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CITY OF OAKLAND



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May 16, 2006

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President De La Fuente and Members of the City Council
Oakland, California

Subject: Report and Resolution Approving a Conflict of Interest Waiver for Sheppard Mullin Richter & Hampton LLP

SUMMARY

The City Attorney's Office requests that the Governing Body approve the conflict of interest waiver in the attached resolution on behalf of Sheppard Mullin Richter & Hampton LLP. Sheppard Mullin represented the City of Oakland in the appeal of a dispute between the City and Pacific Gas & Electric ("PG&E") regarding a business tax appeal. The firm intends to represent the Fulton Project Development Group and related entities ("Fulton") in the possible development of approximately 70 acres of property located at the former Oakland Army Base, for use as a mixed-use entertainment, retail, housing and film/television production studio ("Fulton Project"). Fulton is adverse to the Oakland Redevelopment Agency ("ORA") in these negotiations because this 70-acre portion of the Army Base will be owned by ORA after August 2006.

Sheppard Mullin has stated that it will not represent Fulton in litigation or other dispute resolution proceedings involving the Fulton Project without the further written informed consent of both parties. It has represented that no attorney in the firm that is representing the City will be involved in the representation of Fulton, and vice versa. Though Sheppard Mullin has confirmed that it does not believe it has obtained confidential information from the City related to the Fulton Project, the firm will keep all of the City's files and confidential information from being disclosed to Fulton.

The City Attorney's Office is satisfied that Sheppard Mullin has adequate procedures in place to avoid any ethical breaches. The waivers requested do not constitute a violation of the Rules of Professional Conduct.

FISCAL IMPACTS

No fiscal impact will result from approving the conflict waiver.

BACKGROUND

Sheppard Mullin represented the City of Oakland in the appeal of a dispute between the City and Pacific Gas & Electric regarding business tax repeal. In that case, PG&E sued Oakland alleging that business taxes were being improperly collected. [Pacific Gas and Electric Company v. City of Oakland, Alameda County Superior Court Nos. 7926699-3 and 808136-4] The City cross-complained to invalidate PG&E's indeterminate Oakland electric franchise and the parties reached final settlement of the case on February 9, 2006. Sheppard Mullin does not represent the City or the Redevelopment Agency in any other matter.

Sheppard Mullin intends to represent the Fulton Project Development Group and related entities ("Fulton") in the possible development of approximately 70 acres of property located at the former Oakland Army Base, for use as a mixed-use entertainment, retail, housing and film/television production studio ("Fulton Project"). Fulton is adverse to the Oakland Redevelopment Agency ("ORA") in these negotiations because this 70-acre portion of the Army Base will be owned by ORA after August 2006.

KEY ISSUES AND IMPACTS


Sheppard Mullin's representation of the City has concluded, however, the firm has a duty of loyalty to the City as to any future clients it agrees to represent. Before representing Fulton, Sheppard Mullin must obtain written consent from both parties.

The proposed representation of Fulton gives rise to one concern: that the firm might have confidential information gained from the City that could be material to the representation of Fulton in its negotiations with the Agency regarding the Fulton Project. Sheppard Mullin has addressed this concern by stating: (1) that no attorney in the firm that represented the City will be involved in the representation of Fulton; (2) that it has not obtained confidential information from the City related to the Fulton Project; and (3) that the City's files and confidential information will not be disclosed to Fulton. Further, the firm has confirmed that it will not represent Fulton in litigation or other dispute resolution proceedings involving the Fulton Project without the further written informed consent of both parties. The City Attorney's Office believes that these safeguards are adequate to protect the City's and the Agency's interests, particularly because the two matters are unrelated.

RECOMMENDATION

The City Attorney's Office recommends that the City Council approve the attached resolution granting the requested waiver of any conflict of interest that now exists or may occur in the future as a consequence of the legal representation of Fulton by Sheppard Mullin, given the procedures in place at Sheppard Mullin to protect the City's confidential information, and based on the understanding that Sheppard Mullin's representation of Fulton would likely not intersect with the past representation of the City.

Respectfully submitted,

fw 

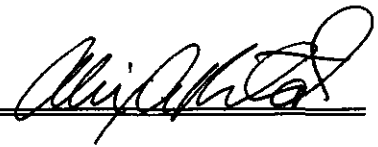
JOHN A. RUSSO,
City Attorney

Assigned Attorney:
Alix Rosenthal

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.



A RESOLUTION APPROVING A WAIVER OF ANY CONFLICT OF INTEREST THAT THE LAW FIRM OF SHEPPARD MULLIN RICHTER & HAMPTON LLP MAY HAVE AS A RESULT OF PROVIDING ADVICE TO THE FULTON PROJECT DEVELOPMENT GROUP IN MATTERS RELATED TO THE DEVELOPMENT OF APPROXIMATELY 70 ACRES OF THE FORMER OAKLAND ARMY BASE

WHEREAS, Sheppard Mullin Richter & Hampton LLP represented the City of Oakland ("City") in the appeal of a dispute between the City and Pacific Gas & Electric regarding a business tax appeal (Pacific Gas and Electric Company v. City of Oakland, Alameda County Superior Court Nos. 7926699-3 and 808136-4); and

WHEREAS, Sheppard Mullin's representation of the City has concluded with the final settlement of the case on February 9, 2006; and

WHEREAS, Sheppard Mullin intends to represent the Fulton Project Development Group and related entities ("Fulton") in the possible development of approximately 70 acres of property located at the former Oakland Army Base, for use as a mixed-use entertainment, retail, housing and film/television production studio ("Fulton Project"); and

WHEREAS, Fulton is adverse to the Oakland Redevelopment Agency ("ORA") in these negotiations because the 70-acre parcel in question will be owned by ORA after August 2006; and

WHEREAS, Sheppard Mullin has stated that it will not represent Fulton in litigation or other dispute resolution proceedings involving the Fulton Project without the further written informed consent of both parties; and

WHEREAS, Sheppard Mullin has represented that no attorney in the firm who represented the City will be involved in the representation of Fulton; and

WHEREAS, Sheppard Mullin has confirmed that it does not believe it has obtained confidential information from the City related to the Fulton Project; and

WHEREAS, Sheppard Mullin has stated that its files and confidential information of the City or its affiliates obtained in the course of representing the City or its affiliates shall not be subject to disclosure to Fulton or its affiliates; and

WHEREAS, Sheppard Mullin has requested that the City waive any conflict of interest that might arise in the course of its representation of Fulton in the possible development of the Fulton Project;

NOW, THEREFORE, BE IT

RESOLVED, That the City Council hereby waives any conflict of interest that the law firm of Sheppard Mullin Richter & Hampton LLP may have by virtue of serving as legal counsel to the Fulton Project Development Group and its affiliate entities in the possible development of approximately 70 acres of property located at the former Oakland Army Base, for use as a mixed-use entertainment, retail, housing and film/television production studio.

IN SESSION, OAKLAND, CALIFORNIA, May 16, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG AND PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the
Redevelopment Agency of
the City of Oakland