

CITY OF OAKLAND



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Office of the City Attorney
John A. Russo
City Attorney

June 20, 2006

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

Subject: Request of the Law Firm of Farella Braun + Martel that the City of Oakland Approve a Conflict Waiver to Allow the firm which Currently Represents the City of Oakland on Various Insurance Coverage Matters, to Represent DeSilva Group, LLC and DeSilva Gates Construction, LP in Responding to Millsmont Homeowners Association's Notice of Intent to File a Citizens' Suit Alleging Violations of the Clean Water Act at the Leona Quarry Project, and any Litigation Arising from the Claim

President De La Fuente and Members of the City Council:

SUMMARY

The law firm of Farella Braun + Martel has requested a conflict of interest waiver from the City of Oakland. The law firm currently represents the City in connection with a number of insurance coverage matters, including but not limited to insurance coverage for the Riders' settlements; and it wishes to provide legal advice to DeSilva Group, LLC and DeSilva Gates Construction, LP regarding a notice of intent to file a citizens' suit alleging violations of the Clean Water Act at the Leona Quarry Project and any litigation arising from the claim. The law firm's proposed representation of DeSilva is unrelated to the work that the firm has performed and continues to perform for the City of Oakland on insurance coverage matters. Accordingly, the City Attorney's Office does not object to the waiver.

DISCUSSION

Attorneys are required to comply with strict ethical rules governing potential conflicts of interest. Therefore, although the law firm's proposed representation of DeSilva is completely unrelated to the work that the firm is performing and has performed for the City, the law firm, in the interest of prudence has determined that it is advisable to disclose its proposed representation of DeSilva to the City and seek the

President De La Fuente and Members
Of the City Council

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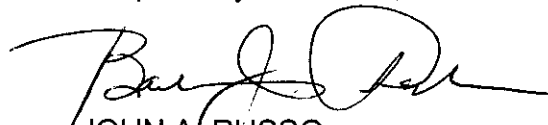
City's consent to its representation of DeSilva regarding the potential lawsuit involving the Leona Quarry project.

The law firm has agreed to establish an "ethics wall" to prevent any communication of confidential information between attorneys and staff who perform work for DeSilva, on the one hand, and for the City of Oakland in unrelated insurance matters on the other hand.

RECOMMENDATION

For the foregoing reasons, the Office of the City Attorney does not oppose the request of Farella Braun + Martel for a waiver and recommends that the City Council grant the waiver.

Respectfully submitted,



JOHN A. RUSSO
City Attorney

Attorney Assigned:
Barbara J. Parker

372246

Approved as to Form and Legality

Oakland City Attorney's Office

03-30-11 11:13
OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER

A RESOLUTION APPROVING A CONFLICT WAIVER FOR THE LAW FIRM OF FARELLA BRAUN + MARTEL, WHICH CURRENTLY REPRESENTS THE CITY OF OAKLAND ON VARIOUS INSURANCE COVERAGE MATTERS, TO ALLOW THE FIRM TO REPRESENT DESILVA GROUP, LLC AND DESILVA GATES CONSTRUCTION, LP IN RESPONDING TO MILLSMONT HOMEOWNERS ASSOCIATION'S NOTICE OF INTENT TO FILE A CITIZENS' SUIT ALLEGING VIOLATIONS OF THE CLEAN WATER ACT AT THE LEONA QUARRY PROJECT, AND ANY LITIGATION ARISING FROM THE CLAIM

WHEREAS, the law firm of Farella, Braun + Martel currently represents the City of Oakland in connection with various insurance coverage matters, including the Riders' and Port of Oakland protest litigation involving allegations of police excessive force and civil rights violations; and

WHEREAS, the law firm proposes to represent DeSilva Group, LLC and DeSilva Gates Construction, LP ("DeSilva") in connection with the Millsmont Homeowners Association's claim alleging violations of the Clean Water Act at the Leona Quarry Project, and any litigation arising from the claim; and

WHEREAS, the claim also names the City of Oakland; and

WHEREAS, the law firm's proposed representation of DeSilva is completely unrelated to the work the firm has performed and continues to perform for the City of Oakland; and

WHEREAS, the law firm has not obtained any confidential information in its representation of the City that would be material to the interests of DeSilva in pursuing the aforesaid easement; and

WHEREAS, attorneys have strict ethical rules governing potential conflicts of interest; and the law firm has disclosed the proposed representation of DeSilva and has requested that the City Council consent to the firm's representation of DeSilva; and

WHEREAS, notwithstanding the fact that the matters as to which the law firm represents the City and DeSilva are unrelated, there is a possibility that in the future the law firm may learn confidential information that would create a conflict of interest and that a conflict of interest may arise between the interests of the City and DeSilva regarding the claim; and

WHEREAS, the law firm will create an ethical wall to assure that attorneys who represent the City are not involved in the representation of DeSilva and the law firm will endeavor to apprise the City of any potential future conflicts and resolve them; now therefore be it

RESOLVED, that the City Council hereby waives any conflict of interest that the law firm of Farella Braun + Martel may have by virtue of serving as counsel to DeSilva regarding the Millsmont Homeowners Association's claim alleging violations of the Clean Water Act at the Leona Quarry Project, and any litigation arising out of the claim.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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 Council of
the City of Oakland, California