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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/08/2019 at 05:16:00 PM
Clerk of the Superior Court
By Marc David, Deputy Clerk

7 Attorneys for Plaintiff and Petitioner Donna Frye

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE

10 _____) CASE NO. 37-2017-00041323-CU-MC-CTL
11 DONNA FRYE,)
12 Plaintiff and Petitioner,) **VERIFIED FIRST AMENDED**
13 vs.) **COMPLAINT FOR DECLARATORY AND**
14 CITY OF SAN DIEGO; and DOES 1 through 100,) **INJUNCTIVE RELIEF AND PETITION**
15 Defendants and Respondents.) **FOR WRIT OF MANDATE UNDER THE**
16 _____) **CALIFORNIA PUBLIC RECORDS ACT,**
) **THE CALIFORNIA CONSTITUTION,**
) **AND OTHER LAWS**
) Action Filed: October 30, 2017
) Department: C-61 (Meyer)

17
18 Plaintiff and Petitioner DONNA FRYE ("PLAINTIFF") alleges as follows:

19 **Introductory Statement**

20 1. PLAINTIFF brings this lawsuit under the California Public Records Act ("CPRA"), the
21 California Constitution, the San Diego City Charter, and other applicable legal authorities for the
22 purposes of maintaining as much transparency as possible when Defendant and Respondent CITY OF
23 SAN DIEGO ("CITY") is asked by its past attorneys to waive conflicts of interest when those same
24 attorneys represent parties who are adverse to CITY's interests. PLAINTIFF has been an open-
25 government advocate for years. She was therefore dismayed when CITY recently adopted a policy that
26 codified CITY's practice of allowing waiver requests to be approved without the matter being
27 considered by the San Diego City Council in open session. This institutionalized secrecy means that
28 waiver requests are approved without the public's knowledge and without any opportunity to express

1 its views on the wisdom or peril of approving the requests. State and local law require policies that
2 limit the public’s access to information and ability to observe the machinery of government in action
3 to be adopted only after the legislative body makes findings demonstrating how such policies promote
4 transparency and accountability in government. Because the policy recently adopted by CITY actually
5 promotes secrecy, and because it was not adopted with and indeed could not have been adopted with
6 the legally required findings, the policy is illegal.

7 2. Further proving the problems inherent in CITY’s practice of keeping waiver requests
8 secret is its inability to produce copies of the waiver requests when members of the public ask for them.
9 As part of her opposition to the policy of secrecy that was recently adopted, PLAINTIFF made a public-
10 records request for “the Conflict of Interest Waivers that have been approved by the City in the past
11 5 years (2012 to 2017).” However, CITY closed PLAINTIFF’s request without producing all
12 responsive waivers – presumably because, like other members of the public, its representatives could
13 not find them.

14 **Parties**

15 3. At all times relevant to this lawsuit, PLAINTIFF has been a resident of the City of San
16 Diego.

17 4. CITY is a “local agency” within the meaning of Government Code Section 6252.

18 5. The true names and capacities of the Defendants/Respondents identified as DOES 1
19 through 100 are unknown to PLAINTIFF, who will seek the Court’s permission to amend this pleading
20 in order to allege the true names and capacities as soon as they are ascertained. PLAINTIFF is
21 informed and believes and on that basis alleges that each of the fictitiously named
22 Defendants/Respondents 1 through 100 has jurisdiction by law over one or more aspects of the public
23 records that are the subject of this lawsuit or has some other cognizable interest in the public records.

24 6. PLAINTIFF is informed and believes and on that basis alleges that, at all times stated
25 in this pleading, each Defendant/Respondent was the agent, servant, or employee of every other
26 Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope
27 of said agency, servitude, or employment and with the full knowledge or subsequent ratification of his
28 principals, masters, and employers. Alternatively, in doing the things alleged in this pleading, each
Defendant/Respondent was acting alone and solely to further his own interests.

1 **Jurisdiction and Venue**

2 7. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6258
3 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*; the California
4 Constitution; the San Diego City Charter; and the common law, among other provisions of law.

5 8. Venue in this Court is proper because the obligations, liabilities, and violations of law
6 alleged in this pleading occurred in the County of San Diego in the State of California.

7 **FIRST CAUSE OF ACTION:**
8 **Violation of Open-Government Laws**
(Against All Defendants/Respondents)

9 9. The preceding allegations in this pleading are fully incorporated into this paragraph.

10 10. At all times relevant to this lawsuit, Section 3(b) of Article 1 of the California
11 Constitution has provided as follows: “(1) The people have the right of access to information
12 concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the
13 writings of public officials and agencies shall be open to public scrutiny. (2) A statute, court rule, or
14 other authority, including those in effect on the effective date of this subdivision, shall be broadly
15 construed if it furthers the people’s right of access, and narrowly construed if it limits the right of
16 access. A statute, court rule, or other authority adopted after the effective date of this subdivision that
17 limits the right of access shall be adopted with findings demonstrating the interest protected by the
18 limitation and the need for protecting that interest. (3) Nothing in this subdivision supersedes or
19 modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court
20 rule, or other authority to the extent that it protects that right to privacy, including any statutory
21 procedures governing discovery or disclosure of information concerning the official performance or
22 professional qualifications of a peace officer. (4) Nothing in this subdivision supersedes or modifies
23 any provision of this Constitution, including the guarantees that a person may not be deprived of life,
24 liberty, or property without due process of law, or denied equal protection of the laws, as provided in
25 Section 7. (5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional
26 or statutory exception to the right of access to public records or meetings of public bodies that is in
27 effect on the effective date of this subdivision, including, but not limited to, any statute protecting the
28 confidentiality of law enforcement and prosecution records. (6) Nothing in this subdivision repeals,

1 nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the
2 Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by
3 Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor
4 does it affect the scope of permitted discovery in judicial or administrative proceedings regarding
5 deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and
6 caucuses. (7) In order to ensure public access to the meetings of public bodies and the writings of public
7 officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply
8 with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7
9 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section
10 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory
11 enactment amending either act, enacting a successor act, or amending any successor act that contains
12 findings demonstrating that the statutory enactment furthers the purposes of this section.”

13 11. At all times relevant to this lawsuit, Section 216.1 of the San Diego City Charter has
14 provided as follows: “(a) The people have the right to instruct their representatives, petition government
15 for redress of grievances, and assemble freely to consult for the common good. (b) (1) The people have
16 the right of access to information concerning the conduct of the people’s business, and therefore, the
17 meetings of public bodies and the writings of public officials and agencies shall be open to public
18 scrutiny. (2) A statute, court rule, or other authority, including those in effect on the effective date of
19 this Section, shall be broadly construed if it furthers the people’s right of access, and narrowly
20 construed if it limits the right of access. A statute, court rule or other authority adopted after the
21 effective date of this Section that limits the right of access shall be adopted with findings demonstrating
22 the interest protected by the limitation and the need for protecting that interest. (3) Nothing in this
23 Section supersedes or modifies the right of privacy guaranteed by Section 1 of the California
24 Constitution or affects the construction of any statute, court rule, or other authority to the extent that
25 it protects that right to privacy, including any statutory procedures governing discovery or disclosure
26 of information concerning the official performance or professional qualifications of a peace officer. (4)
27 Nothing in this Section supersedes or modifies any provision of this Charter or the California
28 Constitution, including the guarantees that a person may not be deprived of life, liberty or property

1 without due process of law, or denied equal protection of the laws. (5) This Section does not repeal or
2 nullify, expressly or by implication, any constitutional or statutory exception to the right of access to
3 public records or meetings of public bodies that is in effect on the effective date of this Section,
4 including, but not limited to, any statute protecting the confidentiality of law enforcement and
5 prosecution records.”

6 12. Defendants/Respondents have violated the applicable open-government laws in at least
7 three ways. By way of example and not limitation, PLAINTIFF is informed and believes and on that
8 basis alleges:

9 A. CITY has violated the California Constitution and the San Diego City Charter
10 as follows:

11 1. On or about August 4, 2017, the San Diego City Council passed
12 Resolution no. R-311286 approving that certain Council Policy on Conflict of Interest Waivers
13 (“Council Policy”). A true and correct copy of the Resolution is attached to this pleading as Exhibit
14 “A,” and a true and correct copy of the draft Council Policy that was approved by the resolution is
15 attached to this pleading as Exhibit “B.”

16 2. Prior to and after the passage of Resolution no. R-311286, PLAINTIFF
17 communicated with CITY in an attempt to prevent the Council Policy from being approved. CITY’s
18 representatives promised PLAINTIFF that they would work with her to resolve her concerns without
19 the need for litigation, but they did not follow through on their promise. A true and correct copy of the
20 e-mail correspondence between PLAINTIFF and CITY’s representatives is attached to this pleading
21 as Exhibit “C.”

22 3. The Council Policy promotes secrecy and limits the right of the public
23 to review requests for conflict-of-interest waivers from CITY’s past attorneys and to monitor and
24 participate in the discussions by CITY’s leaders over the pros and cons of granting such requests.

25 4. The Resolution approving the Council Policy contains no findings that
26 satisfy the applicable requirements of the California Constitution or the San Diego City Charter
27 regarding the interest protected by the Council Policy and the need for protecting that interest.
28

1 B. Plaintiff is informed and believe and on that basis alleges that CITY has violated
2 the California Constitution, the San Diego City Charter, the Ralph M. Brown Act, and/or the State Bar
3 Act as follows:

4 1. The Resolution recognizes that, depending on the matter in question, “the
5 client” for purposes of considering a request for a conflict-of-interest waiver is the San Diego City
6 Council.”

7 2. The Council Policy does not require that any waiver request be put on
8 the San Diego City Council’s agenda unless (i) the City Attorney’s Office has notified the San Diego
9 City Council in writing that a waiver request has been made, (ii) the City Attorney’s Office has
10 determined that the City Council is “the client” for purposes of approving the request, and (iii) at least
11 four members of the City Council ask that the request be put on its meeting agenda.

12 3. For matters on which the City Attorney’s Office has determined that the
13 City Council is “the client,” the Council Policy authorizes a process for approving waiver requests that
14 are done without public disclosure, input, or deliberation. For matters on which the City Attorney’s
15 Office has determined that a CITY officer or body other than the City Council is “the client,” the
16 Council Policy again authorizes a process for approving waiver requests that are done without public
17 disclosure, input, or deliberation. These procedures violate the California Constitution, the San Diego
18 City Charter, and/or the Ralph M. Brown Act.

19 4. The Council Policy also impermissibly delegates to the City Attorney’s
20 Office the City Council’s obligation to determine who “the client” is for purposes of any waiver
21 request, and it further impermissibly delegates the authority to approve at least some waiver requests
22 to a CITY officer or body other than the City Council when in fact only the City Council give such
23 approval.

24 5. Plaintiff believes that, after having a reasonable opportunity to conduct
25 and complete discovery, the following allegations can be proven: CITY has approved at least one
26 waiver request since the Council Policy took effect, without the City Council voting at a duly agendized
27 meeting to authorize the request’s approval or to delegate authority to approve the request even though
28

1 the City Council is “the client” whose approval or delegation of authority is required in order for the
2 waiver to be legally valid.

3 6. Plaintiff believes that, after having a reasonable opportunity to conduct
4 and complete discovery, the following allegations can be proven: CITY has approved at least one
5 waiver request since the Council Policy took effect after the City Council voted in secret to approve
6 the request or delegate authorization to approve it. Alternatively and additionally, CITY has denied
7 at least one waiver request since the Council Policy took effect after the City Council voted in secret
8 not to approve the request and not to delegate authority to approve it. A true and correct copy of
9 examples of the waiver requests and approvals described in this paragraph is attached to this pleading
10 as Exhibit “D.”

11 7. Plaintiff believes that, after having a reasonable opportunity to conduct
12 and complete discovery, the following allegations can be proven: The written “Procedure for Approving
13 or Denying Conflict of Interest Waivers” adopted by the City Attorney’s Office states that third step
14 in the Office’s procedure “is to obtain approval from either the Mayor or Council, depending on the
15 issue in the request for waiver. If it is within the Mayor’s authority, he or she may waive or refuse to
16 waive the conflict of interest without Council approval. Any matter that is not under the purview of
17 the Mayor must be approved or denied by Council.” The approval or denial by the City Council, as
18 described in the third step, constitutes an “action” under the Brown Act that may only be taken at a duly
19 agendized meeting and not in secret.

20 C. Plaintiff is informed and believe and on that basis alleges that CITY has violated
21 the California Constitution, the San Diego City Charter, and/or the CPRA as follows:

22 1. On or about July 31, 2017, PLAINTIFF submitted the following request
23 for public records to CITY through its online public-records portal (known as NextRequest): “I am
24 trying to find copies of documents for the Conflict of Interest Waivers that have been approved by the
25 City in the past 5 years (2012 to 2017). I have been unable to locate them online and hope that you can
26 assist me in locating them or providing copies to me.” CITY responding by providing some waivers
27 and related documents and then closing PLAINTIFF’s request. A true and correct copy of
28 PLAINTIFF’s request and CITY’s response is attached to this pleading as Exhibit “E.”

1 to the processing of requests for conflict-of-interest waivers and/or the response to her request for
2 public records, and that those waiver requests that have been illegally approved are invalid;

3 2. A writ of mandate ordering Defendants/Respondents to promptly and fully
4 comply with the California Constitution, the San Diego City Charter, the Ralph M. Brown Act, the
5 CPRA, the common law, the State Bar Act, and/or other applicable laws with regard to the processing
6 of requests for conflict-of-interest waivers and/or the response to PLAINTIFF's request for public
7 records; and

8 3. Preliminary and permanent injunctive relief directing Defendants/Respondents
9 to fully respond to PLAINTIFF's request for public records and to permit her to inspect and obtain
10 copies of all responsive public records.

11 B. *On the Second Cause of Action:*

12 1. An order determining and declaring that Defendants'/Respondents' have not
13 fully complied with the California Constitution, the San Diego City Charter, the Ralph M. Brown Act,
14 the CPRA, the common law, and/or other applicable laws with regard to the processing of requests for
15 conflict-of-interest waivers and/or the response to PLAINTIFF's request for public records; and

16 2. Preliminary and permanent injunctive relief directing Defendants/Respondents
17 to fully comply with the California Constitution, the San Diego City Charter, the Ralph M. Brown Act,
18 the CPRA, the common law, and/or other applicable laws with regard to the processing of requests for
19 conflict-of-interest waivers and/or the response to PLAINTIFF's request for public records.

20 C. *On All Causes of Action:*

21 1. An order providing for the Court's continuing jurisdiction over this lawsuit in
22 order to ensure that Defendants/Respondents fully comply with the California Constitution, the San
23 Diego City Charter, the Ralph M. Brown Act, the CPRA, the common law, and/or other applicable
24 laws;

25 2. All attorney fees and other legal expenses incurred by PLAINTIFF in connection
26 with this lawsuit; and

27 3. Any further relief that this Court may deem appropriate.
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1 Date: February 8, 2019.

Respectfully submitted,

2 BRIGGS LAW CORPORATION

3 By: Cory J. Briggs
4 Cory J. Briggs

5 Attorneys for Plaintiff and Petitioner Donna Frye
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**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT,
THE CALIFORNIA CONSTITUTION, AND OTHER LAWS**

Exhibit "A"

RESOLUTION NUMBER R- 311286

DATE OF FINAL PASSAGE AUG 04 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO TO APPROVE COUNCIL POLICY NO. ____
TITLED CONFLICT OF INTEREST WAIVERS.

WHEREAS, the City of San Diego (City) occasionally receives requests to waive potential conflicts of interest under the California Rules of Professional Conduct (CRPC), Rule 3-310(E); and

WHEREAS, CRPC, Rule 3-310 requires that the client give informed consent when its attorney or former attorney has a potential conflict of interest; and

WHEREAS, CRPC, Rule 3-600 defines “the client” as the highest authorized officer, employee, body, or constituent overseeing the particular matter; and

WHEREAS, depending upon the matter, the client authorized to waive a potential or actual conflict of interest will be the City Council (Council) as the legislative body of the City; and

WHEREAS, the Council Policy provides guidance on when conflicts of interest may be waived; and

WHEREAS, the Council Policy outlines a procedure for notifying Council in writing of requests for a waiver of potential conflicts of interest that concern matters for which the City Attorney has determined Council to be “the client” under CRPC, Rule 3-600; and

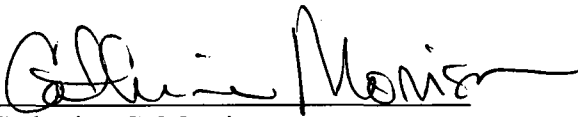
WHEREAS, the Rules Committee reviewed the proposed Council Policy on Conflict of Interest Waivers at its July 27, 2017 meeting and voted 4-0 with one member absent to forward it to the full Council with a recommendation to adopt the proposed Council Policy; NOW,

THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council Policy No. ___ titled "Conflict of Interest Waivers" is approved and adopted.

BE IT FURTHER RESOLVED, that the City Clerk is instructed to update the Council Policy Manual to reflect the addition of this Council Policy.

