

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
2 450 B Street, Suite 780  
San Diego, CA 92101  
3 Telephone: (619) 533-3476

4 Petitioner

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7 **BEFORE THE CITY OF SAN DIEGO**  
8 **ETHICS COMMISSION**

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10 In re the Matter of: ) Case No.: 2018-05  
11 PHIL RATH, )  
12 Respondent. ) **STIPULATION, DECISION, AND**  
13 ) **ORDER**  
\_\_\_\_\_ )

14  
15 **STIPULATION**

16 **THE PARTIES STIPULATE AS FOLLOWS:**

17 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics  
18 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,  
19 implement, and enforce local governmental ethics laws contained in the San Diego Municipal  
20 Code [SDMC] relating to, among other things, the provisions of the City of San Diego Ethics  
21 Ordinance [Ethics Ordinance], SDMC section 27.3501, *et seq.*

22 2. At all times mentioned herein, Phil Rath was a member of the Civic San Diego  
23 Board of Directors [Civic Board] and held a 49% ownership interest in Rath Miller, LLC. Mr.  
24 Rath is referred to herein as "Respondent."

25 3. This Stipulation will be submitted for consideration by the Ethics Commission at its  
26 next scheduled meeting, and the agreements contained herein are contingent upon the approval  
27 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

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1           4.    This Stipulation resolves all factual and legal issues raised in this matter by the  
2 Ethics Commission without the necessity of holding an administrative hearing to determine  
3 Respondent’s liability.

4           5.    Respondent understands and knowingly and voluntarily waives any and all  
5 procedural rights under the SDMC including, but not limited to, a determination of probable  
6 cause, the issuance and receipt of an administrative complaint, the right to appear personally in  
7 any administrative hearing held in this matter, the right to confront and cross-examine witnesses  
8 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to  
9 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees  
10 that the terms of this Stipulation constitute compliance with the provisions of SDMC section  
11 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation, and an  
12 order.

13           6.    Respondent agrees to hold the City of San Diego and the Ethics Commission  
14 harmless from any and all claims or damages resulting from the Commission’s investigation, this  
15 stipulated agreement, or any matter reasonably related thereto.

16           7.    Respondent acknowledges that this Stipulation is not binding upon any other law  
17 enforcement or government agency and does not preclude the Ethics Commission from referring  
18 this matter to, cooperating with, or assisting any other law enforcement or government agency  
19 with regard to this or any other related matter.

20           8.    The parties agree that in the event the Ethics Commission refuses to accept this  
21 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics  
22 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission  
23 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified  
24 because of prior consideration of this Stipulation.

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1 **Summary of Law and Facts**

2 9. As a member of the Civic Board, Respondent is a “Local Code Filer” as that term is  
3 defined by SDMC section 27.3503, and is required to regularly file Form 700 Statements of  
4 Economic Interests [SEIs] in the time and manner set forth in SDMC section 27.3510.

5 10. SDMC section 27.3510 requires that all Local Code Filers file an assuming office  
6 SEI within 30 days of assuming office covering the previous twelve-month period, and an annual  
7 SEI on or before April 1 of each year covering the period from January 1 (or the assuming office  
8 date) through December 31 of the previous calendar year, pursuant to the applicable Conflict of  
9 Interest Code adopted by the City Council.

10 11. According to SDMC section 27.3510 and California Government Code section  
11 82030, a filer’s sources of income include the filer’s pro rata share of income received by any  
12 business entity in which the filer has a ten percent or greater ownership interest. In addition,  
13 California Government Code section 87207 states that filers must disclose the names of sources  
14 of income to a business entity if the filer’s pro rata share of the gross income from a single  
15 reportable source was \$10,000 or more during the reporting period.

16 12. On November 8, 2013, Rath Miller entered into an agreement with developer  
17 Affirmed Housing Group [Affirmed] to provide public affairs services in connection with  
18 Affirmed’s efforts to obtain funding from the County of San Diego for an affordable housing  
19 project located in San Marcos. In compensation for the firm’s services, Rath Miller received its  
20 first payment from Affirmed for \$22,000 on December 18, 2014. The second payment in the  
21 amount of \$100,000 was initially due on March 31, 2015, but the deadline was extended in  
22 response to a request from the client and payment was ultimately made on August 8, 2015.

