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CITY OF OAKLAND



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May 17, 2005

HONORABLE REDEVELOPMENT AGENCY AND CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council and Redevelopment Agency:

SUBJECT: RESOLUTION AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF FARELLA, BRAUN + MARTEL MAY HAVE AS A RESULT OF PROVIDING INSURANCE COVERAGE ADVICE TO THE CITY REGARDING THE PORT PROTEST AND RIDERS LITIGATION (PORT LOCAL 10 WAREHOUSE AND LONGSHOREMEN v. CITY OF OAKLAND AND DELPHINE ALLEN v. CITY OF OAKLAND), AND PERMITTING THE FIRM TO PROVIDE ENVIRONMENTAL LAW ADVICE TO CALIFORNIA URBAN INVESTMENT PARTNERS, AN ENTITY THAT IS CONSIDERING JOINT VENTURING WITH FOREST CITY ON THE UPTOWN PROJECT

I. Introduction

The purpose of this report is to present the request of the law firm of Farella, Braun + Martel that the Redevelopment Agency waive any potential "conflict of interest" that the firm may have because the firm has provided and is providing insurance coverage advice to the City on litigation matters including the Riders litigation (Delphine Allen v. City of Oakland) and the Port protest litigation (Port Local 10 Warehouse and Longshoremen v. City of Oakland), and wishes to provide environmental law advice to California Urban Investment Partners, an entity that is considering joint venturing with Forest City in the Uptown Project in the Central District Redevelopment Project Area.

There is not a **legal** conflict of interest because there is no connection between the firm's provision of insurance coverage advice to the City on various litigation matters and the firm's proposed representation of California Urban Investment Partners regarding a proposed joint venture with Forest City in the Uptown Project. Therefore, the Agency's interests would not be compromised if the firm provides environmental law advice to the entity. The City Attorney's Office is presenting the firm's "conflict waiver" request because it is the Agency's practice to review retention of outside counsel that is or may be in an adverse position to the City in other matters, regardless of whether there is any legal conflict.

II. SUMMARY OF THE ISSUE

The question is whether the Redevelopment Agency should waive the conflict of interest of the City's outside counsel to allow the firm to represent California Urban Investment Partners, the potential joint venture partner of Forest City in the Uptown Project.

III. RECOMMENDATION

The decision ultimately is a policy question for the body to decide. From a legal standpoint, the City Attorney's Office recommends that the Agency waive any potential conflict because there is no legal conflict of interest as discussed in the introduction to this report. The law firm is experienced in environmental law. The firm has agreed not to allow the attorney in the firm who is providing insurance coverage advice to the City to work on the California Urban Investment Partners matter, or to discuss or disclose any information s/he may have obtained from advising the City to her fellow lawyers working on the environmental law issues .

IV. DISCUSSION

The Agency and City have granted Forest City the right to develop the Uptown Project in the Central District Project Area. The Uptown Project is a mixed-use residential rental and retail project that will bring at least 700 units of housing, including 25% affordable housing, to downtown Oakland.

Forest City has asked a private entity, California Urban Investment Partners, to join in the Uptown Project development as a joint venture partner. California Urban Investment Partners wishes to retain its long-time environmental counsel, Farella, Braun + Martel, to review and advise it regarding the environmental aspects of the deal.

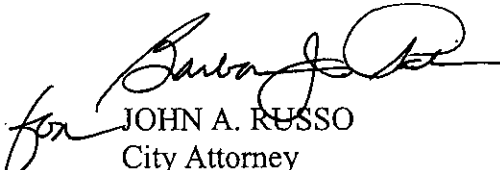
The firm has provided and continues to provide insurance coverage advice to the City regarding litigation involving the Riders (Delphine Allen v. City of Oakland) and the Port protest litigation (Port Local 10 Warehouse and Longshoremen v. City of Oakland). The firm has asked the Agency to waive any potential conflict of interest it may have because it has provided insurance coverage advice to the City, and now seeks to provide environmental law advice to the entity that is considering joint venturing with Forest City on the proposed Uptown Project.

There is no legal conflict of interest between the firm's insurance coverage advice to the City and the environmental law advice to the entity.

V. CONCLUSION

From a legal standpoint, the City Attorney's Office recommends that the Agency waive the potential conflict of interest of Farella, Braun + Martel so that the firm may advise California Urban Investment Partners on environmental matters related to the entity's consideration of joint venturing with Forest City on the Uptown Project transaction. As discussed in this report there is no legal conflict of interest between the firm's provision of insurance coverage advice to the City in litigation matters and the firm's provision of environmental law advice to the entity that is considering the joint venture with Forest City.

Respectfully submitted,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Dianne M. Millner

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

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Resolution No. _____ C.M.S.

D. Miller

RESOLUTION AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF FARELLA, BRAUN + MARTEL MAY HAVE AS A RESULT OF PROVIDING INSURANCE COVERAGE ADVICE TO THE CITY REGARDING THE PORT PROTEST AND RIDERS LITIGATION (PORT LOCAL 10 WAREHOUSE AND LONGSHOREMEN v. CITY OF OAKLAND AND DELPHINE ALLEN v. CITY OF OAKLAND), AND PERMITTING THE FIRM TO PROVIDE ENVIRONMENTAL LAW ADVICE TO CALIFORNIA URBAN INVESTMENT PARTNERS, AN ENTITY THAT IS CONSIDERING JOINT VENTURING WITH FOREST CITY ON THE UPTOWN PROJECT

WHEREAS, Mary E. McCutcheon, a partner in the law firm of Farella, Braun + Martel (the "Firm"), has provided insurance coverage advice to the City as outside counsel regarding litigation matters, including the Port protest and Riders litigation (Port Local 19 Warehouse and Longshoremen v. City of Oakland and Delphine Allen v. City of Oakland); and

WHEREAS, California Urban Investment Partners ("CUIP") is considering becoming a joint venture partner or investor with Forest City, the developer of the Uptown Project in the Central District Redevelopment Project Area; and

WHEREAS, CUIP wants John Gregory, a partner in the Firm, to advise it regarding the environmental aspects of the Uptown Project; and

WHEREAS, because the Firm has advised the City regarding insurance coverage issues, the Firm has requested that the City waive any conflict of interest that the firm may have in providing environmental law advice to CUIP; and

WHEREAS, Ms. McCutcheon would not represent CUIP; Mr. Gregory and other environmental attorneys in the Firm would represent CUIP; and

WHEREAS, CUIP desires to engage the Firm because it is experienced in environmental law; and

WHEREAS, there is no legal conflict of interest between the Firm's representation of the CUIP on the Forest City matter and the Firm's provision of

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insurance coverage advice to the City on the Port protest and Riders litigation matters;
now therefore be it

RESOLVED: that the Agency waives any potential conflict of interest the Firm may have in providing insurance coverage advice to the City regarding litigation matters and providing environmental law advice to CUIP regarding the Uptown Project, and allows the FIRM to represent CUIP regarding the Uptown Project.

IN AGENCY, OAKLAND, CALIFORNIA, MAY 17, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

Attest: _____

LaTonda Simmons
SECRETARY OF THE REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

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