SHARON SPIVAK, Executive Director  
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Petitioner

BEFORE THE CITY OF SAN DIEGO  
ETHICS COMMISSION

In re the Matter of:  
MIDWAY VILLAGE PLUS, LLC,  
Respondent.  

Case No.: 2023-08

STIPULATION

THE PARTIES STIPULATE AS follows:

1. Petitioner Sharon Spivak is the Executive Director of the City of San Diego Ethics Commission (Ethics Commission). The Ethics Commission is charged with administering, implementing, and enforcing local governmental ethics laws in the San Diego Municipal Code (SDMC), including the Municipal Lobbying Ordinance, SDMC sections 27.4001, et seq.

2. At all times referenced in this Stipulation, Midway Village Plus, LLC (Respondent) was a development team in a bid process for selection by the Mayor and San Diego City Council to redevelop what is known as the Sports Arena site. The site encompasses approximately 48.5 acres in the Midway-Pacific Highway area of San Diego.
3. This Stipulation will be submitted for the Ethics Commission's consideration at its next scheduled meeting. The agreements outlined in this Stipulation are contingent upon the Ethics Commission's approval of the Stipulation and the accompanying Decision and Order.

4. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics Commission without needing an administrative hearing to determine the Respondent's liability.

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

6. Respondent agrees to hold the City of San Diego harmless from any claims or damages resulting from the Commission's investigation, this stipulated agreement, or any related matter.

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

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

Summary of Law and Facts

9. “Expenditure lobbyist” is defined in SDMC section 27.4002 as “any person who makes expenditures for public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, studies, or similar activities designed to influence one or more municipal decisions, to the extent that such payments total $5,000 or more within a calendar quarter.” (Emphasis in original).

10. Between July 1, 2021 and September 30, 2021, Respondent made $9,500 in lobbying expenditures to support its bid to redevelop the Sports Arena property. These payments were made to Manolatos Public Affairs (Manolatos) for strategic communication services and IVC Media (IVC) for branding. As Respondent spent more than $5,000 during the calendar quarter on indirect lobbying methods, Respondent met the definition of “expenditure lobbyist” during the third quarter of 2021.

11. Between October 1, 2021 and December 31, 2021, Respondent made $25,870.54 in lobbying expenditures in support of its bid to redevelop the Sports Arena property. These payments were made to Manolatos for strategic communication services and IVC for a website and email. As Respondent spent more than $5,000 during the calendar quarter on indirect lobbying methods, Respondent met the definition of “expenditure lobbyist” during the fourth quarter of 2021.

12. Between January 1, 2022, and March 31, 2022, Respondent made $25,750 in lobbying expenditures in support of its bid to redevelop the Sports Arena property. These payments were made to Manolatos for strategic communication services and IVC for website blog capabilities and social media. As Respondent spent more than $5,000 during the calendar quarter on indirect lobbying methods, Respondent met the definition of “expenditure lobbyist” during the first quarter of 2022.
13. Between April 1, 2022 and June 30, 2022, Respondent made $10,000 in lobbying expenditures to support its bid to redevelop the Sports Arena property. These payments were made to Manolatos for strategic communication services. As Respondent spent more than $5,000 during the calendar quarter on indirect lobbying methods, Respondent met the definition of “expenditure lobbyist” during the second quarter of 2022.

14. Between July 1, 2022 and September 30, 2022, Respondent made $8,750 in lobbying expenditures in support of its bid to redevelop the Sports Arena property. These payments were made to Manolatos for strategic communication services. As Respondent spent more than $5,000 during the calendar quarter on indirect lobbying methods, Respondent met the definition of “expenditure lobbyist” during the third quarter of 2022.

15. The City of San Diego’s Municipal Lobbying Ordinance requires “expenditure lobbyists” to file disclosure reports in every quarter in which they meet that definition. The quarterly reports must be filed no later than the last days of April, July, October, and January, covering the preceding calendar quarter. SDMC §§ 27.4015 and 27.4016.

16. These quarterly disclosure reports require the expenditure lobbyist to identify the municipal decision for which the lobbyist made payments, the outcome sought, the total payments made during the quarter, and the name of any person or entity that paid $100 or more to the expenditure lobbyist for use in making the payments. The disclosure reports do not require details concerning how the funds are spent or to whom they are paid.

17. Respondent filed a disclosure report for the third quarter of 2021 on October 3, 2023. The filing was 703 days late; it had been due October 31, 2021.