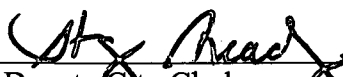
APPROVED: MARA W. ELLIOTT, City Attorney

By 
Catherine C. Morrison
Deputy City Attorney

CCM: pd:jvg
July 28, 2017
Or.Dept: City Attorney
Doc. No.: 1550296

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of AUG 01 2017.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8/3/17
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on AUG 01 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 04 2017.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Hy Mae*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 311286

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT,
THE CALIFORNIA CONSTITUTION, AND OTHER LAWS**

Exhibit "B"

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: CONFLICT OF INTEREST WAIVERS
POLICY NO.: [###]-[##]
EFFECTIVE DATE: [Month Day, Year]

BACKGROUND:

The City of San Diego (City) occasionally receives requests to waive potential conflicts of interest under the California Rules of Professional Conduct (CRPC), Rule 3-310(E). CRPC Rule 3-310(E) prohibits an attorney from representing clients whose interests may be adverse to, and therefore conflict with, another client's or a former client's. Under the CRPC, most conflicts may be waived by the potentially adversely affected client, but only after that client is fully informed of the circumstances giving rise to the potential conflict(s).

Under the CRPC, Rule 3-600, the City, as a municipal corporation, is "the client" acting through its highest authorized officer, employee, body, or constituent overseeing the particular matter. Depending upon the matter, this will be the City Council (Council) as the legislative body of the City. *See* San Diego Charter, Art. III. The Council may delegate its waiver authority as appropriate under this Policy.

PURPOSE:

The purpose of this Policy is to provide a delegation and notification procedure for potential conflicts of interest that concern matters for which the City Attorney has determined Council to be "the client" under the CRPC, Rule 3-600. Further, it provides guidance for when conflicts may be waived.

POLICY:

Where waiver of conflicts of interest is not already addressed in an applicable attorney services agreement, waivers may be granted if (1) waiver of the conflict does not pose a risk of detrimental impact to the City and (2) the conflicted attorney, by virtue of his or her representation of the City, obtained no confidential information that is material to the matter. If the conflicted attorney works at a law firm, there must also be appropriate screening measures in place to protect against sharing of confidential information obtained from the City.

PROCEDURE:

The City Attorney's Office will promptly notify Council in writing of all requests for waiver where the City Attorney has determined that Council is the client under the CRPC, Rule 3-600. If the City Attorney's Office receives requests from at least four Councilmembers within

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

10 days (or sooner if required), the City Attorney will process the sought waiver(s) of conflict of interest for consideration on the Council agenda. Once placed on the Council agenda, the Council will have the authority to consider and grant the requests consistent with the factors articulated in this Policy. For all other requests, the Mayor in consultation with the City Attorney is authorized to consider and grant the request(s) consistent with the factors articulated in this Policy.

HISTORY:

“Conflict of Interest Waivers”

Adopted by Resolution _____

DRAFT

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT,
THE CALIFORNIA CONSTITUTION, AND OTHER LAWS**

Exhibit "C"

From: Donna Frye
Subject: Re: Item 2 at Rules July 27 Re: Conflict of Interest Waiver
Date: July 26, 2017 at 12:48:30 PM PDT
To: gbraun@sandiego.gov, cityattorney@sandiego.gov

Hi Gerry,

Hope all is well. I wanted to bring to your attention an item that will be heard at the Rules Committee tomorrow. I have sent the following email to all the committee members and wanted to make sure Mara sees this before the meeting.

Thanks,
Donna

I am writing in opposition to the proposed COUNCIL POLICY ON WAIVER OF CONFLICTS OF INTEREST UNDER CALIFORNIA RULES OF PROFESSIONAL CONDUCT that will be heard on July 27 at the Rules Committee as ITEM-2.

According to the City Attorney's Report, "*The City of San Diego (City) occasionally receives requests to waive potential conflicts of interest under the California Rules of Professional Conduct (CRPC), Rule 3-310(E).*"

Given that these requests are received occasionally, there is no reason that the authority to review and approve should be delegated. I am requesting that any and all conflict of interest waivers be heard by the full council and that the authority to do so *not* be delegated to the office of the mayor.

The council as a legislative body represents the public and when you delegate your authority, the public's right to know what our elected officials are doing and why you are doing it is also delegated. In other words, you are limiting our ability to participate and have shown no reason why this is necessary.

Additionally, San Diego City Charter, Section 216.1 (b) (2) states that (emphasis mine):

"A statute, court rule, or other authority, including those in effect on the effective date of this Section, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule or other authority adopted after the effective date of this Section that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest."

Therefore, if you decide to deny the public the opportunity to have full access to this process, you will need to adopt findings that show why this proposed policy (that limits public access and participation) is in compliance with the City Charter.

I request that you amend the proposed policy to ensure that all conflict of interest waivers are heard by the full city council so the public can participate and remain informed.

Please feel free to contact me with any questions.

Thank you,
Donna Frye

From: Donna Frye
Subject: Request to discuss Conflict of Interest Waiver Policy by August 30
Date: August 25, 2017 at 4:45:39 PM PDT
To: Mara Elliott <melliott@sandiego.gov>

August 25, 2017

Dear Mara,

On July 26, 2017, I sent you and your chief of staff an email regarding my concerns with the Waiver of Conflict of Interest policy being proposed by your office. I was specifically concerned that it is in conflict with the San Diego City Charter, Section 216.1 (b) (2). (A copy is included at the end of this email.)

I received no acknowledgment of my email, but know that it was received based upon comments by your staff at the August 1, 2017 City Council meeting.

Specifically, your staff responded to a question from a council member about Charter Section 216.1 (b) (2) and whether the policy “*put us in conflict with the charter?*”

Your staff responded that: “*We did receive an email suggesting there was an issue with charter section 216 and public access requirements ...*” and “*our analysis is that section is not applicable to this proposed action. Whatever records would be available now would be continue to be available under the counsel policy if adopted. So we don't see a legal issue with public access required findings are provided for in that section.*”

I do not agree with that analysis and believe that the council’s adoption of a policy that eliminates public access to the deliberations concerning conflict of interest waivers violates the City Charter and the California Constitution, Article I, Section 3. The policy allows *future* waivers on the City’s behalf, but there are no findings stating the interest to be protected by such delegation and the need for that interest. The public has a right to hear why a given waiver is justified and this right would be satisfied by public notice and deliberation of the issues involved.

I am requesting that you ask the City Council to reconsider the policy your office asked the council to adopt and ensure that all future conflict of interest waivers, whether approved by the mayor or council, be placed on the City Council agenda for a public hearing. I would prefer to find a solution to these matters by August 30, 2017 as opposed to initiating litigation to resolve them.

I realize this is a short time frame, so I would request that you toll the statute of limitations so that we have time to find a workable solution.

Thank you,
Donna Frye

Hi Gerry,

Hope all is well. I wanted to bring to your attention an item that will be heard at the Rules Committee tomorrow. I have sent the following email to all the committee members and wanted to make sure Mara sees this before the meeting.

Thanks,
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According to the City Attorney's Report, "*The City of San Diego (City) occasionally receives requests to waive potential conflicts of interest under the California Rules of Professional Conduct (CRPC), Rule 3-310(E).*"

Given that these requests are received occasionally, there is no reason that the authority to review and approve should be delegated. I am requesting that any and all conflict of interest waivers be heard by the full council and that the authority to do so *not* be delegated to the office of the mayor.

The council as a legislative body represents the public and when you delegate your authority, the public's right to know what our elected officials are doing and why you are doing it is also delegated. In other words, you are limiting our ability to participate and have shown no reason why this is necessary.

Additionally, San Diego City Charter, Section 216.1 (b) (2) states that (emphasis mine):

"A statute, court rule, or other authority, including those in effect on the effective date of this Section, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule or other authority adopted after the effective date of this Section that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest."

Therefore, if you decide to deny the public the opportunity to have full access to this process, you will need to adopt findings that show why this proposed policy (that limits public access and participation) is in compliance with the City Charter.

I request that you amend the proposed policy to ensure that all conflict of interest waivers are heard by the full city council so the public can participate and remain informed.

Please feel free to contact me with any questions.

Thank you,
Donna Frye

From: "Elliott, Mara" <MElliott@sandiego.gov>

Subject: Automatic reply: Request to discuss Conflict of Interest Waiver Policy by August 30

Date: August 25, 2017 at 4:45:42 PM PDT

To: Donna Frye

??I am out of the office and will return on August 28, 2017. I will respond to your e-mail when I'm back in the office.

From: "Elliott, Mara" <MElliott@sandiego.gov>
Subject: RE: Request to discuss Conflict of Interest Waiver Policy by August 30
Date: August 29, 2017 at 12:17:37 PM PDT
To: Donna Frye

Donna,

Thank you for speaking with me this afternoon. I think we discussed some good potential solutions. I'll do some research on my end and circle back as soon as possible. In the meantime, the City agrees to toll the statute of limitations through October 31, 2017, so that we can continue to work together on this. Again, thank you, and take good care.

Mara

Mara W. Elliott
San Diego City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Bus.: 619.236.6220
E-mail: melliott@sandiego.gov

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From: Donna Frye

Subject: Re: Request to discuss Conflict of Interest Waiver Policy by August 30

Date: August 29, 2017 at 12:23:11 PM PDT

To: Mara Elliott <MElliott@sandiego.gov>

Thank you so much Mara for agreeing to toll the statute of limitations until October 31, 2017.

I appreciate your phone call and am available to help in any way.

With gratitude,

Donna

From: Donna Frye
Subject: Conflict of Interest Waiver policy
Date: October 5, 2017 at 9:02:20 PM PDT
To: Mara Elliott <melliott@sandiego.gov>

Hi Mara,

I am emailing about the status of the policy regarding conflict of interest waivers. As you know, I am asking that the policy be changed to require all conflict of interest waivers to be placed on the city council agenda so the public can be kept informed and have an opportunity to participate.

Please advise.

Thank you,
Donna

From: "Elliott, Mara" <MElliott@sandiego.gov>
Subject: Re: Conflict of Interest Waiver policy
Date: October 5, 2017 at 9:15:05 PM PDT
To: Donna Frye

We have some options to present. I just haven't had time to write the letter yet.

Mara

From: Donna Frye

Subject: Re: Conflict of Interest Waiver policy

Date: October 6, 2017 at 7:38:29 AM PDT

To: Mara Elliott <YPERLINK"mailto:MElliott@sandiego.gov"MElliott@sandiego.gov>

Thanks Mara. Looking forward to a resolution.

From: "Elliott, Mara" <MElliott@sandiego.gov>
Subject: Options - Conflict of Interest Waiver Policy
Date: October 12, 2017 at 3:57:23 PM PDT
To: Donna Frye

Hi Donna,

Under the newly adopted policy, if a request for waiver falls within the Council's purview, the City Attorney notifies all councilmembers of the request. Our office docket the item for Council review if at least four councilmembers make that request within 10 days from the date we inform them of the waiver request. The 4-person memo is consistent with Rules of Council. If we do not receive a request for review, the Mayor may consider and approve the request following consultation with my office and application of the standards provided in the policy.

To address the concern you've raised, we can supplement the process described above as follows:

Option 1: We can post the conflict waiver request on the City Attorney's website at the time the request is transmitted to the City Council. Members of the public could contact their councilmember, come to non-agenda public comment, or contact the City Attorney's Office with concerns.

Option 2: We can add a standing informational line item on the Council agenda for conflict of interest waiver requests that lists each request for waiver of items within the Council's purview. Public comment can be taken. If the Council wishes to hear it, they can put the item on a future Council agenda for action.

Option 3: Do both items 1 and 2.

Look forward to hearing back.

Mara

Mara W. Elliott
San Diego City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Bus.: 619.236.6220
E-mail: melliott@sandiego.gov

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From: Donna Frye

Subject: Re: Options - Conflict of Interest Waiver Policy

Date: October 13, 2017 at 8:58:35 AM PDT

To: Mara Elliott <MElliott@sandiego.gov>

Good morning Mara,

Thank you for getting this to me. I will review it and get back to you in the next few days.

Happy Friday,

Donna

From: Donna Frye
Subject: Re: Options - Conflict of Interest Waiver Policy
Date: October 16, 2017 at 4:00:49 PM PDT
To: Mara Elliott <MElliott@sandiego.gov>

Dear Mara,

I have reviewed the options and appreciate your willingness to resolve this.

However, the proposed options do not ensure full public participation and require more work, time and energy than my proposal.

Option 1 requires the public to find the conflict of interest waivers on the city attorney's website, contact their councilmember or come to non-agenda public comment, or contact your office. Even then, there is no guarantee the item will ever be heard at a city council meeting.

Option 2 allows public comment but there is no assurance the city council will hear the item on a regular agenda. It also allows the city council to make an affirmative decision to support the conflict of interest waivers without ever holding a noticed public meeting.

Combining the options creates even more new processes and does not solve the underlying problem of lack of public participation and right to know what the elected officials are doing and why they are doing it.

Additionally, based upon the city's responses to my Public Records Act request for copies of all conflict of interest waivers for the last five years, there appears to be, at most, two waiver requests per year.

Minimal time would be needed to place all conflict of interest waivers on the city council consent agenda and doing so would accomplish the objective of full public participation.

Please consider again my proposal to simply amend the City Council Policy that was adopted August 1, 2017, to include docketing all conflict of interest waivers, both mayoral and those within the city council's purview, on the city council consent agenda. This would allow the public to participate and make it much easier for all involved because it is a standard process to which everyone is accustomed.

Thank you for your consideration and timely reply,
Donna

From: Donna Frye
Subject: Second email re: Options - Conflict of Interest Waiver Policy
Date: October 20, 2017 at 12:00:31 PM PDT
To: Mara Elliott <melliott@sandiego.gov>

Hi Mara,

I am resending this email that I sent to you on Monday.

Please let me know that you have received it.

Thanks,
Donna

Begin forwarded message:

From: Donna Frye
Subject: Re: Options - Conflict of Interest Waiver Policy
Date: October 16, 2017 at 4:00:49 PM PDT
To: Mara Elliott <MElliott@sandiego.gov>

Dear Mara,

I have reviewed the options and appreciate your willingness to resolve this.

However, the proposed options do not ensure full public participation and require more work, time and energy than my proposal.

Option 1 requires the public to find the conflict of interest waivers on the city attorney's website, contact their councilmember or come to non-agenda public comment, or contact your office. Even then, there is no guarantee the item will ever be heard at a city council meeting.

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Combining the options creates even more new processes and does not solve the underlying problem of lack of public participation and right to know what the elected officials are doing and why they are doing it.

Additionally, based upon the city's responses to my Public Records Act request for copies of all conflict of interest waivers for the last five years, there appears to be, at most, two waiver requests per year.

Minimal time would be needed to place all conflict of interest waivers on the city council consent agenda and doing so would accomplish the objective of full public participation.

Please consider again my proposal to simply amend the City Council Policy that was adopted August 1, 2017, to include docketing all conflict of interest waivers, both mayoral and those within the city council's purview, on the city council consent agenda. This would allow the public to participate and make it much easier for all involved because it is a standard process to which everyone is accustomed. Thank you for your consideration and timely reply,
Donna

On Oct 12, 2017, at 3:57 PM, Elliott, Mara <MElliott@sandiego.gov> wrote:
Hi Donna,

Under the newly adopted policy, if a request for waiver falls within the Council's purview, the City Attorney notifies all councilmembers of the request. Our office docket the item for Council review if at least four councilmembers make that request within 10 days from the date we inform them of the waiver request. The 4-person memo is consistent with Rules of Council. If we do not receive a request for review, the Mayor may consider and approve the request following consultation with my office and application of the standards provided in the policy.

To address the concern you've raised, we can supplement the process described above as follows:

Option 1: We can post the conflict waiver request on the City Attorney's website at the time the request is transmitted to the City Council. Members of the public could contact their councilmember, come to non-agenda public comment, or contact the City Attorney's Office with concerns.

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Option 3: Do both items 1 and 2.

Look forward to hearing back.

Mara

Mara W. Elliott
San Diego City Attorney
Office of the San Diego City Attorney
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From: "Elliott, Mara" <MElliott@sandiego.gov>
Subject: RE: Second email re: Options - Conflict of Interest Waiver Policy
Date: October 21, 2017 at 4:30:52 PM PDT
To: Donna Frye

Donna,

We are still vetting your email internally.

Mara

From: Donna Frye

Subject: Re: Second email re: Options - Conflict of Interest Waiver Policy

Date: October 21, 2017 at 5:28:09 PM PDT

To: Mara Elliott <MElliott@san Diego.gov>

Thanks Mara!

From: Donna Frye
Subject: Conflict of interest waivers tolling agreement
Date: October 24, 2017 at 4:14:15 PM PDT
To: Mara Elliott <melliott@sandiego.gov>

Hi Mara,

I know you have your hands full with all that is going on so if it would help, we could extend the tolling agreement.

Let me know please.

Thanks,
Donna

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT,
THE CALIFORNIA CONSTITUTION, AND OTHER LAWS**

Exhibit "D"

Office of
The City Attorney
City of San Diego

MEMORANDUM

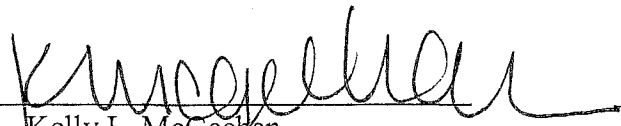
DATE: June 11, 2018
TO: Honorable Councilmembers
FROM: City Attorney
SUBJECT: Request to Waive Attorney Conflict of Interest

The enclosed from Kimberly S. Oberrecht, Esq. of Horton, Oberrecht, Kirkpatrick & Martha dated June 6, 2018, requests the City waive an attorney conflict of interest pursuant to California Code of Professional Conduct, Rule 3-310 and states the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter.

