

1 [Urging California State Legislature to reject the passage of Assembly Bill 746]

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3 **Resolution urging the California State Legislature to reject the passage of Assembly**
4 **Bill 746, relating to conflicts of interest.**
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6 WHEREAS, Existing California law prohibits specified state and local officers and
7 employees from being financially interested in any contract made by them in their official
8 capacity; and
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10 WHEREAS, California’s conflict of interest provisions in state law are meant to protect
11 against corruption and the appearance of bias and unfairness in the public procurement
12 process; and

13 WHEREAS, In July of 2008 the San Francisco Public Utilities Commission(“SFPUC”)
14 requested a written opinion from the City Attorney of San Francisco as to whether the SFPUC
15 could award Parsons Water and Infrastructure, Inc. a contract for the Water System
16 Improvement Program (“WISP”) Agreement No. CS-940; and

17 WHEREAS, On August 4, 2008 the City Attorney of San Francisco concluded in a
18 written memorandum to the General Manager of the SFPUC that if the SFPUC were to award
19 a contract to Parsons to provide services described in the RFP for Agreement CS-940, a
20 court would likely find a violation of California Government Code 1090 because of Parson’s
21 key role in developing the scope of those same services described in the RFP; and

22 WHEREAS, Assembly Bill (“AB”) 746, relating to conflict of interest provisions in
23 California state law, was introduced by Assemblymember Joe Coto representing San Jose in
24 California’s 23rd Assembly District; and
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1 WHEREAS, AB 746 would amend state law to provide that an independent contractor
2 not be deemed interested in a contract executed on or after September 1, 2008 under certain
3 circumstances even if the contractor participated in the preparation of a request for proposals
4 or any other bid document that serves as a basis for the award of the underlying contract;
5 and,

6 WHEREAS, AB 746 is retroactive in scope and asks the Legislature to reach back in
7 time and clear Parsons, one company, from any conflicts of interest pursuant to current state
8 law; and,

9 WHEREAS, Because of its retroactive scope, AB 746 contravenes the presumption
10 against retroactive laws that is deeply rooted in US jurisprudence; and

11 WHEREAS, the federal government is prohibited from passing ex post facto laws,
12 which apply to criminal statutes, by Section 9 of Article I of the U.S. Constitution and the
13 states are prohibited from the same by Clause 1 of Section 10 of Article 1; and,

14 WHEREAS, In *Landgraf v. Usi Film Productions* (1994) (511 U.S. 244), the United
15 States Supreme Court wrote that “the presumption against retroactive legislation is deeply
16 rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic
17 (Id. At 265)”; and,

18 WHEREAS, *Landgraf v. Usi Film Productions* (1994) (511 U.S. 244) explained that
19 “the principle... that the legal effect of conduct should ordinarily be assessed under the law
20 that existed when the conduct took place has timeless and universal appeal; and,

21 WHEREAS, As the United States Supreme Court further noted, “[i]n a free, dynamic
22 society, creativity in both commercial and artistic endeavors is fostered by a rule of law that
23 gives people confidence about the legal consequences of their actions”; and,

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1 WHEREAS, Section 1090 of the California Government Code, including the provision
2 which AB 746 attempts to amend, was enacted for the purpose of promoting and ensuring
3 fairness, transparency and objectivity in government contracting; and,

4 WHEREAS, California Government Code 1090 ensures a fair and equitable
5 government contracting process that removes barriers for all businesses, including many
6 women and minority-owned businesses which have traditionally been underrepresented in
7 large public works projects; and,

8 WHEREAS, This program has removed barriers for many women and minority-owned
9 businesses which have traditionally been underrepresented in large public works projects,
10 now, therefore, be it

11 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
12 urges the California State Legislature to reject the passage of AB 746, relating to conflicts of
13 interest and hereby officially opposes AB 746 by Assemblymember Joe Coto.