceable. *Thomson v. Call* at 646, 649. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. *Id.* At 646-649. See also *Carson Redevelopment Agency v. Padilla*, 140 Cal.App.4th 1323 (2006).

An official participates in the making of a contract if the official is involved with its preparation at any stage of the process. The contract-making process begins at the time the idea for the contract is conceived and continues through the actual execution of the contract. That means that planning, determining the scope of the contract, drafting plans and specifications, setting contract terms, evaluating applicants, and negotiating are all included within scope of Section 1090. As noted previously, your mere recusal from voting on any specific matter does not absolve you of any potential Section 1090 violation.

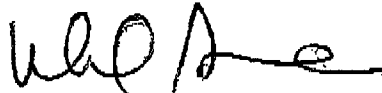
Moreover, Section 1090 does not define when an official is financially interested in a contract. However, the courts have applied the prohibition to include a broad range of interests. The courts have continually reiterated that no matter how twisted and winding the trail may be, if the connection between the financial interest of the official and the contract can be made, a violation of section 1090 will be found.

Accordingly, you are hereby advised that based upon the above known information and the clear precepts of the above stated California Government Code sections, as further elaborated upon by the aforementioned case law, all contracts, agreements, and other business arrangements entered into between PDP Imperial Partners, LLC (including PDP as the sole contracting party or one of several contracting parties or having an interest in any of the contracting parties) and either SEDC and/or the Redevelopment Agency of the City of San Diego which came to or through the SEDC Board while you were a member of the Board are void and unenforceable.

In addition, if the SEDC Board plans to consider any new contracts or agreements with PDP, it cannot do so as long as you remain on the Board and retain a prohibited financial interest.

This office is continuing its review of this matter. A copy of this letter is also being sent to you as Chair of the SEDC Board at 4393 Imperial Avenue, Suite 200, San Diego, CA 92113.

Very truly yours,



MICHAEL J. AGUIRRE
City Attorney

cc: Mayor Jerry Sanders
City Council members
Carolyn Smith