As provided in Council Policy No. 000-34, please notify the City Attorney's Office within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34.

MARA W. ELLIOTT, City Attorney

By


Kelly L. McGeehan
Deputy City Attorney

KLM:jn
Enclosure

Kimberly S. Oberrecht
Cheryl A. Kirkpatrick
Richard H. Martha
Erin E. Schroeder
Michael D. Marchesini
Fang-Chung Li

KIRKPATRICK & MARTHA

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Edward M. Chavez
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Danielle K. Lasure-Sopheak

PARALEGALS

Tina Hill
Adrian Ziegler
Elvia Ramos
Kathryn Figl
Jordan Malavar
Arturo Suarez

June 6, 2018

VIA FACSIMILE & U.S. MAIL

Kelly McGeehan, Esq.
Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Fax: (619) 533-5856

Re: Cindy Gates, et al. vs. Aaron Blakely, et al.
Our Clients : Aaron Blakely and Lynda Crawford
Date of Loss : December 30, 2017
Jurisdiction : San Diego County Superior Court
Court Case No.: 37-2018-00017261-CU-PO-CTL

Dear Ms. McGeehan:

This wrongful death lawsuit involves an automobile vs. motorcycle accident that occurred at or near the intersection of 19th and Broadway in downtown San Diego on December 30, 2017 at approximately 1:20 p.m. It is alleged that Decedent Adam Carmeli, who was driving his 2012 Ducati Streetfighter motorcycle, was struck by a vehicle driven by our client, Aaron Blakely, and subsequently died from his injuries. We also represent Lynda Crawford, who was the registered owner of the vehicle driven by Blakely. It is further alleged by the Plaintiffs that there are various dangerous conditions relating to road construction and design that may have contributed to the accident. Therefore, the City of San Diego is also named as a Defendant in this matter.

COSDPROD-000541

POTENTIAL PRESENT CONFLICT

Liberty Mutual, who is providing a defense to Aaron Blakely and Lynda Crawford pursuant to an insurance policy, have requested that we handle the matter and defend Blakely and Crawford. The City of San Diego is also a Defendant. We would therefore be adverse to the City of San Diego, whom we have represented in prior matters. At the time of the accident, Aaron Blakely was driving in the course of his employment for Coca-Cola. Coca-Cola is not yet a named party to the action, although it is anticipated they will be shortly. Coca-Cola has therefore retained its own attorneys and it is unknown whether Coca-Cola will tender its defense to Liberty Mutual once they are brought into the case.

PRIOR REPRESENTATION OF THE CITY

Our office has previously represented the City of San Diego in prior matters where the City has been indemnified through various insurance policies. Below please find a list of prior litigated matters wherein our office represented the City of San Diego. These matters have all resolved and are dismissed.

1. Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279CU-PO-CTL. This is a case in which Plaintiff allegedly slipped and fractured his ankle while crossing a cement spillway in the middle of a walking trail in Tierrasanta. Plaintiff's theory was that the City of San Diego is liable because Treebeard Landscape, Inc., who had a maintenance contract with the City, used an inappropriate paint to paint over graffiti on the spillway, which made the spillway slippery. Treebeard Landscape's insurance carrier picked up the defense of the City under Treebeard's policy. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.
2. Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL. This is a case where Plaintiff was involved in a motor vehicle collision at an intersection, wherein the driver of the vehicle that hit Plaintiff ran a red light. Plaintiff claimed that vegetation on one corner of the intersection interfered with his and the other driver's sightline and created a dangerous condition. Plaintiff claimed that the vegetation was on land owned and/or controlled by the City of San Diego. The City was defended and indemnified under an insurance policy held by Treebeard Landscape, who had a maintenance contract with the City. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.

3. Claire Rowland vs. City of San Diego, San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL. This is a case wherein Plaintiff, a minor, allegedly had her leg severely lacerated by a wrought iron sprinkler head support while walking along a City-owned and maintained area between condominium residences and a hillside. The City was defended and indemnified under an insurance policy held by Landscapes USA, Inc., the landscape contractor who served the subject area. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.

CURRENT REPRESENTATION OF THE CITY

We do not currently represent the City of San Diego in any pending matters.

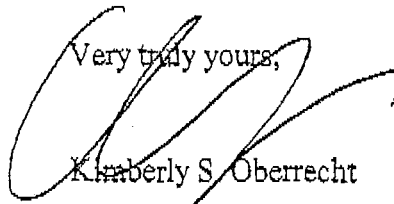
HOW WE WILL GUARD AGAINST CONFLICT

As mentioned previously, we do not currently represent the City of San Diego in any pending matters and therefore do not have any current active cases that pose a conflict. We did previously represent the City of San Diego as discussed above and will keep any and all information about the City learned in those cases kept separately and confidentially and will not use any information learned from those cases.

We are enclosing a Conflict Waiver for the City's consideration and signature. If the City approves, please return the signed document to us as soon as possible. **Aaron Blakely and Lynda Crawford's response to the Complaint is due to be filed with Court by June 18, 2018.** Therefore, we would appreciate an expedited decision from the City.

Thank you for your assistance.

Very truly yours,



Kimberly S. Oberrecht

KSO:njr
Enclosure



Sullivan Hill Lewin Roz & Engel
A Professional Law Corporation

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Timothy C. Earl
earl@sullivanhill.com
619.596.3279

Robert P. Allenby
allenby@sullivanhill.com
619.596.3209

June 21, 2017

VIA FIRST CLASS U.S. MAIL AND ELECTRONIC MAIL

Mr. Richard Lemmel
Wermers Multi-Family Corporation
5120 Shoreham Place, Suite 150
San Diego, California 92122
richardl@wermerscompanies.com

David J. Karlin, Esq.
Chief Deputy City Attorney
Office of the City Attorney, Civil Litigation Division
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone (619) 533-5800
DKarlin@sandiego.gov

Re: *City of San Diego v. Wermers Multi-Family Corporation*
Deborah Ganley v. City of San Diego
Request for Informed Written Consent to Waive Potential Conflicts of Interest

Gentlemen:

We write to obtain the informed, written consent of Wermers Multi-Family Corporation ("Wermers") and The City of San Diego (the "City") to our simultaneous representation of Wermers and the City, and their waiver of any actual or potential conflicts of interest that could arise from such simultaneous representation as detailed below.

Wermers and the City have been clients of this firm for many years.

Wermers has asked us to represent it as insurance coverage counsel only in regard to the claim of the City in the above-referenced case (the "Wermers Case"). We will not be representing Wermers as a party in the Wermers Case and we will not be directly adverse to the City in the Wermers Case. Our role will be more limited: to communicate with one or more of Wermers' insurers about coverage issues arising out of the Wermers Case.

We are currently representing the City in litigation known as *Ganley v. The City of San Diego*; San Diego Superior Court Case No. 37-2016-00000261-CU-OE-CTL (the "Ganley Case"). The Ganley Case relates to alleged discrimination arising out of survivor benefits in the City's defined-benefit pension plan. We have previously represented the City in other litigation predicated on claims identical to those alleged in the Ganley Case.

We believe we can represent Wermers in connection with the insurance coverage issues related to the Wermers Case while simultaneously representing the City in connection with the Ganley Case without comprising our duties of loyalty, competence, zealous advocacy, and confidentiality to Wermers and the City. However, because we would be representing both the City and Wermers while they were adverse to one another in the Wermers Case, there may be

actual or potential conflicts of interest that could arise. We are ethically required to advise you of the relevant circumstances and the reasonably foreseeable adverse consequences and to obtain your informed written consent to our simultaneous representation of Wermers and the City.

This situation is governed by California Rule of Professional Conduct 3-310 (Avoiding the Representation of Adverse Interests), which provides, in pertinent part, that a member shall not, without the informed written consent of each client:

accept representation of more than one client in a matter in which the interests of the clients potentially conflict. . . .

accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict. . . .

represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter . . . [or]

accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Cal. R. of Prof'l Cond. 3-310(C)(1), (C)(2), C(3) & (E).

Potential conflicts could arise from our representation of Wermers and the City. For example, in the course of representing each of Wermers and the City, we possess, and there is a risk that we might disclose or use Wermers' or City's confidential information in a manner that could be detrimental to the other, despite our duties of confidentiality. From the City's perspective, we, as coverage counsel for Wermers, could advocate for the insurer's settlement of the City's claim or we could advocate for not settling and vigorously defending the City's claim. Settling might be helpful to the City but not settling and vigorously defending might result in protracted litigation and added expenses to the City. From Wermers' perspective, Wermers may believe we would be less vigorous in pursuing its interest because of our divided loyalties and a perceived desire to achieve a good result for the City, including at the expense of Wermers.

In order to protect your interests and comply with California Rule of Professional Conduct 3-310, we intend to represent Wermers and the City under the following conditions:

1. We will not disclose to Wermers or the City any confidential information of the other.
2. Anything we learn from Wermers or the City that is not learned in confidence and that we believe the other needs to know in connection with our representation, we will tell the other. But if we learn something from Wermers or the City that we do not believe is pertinent to our representation of the other or that the other does not need to know, we will not tell the other.

3. The attorneys and staff who work on the Wermers Case will be different than the attorneys and staff who work on the Ganley Case on behalf of the City. If either or both clients so request, we will install a formal ethical wall preventing the attorneys and staff working on the matter from accessing the files and communicating with one another regarding the respective matters.

4. Wermers and the City must both agree that we will have no duty to disclose or use any confidential information of one client for the benefit or detriment of the other. For example, if we learned from Wermers confidential information regarding coverage issues that could benefit the City, we would not disclose it to the City; the City could not ask us to disclose it; and we would not be in breach of our duties of loyalty, candor, or zealous advocacy to the City by not disclosing it. Conversely, if we learn information from the City, e.g. about the City's general attitude towards settlement and recovering insurance, during the course of the Ganley Case, we will not disclose it to Wermers. Similarly, Wermers cannot ask us to use our relationships with City personnel, and the City cannot ask us to use our relationships with Wermers personnel, to influence or obtain an advantage in settlement discussions in either the Wermers Case or the Ganley Case.

5. In representing either of you in other unrelated matters, we will not take any action adverse or detrimental to the other.

6. Neither of you will seek our advice in the other's matter and each of you will be screened from access to the other's confidential information and files.

If there are any other conditions that you would like us to consider, please let us know.

We have tried to identify the potential conflicts and reasonably foreseeable adverse consequences that could arise from our simultaneous representation of each of you in the matters described, but there may be others. In part for this reason, we encourage you each to consult with independent counsel of your choice regarding this letter before signing the waiver and consent which follows. Independent counsel may identify other potential conflicts and reasonably foreseeable adverse consequences that we have not identified.

If you consent to our representation and acknowledge our ability to represent each of you under the circumstances and the conditions described above, please sign a duplicate of the waiver and consent which follows and return it to us. Please keep a duplicate for your records.

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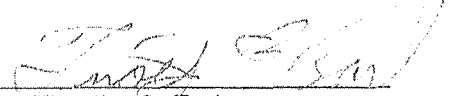
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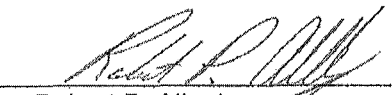
Richard Lemmel – Wermers Multi-Family Corporation
David J. Karlin – City of San Diego
June 21, 2017
Page 4

Thank you for giving this matter your attention. If you have any questions or comments, please do not hesitate to contact either of us.

Very truly yours,

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

By: 
Timothy C. Earl

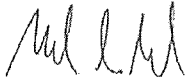
By: 
Robert P. Allenby
JRE/ddr

WAIVER AND CONSENT

The undersigned hereby agree as follows:

1. Sullivan Hill Lewin Rez & Engel ("Sullivan Hill") has informed us in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences arising from its representation of each of us as described in the above letter.
2. We have been given an opportunity to consult with independent counsel of our own choosing regarding the above letter and the wisdom and effect of executing this waiver and consent.
3. We waive the potential conflicts of interest and consent to Sullivan Hill's representation of each of us under the circumstances and subject to the conditions outlined in the above letter.

WERMERS MULTI-FAMILY CORPORATION

By:  6.23., 2017
Richard Lemmel
Its: Chief Financial Officer

THE CITY OF SAN DIEGO

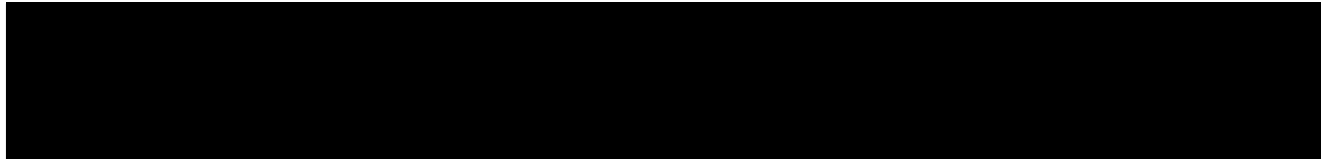
By: _____, 2017
Its _____

Office of
The City Attorney
City of San Diego

MEMORANDUM

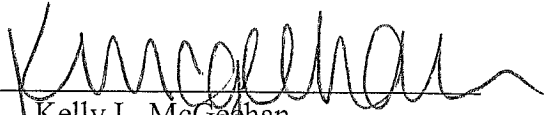
DATE: July 3, 2018
TO: Honorable Mayor
FROM: City Attorney via Kelly L. McGeehan, Deputy City Attorney
SUBJECT: Conflict of Interest Waiver Delegated by City Council
Cindy Gates, et al v. Aaron Blakely, et al
37-2018-00017261-CU-PO-CTL

The attached request for a conflict of interest waiver is delegated to you by the City Council to consider in consultation with the City Attorney's Offices as provided in Council Policy No. 000-34.



Please review the request and advise whether you have any issue you would like to discuss or whether you concur with the City Attorney's Office assessment. Alternatively, please notify the City attorney's Office if you would like to sign the waiver request, or if you refuse to sign the request. Enclosed is a draft response consistent with this Office's assessment.

MARA W. ELLIOTT, City Attorney

By 
Kelly L. McGeehan
Deputy City Attorney

KLM;jn
Enclosure

PARTNERS

Lithér W. Horton
Kimberly S. Oberrecht
Cheryl A. Kirkpatrick
Richard H. Martha
Erin E. Schroeder
Michael D. Marchesini
Fang-Chung Li

ASSOCIATES

Karen L. Bilotti
Eric M. Leenerts
Sharla N. Hilburn
Courtney S. Becker
Peter C.L. Chen
Michael S. Ayers
Nathaniel J. Michels
Edward M. Chavez
Jonathan M. Berger
Danielle C. Hicks
Whitney J. Betts
Dawn C. Nelms
Alice S. Li
Carolyn A. Mush
Heidi K. Williams
Carey J. Eshelman
Elise M. Czelusniak
Kimberly I. Marcus
Danielle K. Lesure-Sopheak

HORTON, OBERRECHT,
KIRKPATRICK & MARTHA

ATTORNEYS AT LAW
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NORTHERN CALIFORNIA OFFICE
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SACRAMENTO, CALIFORNIA 95814
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FACSIMILE (916) 449-9507

PARALEGALS

Tina Hill
Adrian Ziegler
Elvia Ramos
Kathryn Figi
Jordan Malavar
Arturo Suarez

June 6, 2018

VIA FACSIMILE & U.S. MAIL

Kelly McGeehan, Esq.
Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Fax: (619) 533-5856

Re: Cindy Gates, et al. vs. Aaron Blakely, et al.
Our Clients : Aaron Blakely and Lynda Crawford
Date of Loss : December 30, 2017
Jurisdiction : San Diego County Superior Court
Court Case No.: 37-2018-00017261-CU-PO-CTL

Dear Ms. McGeehan:

This wrongful death lawsuit involves an automobile vs. motorcycle accident that occurred at or near the intersection of 19th and Broadway in downtown San Diego on December 30, 2017 at approximately 1:20 p.m. It is alleged that Decedent Adam Carmeli, who was driving his 2012 Ducati Streetfighter motorcycle, was struck by a vehicle driven by our client, Aaron Blakely, and subsequently died from his injuries. We also represent Lynda Crawford, who was the registered owner of the vehicle driven by Blakely. It is further alleged by the Plaintiffs that there are various dangerous conditions relating to road construction and design that may have contributed to the accident. Therefore, the City of San Diego is also named as a Defendant in this matter.

To: Kelly McGeehan, Esq., Deputy City Attorney

Re: Cindy Gates, et al. vs. Aaron Blakely, et al.

June 6, 2018

Page 2

POTENTIAL PRESENT CONFLICT

Liberty Mutual, who is providing a defense to Aaron Blakely and Lynda Crawford pursuant to an insurance policy, have requested that we handle the matter and defend Blakely and Crawford. The City of San Diego is also a Defendant. We would therefore be adverse to the City of San Diego, whom we have represented in prior matters. At the time of the accident, Aaron Blakely was driving in the course of his employment for Coca-Cola. Coca-Cola is not yet a named party to the action, although it is anticipated they will be shortly. Coca-Cola has therefore retained its own attorneys and it is unknown whether Coca-Cola will tender its defense to Liberty Mutual once they are brought into the case.

PRIOR REPRESENTATION OF THE CITY

Our office has previously represented the City of San Diego in prior matters where the City has been indemnified through various insurance policies. Below please find a list of prior litigated matters wherein our office represented the City of San Diego. These matters have all resolved and are dismissed.

1. Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279CU-PO-CTL. This is a case in which Plaintiff allegedly slipped and fractured his ankle while crossing a cement spillway in the middle of a walking trail in Tierrasanta. Plaintiff's theory was that the City of San Diego is liable because Treebeard Landscape, Inc., who had a maintenance contract with the City, used an inappropriate paint to paint over graffiti on the spillway, which made the spillway slippery. Treebeard Landscape's insurance carrier picked up the defense of the City under Treebeard's policy. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.
2. Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL. This is a case where Plaintiff was involved in a motor vehicle collision at an intersection, wherein the driver of the vehicle that hit Plaintiff ran a red light. Plaintiff claimed that vegetation on one corner of the intersection interfered with his and the other driver's sightline and created a dangerous condition. Plaintiff claimed that the vegetation was on land owned and/or controlled by the City of San Diego. The City was defended and indemnified under an insurance policy held by Treebeard Landscape, who had a maintenance contract with the City. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.

To: Kelly McGeehan, Esq., Deputy City Attorney

Re: Cindy Gates, et al. vs. Aaron Blakely, et al.

June 6, 2018

Page 3

3. Claire Rowland vs. City of San Diego, San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL. This is a case wherein Plaintiff, a minor, allegedly had her leg severely lacerated by a wrought iron sprinkler head support while walking along a City-owned and maintained area between condominium residences and a hillside. The City was defended and indemnified under an insurance policy held by Landscapes USA, Inc., the landscape contractor who served the subject area. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.

CURRENT REPRESENTATION OF THE CITY

We do not currently represent the City of San Diego in any pending matters.

HOW WE WILL GUARD AGAINST CONFLICT

As mentioned previously, we do not currently represent the City of San Diego in any pending matters and therefore do not have any current active cases that pose a conflict. We did previously represent the City of San Diego as discussed above and will keep any and all information about the City learned in those cases kept separately and confidentially and will not use any information learned from those cases.

We are enclosing a Conflict Waiver for the City's consideration and signature. If the City approves, please return the signed document to us as soon as possible. **Aaron Blakely and Lynda Crawford's response to the Complaint is due to be filed with Court by June 18, 2018. Therefore, we would appreciate an expedited decision from the City.**

Thank you for your assistance.

Very truly yours,


Kimberly S. Oberrecht

KSO:njr
Enclosure

G:\CLIENTS\Natalie\City Attorney.01.wpd

COSDPROD-000552

WAIVER OF CONFLICT OF INTEREST

This agreement will be referred to as the "Waiver". The City of San Diego ("hereinafter "City") understands that the law firm of Horton, Oberrecht, Kirkpatrick & Martha, APC (hereinafter "the Horton Firm") has been retained to represent the interests of Aaron Blakely and Lynda Crawford in a current litigation entitled Cindy Gates, et al. vs. Aaron Blakely, et al., San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL. The City of San Diego is also a named Defendant in this matter and is being represented by the Office of the San Diego City Attorney.

The City understands and has been informed that a conflict of interest may exist due to the Horton Firm's prior representation of The City of San Diego in past cases that have since resolved. Those cases were entitled Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279-CU-PO-CTL, Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL, and Claire Rowland vs. City of San Diego, San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL.

The Horton Firm has also represented clients who have been sued by the City and/or were adverse to the City. The City is informed California State Law requires that an attorney not disclose confidential communications or secrets of a client. The City is further informed that the Rules of Professional Conduct of the State Bar of California, require the City's informed written consent before the Horton firm can represent them in the above-described matter. The Horton Firm has disclosed to the City that there is a conflict of interest by the prior representation, although no current representation of the City exists. After informed consent, the City elected and agreed to waive the conflict of interest to allow for the Horton Firm's representation of defendants adverse to the City in the matter of Cindy Gates, et al. vs. Aaron Blakely, et al. By execution of this Waiver, the City expressly acknowledges they have been advised that they have elected to allow the Horton Firm to represent Aaron Blakely and Lynda Crawford for the purpose of representation described herein.

Therefore, the City expressly agrees to waive the conflict of interest which exists due to prior representation of the City by and through the Horton Firm. The City agrees and elects of their own free will after informed consent has been provided to allow the Horton Law Firm to be adverse to the City of San Diego in the matter of Cindy Gates, et al. vs. Aaron Blakely, et al.

In addition to their conflict waiver in the case entitled Cindy Gates, et al. vs. Aaron Blakely, et al., the City expressly agrees to waive conflicts in future cases wherein the Horton Firm may be adverse to the City and/or may be required to file cross-actions and/or claims against the City.

Date: _____

CITY OF SAN DIEGO

Name of Person Signing

Title

From: Lonergan, Anna
Sent: Friday, August 25, 2017 3:04 PM
To: Bry, Barbara <BryBA@san Diego.gov>; Zapf, Lorie <LZapf@san Diego.gov>; Ward, Christopher <CMWard@san Diego.gov>; Cole, Myrtle <MRCole@san Diego.gov>; Kersey, Mark <MKersey@san Diego.gov>; Cate, Chris <CJCate@san Diego.gov>; Sherman, Scott <SSherman@san Diego.gov>; Alvarez, David <DAAlvarez@san Diego.gov>; Gomez, Georgette <GomezG@san Diego.gov>
Cc: Karlin, David <DKarlin@san Diego.gov>
Subject: Request to Waive Conflict of Interest

Councilmembers:

Please see the attached memo related to a Request to Waive Conflict of Interest received from Sullivan Hill Levin Rez & Engel. If you have any questions please contact David Karlin directly at dkarlin@san Diego.gov or at 619-533-5816.

Anna

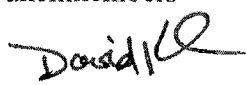
Anna Lonergan
Principal Legal Secretary
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Tel: 619-533-5838
Fax: 619-533-5856

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: August 25, 2017
TO: Honorable Councilmembers
FROM: City Attorney 
SUBJECT: Request to Waive Conflict of Interest

The enclosed from Sullivan Hill Levin Rez & Engel, dated June 21, 2017 requests the City waive an attorney conflict of interest pursuant to California Code of Professional Conduct, Rule 3-310 and states the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter.

As provided in Council Policy No. 000-34, please notify David J. Karlin, Senior Deputy Attorney at the City Attorney's Office within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34.

DJK:aml
Doc. No.: 1567584
Enclosure



Sullivan Hill Lewin Roz & Engel
A Professional Law Corporation

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☎ 619.231.4372
sullivanhill.com

Timothy C. Earl
earl@sullivanhill.com
619.596.3279

Robert P. Allenby
allenby@sullivanhill.com
619.596.3209

June 21, 2017

VIA FIRST CLASS U.S. MAIL AND ELECTRONIC MAIL

Mr. Richard Lemmel
Wermers Multi-Family Corporation
5120 Shoreham Place, Suite 150
San Diego, California 92122
richardl@wermerscompanies.com

David J. Karlin, Esq.
Chief Deputy City Attorney
Office of the City Attorney, Civil Litigation Division
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone (619) 533-5800
DKarlin@sandiego.gov

Re: *City of San Diego v. Wermers Multi-Family Corporation*
Deborah Ganley v. City of San Diego
Request for Informed Written Consent to Waive Potential Conflicts of Interest

Gentlemen:

We write to obtain the informed, written consent of Wermers Multi-Family Corporation ("Wermers") and The City of San Diego (the "City") to our simultaneous representation of Wermers and the City, and their waiver of any actual or potential conflicts of interest that could arise from such simultaneous representation as detailed below.

Wermers and the City have been clients of this firm for many years.

Wermers has asked us to represent it as insurance coverage counsel only in regard to the claim of the City in the above-referenced case (the "Wermers Case"). We will not be representing Wermers as a party in the Wermers Case and we will not be directly adverse to the City in the Wermers Case. Our role will be more limited: to communicate with one or more of Wermers' insurers about coverage issues arising out of the Wermers Case.

We are currently representing the City in litigation known as *Ganley v. The City of San Diego*; San Diego Superior Court Case No. 37-2016-00000261-CU-OE-CTL (the "Ganley Case"). The Ganley Case relates to alleged discrimination arising out of survivor benefits in the City's defined-benefit pension plan. We have previously represented the City in other litigation predicated on claims identical to those alleged in the Ganley Case.

We believe we can represent Wermers in connection with the insurance coverage issues related to the Wermers Case while simultaneously representing the City in connection with the Ganley Case without comprising our duties of loyalty, competence, zealous advocacy, and confidentiality to Wermers and the City. However, because we would be representing both the City and Wermers while they were adverse to one another in the Wermers Case, there may be

actual or potential conflicts of interest that could arise. We are ethically required to advise you of the relevant circumstances and the reasonably foreseeable adverse consequences and to obtain your informed written consent to our simultaneous representation of Wermers and the City.

This situation is governed by California Rule of Professional Conduct 3-310 (Avoiding the Representation of Adverse Interests), which provides, in pertinent part, that a member shall not, without the informed written consent of each client:

accept representation of more than one client in a matter in which the interests of the clients potentially conflict. . . .

accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict. . . .

represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter . . . [or]

accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Cal. R. of Prof'l Cond. 3-310(C)(1), (C)(2), C(3) & (E).

Potential conflicts could arise from our representation of Wermers and the City. For example, in the course of representing each of Wermers and the City, we possess, and there is a risk that we might disclose or use Wermers' or City's confidential information in a manner that could be detrimental to the other, despite our duties of confidentiality. From the City's perspective, we, as coverage counsel for Wermers, could advocate for the insurer's settlement of the City's claim or we could advocate for not settling and vigorously defending the City's claim. Settling might be helpful to the City but not settling and vigorously defending might result in protracted litigation and added expenses to the City. From Wermers' perspective, Wermers may believe we would be less vigorous in pursuing its interest because of our divided loyalties and a perceived desire to achieve a good result for the City, including at the expense of Wermers.

In order to protect your interests and comply with California Rule of Professional Conduct 3-310, we intend to represent Wermers and the City under the following conditions:

1. We will not disclose to Wermers or the City any confidential information of the other.
2. Anything we learn from Wermers or the City that is not learned in confidence and that we believe the other needs to know in connection with our representation, we will tell the other. But if we learn something from Wermers or the City that we do not believe is pertinent to our representation of the other or that the other does not need to know, we will not tell the other.

3. The attorneys and staff who work on the Wermers Case will be different than the attorneys and staff who work on the Ganley Case on behalf of the City. If either or both clients so request, we will install a formal ethical wall preventing the attorneys and staff working on the matter from accessing the files and communicating with one another regarding the respective matters.

4. Wermers and the City must both agree that we will have no duty to disclose or use any confidential information of one client for the benefit or detriment of the other. For example, if we learned from Wermers confidential information regarding coverage issues that could benefit the City, we would not disclose it to the City; the City could not ask us to disclose it; and we would not be in breach of our duties of loyalty, candor, or zealous advocacy to the City by not disclosing it. Conversely, if we learn information from the City, e.g. about the City's general attitude towards settlement and recovering insurance, during the course of the Ganley Case, we will not disclose it to Wermers. Similarly, Wermers cannot ask us to use our relationships with City personnel, and the City cannot ask us to use our relationships with Wermers personnel, to influence or obtain an advantage in settlement discussions in either the Wermers Case or the Ganley Case.

5. In representing either of you in other unrelated matters, we will not take any action adverse or detrimental to the other.

6. Neither of you will seek our advice in the other's matter and each of you will be screened from access to the other's confidential information and files.

If there are any other conditions that you would like us to consider, please let us know.

We have tried to identify the potential conflicts and reasonably foreseeable adverse consequences that could arise from our simultaneous representation of each of you in the matters described, but there may be others. In part for this reason, we encourage you each to consult with independent counsel of your choice regarding this letter before signing the waiver and consent which follows. Independent counsel may identify other potential conflicts and reasonably foreseeable adverse consequences that we have not identified.

If you consent to our representation and acknowledge our ability to represent each of you under the circumstances and the conditions described above, please sign a duplicate of the waiver and consent which follows and return it to us. Please keep a duplicate for your records.

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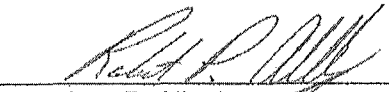
Richard Lemmel – Wermers Multi-Family Corporation
David J. Karlin – City of San Diego
June 21, 2017
Page 4

Thank you for giving this matter your attention. If you have any questions or comments, please do not hesitate to contact either of us.

Very truly yours,

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

By: 
Timothy C. Earl

By: 
Robert P. Allenby
JRE/ddr

WAIVER AND CONSENT

The undersigned hereby agree as follows:

1. Sullivan Hill Lewin Rez & Engel ("Sullivan Hill") has informed us in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences arising from its representation of each of us as described in the above letter.
2. We have been given an opportunity to consult with independent counsel of our own choosing regarding the above letter and the wisdom and effect of executing this waiver and consent.
3. We waive the potential conflicts of interest and consent to Sullivan Hill's representation of each of us under the circumstances and subject to the conditions outlined in the above letter.

WERMERS MULTI-FAMILY CORPORATION

By:  6.23., 2017
Richard Lemmel
Its: Chief Financial Officer

THE CITY OF SAN DIEGO

By: _____, 2017
Its _____



PROCOPIO
525 B Street,
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T. 619.238.1900
F. 619.235.0398

CECILIA O. MILLER
Partner
P. 619.525.3801
cecilia.miller@procopio.com

AUSTIN
DEL MAR HEIGHTS
PHOENIX
SAN DIEGO
SILICON VALLEY

October 12, 2017

VIA E-MAIL, FACSIMILE & U.S. MAIL

George Schaefer, Esq.
Assistant City Attorney
Civil Litigation Division
Office of the City Attorney, City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Email: gschaefer@sandiego.gov
Fax: (619)533-5856

Re: Request for Specific Waiver of Conflicts of Interest (Mind Soccer, Inc.)

Dear Mr. Schaefer:

As you know, Procopio, Cory, Hargreaves & Savitch LLP (the "Firm") currently represents the City of San Diego ("City") with respect to insurance coverage issues and insurance-related litigation including the De Anza litigations. In conjunction with that retention, the Firm requested and the City provided the following:

The undersigned agrees to the foregoing and consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of the clients listed on Exhibit A hereto and further consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of its clients, including, but not limited to, its charter school clients, in future matters involving planning, zoning, environmental review/mitigation, development, land use, code enforcement or CEQA issues, including litigation of such matters, adverse, or potentially adverse, to the City of San Diego. The undersigned further commits to cooperate in an effort to provide similar waivers to Procopio, Cory, Hargreaves & Savitch LLP in other matters under the conditions set out herein.

Correspondence dated May 15, 2013 from C. Miller to A. Jones.

procopio.com



George Schaefer, Esq.
October 12, 2017
Page 2

An existing client of the Firm, Mind Soccer Group, Inc. ("Mind Soccer"), would like to retain the Firm in connection with the negotiation of a lease of an existing sports training facility owned by the City and located at 4020 Murphy Canyon Road ("4020 Murphy Canyon Lease Negotiations"). The City and Mind Soccer may be adverse with respect to the 4020 Murphy Canyon Lease Negotiations

Obviously, the Firm wishes to continue to represent the City's interests in matters unrelated to the matter in which we are being asked to undertake the representation of Mind Soccer; at the same time, we would like to represent Mind Soccer in the matter in which it has requested the Firm's representation. The matter in which Mind Soccer has requested the Firm's representation is not directly related to any work which we have done, or are doing, for the City.

The purpose of this letter is to notify you of the Firm's potential representation of Mind Soccer with respect to the 4020 Murphy Canyon Lease Negotiations and to request the City's waiver of the resulting conflict of interest should the Firm be so retained by Mind Soccer. As attorneys, we are governed by specific rules relating to our representation of clients when actual or potential conflicts of interest exist. In particular, absent the informed written consent of the clients, attorneys may not simultaneously represent clients whose interests conflict even where one matter is totally unrelated to the other. In addition, Rule 3-310 of the Rules of Professional Conduct of the State Bar of California provides, in relevant part, as follows:

"(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

....

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

....

(C) A member shall not, without the informed written consent of each client:

....

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter;

procopio.com

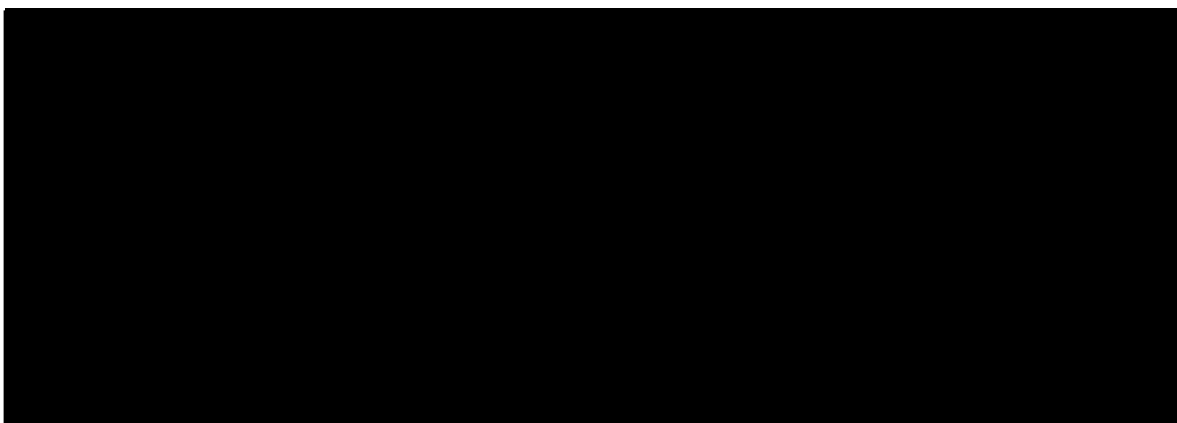


George Schaefer, Esq.
October 12, 2017
Page 3

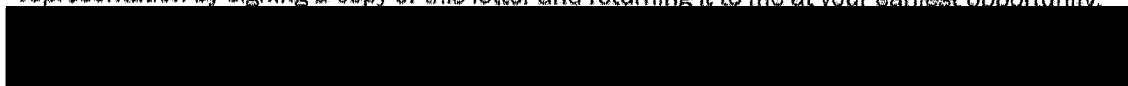
....

