



09 NOV -5 PM 2:16

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
John A. Russo  
City Attorney

November 17, 2009

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254  
(510) 238-6839

**President Brunner and Members of the City Council**  
Oakland, California

**Subject: A RESOLUTION APPROVING A CONFLICT WAIVER FOR THE LAW FIRM OF BINGHAM MCCUTCHEN WHICH HAS REPRESENTED PARTIES ON VARIOUS LAND USE AND DEVELOPMENT MATTERS THAT REQUIRE THE PARTIES TO SECURE PERMITS OR OTHER APPROVALS FROM THE CITY OF OAKLAND, TO ALLOW THE FIRM TO REPRESENT THE CITY OF OAKLAND ON CERTAIN BANKING REGULATORY MATTERS ARISING FROM THE CITY'S CONSIDERATION OF A DEBIT FUNCTION IN OAKLAND'S MUNICIPAL IDENTIFICATION CARD PROGRAM**

President Brunner and Members of the City Council:

#### **SUMMARY**

The law firm of Bingham McCutchen ("Bingham") is requesting a conflict of interest waiver from the City of Oakland in order to represent the City on banking regulatory matters pertaining to the debit component of the municipal identification card ("ID") program. On October 20, 2009 the City Council authorized the staff to issue Requests for Proposals for vendors to provide a municipal ID card with a debit function as well as proposals solely to provide the municipal ID card. Bingham has represented parties on various land use and development matters that require the parties to secure permits or other approvals from the City of Oakland.

#### **DISCUSSION**

As we advised in our October 20, 2009 report to the Council, adding a debit feature on the municipal ID card raises a number of legal issues under complex and dynamic state and federal banking laws and regulations, including but not limited to the Fair Credit Reporting Act, the Bank Secrecy Act, money service licensing regulations and anti-money laundering laws. Neither this Office nor any other municipal law office or practice has expertise in-house to address banking law issues as they are not typically at issue in municipal law practice. For these reasons, we advised the Council that we would retain a banking law expert to review the RFP, conduct necessary legal research and provide advice regarding the RFP's provisions and that we anticipated

that this advice would require approximately ten (10) hours of the banking law expert's time.

Maureen Young, a partner at Bingham, has the requisite banking law expertise and specializes in stored value cards.

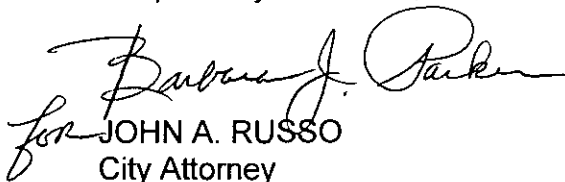
Attorneys are required to comply with strict ethical rules governing potential conflicts of interest. Therefore, although the law firm's representation of developers in the land use and development area is wholly unrelated to the work that the firm proposes to perform for the City on banking regulatory matters, the firm has requested that the City waive any conflict of interest Bingham has or may have by virtue of representing clients in securing permits and other approvals in the land use and development area. We recommend that the City waive any potential conflict that the firm may have by virtue of representing clients in securing permits and other approvals in the land use and development area..

Bingham has agreed to establish an "ethical wall" to prevent any communication of confidential information between attorneys and staff who perform work for parties in land use and development matters, on the one hand, and for the City of Oakland in unrelated banking regulatory matters on the other hand.

#### RECOMMENDATION

For the foregoing reasons, the Office of the City Attorney recommends that the City Council grant the waiver.

Respectfully submitted,

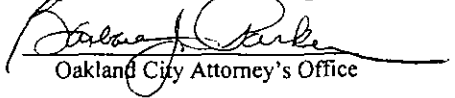
  
for JOHN A. RUSSO  
City Attorney

Attorneys Assigned:  
Barbara J. Parker  
Doryanna Moreno  
Kiran Jain

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2009 NOV -5 PM 2:36

Approved as to Form and Legality

  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER

**A RESOLUTION APPROVING A CONFLICT WAIVER FOR THE LAW FIRM OF BINGHAM MCCUTCHEN WHICH HAS REPRESENTED PARTIES ON VARIOUS LAND USE AND DEVELOPMENT MATTERS THAT REQUIRE THE PARTIES TO SECURE PERMITS OR OTHER APPROVALS FROM THE CITY OF OAKLAND AND TO ALLOW THE FIRM TO REPRESENT THE CITY OF OAKLAND ON CERTAIN BANKING REGULATORY MATTERS ARISING FROM THE CITY'S CONSIDERATION OF A DEBIT FUNCTION IN OAKLAND'S MUNICIPAL IDENTIFICATION CARD PROGRAM**

**WHEREAS**, the law firm of Bingham McCutchen ("Bingham") has represented parties on various land use and development matters that require the parties to secure permits or other approvals from the City of Oakland; and

**WHEREAS**, on October 20, 2009, the City Council approved issuance of a Request for Proposals ("RFP") that would include consideration of a debit function on its municipal identification ("ID") card, allowing use of the ID Card to make certain purchases; and

**WHEREAS**, the RFP requires the review of specialized and experienced banking law counsel familiar with the vast and changing landscape of state and federal banking laws and regulations; and

**WHEREAS**, neither the City Attorney's Office, nor any other municipal law office possesses banking law expertise; and

**WHEREAS**, the City Attorney's Office wishes to retain Maureen Young, a partner at Bingham who possesses banking law expertise; and

**WHEREAS**, Bingham's representation of parties on various land use and development matters is completely unrelated to the work Ms. Young and Bingham will perform in relation to the debit component for the City of Oakland; and

**WHEREAS**, attorneys have strict ethical rules governing potential conflicts of interest; and based on those ethical rules, Bingham has disclosed its representation of parties on various land use and development matters that require the parties to secure

permits or other approvals from the City of Oakland and Bingham has requested that the City Council consent to the firm's representation of the City in this debit component matter relating to the ID Card; and

**WHEREAS**, notwithstanding the fact that the matters as to which Bingham represents parties and unrelated, there is a possibility that in the future the law firm may learn confidential information that would create a conflict of interest and the law firm will endeavor to apprise the City of any potential future conflicts and resolve them; and

**WHEREAS**, Bingham will erect an ethical wall at its firm to prevent any attorney in the firm who handles the debit matter from working on or having access to confidential information regarding the matters that the firm handles for parties on the various land use and development matters; now therefore be it

**RESOLVED**, that the City Council hereby waives any conflict of interest that the law firm of Bingham McCutchen may have by virtue of serving as counsel to parties o various land use and development matters that require permits or other approvals from the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California