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Office of the City Attorney
John A. Russo
City Attorney

May 2, 2006

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

- Subject:**
- 1. RESOLUTION AUTHORIZING THE CITY'S WAIVER OF ANY CONFLICT OF INTEREST THAT THE LAW FIRM OF BELL, ROSENBERG & HUGHES, LLP MAY HAVE IN REPRESENTING THE CITY OF OAKLAND WITH RESPECT TO THE MACARTHUR BOULEVARD UNDERGROUNDING PROJECT WHICH WILL PLACE EXISTING OVERHEAD FACILITIES SUCH AS WIRING FOR STREET LIGHTS, CABLE, AND PHONE SERVICES UNDERGROUND**
 - 2. RESOLUTION AUTHORIZING THE AGENCY'S CONSENT AND WAIVER OF ANY CONFLICT OF INTEREST THAT THE LAW FIRM OF BELL, ROSENBERG & HUGHES, LLP MAY HAVE IN REPRESENTING THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND WITH RESPECT TO THE FOX THEATER PROJECT**

President De La Fuente and Members of the City Council:

SUMMARY

The City Attorney's Office requests that the City Council waive any conflict of interest that the law firm of Bell, Rosenberg & Hughes, LLP ("BR&H") may have so that the firm may represent the City on the MacArthur Boulevard Undergrounding Project (the "Project") and represent the Redevelopment Agency on the Fox Theatre Project ("Fox Theatre").

Underground Construction Co., Inc. ("Underground") is the general contractor on the Project. Underground will install a new substructure for the purpose of undergrounding the existing overhead facilities of the City of Oakland, PG&E, SBC and Comcast. The City is the lead agency for the project and is primarily responsible for project implementation and construction management. Construction scheduling and coordination between the many entities involved and Underground will be critical to the success of the Project.

The Project substructure work consists of excavation and emplacement of a joint trench, utility boxes and vaults, streetlight and traffic signal foundations. The substructure contract work requires underground surveying, potholing, excavation (open trenching, rock-wheeling, trench-

less boring), backfilling, restoring surface to prior condition, installing duct banks, streetlight, traffic signal foundations, utility vaults, pull boxes, and curb boxes in the public-right-of-way in the City of Oakland. New service laterals and electric panel conversions will be installed on both private and public properties. Work will occur primarily in the public-right-of way and city street but also on private property. The total amount of the contract is \$9,842,522.60.

The work on the Fox Theater involves the renovation of the historic Fox Theater and surrounding attached buildings for use as a performing arts theater and the home of the Oakland School for the Arts. The Agency still owns the Fox Theater building and has entered into a Disposition and Development Agreement with Oakland Renaissance NTC, Inc., (“ORNMTTC”) a non-profit affiliate of the Agency, to develop the Fox Theater. BR&H will be expected to advise the City Attorney’s Office, the Agency and ORNMTTC on complex construction issues and documents for the project. While cost estimating for the Fox Theater is still in progress, the total cost for the project, including hard construction costs and soft costs is expected to be in the neighborhood of \$40 to \$45 million.

BACKGROUND

BR&H is a law firm that is recognized for its expertise involving complex construction contracting matters. For several years, BR&H has provided construction law expertise to the City and the City Attorney’s Office. The City Attorney’s Office would like to retain BR&H on the Project to provide advice regarding complex legal issues that may arise involving project scheduling and coordination, construction change orders and claim related matters. BR&H to and provide representation on the Fox Theater for advice on construction agreements and related legal advice.

The waiver is necessary because Underground previously retained BR&H to provide advice related to a separate construction project for the University of Merced; in that matter Underground filed a stop notice and a bond claim against the general contractor on that project.

To comply with conflict of interest rules and to protect the interest of both the City, Agency, and Underground, BR&H will institute an “ethical wall” procedure that will isolate attorneys in BR&H’s office who have worked on Underground cases, including but not limited to Ms. Carol Watson, a partner in the firm who is representing Underground on the unrelated matter, , and members of BR&H’s staff who have worked on Underground matters, from working on the MacArthur Boulevard matter for the City of Oakland or the Agency on the Fox Theatre.

Additionally, BR&H has assured the City and Agency, and Underground that its duties to the other client will not affect its full performance of each of its essential duties to the other client. These include the following: maintenance of the attorney-client privilege which bars BR&H’s disclosure of confidential communications with its clients; and maintenance of its

President De La Fuente and Members
of the City Council
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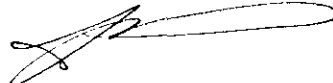
fiduciary duty of full disclosure that requires that BR&H to keep each client reasonably informed about significant developments relating to the representation and to promptly comply with reasonable requests for information. This means that BR&H has a duty not to provide either the City and Agency or Underground any confidential information about the other client. The firm will keep all of the City's and Agency's files and confidential information from being disclosed to Underground.

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

RECOMMENDATION

The City Attorney's Office recommends that the City Council approve the attached resolutions 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 the City and Agency by BR&H*, given the procedures in place at BR&H to protect the City's and Agency's confidential information, and based on the understanding that BR&H's representation of Underground is on a wholly unrelated matter that would likely not intersect with the representation of the City on the Project or the Agency on the Fox Theater.

Respectfully submitted,

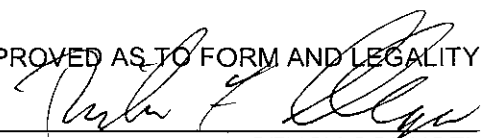


John A. Russo
City Attorney

Assigned Attorney:
Celso Ortiz
Richard Illgen

OFFICE OF THE CITY CLERK
OAKLAND

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APPROVED AS TO FORM AND LEGALITY

AGENCY COUNSEL

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

RESOLUTION No. _____ C.M.S.