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment...."

"Informed written consent" means the client's written agreement to the representation following written disclosure. "Disclosure" means informing the client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client.



If you are agreeable to our representation of Mind Soccer with respect to the 4020 Murphy Canyon Lease Negotiations, including any litigation related to the 4020 Murphy Canyon Lease Negotiations, we ask that you provide us with the City's informed written consent to such representation by signing a copy of this letter and returning it to me at your earliest opportunity.





George Schaefer, Esq.
October 12, 2017
Page 4

Certainly, should you have any questions whatsoever concerning this letter, the consent or our representation, please discuss them with me before signing and returning this letter.

Very truly yours,

Cecilia O. Miller, of Procopio, Cory, Hargreaves & Savitch LLP

WAIVER AND CONSENT

The undersigned agrees to the foregoing and consents to the representation of Mind Soccer Corporation by Procopio, Cory, Hargreaves & Savitch LLP with respect to the 4020 Murphy Canyon Lease Negotiations, including any litigation that may arise out of such negotiations, notwithstanding the current representation by Procopio, Cory, Hargreaves & Savitch LLP of the interests of the undersigned in matters unrelated to the subject matter of the dispute in which Procopio, Cory, Hargreaves & Savitch LLP proposes to represent Mind Soccer.

Dated: _____


George Schaefer, Esq., Assistant City Attorney
City of San Diego

Scott Chadwick, Chief Operating Officer
City of San Diego

procopio.com

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: October 18, 2017
TO: Honorable Councilmembers
FROM: City Attorney 
SUBJECT: Request to Waive Conflict of Interest

The enclosed from Cecilia O. Miller of Procopio Cory Hargreaves & Savitch, LLP dated October 12, 2017 requests that the City provided its informed written consent and waive an apparent attorney conflict of interest pursuant to California Rules of Professional Conduct, Rule 3-310 and states the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to consider the waiver on this matter.

As provided in Council Policy No. 000-34, please notify the City Attorney's Office within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office, as provided in Council Policy No. 000-34.

DJK:aml
Doc. No.: 1604425
Enclosure



PROCOPIO
525 B Street,
Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

CECILIA O. MILLER
Partner
P. 619.525.3801
cecilia.miller@procopio.com

AUSTIN
DEL MAR HEIGHTS
PHOENIX
SAN DIEGO
SILICON VALLEY

October 12, 2017

VIA E-MAIL, FACSIMILE & U.S. MAIL

George Schaefer, Esq.
Assistant City Attorney
Civil Litigation Division
Office of the City Attorney, City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Email: gschaefer@sandiego.gov
Fax: (619)533-5856

Re: Request for Specific Waiver of Conflicts of Interest (Mind Soccer, Inc.)

Dear Mr. Schaefer:

As you know, Procopio, Cory, Hargreaves & Savitch LLP (the "Firm") currently represents the City of San Diego ("City") with respect to insurance coverage issues and insurance-related litigation including the De Anza litigations. In conjunction with that retention, the Firm requested and the City provided the following:

The undersigned agrees to the foregoing and consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of the clients listed on Exhibit A hereto and further consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of its clients, including, but not limited to, its charter school clients, in future matters involving planning, zoning, environmental review/mitigation, development, land use, code enforcement or CEQA issues, including litigation of such matters, adverse, or potentially adverse, to the City of San Diego. The undersigned further commits to cooperate in an effort to provide similar waivers to Procopio, Cory, Hargreaves & Savitch LLP in other matters under the conditions set out herein.

Correspondence dated May 15, 2013 from C. Miller to A. Jones.

procopio.com



George Schaefer, Esq.
October 12, 2017
Page 2

An existing client of the Firm, Mind Soccer Group, Inc. ("Mind Soccer"), would like to retain the Firm in connection with the negotiation of a lease of an existing sports training facility owned by the City and located at 4020 Murphy Canyon Road ("4020 Murphy Canyon Lease Negotiations"). The City and Mind Soccer may be adverse with respect to the 4020 Murphy Canyon Lease Negotiations

Obviously, the Firm wishes to continue to represent the City's interests in matters unrelated to the matter in which we are being asked to undertake the representation of Mind Soccer; at the same time, we would like to represent Mind Soccer in the matter in which it has requested the Firm's representation. The matter in which Mind Soccer has requested the Firm's representation is not directly related to any work which we have done, or are doing, for the City.

The purpose of this letter is to notify you of the Firm's potential representation of Mind Soccer with respect to the 4020 Murphy Canyon Lease Negotiations and to request the City's waiver of the resulting conflict of interest should the Firm be so retained by Mind Soccer. As attorneys, we are governed by specific rules relating to our representation of clients when actual or potential conflicts of interest exist. In particular, absent the informed written consent of the clients, attorneys may not simultaneously represent clients whose interests conflict even where one matter is totally unrelated to the other. In addition, Rule 3-310 of the Rules of Professional Conduct of the State Bar of California provides, in relevant part, as follows:

"(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

....

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

....

(C) A member shall not, without the informed written consent of each client:

....

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter;

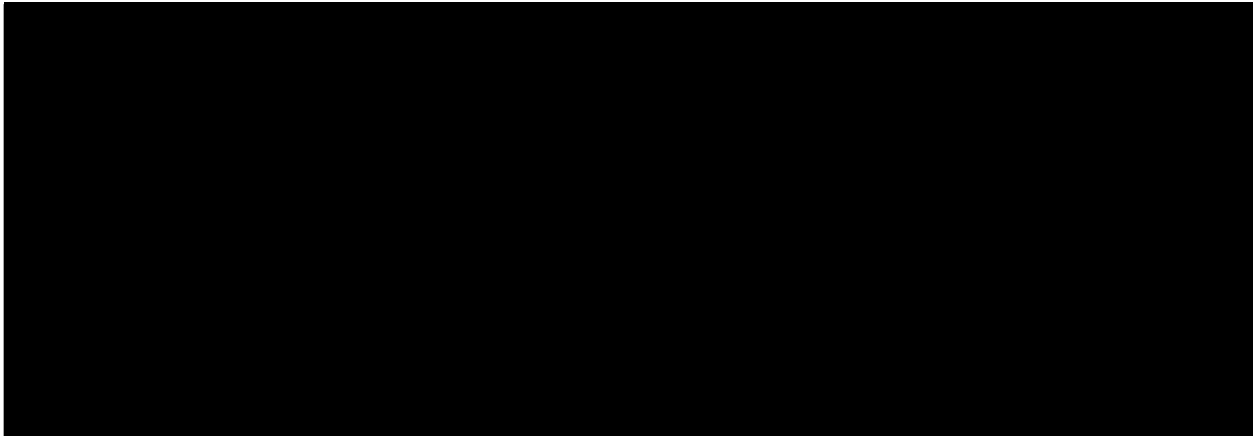


George Schaefer, Esq.
October 12, 2017
Page 3

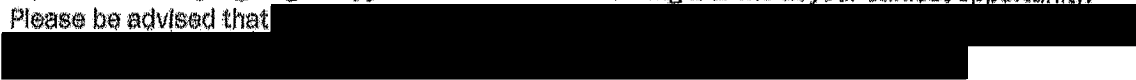
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"Informed written consent" means the client's written agreement to the representation following written disclosure. "Disclosure" means informing the client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client.



If you are agreeable to our representation of Mind Soccer with respect to the 4020 Murphy Canyon Lease Negotiations, including any litigation related to the 4020 Murphy Canyon Lease Negotiations, we ask that you provide us with the City's informed written consent to such representation by signing a copy of this letter and returning it to me at your earliest opportunity. Please be advised that





George Schaefer, Esq.
October 12, 2017
Page 4

Certainly, should you have any questions whatsoever concerning this letter, the consent or our representation, please discuss them with me before signing and returning this letter.

Very truly yours,

Cecilia O. Miller, of Procopio, Cory, Hargreaves & Savitch LLP

WAIVER AND CONSENT

The undersigned agrees to the foregoing and consents to the representation of Mind Soccer Corporation by Procopio, Cory, Hargreaves & Savitch LLP with respect to the 4020 Murphy Canyon Lease Negotiations, including any litigation that may arise out of such negotiations, notwithstanding the current representation by Procopio, Cory, Hargreaves & Savitch LLP of the interests of the undersigned in matters unrelated to the subject matter of the dispute in which Procopio, Cory, Hargreaves & Savitch LLP proposes to represent Mind Soccer.

Dated: _____

George Schaefer, Esq., Assistant City Attorney
City of San Diego

Scott Chadwick, Chief Operating Officer
City of San Diego

procopio.com



PROCOPIO
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Suite 2200
San Diego, CA 92101
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—
AUSTIN
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November 6, 2017

VIA E-MAIL, FACSIMILE & U.S. MAIL

David Karlin, Esq.
Senior Chief Deputy City Attorney
Civil Litigation Division
Office of the City Attorney, City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Email: dkarlin@sandiego.gov
Fax: (619)533-5856

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David Karlin, Esq.
November 6, 2017
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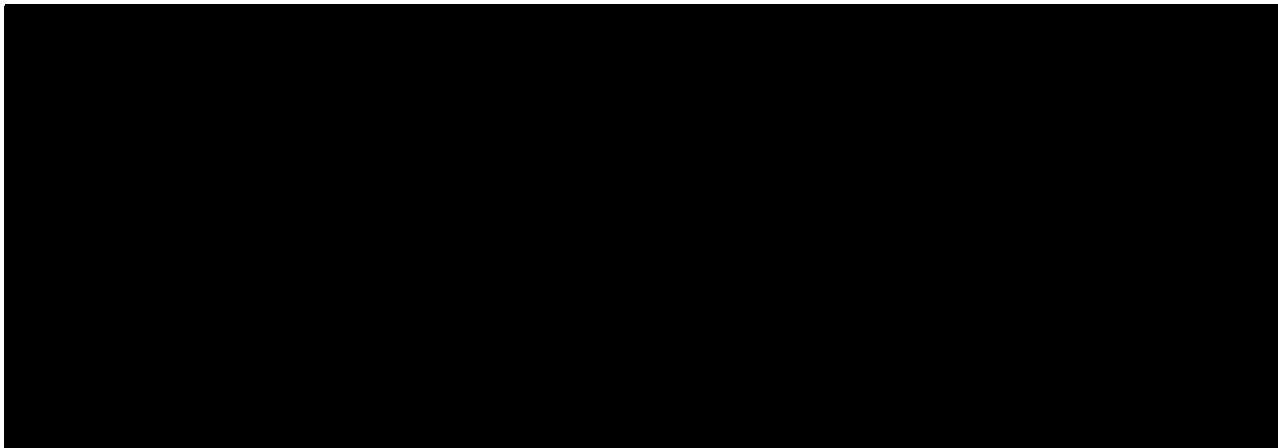


David Karlin, Esq.
November 6, 2017
Page 3

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If you are agreeable to our representation of Mind Soccer with respect to the 4020 Murphy Canyon Lease Negotiations, including any litigation related to the 4020 Murphy Canyon Lease Negotiations, we ask that you provide us with the City's informed written consent to such representation by signing a copy of this letter and returning it to me at your earliest opportunity.





David Karlin, Esq.
November 6, 2017
Page 4

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Very truly yours,

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WAIVER AND CONSENT

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Dated: _____

The Honorable Kevin L. Faulconer
Mayor, City of San Diego

Approved as to Form:

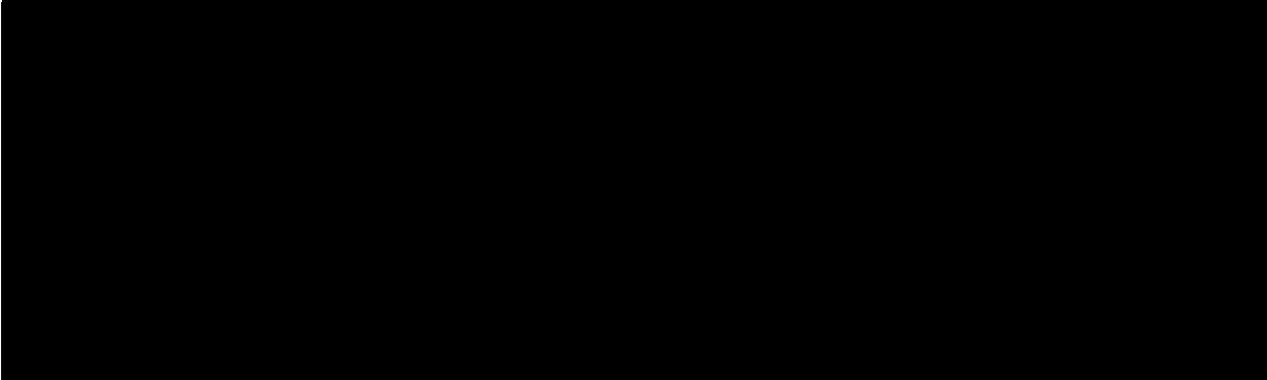
David Karlin, Esq.
Senior Chief Deputy City Attorney, City of San Diego

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: November 16, 2017
TO: Honorable Mayor
FROM: City Attorney *David R*
SUBJECT: Conflict of Interest Waiver Delegated by City Council

The attached specific conflict of interest waiver was delegated to you by the City Council to consider in consultation with the City Attorney's Office, as provided in Council Policy No. 000-34.



Please review the request and advise whether you have any issue you would like to discuss.

Please notify the City Attorney's Office if you decline to sign the request, otherwise please sign where indicated on page 4 and return to the City Attorney's Office.

DJK:aml
Doc. No.: 1618082
Enclosure



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San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

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Partner
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November 6, 2017

VIA E-MAIL, FACSIMILE & U.S. MAIL

David Karlin, Esq.
Senior Chief Deputy City Attorney
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1200 Third Avenue, Suite 1100
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procopio.com

David Karlin, Esq.
November 6, 2017
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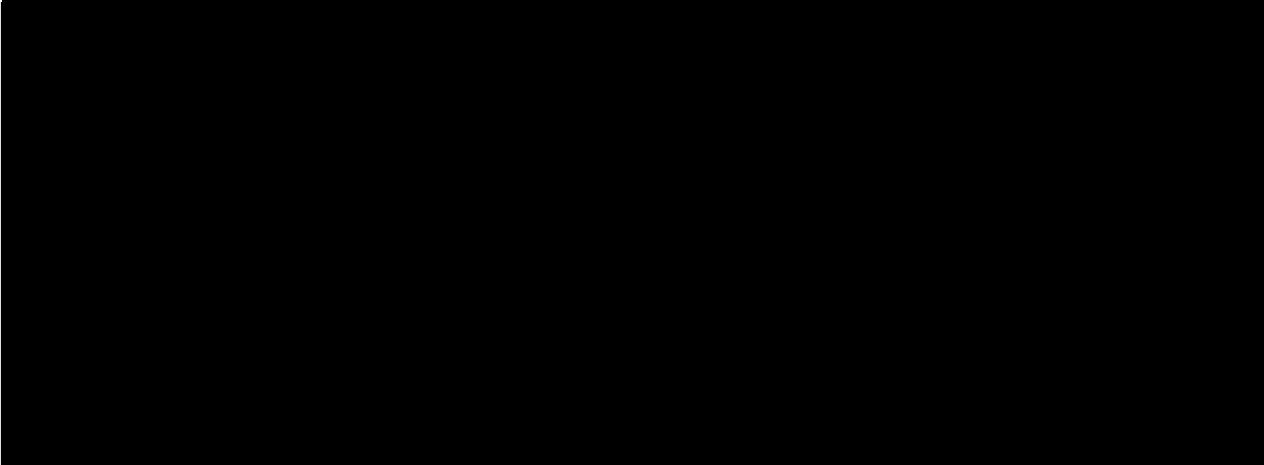


David Karlin, Esq.
November 6, 2017
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David Karlin, Esq.
November 6, 2017
Page 4

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Very truly yours,

Cecilia O. Miller, of Procopio, Cory, Hargreaves & Savitch LLP

WAIVER AND CONSENT

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Dated: _____

The Honorable Kevin L. Faulconer
Mayor, City of San Diego

Approved as to Form:

David Karlin, Esq.
Senior Chief Deputy City Attorney, City of San Diego

SDAT City Atty Production

From: Fernandez, Jessie
Sent: Friday, December 15, 2017 2:30 PM
To: Alvarez, David; Batten, Kelly; Bry, Barbara; Bukalova, Dominika; Cate, Chris; Chase, Molly; Clampett, Ian; Councilmember Myrtle Cole; Councilmember Scott Sherman; Fox, Jamie; Gates, Lara; Gomez, Georgette; Hauser, James; Jackson, Venessa; Joes, Vicky; Kersey, Mark; Knowles, Travis; Lugo, Brenda; Pepin, Kimberly; Slack, Jimmie; Spillane, Elizabeth; Tetlow, Barrett; Ward, Christopher; Zapf, Lorie
Cc: Faulconer, Mayor Kevin; Chadwick, Scott; So, Kenneth
Subject: Memo re Waive Atty Conflict of Interest
Attachments: Letter re Req. to Waive Atty Conflict of Interest.pdf; CAO Conflict Analysis Letter.pdf; Colantuono Request for Conflict Waiver.pdf; Colantuono Letter dated Nov 20.pdf

Good Afternoon,

Please see the attached Memorandum, by DCA Ken So re a Request to Waive Attorney Conflict of Interest.

