BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: ) Case No.: 2005-23

REY ARELLANO, ) STIPULATION, DECISION AND ORDER

Respondent.

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, the disclosure of economic interests as required by the City’s Ethics Ordinance.

2. Respondent Rey Arellano [Respondent] is the Deputy City Manager and Chief Information Officer for the City of San Diego. He assumed this office on January 17, 2002.

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

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

5. Respondent understands and knowingly and voluntarily waives any and all 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 a hearing, the right to subpoena witnesses to testify at a hearing, and the right to have the Ethics Commission or a hearing officer hear this matter. Respondent agrees to hold the City of San Diego harmless from any and all claims or damages resulting from the Commission’s investigation or this stipulated agreement, or any matter reasonably related thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation, and an order.

6. The 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 with regard to this or any other related matter.

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

Summary of Law and Facts

8. As a Deputy City Manager, Respondent is a “Local Code Filer” as that term is defined by SDMC section 27.3503, and is required to file Statements of Economic Interests [SEIs] in the time and manner set forth in SDMC section 27.3510. Respondent is also required
to disclose gifts from a reportable source with an aggregate fair market value of $50 or more in a calendar year, pursuant to SDMC section 27.3526.

9. SDMC section 27.3510 requires all Local Code Filers to file an annual SEI on or before April 1 of each year, covering the period from January 1 through December 31 of the previous calendar year, pursuant to the applicable Conflict of Interest Code adopted by the City Council.

10. The Conflict of Interest Code applicable to Respondent requires the disclosure of gifts received from any person or business entity that supplies goods or services to the City.

11. As the Chief Information Officer for the City, Respondent is responsible for overseeing the contract between the City of San Diego and San Diego Data Processing Corporation [SDDPC] whereby SDDPC provides information technology services to the City at a cost of approximately $60 million per year.

12. According to records maintained by SDDPC, Respondent accepted gifts in the form of meals from SDDPC executives during calendar years 2002 and 2003. In particular, SDDPC executives purchased a total of eight meals for Respondent with an aggregate value of $149.00 during 2002, and a total of three meals for Respondent with an aggregate value of $76.00 during 2003.

13. Respondent filed an SEI for the 2002 calendar year on March 27, 2003. On this SEI, Respondent failed to disclose the $149.00 in gifts received from SDDPC during calendar year 2002, despite the fact that this entity is a reportable source pursuant to Respondent’s Conflict of Interest Code. Respondent filed an amendment to his 2002 SEI on February 11, 2005. This amendment includes the eight gifts from SDDPC executives in 2002 totaling $149.00 that were not previously reported.

14. Respondent filed an SEI for the 2003 calendar year on March 25, 2004. On this SEI, Respondent failed to disclose the $76.00 in gifts received from SDDPC during calendar year 2003, despite the fact that SDDPC is a reportable source pursuant to Respondent’s Conflict of Interest Code. Respondent filed an amendment to his 2003 SEI on March 30, 2005. This
amendment includes the three gifts from SDDPC executives in 2003 totaling $76.00 that were not previously reported.

Counts

Counts 1 and 2 - Violations of SDMC sections 27.3510 and 27.3526

15. Respondent failed to disclose gifts from a reportable source with a fair market value of $50 or more in a calendar year, as required by SDMC sections 27.3510 and 27.3526. In particular, Respondent failed to disclose gifts he received from SDDPC during 2002 totaling $149.00, and failed to disclose gifts he received from SDDPC during 2003 totaling $76.00.

Factors in Mitigation

16. Respondent cooperated fully with the Ethics Commission investigation.

17. The Commission’s investigation revealed that SDDPC’s dining expense records were not entirely reliable. In some cases, records reflecting credit card charges by various SDDPC officials were found to inaccurately identify parties who attended certain meals. In other cases, SDDPC records fail to reflect cash payments reportedly made by City Officials who were present but who insisted on paying cash for their meals. Several years have passed since SDDPC reportedly purchased the meals that are the subject of this Stipulation, and Respondent cannot specifically recall if he paid cash for any of the meals he ultimately disclosed on his SEIs.

Conclusion

18. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Ethics Ordinance in the future. In particular, Respondent agrees to fully and completely disclose his economic interests.
19. Respondent shall pay a fine in the amount of $500 for violations of SDMC sections 27.3510 and 27.3526. This amount must be paid no later than November 4, 2005. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order set forth below.

DATED:______________  ______________________________

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:______________  ______________________________

REY ARELLANO, Respondent

DECISION AND ORDER

The Ethics Commission has considered the above Stipulation at its meeting on ______. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $500.

DATED:______________

DOROTHY LEONARD, Chair
SAN DIEGO ETHICS COMMISSION