23 13. On July 28, 2015, Respondent assumed office as a member of the Civic Board. On  
24 August 28, 2015, he filed an assuming office SEI. In accordance with the Conflict of Interest  
25 Code adopted by the City Council for the Board, Respondent was required to disclose income  
26 from any entity engaged in land development, construction, and/or land use consulting within the  
27 City of San Diego. Affirmed engages in land development and within the City of San Diego.  
28 Respondent disclosed his ownership interest of ten percent or greater in Rath Miller, as well as

1 four reportable sources of income of \$10,000 or more received through the firm, but did not  
2 disclose his portion of the income received from Affirmed during the reporting period, even  
3 though Affirmed was a reportable source of income.

4 14. On January 25, 2016, Respondent filed his 2015 annual SEI covering the period  
5 from July 28, 2015, through December 31, 2015. In accordance with the Conflict of Interest  
6 Code adopted by the City Council for the Board, Respondent was required to disclose income  
7 from any entity engaged in land development, construction, and/or land use consulting within the  
8 City of San Diego. Respondent disclosed his ownership interest of ten percent or greater in Rath  
9 Miller, as well as seven reportable sources of income of \$10,000 or more received through the  
10 firm, but did not disclose his portion of the income received from Affirmed during the reporting  
11 period, even though Affirmed was a reportable source of income.

12 15. SDMC section 27.3561 prohibits City Officials from making or participating in a  
13 municipal decision if the decision will impact their financial interests, including sources of  
14 income of \$500 or more within the previous twelve-month period.

15 16. On January 5, 2016, in response to a Request for Proposals issued by Civic San  
16 Diego, Affirmed submitted one of three bids to develop a 143,800-square foot mixed use project  
17 at the northwest corner of Hilltop Drive and Euclid Avenue in the Chollas View neighborhood of  
18 the Encanto Neighborhoods Community Planning Area in the City of San Diego [Hilltop &  
19 Euclid project].

20 17. On June 8, 2016, the Real Estate and Budget/Finance Joint Committee of the Civic  
21 Board voted (6 – 0, 1 abstention) to approve the staff recommendation to enter into an Exclusive  
22 Negotiation Agreement with Affirmed to develop the Hilltop & Euclid project. Respondent was  
23 a member of the Committee and participated in this matter, despite the fact that he had received  
24 more than \$500 in income from Affirmed on August 8, 2015, within the previous twelve-month  
25 period. In addition to voting in favor of supporting the staff recommendation, Respondent  
26 participated in the discussion concerning procedural issues and the selection of Affirmed,  
27 commenting that “I do believe that the Affirmed project is the best option for this organization.”

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1 18. On June 22, 2016, the Civic Board voted (6 – 1) to recommend that the City  
2 Council enter into an Exclusive Negotiation Agreement with Affirmed to develop the Hilltop &  
3 Euclid project. Respondent participated in this matter, despite the fact that he had received more  
4 than \$500 in income from Affirmed within the previous twelve-month period. In addition to  
5 voting in favor of the motion concerning the recommendation to the City Council, Respondent  
6 participated in the discussion and opined as follows concerning the selection of Affirmed: “[I]t’s  
7 clear that this is the winner of this contest . . . and who I think we should proceed with.”

### 8 Counts

#### 9 **Counts 1 and 2 – Violations of SDMC section 27.3510**

10 19. Respondent violated SDMC section 27.3510 by failing to timely disclose income  
11 received from a reportable source on his assuming office SEI.

12 20. Respondent violated SDMC section 27.3510 by failing to timely disclose income  
13 received from a reportable source on his 2015 annual SEI.

#### 14 **Counts 3 and 4 – Violation of SDMC section 27.3561**

15 21. Respondent violated SDMC section 27.3561 by participating in a decision by the  
16 Real Estate and Budget/Finance Joint Committee of the Civic Board that financially benefited  
17 Affirmed, one of Respondent’s sources of income within the previous twelve-month period.

18 22. Respondent violated SDMC section 27.3561 by participating in a Civic Board  
19 decision that financially benefited Affirmed, one of Respondent’s sources of income within the  
20 previous twelve-month period.

### 21 Conclusion

22 23. Respondent agrees to file amendments to his assuming office and 2015 annual SEIs  
23 on or before August 9, 2018, to disclose income he received from Affirmed Housing Group.

24 24. Respondent agrees to take necessary and prudent precautions to ensure compliance  
25 with all provisions of the Ethics Ordinance in the future.

26 25. Respondent acknowledges that the Ethics Commission may impose increased fines  
27 in connection with any future violations of the City’s Ethics Ordinance.

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