Thank you.

Jessie D. Fernandez

Legal Secretary to DCA's Bret Bartolotta, Brant Will, Joan Dawson, Ken So, Sharon Spivak, and William Gersten
City of San Diego / City Attorney's Office
(619) 533-5874
jdfernandez@sandiego.gov

Office of
The City Attorney
City of San Diego

MEMORANDUM

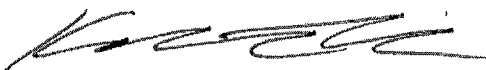
DATE: December 15, 2017
TO: Honorable Councilmembers
FROM: City Attorney
SUBJECT: Request to Waive Attorney Conflict of Interest

The enclosed letter dated December 13, 2017, from attorney Michael Colantuono with the law firm of Colantuono, Highsmith & Whatley, P.C., requests that the City waive an attorney conflict of interest pursuant to California Rule of Professional Conduct, Rule No. 3-310. Mr. Colantuono's letter dated November 20, 2017, along with our Office's response letter dated December 8, 2017, set forth the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter.

As provided in Council Policy No. 000-34, please notify me in writing within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By 
Kenneth R. So
Deputy City Attorney

KRS:jdf
Doc. No.: 1644704
Enclosures

cc: Honorable Mayor Kevin Faulconer
Scott Chadwick, Chief Operating Officer

SANNA R. SINGER
ASSISTANT CITY ATTORNEY

KENNETH R. SO
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

MARA W. ELLIOTT
CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

December 8, 2017

Michael Colantuono, Esq.
Colantuono, Highsmith & Whatley PC
101 West Broadway, Ninth Floor
San Diego, CA 92101

*Re: Conflict Analysis involving Colantuono Highsmith & Whatley, PC
Representing Citizens for a Better San Diego*

Dear Mr. Colantuono:

Thank you for your email dated November 20, 2017, informing us of your firm's intent to represent Citizens for a Better San Diego, a ballot measure committee and unincorporated association (Committee). According to your letter, the Committee appears to intend to propose an ordinance via citizen's initiative to impose a special tax to fund a Convention Center expansion, road improvements, and homeless initiatives. You ask whether we believe a formal conflict waiver is necessary.

Based on your letter and our own records, it is our understanding that your firm currently represents the City of San Diego (City) in two post-redevelopment litigation matters which appear completely unrelated to your proposed representation of the Committee. If this information changes or is inaccurate, please let me know as it may affect our analysis of this situation.

Given that the City is a current client of your firm, the firm owes a duty of undivided loyalty to the City and may not concurrently represent two clients who have adverse interests, even on unrelated matters. *Western Sugar Coop. v. Archer-Daniels-Midland Co.*, 98 F. Supp. 3d 1074, 1081-82 (2015). As implicated in Rule of Professional Conduct 3-310, which proscribes the representation of adverse interests, the duty of loyalty is concerned with the client's sense of trust and security, which are features essential to the effective functioning of the fiduciary relationship. *Flatt v. Superior Court*, 9 Cal. 4th 275, 282 (1994). The key issue is whether there are potential or actual adverse interests between the City and the Committee. *See* Cal. Rule of Prof. Conduct, Rule 3-310.

An actual conflict of interest exists whenever their common lawyer's representation of one may be rendered less effective by reason of representation of the other. *In re Jaeger*, 213 B.R. 578, 584 (Bkrcty. C.D. Cal. 1997). A potential conflict of interest exists if there is no present actual conflict of interest, but there is the possibility of actual conflict arising in the future, resulting

from developments that have not yet occurred or facts that have not yet become known. *Id.* If there is only a remote possibility of conflict, an attorney generally has no obligation to obtain informed written consent of the affected clients. *Id.*

Here, it would appear that there is at least a potential conflict of interest. As you are most likely aware, the Mayor's Office proposed a similar ballot measure earlier this year. That measure was on the City Council agenda of June 12, 2017 as Item 600. Ultimately, it was not acted upon by the City Council and was returned to City staff.

While you may be correct that the City would be supportive of a special tax to fund Convention Center expansion, road improvements, and homeless initiatives as such a measure is akin to what the Mayor's Office had proposed, we believe that there is more than a remote possibility that the City through a City official could propose a similar, but somewhat different, ballot measure to impose a special tax than what the Committee proposes to do, especially given what has previously occurred.¹ If this were to take place, the two ballot measures, and thus the positions of the Committee and the City, would be adverse to each other as the measures could be competing against each other for voter approval.

Furthermore, there is the possibility that your representation of the Committee could be adverse to the City because the City Clerk is responsible for determining whether an initiative petition complies with applicable law. San Diego Municipal Code § 27.1021. While this adverse interest could conceivably be considered more remote, if for whatever reason, the City Clerk were to determine that the Committee's initiative was insufficient, your firm may be called upon by the Committee to dispute this issue with the City.

As you know, it is the responsibility of the potentially conflicted lawyer and law firm to determine whether there is a potential or actual adverse interest and what action needs to be taken by them to comply with all rules and regulations applicable to attorneys in California. *See* Rules of Professional Conduct, Rules 1-100, 1-110, and 3-310. Therefore, our opinion on this matter should not be relied upon to ensure your compliance with applicable ethical rules. With that said, we believe the more cautious approach is for you to seek a conflict waiver from the City.

If you determine that you would like to seek a conflict waiver from the City, please inform us in writing and we will process your request in accordance with City Council Policy 000-34.

¹ In addition to the Mayor's prior proposal in June 2017 for a tax increase, there is also another potential proposal that we are aware of. In the attached memorandum dated November 7, 2017, a City Councilmember requested that the City Council act to amend the City Charter to mandate growth in Transient Occupancy Tax revenues be dedicated for the next 20 years to fund homelessness services, shelters and permanent supportive housing solutions. Given the fact that the exact language of any proposed ballot measure (whether on behalf of the Committee or the City) has yet to be put together, it is not entirely clear exactly how any such ballot measures would impact each other, but there exists the potential that they could conflict.

If you have any questions or would like to discuss further, please feel free to contact me at (619) 533-5814.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By



Kenneth R. So
Deputy City Attorney

KRS:jdf
Attachment



RECEIVED
CITY CLERK'S OFFICE
17 NOV -8 AM 7:29
SAN DIEGO, CALIF.

COUNCILMEMBER DAVID ALVAREZ

City of San Diego
Eighth District

MEMORANDUM

DATE: November 7, 2017
TO: Honorable Council President Myrtle Cole
FROM: Councilmember David Alvarez

SUBJECT: Dedicated Funding Source for Homeless Services

The City of San Diego is in the midst of a terrible homelessness crisis. To date, every proposal brought forward, from industrial tents to campgrounds have been largely ineffective. It is abundantly clear that the most effective way to address homelessness is to have an ample supply of permanent supportive housing available for families and individuals that are close to or actually experiencing homelessness. While the lack of secure funding for services is concerning, it is the lack of funding for housing that is especially glaring. I am requesting a City Charter amendment mandating that growth in Transient Occupancy Tax revenues be dedicated for the next 20 years to fund homelessness services, shelters, and permanent supportive housing solutions be placed on the Rules Committee agenda that will discuss 2018 ballot measures.

The City has an obligation to ensure certain levels of public safety and health by not only preventing the current crisis from growing, but also by taking meaningful steps to proactively curb the number of individuals and families living on the streets. According to the San Diego Regional Task Force on the Homeless annual Point-In-Time Count, the population of homeless individuals has grown throughout the City, from 5,093 in 2016 to 5,619 in 2017, as well as a 34% increase in chronically homeless in the City since 2016. Growth of this magnitude heightens the potential for unsanitary conditions and the spread of infectious diseases. The Hepatitis A crisis the City is currently responding to likely could have been averted if the City had an effective permanent supportive housing program that quickly matched homeless individuals and families with services and housing in place. Critical services that can help prevent individuals from experiencing homelessness include mental health treatment, health care, drug and alcohol treatment, education and job training.

Thank you for your attention to this matter. Your timely response is greatly appreciated.

CC: Honorable City Councilmembers

Honorable City Attorney Mara Elliott

Andrea Tevlin, Independent Budget Analyst



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: November 8, 2017
TO: Marisa Berumen, Rules Committee Consultant
FROM: Elizabeth Maland, City Clerk
SUBJECT: Ballot Proposals for Committee Review

Attached is a ballot proposal filed in my office pursuant to Council Policy 000-21 for the submission of ballot proposals to be reviewed by the Committee for possible placement on the ballot.

Date Filed	Topic	Proponent
November 8, 2017	Dedicated Funding Source for Homeless Services	Councilmember David Alvarez

The Clerk's Office has established January 2, 2018 as the deadline for submitting such ballot proposals for the June 5, 2018 ballot, and anticipates that the Committee will review the proposals at its January 10, 2018 meeting. Ballot proposals which are referred for 2nd Committee review and to the full City Council will be listed under Public Notice on the Council Docket of January 22, 2018, and docketed for consideration between February 12, 2018 through March 6, 2018.

EM/cs

cc: Erin Demorest, Director of Legislative Affairs
Sharon Spivak, Deputy City Attorney

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

December 13, 2017

VIA E-MAIL AND U.S. MAIL

Kenneth R. So, Esq.
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-6220

**Re: Request for Consent to Simultaneous Representation of the City and Yes for
a Better San Diego**

Dear Mr. So:

I reply to your letter of December 8, which I received by email on December 11th. As you invited, I write to request the City of San Diego's consent to our representation of Yes for a Better San Diego, an unincorporated association and ballot measure committee that will soon propose an initiative ordinance of the City to impose a hotel bed tax to fund a Convention Center expansion, homeless services, and road maintenance services.

The measure creates resources for City programs and I believe aligns with the City's goals. It is in the City's interest that it be well drafted and legally defensible. Nor do we represent your Mayor, City Council or elections official and therefore there is little risk our work will interfere with our professional judgment in the post-redevelopment and municipal finance matters for which the City has retained us.

If you need any additional information to handle this request, please let me know.

Very truly yours,



Michael G. Colantuono

MGC:mgc

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

Our File No. 10000.0191

November 20, 2017

VIA ELECTRONIC AND U.S. MAIL

Mara W. Elliott, City Attorney
City of San Diego
1200 3rd Avenue, Ste. 1620
San Diego, CA 92101

Re: Representation of Yes for a Better San Diego

Dear Mara:

As you know, our firm represents the City, along with several other San Diego County cities, in two post-redevelopment disputes. We have previously assisted the City in litigation involving assessment revenues. Due to our pre-existing relationships with the San Diego Tourism Marketing District Corporation, the San Diego LAFCO, the San Diego County Water Authority, and other cities in County, we have limited our relationship with the City to those matters and the City has consented to our doing so.

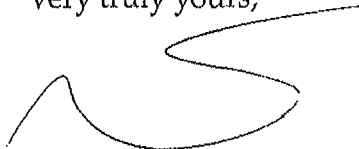
I write to disclose a further proposed client relationship. Citizens for a Better San Diego, a ballot measure committee and unincorporated association ("the Committee"), has asked us to represent it with respect to a proposed initiative ordinance of the City to impose a special tax to fund a Convention Center expansion, road improvements, and homeless initiatives. Because we understand the proposal to fund programs and services the City supports, we see no legal adversity here that would require a formal written consent of the City to our taking this project on. We have not represented the City's election official, who will have ministerial responsibilities for the measure, as will the Council.

If you view this differently and believe formal consents are necessary, please let me know and I will prepare requests to the City and the Committee.

Mara W. Elliott
November 20, 2017
Page 2

Thank you for your consideration and for the privilege of representing the City.

Very truly yours,

A handwritten signature in black ink, consisting of a series of connected loops and curves, positioned above the printed name.

Michael G. Colantuono

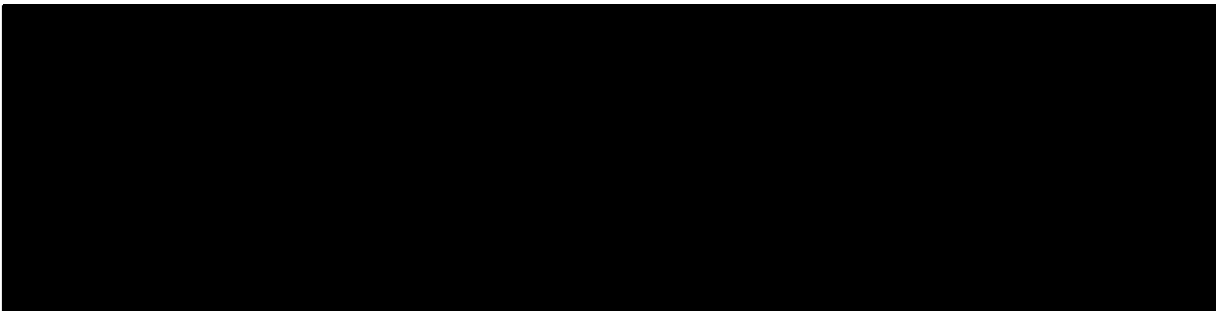
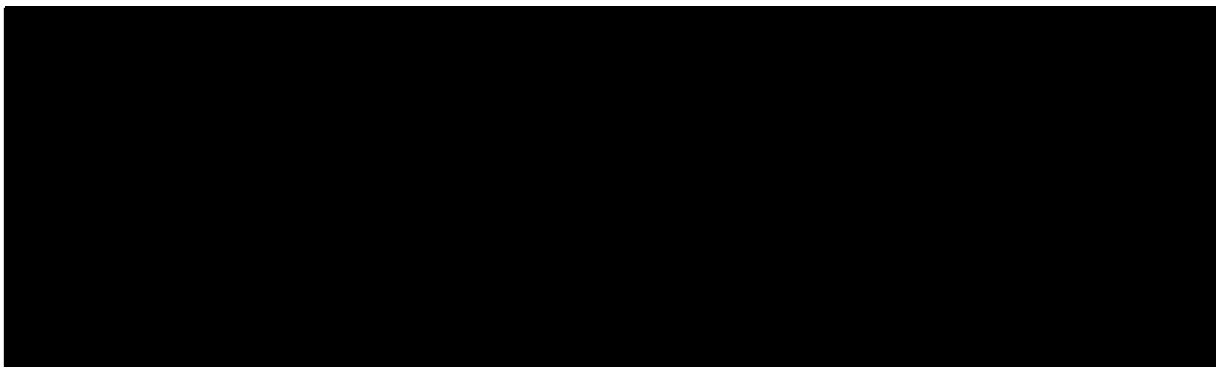
MGC:mgc

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: December 20, 2017
TO: Honorable Mayor Kevin Faulconer
FROM: City Attorney *David R*
SUBJECT: Conflict of Interest Waiver Delegated by City Council

The attached conflict of interest waiver request was delegated to you by the City Council to consider in consultation with the City Attorney's Office, as provided in Council Policy No. 000-34.



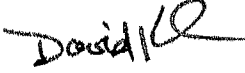
Please review the request and advise whether you have any issue you would like to discuss.

Please notify the City Attorney's Office if you decline to sign the request, otherwise please sign where indicated on page 5 and return to the City Attorney's Office.

DJK:aml
Doc. No.: 1651749
Enclosure

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: August 25, 2017
TO: Honorable Councilmembers
FROM: City Attorney 
SUBJECT: Request to Waive Conflict of Interest

The enclosed from Sullivan Hill Levin Rez & Engel, dated June 21, 2017 requests the City waive an attorney conflict of interest pursuant to California Code of Professional Conduct, Rule 3-310 and states the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter.

As provided in Council Policy No. 000-34, please notify David J. Karlin, Senior Deputy Attorney at the City Attorney's Office within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34.

DJK:aml
Doc. No.: 1567584
Enclosure



Sullivan Hill Lowin Rez & Engol
A Professional Law Corporation

550 West C Street
15th Floor
San Diego, CA 92101
619.233.4100
619.231.4372

sullivanhill.com

Timothy C. Earl
earl@sullivanhill.com
619.595.3279

Robert P. Allenby
allenby@sullivanhill.com
619.595.3209

June 21, 2017

VIA FIRST CLASS U.S. MAIL AND ELECTRONIC MAIL

Mr. Richard Lemmel
Wermers Multi-Family Corporation
5120 Shoreham Place, Suite 150
San Diego, California 92122
richardl@wermerscompanies.com

David J. Karlin, Esq.
Chief Deputy City Attorney
Office of the City Attorney, Civil Litigation Division
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone (619) 533-5800
DKarlin@sandiego.gov

Re: *City of San Diego v. Wermers Multi-Family Corporation*
Deborah Ganley v. City of San Diego
Request for Informed Written Consent to Waive Potential Conflicts of Interest

Gentlemen:

We write to obtain the informed, written consent of Wermers Multi-Family Corporation ("Wermers") and The City of San Diego (the "City") to our simultaneous representation of Wermers and the City, and their waiver of any actual or potential conflicts of interest that could arise from such simultaneous representation as detailed below.