18. Respondent filed a disclosure report for the fourth quarter of 2021 on October 3, 2023. The filing was 611 days late; it had been due January 31, 2022.
19. Respondent filed a disclosure report for the first quarter of 2022 on October 3, 2023. The filing was 522 days late; it had been due April 30, 2022.

20. Respondent filed a disclosure report for the second quarter of 2022 on October 3, 2023. The filing was 430 days late; it had been due July 31, 2022.

21. Respondent filed a disclosure report for the third quarter of 2022 on October 3, 2023. The filing was 338 days late; it had been due October 31, 2022.

Counts

Counts 1 through 5 – Violations of SDMC sections 27.4015 and 27.4016

22. The Respondent violated SDMC sections 27.4015 and 27.4016 by failing to file five expenditure lobbyist disclosure reports due quarterly in a timely manner, as outlined in paragraphs 17 through 21 above.

Factors in Mitigation

23. Respondent fully cooperated with the Commission’s investigation.

24. Respondent has now filed all outstanding expenditure lobbying reports.

25. Respondent was not selected as the redevelopment team for the Sports Arena property.

Factors in Aggravation

26. The following timeline shows major milestones for the Sports Arena redevelopment project. Respondent’s forms were filed after the following actions were taken. At each milestone, the public, other bidders, and City officials were denied, but could have benefitted from, having information contained in the disclosure forms.

A) October 4, 2021 – The City issues a notice of availability (NOA) for the property after the City Council previously passed a resolution to declare the land “surplus.”

October 31, 2021 – third quarter 2021 (July through September 2021) disclosure report was due.
B) December 3, 2021 – The Department of Real Estate and Airport Management (DREAM) receives five responsive submittals to the NOA, including a submittal from the Respondent.

C) December 4, 2021 – The City begins a mandatory 90-day “good faith negotiating” period.

   January 31, 2022 - fourth quarter 2021 (October through December 2021) disclosure report was due.

D) March 4, 2022 – 90-day “good faith negotiating” period ends.

E) March 9, 2022 – Staff recommends the City Council’s Land Use and Housing Committee (LUHC) shortlist the three teams with the most proposed affordable housing units, including Respondent.

F) April 21, 2022 – Public provides feedback at a LUHC meeting.

   April 30, 2022 – first quarter 2022 (January through March 2022) disclosure report was due.

G) May 23, 2022 – The City Council approves a shortlist of three of the five NOA responders, including Respondent. The public provides feedback at this meeting.

H) June 14, 2022 – The City contracts with JLL to provide financial analysis and consulting services. JLL coordinates with staff to prepare a Request for Information (RFI) to obtain additional information from the three shortlisted teams.

I) July and August 2022 – JLL and City staff have a comprehensive working session with each team and several direct interactions with individual team representatives. Meetings are also held with the California Department of Housing and Community Development.

   July 31, 2022 – second quarter 2022 (April 2022 through June 2022) disclosure report was due.
J) September 8, 2022 – At a LUHC meeting, DREAM recommends that Midway Rising be selected as the redevelopment team. LUHC votes 3-0 (with Councilmember Vivian Moreno absent) to move staff’s recommendation with additional requirements.

K) September 13, 2022 – The City Council votes to select Midway Rising as the redevelopment team for the Sports Arena project.

October 31, 2022 – third quarter 2022 (July through September 2022) disclosure report was due.

L) Respondent filed its five late disclosure reports on October 3, 2023, well after the selection of the winning bidder.

Conclusion

27. Respondent agrees to take necessary and prudent precautions to ensure compliance with all provisions of the City’s Lobbying Ordinance in the future.

28. Respondent acknowledges that the Ethics Commission may impose increased fines concerning future violations of the City’s lobbying laws.

29. Respondent agrees to pay a fine in the amount of $7,500 for violating SDMC sections 27.4015 and 27.4016. This amount must be paid by check or money order made payable to the City Treasurer by January 2, 2024. The payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED: ______________

[REDACTED]

Sharon Spivak, Petitioner
SAN DIEGO ETHICS COMMISSION

DATED: ______________

[REDACTED]

David Smith, Project Executive
MIDWAY VILLAGE PLUS, LLC
DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on January 11, 2024. The Ethics Commission hereby approves the Stipulation and orders that, per the Stipulation, the Respondent pay a fine in the amount of $7,500.

DATED: _______________  [REDACTED]

Caridad Sanchez, Chair
SAN DIEGO ETHICS COMMISSION