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October 20, 2009

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

**Subject: A RESOLUTION APPROVING A CONFLICT WAIVER FOR THE LAW FIRM OF ORRICK, HERRICK & SUTLIFFE WHICH HAS REPRESENTED THE CITY OF OAKLAND ON VARIOUS BOND MATTERS FOR DECADES AND ALSO REPRESENTS THE CITY IN *DEBORAH EDGERLY V. CITY OF OAKLAND* TO ALLOW THE FIRM TO REPRESENT SEVERAL DEFENDANTS IN *CITY OF LOS ANGELES, ET AL. V. INFINEON TECHNOLOGIES AG*, AN ANTI-TRUST LAWSUIT FILED ON BEHALF OF THE CITY OF LOS ANGELES, THE CITY OF OAKLAND AND MORE THAN 90 OTHER PLAINTIFFS AGAINST A NUMBER OF MANUFACTURERS OF MEMORY CHIPS FOR ILLEGAL PRICE-FIXING**

President Brunner and Members of the City Council:

#### SUMMARY

The law firm of Orrick, Herrington & Suttiff ("Orrick") has requested a conflict of interest waiver from the City of Oakland. For decades Orrick has represented the City on a various bond matters. Orrick also is representing the City in litigation that former City Administrator, Deborah Edgerly filed against the City challenging her termination.

Orrick recently requested the conflict waiver because it has represented Nanya Technology Corporation and Nanya Technology Corporation USA (collectively "Nanya"), and Mosel Vitelic, Inc., and Mosel Vitelic Corporation (collectively "Mosel") since 2004 and 2006, respectively, who are defendants in an anti-trust, price-fixing law suit. The City of Oakland became a party plaintiff in the anti-trust litigation this year. The California Attorney General is prosecuting and funding the litigation on behalf of the City of Los Angeles, the City of Oakland and more than 90 other plaintiffs. The California Attorney General's Office filed the lawsuit against a number of memory chip manufacturers, including the defendants that Orrick represents, alleging that defendants overcharged for computers and other electronic equipment containing memory chips as a result of an illegal price-fixing cartel of major memory chip manufacturers. The law firm's representation of defendants in the anti-trust litigation is unrelated to the work that

the firm has performed and continues to perform for the City of Oakland on bond matters and in representing the City in *Deborah Edgerly v. City of Oakland*. Accordingly, the City Attorney's Office does not object to the waiver.

### DISCUSSION

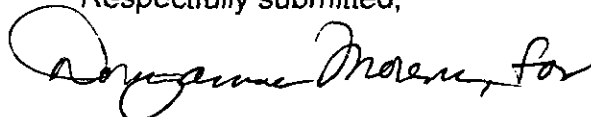
Attorneys are required to comply with strict ethical rules governing potential conflicts of interest. Therefore, although the law firm's proposed representation of several defendants in the anti-trust litigation is unrelated to the work that the firm is performing and has performed for the City, the law firm has disclosed its proposed representation of the several defendants in the anti-trust litigation and Orrick has requested that the City waive any conflict of interest Orrick has or may have by virtue of representing the defendants Nanya and Mosel in the anti-trust litigation.

Orrick has agreed to establish an "ethical wall" to prevent any communication of confidential information between attorneys and staff who perform work for Nanya or Mosel in the anti-trust litigation, on the one hand, and for the City of Oakland in unrelated bond matters and *Deborah Edgerly v. City of Oakland* 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,

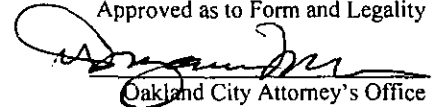


JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Barbara J. Parker

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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 ORRICK, HERRICK & SUTLIFFE WHICH HAS REPRESENTED THE CITY OF OAKLAND ON VARIOUS BOND MATTERS FOR DECADES AND ALSO REPRESENTS THE CITY IN *DEBORAH EDGERLY V. CITY OF OAKLAND* TO ALLOW THE FIRM TO REPRESENT SEVERAL DEFENDANTS IN *CITY OF LOS ANGELES, ET AL. V. INFINEON TECHNOLOGIES AG*, AN ANTI-TRUST LAWSUIT FILED ON BEHALF OF THE CITY OF LOS ANGELES, THE CITY OF OAKLAND AND MORE THAN 90 OTHER PLAINTIFFS AGAINST A NUMBER OF MANUFACTURERS OF MEMORY CHIPS FOR ILLEGAL PRICE-FIXING**

**WHEREAS**, the law firm of Orrick, Herrington & Sutcliffe ("Orrick") has represented the City of Oakland on various bond matters for decades and Orrick currently represents the City in a lawsuit former City Administrator Deborah Edgerly has filed against the City, challenging her termination; and

**WHEREAS**, Orrick has established a one-year fellowship program under which it is placing with public entities fifty (50) 2009 law school graduates who have been hired by Orrick as first year associates; and Orrick has agreed to place one of the fellows in the City Attorney's Office and Orrick will pay the fellow's stipend; and

**WHEREAS**, Orrick has represented Nanya Technology Corporation and Nanya Technology Corporation USA (collectively "Nanya"), and Mosel Vitelic, Inc. and Mosel Vitelic Corporation (collectively "Mosel") since 2004 and 2006 respectively, in anti-trust litigation that the California Attorney General filed against various memory chip manufacturers alleging price-fixing; and

**WHEREAS**, the California Attorney General is funding and prosecuting the anti-trust litigation and the City became a party plaintiff to the litigation this year, several years after Orrick began representing Nanya and Mosel in the litigation; and

**WHEREAS**, Orrick's representation of Nanya and Mosel 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 Nanya or Mosel in its defense of the anti-trust litigation; and

**WHEREAS**, attorneys have strict ethical rules governing potential conflicts of interest; and Orrick has disclosed its representation of Nanya and Mosel and has requested that the City Council consent to the firm's representation of Nanya and Mosel in the anti-trust litigation; and

**WHEREAS**, notwithstanding the fact that the matters as to which the law firm represents the City and Nanya and Mosel 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 the law firm will endeavor to apprise the City of any potential future conflicts and resolve them; and

**WHEREAS**, Orrick will erect an ethical wall at its firm to prevent any attorney in the firm who handles the anti-trust defense from working on or having access to confidential information regarding the matters that the firm handles for the City; and

**WHEREAS**, the City Attorney's Office likewise will erect an ethical wall to prevent the Orrick fellow, who will be placed in the City Attorney's Office for a year, from working on or being privy to information regarding the City's work to assist the California Attorney general in prosecuting the anti-trust litigation; now therefore be it

**RESOLVED**, that the City Council hereby waives any conflict of interest that the law firm of Orrick, Herrington & Sutcliffe may have by virtue of serving as counsel to Nanya and Mosel in the anti-trust, price-fixing litigation that the City of Los Angeles, the City of Oakland and more than 90 other plaintiffs have filed against Nanya and Mosel and a number of other memory chip manufacturers.

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