Wermers and the City have been clients of this firm for many years.

Wermers has asked us to represent it as insurance coverage counsel only in regard to the claim of the City in the above-referenced case (the "Wermers Case"). We will not be representing Wermers as a party in the Wermers Case and we will not be directly adverse to the City in the Wermers Case. Our role will be more limited: to communicate with one or more of Wermers' insurers about coverage issues arising out of the Wermers Case.

We are currently representing the City in litigation known as *Ganley v. The City of San Diego*; San Diego Superior Court Case No. 37-2016-00000261-CU-OE-CTL (the "Ganley Case"). The Ganley Case relates to alleged discrimination arising out of survivor benefits in the City's defined-benefit pension plan. We have previously represented the City in other litigation predicated on claims identical to those alleged in the Ganley Case.

We believe we can represent Wermers in connection with the insurance coverage issues related to the Wermers Case while simultaneously representing the City in connection with the Ganley Case without comprising our duties of loyalty, competence, zealous advocacy, and confidentiality to Wermers and the City. However, because we would be representing both the City and Wermers while they were adverse to one another in the Wermers Case, there may be

actual or potential conflicts of interest that could arise. We are ethically required to advise you of the relevant circumstances and the reasonably foreseeable adverse consequences and to obtain your informed written consent to our simultaneous representation of Wermers and the City.

This situation is governed by California Rule of Professional Conduct 3-310 (Avoiding the Representation of Adverse Interests), which provides, in pertinent part, that a member shall not, without the informed written consent of each client:

accept representation of more than one client in a matter in which the interests of the clients potentially conflict. . . .

accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict. . . .

represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter . . . [or]

accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Cal. R. of Prof'l Cond. 3-310(C)(1), (C)(2), C(3) & (E).

Potential conflicts could arise from our representation of Wermers and the City. For example, in the course of representing each of Wermers and the City, we possess, and there is a risk that we might disclose or use Wermers' or City's confidential information in a manner that could be detrimental to the other, despite our duties of confidentiality. From the City's perspective, we, as coverage counsel for Wermers, could advocate for the insurer's settlement of the City's claim or we could advocate for not settling and vigorously defending the City's claim. Settling might be helpful to the City but not settling and vigorously defending might result in protracted litigation and added expenses to the City. From Wermers' perspective, Wermers may believe we would be less vigorous in pursuing its interest because of our divided loyalties and a perceived desire to achieve a good result for the City, including at the expense of Wermers.

In order to protect your interests and comply with California Rule of Professional Conduct 3-310, we intend to represent Wermers and the City under the following conditions:

1. We will not disclose to Wermers or the City any confidential information of the other.
2. Anything we learn from Wermers or the City that is not learned in confidence and that we believe the other needs to know in connection with our representation, we will tell the other. But if we learn something from Wermers or the City that we do not believe is pertinent to our representation of the other or that the other does not need to know, we will not tell the other.

3. The attorneys and staff who work on the Wermers Case will be different than the attorneys and staff who work on the Ganley Case on behalf of the City. If either or both clients so request, we will install a formal ethical wall preventing the attorneys and staff working on the matter from accessing the files and communicating with one another regarding the respective matters.

4. Wermers and the City must both agree that we will have no duty to disclose or use any confidential information of one client for the benefit or detriment of the other. For example, if we learned from Wermers confidential information regarding coverage issues that could benefit the City, we would not disclose it to the City; the City could not ask us to disclose it; and we would not be in breach of our duties of loyalty, candor, or zealous advocacy to the City by not disclosing it. Conversely, if we learn information from the City, e.g. about the City's general attitude towards settlement and recovering insurance, during the course of the Ganley Case, we will not disclose it to Wermers. Similarly, Wermers cannot ask us to use our relationships with City personnel, and the City cannot ask us to use our relationships with Wermers personnel, to influence or obtain an advantage in settlement discussions in either the Wermers Case or the Ganley Case.

5. In representing either of you in other unrelated matters, we will not take any action adverse or detrimental to the other.

6. Neither of you will seek our advice in the other's matter and each of you will be screened from access to the other's confidential information and files.

If there are any other conditions that you would like us to consider, please let us know.

We have tried to identify the potential conflicts and reasonably foreseeable adverse consequences that could arise from our simultaneous representation of each of you in the matters described, but there may be others. In part for this reason, we encourage you each to consult with independent counsel of your choice regarding this letter before signing the waiver and consent which follows. Independent counsel may identify other potential conflicts and reasonably foreseeable adverse consequences that we have not identified.

If you consent to our representation and acknowledge our ability to represent each of you under the circumstances and the conditions described above, please sign a duplicate of the waiver and consent which follows and return it to us. Please keep a duplicate for your records.

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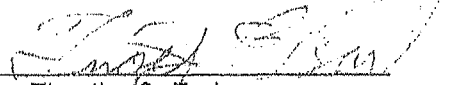
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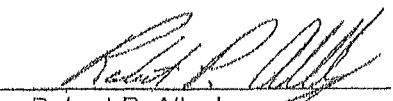
Richard Lemmel – Wermers Multi-Family Corporation
David J. Karlin – City of San Diego
June 21, 2017
Page 4

Thank you for giving this matter your attention. If you have any questions or comments, please do not hesitate to contact either of us.

Very truly yours,

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

By: 
Timothy C. Earl

By: 
Robert P. Allenby

JRE/ddr

WAIVER AND CONSENT

The undersigned hereby agree as follows:

1. Sullivan Hill Lewin Rez & Engel ("Sullivan Hill") has informed us in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences arising from its representation of each of us as described in the above letter.
2. We have been given an opportunity to consult with independent counsel of our own choosing regarding the above letter and the wisdom and effect of executing this waiver and consent.
3. We waive the potential conflicts of interest and consent to Sullivan Hill's representation of each of us under the circumstances and subject to the conditions outlined in the above letter.

WERMERS MULTI-FAMILY CORPORATION

By: Richard Lemmel 6.23, 2017
Richard Lemmel
Its: Chief Financial Officer

THE CITY OF SAN DIEGO

By: _____, 2017
Its _____

SDAT City Atty Production

From: Smith, Kevin
Sent: Friday, December 22, 2017 11:19 AM
To: So, Kenneth
Cc: Fernandez, Jessie; Elliott, Mara; Knowles, Travis
Subject: FW: Memo re Waive Atty Conflict of Interest
Attachments: Letter re Req. to Waive Atty Conflict of Interest.pdf; CAO Conflict Analysis Letter.pdf; Colantuono Request for Conflict Waiver.pdf; Colantuono Letter dated Nov 20.pdf

Ken,

Per the instructions in the attached memo, Councilmember Alvarez would like to formally request that this conflict of interest waiver be heard and voted on by the full City Council. This email represents this request in writing to your office.

Kevin C. Smith
Chief of Policy,
Environment Committee Consultant
Office of Councilmember David Alvarez
202 C St. MS 10A
San Diego, CA 92101
Phone: (619) 533-3924

Disclosure: This email is public information. Correspondence to and from this email is recorded and may be viewed by third parties and the public upon request.

From: Fernandez, Jessie
Sent: Friday, December 15, 2017 2:30 PM
To: Alvarez, David <DAAlvarez@sandiego.gov>; Batten, Kelly <KMBatten@sandiego.gov>; Bry, Barbara <BryBA@sandiego.gov>; Bukalova, Dominika <DBukalova@sandiego.gov>; Cate, Chris <CJCate@sandiego.gov>; Chase, Molly <MBChase@sandiego.gov>; Clampett, Ian <IClampett@sandiego.gov>; Councilmember Myrtle Cole <MyrtleCole@sandiego.gov>; Councilmember Scott Sherman <ScottSherman@sandiego.gov>; Fox, Jamie <JFox@sandiego.gov>; Gates, Lara <LGates@sandiego.gov>; Gomez, Georgette <GomezG@sandiego.gov>; Hauser, James <JHauser@sandiego.gov>; Jackson, Venessa <VJackson@sandiego.gov>; Joes, Vicky <VCJoes@sandiego.gov>; Kersey, Mark <MKersey@sandiego.gov>; Knowles, Travis <KnowlesT@sandiego.gov>; Lugo, Brenda <BLugo@sandiego.gov>; Pepin, Kimberly <KPepin@sandiego.gov>; Slack, Jimmie <JSlack@sandiego.gov>; Spillane, Elizabeth <ESpillane@sandiego.gov>; Tetlow, Barrett <BTetlow@sandiego.gov>; Ward, Christopher <CMWard@sandiego.gov>; Zapf, Lorie <LZapf@sandiego.gov>
Cc: Mayor Kevin Faulconer <KevinFaulconer@sandiego.gov>; Chadwick, Scott <SChadwick@sandiego.gov>; So, Kenneth <KSo@sandiego.gov>
Subject: Memo re Waive Atty Conflict of Interest

Good Afternoon,

Please see the attached Memorandum, by DCA Ken So re a Request to Waive Attorney Conflict of Interest.

Thank you.

Jessie D. Fernandez

Legal Secretary to DCA's Bret Bartolotta, Brant Will, Joan Dawson, Ken So, Sharon Spivak, and William Gersten
City of San Diego / City Attorney's Office
(619) 533-5874
jdfernandez@sandiego.gov

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: December 15, 2017
TO: Honorable Councilmembers
FROM: City Attorney
SUBJECT: Request to Waive Attorney Conflict of Interest

The enclosed letter dated December 13, 2017, from attorney Michael Colantuono with the law firm of Colantuono, Highsmith & Whatley, P.C., requests that the City waive an attorney conflict of interest pursuant to California Rule of Professional Conduct, Rule No. 3-310. Mr. Colantuono's letter dated November 20, 2017, along with our Office's response letter dated December 8, 2017, set forth the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter.

As provided in Council Policy No. 000-34, please notify me in writing within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By



Kenneth R. So
Deputy City Attorney

KRS:jdf

Doc. No.: 1644704

Enclosures

cc: Honorable Mayor Kevin Faulconer
Scott Chadwick, Chief Operating Officer

SANNA R. SINGER
ASSISTANT CITY ATTORNEY

KENNETH R. SO
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MARA W. ELLIOTT
CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

December 8, 2017

Michael Colantuono, Esq.
Colantuono, Highsmith & Whatley PC
101 West Broadway, Ninth Floor
San Diego, CA 92101

*Re: Conflict Analysis involving Colantuono Highsmith & Whatley, PC
Representing Citizens for a Better San Diego*

Dear Mr. Colantuono:

Thank you for your email dated November 20, 2017, informing us of your firm's intent to represent Citizens for a Better San Diego, a ballot measure committee and unincorporated association (Committee). According to your letter, the Committee appears to intend to propose an ordinance via citizen's initiative to impose a special tax to fund a Convention Center expansion, road improvements, and homeless initiatives. You ask whether we believe a formal conflict waiver is necessary.

Based on your letter and our own records, it is our understanding that your firm currently represents the City of San Diego (City) in two post-redevelopment litigation matters which appear completely unrelated to your proposed representation of the Committee. If this information changes or is inaccurate, please let me know as it may affect our analysis of this situation.

Given that the City is a current client of your firm, the firm owes a duty of undivided loyalty to the City and may not concurrently represent two clients who have adverse interests, even on unrelated matters. *Western Sugar Coop. v. Archer-Daniels-Midland Co.*, 98 F. Supp. 3d 1074, 1081-82 (2015). As implicated in Rule of Professional Conduct 3-310, which proscribes the representation of adverse interests, the duty of loyalty is concerned with the client's sense of trust and security, which are features essential to the effective functioning of the fiduciary relationship. *Flatt v. Superior Court*, 9 Cal. 4th 275, 282 (1994). The key issue is whether there are potential or actual adverse interests between the City and the Committee. *See* Cal. Rule of Prof. Conduct, Rule 3-310.

An actual conflict of interest exists whenever their common lawyer's representation of one may be rendered less effective by reason of representation of the other. *In re Jaeger*, 213 B.R. 578, 584 (Bkrcty. C.D. Cal. 1997). A potential conflict of interest exists if there is no present actual conflict of interest, but there is the possibility of actual conflict arising in the future, resulting

from developments that have not yet occurred or facts that have not yet become known. *Id.* If there is only a remote possibility of conflict, an attorney generally has no obligation to obtain informed written consent of the affected clients. *Id.*

Here, it would appear that there is at least a potential conflict of interest. As you are most likely aware, the Mayor's Office proposed a similar ballot measure earlier this year. That measure was on the City Council agenda of June 12, 2017 as Item 600. Ultimately, it was not acted upon by the City Council and was returned to City staff.

While you may be correct that the City would be supportive of a special tax to fund Convention Center expansion, road improvements, and homeless initiatives as such a measure is akin to what the Mayor's Office had proposed, we believe that there is more than a remote possibility that the City through a City official could propose a similar, but somewhat different, ballot measure to impose a special tax than what the Committee proposes to do, especially given what has previously occurred.¹ If this were to take place, the two ballot measures, and thus the positions of the Committee and the City, would be adverse to each other as the measures could be competing against each other for voter approval.

Furthermore, there is the possibility that your representation of the Committee could be adverse to the City because the City Clerk is responsible for determining whether an initiative petition complies with applicable law. San Diego Municipal Code § 27.1021. While this adverse interest could conceivably be considered more remote, if for whatever reason, the City Clerk were to determine that the Committee's initiative was insufficient, your firm may be called upon by the Committee to dispute this issue with the City.

As you know, it is the responsibility of the potentially conflicted lawyer and law firm to determine whether there is a potential or actual adverse interest and what action needs to be taken by them to comply with all rules and regulations applicable to attorneys in California. *See* Rules of Professional Conduct, Rules 1-100, 1-110, and 3-310. Therefore, our opinion on this matter should not be relied upon to ensure your compliance with applicable ethical rules. With that said, we believe the more cautious approach is for you to seek a conflict waiver from the City.


If you determine that you would like to seek a conflict waiver from the City, please inform us in writing and we will process your request in accordance with City Council Policy 000-34.

¹ In addition to the Mayor's prior proposal in June 2017 for a tax increase, there is also another potential proposal that we are aware of. In the attached memorandum dated November 7, 2017, a City Councilmember requested that the City Council act to amend the City Charter to mandate growth in Transient Occupancy Tax revenues be dedicated for the next 20 years to fund homelessness services, shelters and permanent supportive housing solutions. Given the fact that the exact language of any proposed ballot measure (whether on behalf of the Committee or the City) has yet to be put together, it is not entirely clear exactly how any such ballot measures would impact each other, but there exists the potential that they could conflict.

If you have any questions or would like to discuss further, please feel free to contact me at (619) 533-5814.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By 
Kenneth R. So
Deputy City Attorney

KRS:jdf
Attachment



RECEIVED
CITY CLERK'S OFFICE
17 NOV -8 AM 7:29
SAN DIEGO, CALIF.

COUNCILMEMBER DAVID ALVAREZ

City of San Diego
Eighth District

MEMORANDUM

DATE: November 7, 2017
TO: Honorable Council President Myrtle Cole
FROM: Councilmember David Alvarez

SUBJECT: Dedicated Funding Source for Homeless Services

The City of San Diego is in the midst of a terrible homelessness crisis. To date, every proposal brought forward, from industrial tents to campgrounds have been largely ineffective. It is abundantly clear that the most effective way to address homelessness is to have an ample supply of permanent supportive housing available for families and individuals that are close to or actually experiencing homelessness. While the lack of secure funding for services is concerning, it is the lack of funding for housing that is especially glaring. I am requesting a City Charter amendment mandating that growth in Transient Occupancy Tax revenues be dedicated for the next 20 years to fund homelessness services, shelters, and permanent supportive housing solutions be placed on the Rules Committee agenda that will discuss 2018 ballot measures.

The City has an obligation to ensure certain levels of public safety and health by not only preventing the current crisis from growing, but also by taking meaningful steps to proactively curb the number of individuals and families living on the streets. According to the San Diego Regional Task Force on the Homeless annual Point-In-Time Count, the population of homeless individuals has grown throughout the City, from 5,093 in 2016 to 5,619 in 2017, as well as a 34% increase in chronically homeless in the City since 2016. Growth of this magnitude heightens the potential for unsanitary conditions and the spread of infectious diseases. The Hepatitis A crisis the City is currently responding to likely could have been averted if the City had an effective permanent supportive housing program that quickly matched homeless individuals and families with services and housing in place. Critical services that can help prevent individuals from experiencing homelessness include mental health treatment, health care, drug and alcohol treatment, education and job training.

Thank you for your attention to this matter. Your timely response is greatly appreciated.

CC: Honorable City Councilmembers

Honorable City Attorney Mara Elliott

Andrea Tevlin, Independent Budget Analyst



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: November 8, 2017

TO: Marisa Berumen, Rules Committee Consultant

FROM: Elizabeth Maland, City Clerk

SUBJECT: Ballot Proposals for Committee Review

Attached is a ballot proposal filed in my office pursuant to Council Policy 000-21 for the submission of ballot proposals to be reviewed by the Committee for possible placement on the ballot.