**RESOLUTION AUTHORIZING THE AGENCY'S WAIVER OF ANY
CONFLICT OF INTEREST THAT THE LAW FIRM OF BELL,
ROSENBERG & HUGHES, LLP MAY HAVE IN REPRESENTING
THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND
WITH RESPECT TO THE FOX THEATER PROJECT**

WHEREAS, the Redevelopment Agency of the City of Oakland wishes to retain the law firm of Bell, Rosenberg & Hughes, LLP ("BR&H") to serve as legal counsel to the Agency and provide advice with respect to the Fox Theater Project (the "Project"); and

WHEREAS, BR&H has provided complex construction contracting legal advice to the City of Oakland for several years; and

WHEREAS, BR&H has been retained previously by Underground Construction Co. Inc. ("Underground"), the general contractor for the Project in a separate unrelated stop notice bond claim matter involving the University of Merced; and

WHEREAS, BR&H has requested that the Agency waive any potential conflict that may arise as a result of the firm's representation of Underground in the unrelated stop notice matter described above and BR&H's representation of the Agency concerning the Project; and

WHEREAS, pursuant to Rule 3-310 of the California Rules of Professional Conduct concerning the avoidance of conflict of interest, BR&H requires that the Agency and Underground execute a written consent agreement ("Consent Agreement") which acknowledges and waives this potential conflict of interest and which attached to this Resolution; and

WHEREAS, Underground has agreed to waive any conflict of interest that might arise in the course of BR&H's representation of Agency with respect to the Project and has executed the Consent Agreement; and

WHEREAS, BR&H has requested that the Agency waive any conflict of interest that might arise in the course of its representation of Agency with respect to the Project and execute the Consent Agreement; and

WHEREAS, the City Attorney's Office is satisfied that BR&H has adequate procedures in place, as more fully described in the Staff Report, to avoid any ethical breaches and the waivers requested do not constitute a violation of the California State Bar Rules of Professional Conduct; and

WHEREAS, the City Attorney requests that the Agency agree to waive any conflict of interest that might arise in the course of BR&H's representation of the Agency with respect to the Project and authorize the City Attorney to execute the Consent Agreement which waives any such potential conflict of interest; now, therefore, be it

RESOLVED, That the Agency hereby waives any conflict of interest that the law firm of Bell, Rosenberg and Hughes, LLP may have by virtue of serving as legal counsel to the Agency with respect to the Project and authorizes the City Attorney to execute the Consent Agreement which waives any such potential conflict of interest.

IN SESSION, OAKLAND, CALIFORNIA, MAY 2, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland

OFFICE OF THE CITY CLERK
OAKLAND

APPROVED BY THE CITY CLERK FOR LEGALITY

OAKLAND CITY COUNCIL

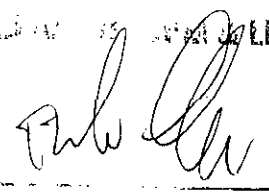
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RESOLUTION No. _____

C.M.S. _____

Deputy City Clerk

Date



RESOLUTION AUTHORIZING THE CITY'S WAIVER OF ANY CONFLICT OF INTEREST THAT THE LAW FIRM OF BELL, ROSENBERG & HUGHES, LLP MAY HAVE IN REPRESENTING THE CITY OF OAKLAND WITH RESPECT TO THE MACARTHUR BOULEVARD UNDERGROUNDING PROJECT WHICH WILL PLACE EXISTING OVERHEAD FACILITIES SUCH AS WIRING FOR STREET LIGHTS, CABLE, AND PHONE SERVICES UNDERGROUND

WHEREAS, the City of Oakland wishes to retain the law firm of Bell, Rosenberg & Hughes, LLP ("BR&H") to serve as legal counsel to the City and provide advice with respect to the MacArthur Boulevard Project (the "Project"); and

WHEREAS, BR&H has provided complex construction contracting legal advice to the City for several years; and

WHEREAS, BR&H has been retained previously by Underground Construction Co. Inc. ("Underground"), the general contractor for the Project in a separate unrelated stop notice bond claim matter involving the University of Merced; and

WHEREAS, BR&H has requested that the City waive any potential conflict that may arise as a result of the firm's representation of the Underground Construction Co., Inc. ("Underground") in the unrelated stop notice matter described above and BR&H's representation of the City concerning the Project; and

WHEREAS, pursuant to Rule 3-310 of the California Rules of Professional Conduct concerning the avoidance of conflict of interest, BR&H requires that the City and Underground execute a written consent agreement ("Consent Agreement") which acknowledges and waives this potential conflict of interest and which attached to this Resolution; and

WHEREAS, Underground has agreed to waive any conflict of interest that might arise in the course of BR&H's representation of City with respect to the Project and has executed the Consent Agreement; and

WHEREAS, BR&H has requested that the City waive any conflict of interest that might arise in the course of its representation of City with respect to the Project and execute the Consent Agreement; and

WHEREAS, the City Attorney's Office is satisfied that BR&H has adequate procedures in place, as more fully described in the Staff Report, to avoid any ethical breaches and the waivers requested do not constitute a violation of the California State Bar Rules of Professional Conduct; and.

WHEREAS, the City Attorney has recommended that the City agree to waive any conflict of interest that might arise in the course of BR&H's representation of the City with respect to the Project and authorize the City Attorney to execute the Consent Agreement which waives any such potential conflict of interest; now therefore, be it

RESOLVED, That the City Council hereby waives any conflict of interest that the law firm of Bell, Rosenberg and Hughes, LLP may have by virtue of serving as legal counsel to the City with respect to the Project and authorizes the City Attorney to execute the Consent Agreement which waives any such potential conflict of interest.

IN SESSION, OAKLAND, CALIFORNIA, MAY 4, 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 of the City of
Oakland