Date Filed	Topic	Proponent
November 8, 2017	Dedicated Funding Source for Homeless Services	Councilmember David Alvarez

The Clerk's Office has established January 2, 2018 as the deadline for submitting such ballot proposals for the June 5, 2018 ballot, and anticipates that the Committee will review the proposals at its January 10, 2018 meeting. Ballot proposals which are referred for 2nd Committee review and to the full City Council will be listed under Public Notice on the Council Docket of January 22, 2018, and docketed for consideration between February 12, 2018 through March 6, 2018.

EM/cs

cc: Erin Demorest, Director of Legislative Affairs
Sharon Spivak, Deputy City Attorney

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

December 13, 2017

VIA E-MAIL AND U.S. MAIL

Kenneth R. So, Esq.
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-6220

**Re: Request for Consent to Simultaneous Representation of the City and Yes for
a Better San Diego**

Dear Mr. So:

I reply to your letter of December 8, which I received by email on December 11th. As you invited, I write to request the City of San Diego's consent to our representation of Yes for a Better San Diego, an unincorporated association and ballot measure committee that will soon propose an initiative ordinance of the City to impose a hotel bed tax to fund a Convention Center expansion, homeless services, and road maintenance services.

The measure creates resources for City programs and I believe aligns with the City's goals. It is in the City's interest that it be well drafted and legally defensible. Nor do we represent your Mayor, City Council or elections official and therefore there is little risk our work will interfere with our professional judgment in the post-redevelopment and municipal finance matters for which the City has retained us.

If you need any additional information to handle this request, please let me know.

Very truly yours,



Michael G. Colantuono

MGC:mgc

COSDPROD-000607

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

Our File No. 10000.0191

November 20, 2017

VIA ELECTRONIC AND U.S. MAIL

Mara W. Elliott, City Attorney
City of San Diego
1200 3rd Avenue, Ste. 1620
San Diego, CA 92101

Re: Representation of Yes for a Better San Diego

Dear Mara:

As you know, our firm represents the City, along with several other San Diego County cities, in two post-redevelopment disputes. We have previously assisted the City in litigation involving assessment revenues. Due to our pre-existing relationships with the San Diego Tourism Marketing District Corporation, the San Diego LAFCO, the San Diego County Water Authority, and other cities in County, we have limited our relationship with the City to those matters and the City has consented to our doing so.

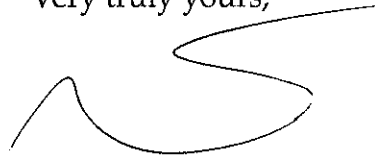
I write to disclose a further proposed client relationship. Citizens for a Better San Diego, a ballot measure committee and unincorporated association ("the Committee"), has asked us to represent it with respect to a proposed initiative ordinance of the City to impose a special tax to fund a Convention Center expansion, road improvements, and homeless initiatives. Because we understand the proposal to fund programs and services the City supports, we see no legal adversity here that would require a formal written consent of the City to our taking this project on. We have not represented the City's election official, who will have ministerial responsibilities for the measure, as will the Council.

If you view this differently and believe formal consents are necessary, please let me know and I will prepare requests to the City and the Committee.

Mara W. Elliott
November 20, 2017
Page 2

Thank you for your consideration and for the privilege of representing the City.

Very truly yours,

A handwritten signature in black ink, consisting of a series of fluid, connected loops and curves. The signature starts with a small peak on the left, followed by a large, sweeping loop that extends to the right and then curves back down and left.

Michael G. Colantuono

MGC:mgc

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

Our File No. 10000.0191

November 20, 2017

VIA ELECTRONIC AND U.S. MAIL

Mara W. Elliott, City Attorney
City of San Diego
1200 3rd Avenue, Ste. 1620
San Diego, CA 92101

Re: Representation of Yes for a Better San Diego

Dear Mara:

As you know, our firm represents the City, along with several other San Diego County cities, in two post-redevelopment disputes. We have previously assisted the City in litigation involving assessment revenues. Due to our pre-existing relationships with the San Diego Tourism Marketing District Corporation, the San Diego LAFCO, the San Diego County Water Authority, and other cities in County, we have limited our relationship with the City to those matters and the City has consented to our doing so.

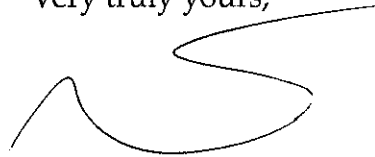
I write to disclose a further proposed client relationship. Citizens for a Better San Diego, a ballot measure committee and unincorporated association ("the Committee"), has asked us to represent it with respect to a proposed initiative ordinance of the City to impose a special tax to fund a Convention Center expansion, road improvements, and homeless initiatives. Because we understand the proposal to fund programs and services the City supports, we see no legal adversity here that would require a formal written consent of the City to our taking this project on. We have not represented the City's election official, who will have ministerial responsibilities for the measure, as will the Council.

If you view this differently and believe formal consents are necessary, please let me know and I will prepare requests to the City and the Committee.

Mara W. Elliott
November 20, 2017
Page 2

Thank you for your consideration and for the privilege of representing the City.

Very truly yours,

A handwritten signature in black ink, consisting of a series of fluid, connected loops and curves, positioned above the printed name.

Michael G. Colantuono

MGC:mgc

790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

December 13, 2017

VIA E-MAIL AND U.S. MAIL

Kenneth R. So, Esq.
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-6220

**Re: Request for Consent to Simultaneous Representation of the City and Yes for
a Better San Diego**

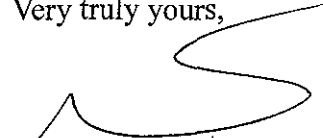
Dear Mr. So:

I reply to your letter of December 8, which I received by email on December 11th. As you invited, I write to request the City of San Diego's consent to our representation of Yes for a Better San Diego, an unincorporated association and ballot measure committee that will soon propose an initiative ordinance of the City to impose a hotel bed tax to fund a Convention Center expansion, homeless services, and road maintenance services.

The measure creates resources for City programs and I believe aligns with the City's goals. It is in the City's interest that it be well drafted and legally defensible. Nor do we represent your Mayor, City Council or elections official and therefore there is little risk our work will interfere with our professional judgment in the post-redevelopment and municipal finance matters for which the City has retained us.

If you need any additional information to handle this request, please let me know.

Very truly yours,


Michael G. Colantuono

MGC:mgc

COSDPROD-000612

From: Loneragan, Anna
Sent: Thursday, December 14, 2017 1:26 PM
To: Hoy, Cheri <CHoy@sandiego.gov>
Subject: RE: Soccer City - Conflict of Interest

Hi Cheri,

Appreciate the response.

Thanks, Anna

From: Hoy, Cheri
Sent: Thursday, December 14, 2017 1:23 PM
To: Loneragan, Anna <ALoneragan@sandiego.gov>
Subject: RE: Soccer City - Conflict of Interest

Hello Anna,

Thank you, I will check into this and someone from our office will get back to you.

Kind Regards,
Cheri

Cheri Hoy
Executive Assistant to the Mayor

The City of
SAN DIEGO
Mayor Kevin L. Faulconer
T 619-236-7776
www.sandiego.gov/mayor

DISCLOSURE:

This email is public information. Correspondence to and from this email address is recorded and may be viewed by third parties and the public upon request.

From: Loneragan, Anna
Sent: Thursday, December 14, 2017 10:22 AM

To: Hoy, Cheri <CHoy@sandiego.gov>
Subject: Soccer City - Conflict of Interest

Hi Cheri,

We sent the attached memo to the Mayor on November 16th last. Can you provide me with an update please?

Anna

Anna Lonergan
Principal Legal Secretary
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Tel: 619-533-5838
Fax: 619-533-5856

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

Kimberly S. Oberrecht
Cheryl A. Kirkpatrick
Richard H. Martha
Erin E. Schroeder
Michael D. Marchesini
Fang-Chung Li

KIRKPATRICK & MARTHA

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
225 BROADWAY, SUITE 2200
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1183
FACSIMILE (619) 696-5719

3847 1 WELFTH STREET
RIVERSIDE, CALIFORNIA 92501

ORANGE COUNTY OFFICE
2 PARK PLAZA, SUITE 440
IRVINE, CALIFORNIA 92614
TELEPHONE (949) 251-5100
FACSIMILE (949) 251-5104

NORTHERN CALIFORNIA OFFICE
980 NINTH STREET, 16TH FLOOR
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-9950
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ASSOCIATES

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Sharla N. Hilburn
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Michael S. Ayers
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Edward M. Chavez
Jonathan M. Berger
Danielle C. Hicks
Whitney J. Betts
Dawn C. Nelms
Alice S. Li
Carolyn A. Mush
Heidi K. Williams
Carey J. Eshelman
Elise M. Czelusniak
Kimberly L. Marcus
Danielle K. Lasure-Sopheak

PARALEGALS

Tina Hill
Adrian Ziegler
Elvia Ramos
Kathryn Figl
Jordan Malavar
Arturo Suarez

June 6, 2018

VIA FACSIMILE & U.S. MAIL

Kelly McGeehan, Esq.
Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Fax: (619) 533-5856

Re: Cindy Gates, et al. vs. Aaron Blakely, et al.
Our Clients : Aaron Blakely and Lynda Crawford
Date of Loss : December 30, 2017
Jurisdiction : San Diego County Superior Court
Court Case No.: 37-2018-00017261-CU-PO-CTL

Dear Ms. McGeehan:

This wrongful death lawsuit involves an automobile vs. motorcycle accident that occurred at or near the intersection of 19th and Broadway in downtown San Diego on December 30, 2017 at approximately 1:20 p.m. It is alleged that Decedent Adam Carmeli, who was driving his 2012 Ducati Streetfighter motorcycle, was struck by a vehicle driven by our client, Aaron Blakely, and subsequently died from his injuries. We also represent Lynda Crawford, who was the registered owner of the vehicle driven by Blakely. It is further alleged by the Plaintiffs that there are various dangerous conditions relating to road construction and design that may have contributed to the accident. Therefore, the City of San Diego is also named as a Defendant in this matter.

COSDPROD-000615

POTENTIAL PRESENT CONFLICT

Liberty Mutual, who is providing a defense to Aaron Blakely and Lynda Crawford pursuant to an insurance policy, have requested that we handle the matter and defend Blakely and Crawford. The City of San Diego is also a Defendant. We would therefore be adverse to the City of San Diego, whom we have represented in prior matters. At the time of the accident, Aaron Blakely was driving in the course of his employment for Coca-Cola. Coca-Cola is not yet a named party to the action, although it is anticipated they will be shortly. Coca-Cola has therefore retained its own attorneys and it is unknown whether Coca-Cola will tender its defense to Liberty Mutual once they are brought into the case.

PRIOR REPRESENTATION OF THE CITY

Our office has previously represented the City of San Diego in prior matters where the City has been indemnified through various insurance policies. Below please find a list of prior litigated matters wherein our office represented the City of San Diego. These matters have all resolved and are dismissed.

1. Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279CU-PO-CTL. This is a case in which Plaintiff allegedly slipped and fractured his ankle while crossing a cement spillway in the middle of a walking trail in Tierrasanta. Plaintiff's theory was that the City of San Diego is liable because Treebeard Landscape, Inc., who had a maintenance contract with the City, used an inappropriate paint to paint over graffiti on the spillway, which made the spillway slippery. Treebeard Landscape's insurance carrier picked up the defense of the City under Treebeard's policy. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.
2. Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL. This is a case where Plaintiff was involved in a motor vehicle collision at an intersection, wherein the driver of the vehicle that hit Plaintiff ran a red light. Plaintiff claimed that vegetation on one corner of the intersection interfered with his and the other driver's sightline and created a dangerous condition. Plaintiff claimed that the vegetation was on land owned and/or controlled by the City of San Diego. The City was defended and indemnified under an insurance policy held by Treebeard Landscape, who had a maintenance contract with the City. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.

3. Claire Rowland vs. City of San Diego, San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL. This is a case wherein Plaintiff, a minor, allegedly had her leg severely lacerated by a wrought iron sprinkler head support while walking along a City-owned and maintained area between condominium residences and a hillside. The City was defended and indemnified under an insurance policy held by Landscapes USA, Inc., the landscape contractor who served the subject area. The City signed a conflict waiver allowing us to represent it since our firm had previously been adverse to the City in other matters. This matter settled and the City was dismissed in 2016.

CURRENT REPRESENTATION OF THE CITY

We do not currently represent the City of San Diego in any pending matters.

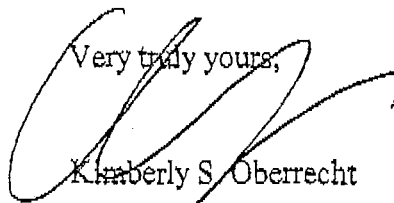
HOW WE WILL GUARD AGAINST CONFLICT

As mentioned previously, we do not currently represent the City of San Diego in any pending matters and therefore do not have any current active cases that pose a conflict. We did previously represent the City of San Diego as discussed above and will keep any and all information about the City learned in those cases kept separately and confidentially and will not use any information learned from those cases.

We are enclosing a Conflict Waiver for the City's consideration and signature. If the City approves, please return the signed document to us as soon as possible. **Aaron Blakely and Lynda Crawford's response to the Complaint is due to be filed with Court by June 18, 2018.** Therefore, we would appreciate an expedited decision from the City.

Thank you for your assistance.

Very truly yours,



Kimberly S. Oberrecht

KSO:njr
Enclosure

WAIVER OF CONFLICT OF INTEREST

This agreement will be referred to as the "Waiver". The City of San Diego ("hereinafter "City") understands that Horton, Oberrecht, Kirkpatrick & Martha (hereinafter "the Horton Firm") has been retained to represent the interests of The City of San Diego in a current litigation entitled Claire Rowland, et al. vs. City of San Diego, San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL.

The City understands and has been informed that a conflict of interest exists because Partner Kimberly S. Oberrecht of the Horton Firm also represents a party adverse to The City of San Diego in a current case entitled Holly Jean Richardson vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00043147-CU-PO-CTL.

The Horton Firm represents the interests of the City in two other current litigations, entitled Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279-CU-PO-CTL and Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL.

The Horton Firm also represented clients who have been sued by the City and/or were adverse to the City. The City is informed California State Law requires that an attorney not disclose confidential communications or secrets of a client. The City is further informed that the Rules of Professional Conduct of the State Bar of California require the City's informed written consent before the Horton firm can represent them in the above-described matter. The Horton Firm has disclosed to the City that there is a conflict of interest by the current representation. After informed consent, the City elected and agreed to waive the conflict of interest to allow for the Horton Firm's representation of them in the above-described matter. By execution of this Waiver, the City expressly acknowledges [REDACTED] and that they have elected to be represented by the Horton Firm for the purpose of representation described herein.

Therefore, the City expressly agrees to waive the conflict of interest which exists between the representation of the City by and through the Horton Firm. The City agrees and elects of their own free will after informed consent has been provided to be represented by the Horton Law Firm in the above-described lawsuit.

[REDACTED] The City elected to continue with the retention the Horton Firm to defend their interests and to represent them in the above-described lawsuit.

In addition to their conflict waiver in the above-described lawsuit, the City expressly agrees to waive conflicts in future cases wherein the Horton Firm may be adverse to the City and/or may be required to file cross-actions and/or claims against the City.

Date: 10/23/15 D. P. Bamberg
CITY OF SAN DIEGO

Daniel Bamberg, Esq.
Name of Person Signing

ASSISTANT City Attorney
Title

RECEIVED
OCT 23 2015

WAIVER OF CONFLICT OF INTEREST

This agreement will be referred to as the "Waiver". The City of San Diego ("hereinafter "City") understands that Horton, Oberrecht, Kirkpatrick & Martha (hereinafter "the Horton Firm") has been retained to represent the interests of the City in a current litigation entitled Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279CU-PO-CTL.

The City understands and has been informed that a conflict of interest exists because the Horton Firm represents and has represented the interests of clients adverse to the City in current litigation and multiple past lawsuits. The Horton Firm has also represented clients who have been sued by the City and/or were adverse to the City. The City is informed California State Law requires that an attorney not disclose confidential communications or secrets of a client. The City is further informed that the Rules of Professional Conduct of the State Bar of California require the City's informed written consent before the Horton firm can represent them in the above-described matter. The Horton Firm has disclosed to the City that there is a conflict of interest by the current representation. After informed consent, the City elected and agreed to waive the conflict of interest to allow for the Horton Firm's representation of them in the above-described matter. By execution of this Waiver, the City expressly acknowledges [REDACTED] and that they have elected to be represented by the Horton Firm for the purpose of representation described herein.

Therefore, the City expressly agrees to waive the conflict of interest which exists between the representation of the City by and through the Horton Firm. The City agrees and elects of their own free will after informed consent has been provided to be represented by the Horton Law Firm in the above-described lawsuit.

By execution of this Waiver [REDACTED]
[REDACTED] The City elected to continue with the retention the Horton Firm to defend their interests and to represent them in the above-described lawsuit.

~~In addition to their conflict waiver in the above-described lawsuit, the City expressly agrees to waive conflicts in future cases wherein the Horton Firm may be adverse to the City and/or may be required to file cross-actions and/or claims against the City.~~

6/24/15
DFB

Date: 6/24/15

D.F. Bamberg
CITY OF SAN DIEGO

Daniel F. Bamberg
Name of Person Signing
D.F. Bamberg
Title Assistant City Attorney

WAIVER OF CONFLICT OF INTEREST

This agreement will be referred to as the "Waiver". The City of San Diego ("hereinafter "City") understands that the law firm of Horton, Oberrecht, Kirkpatrick & Martha, APC (hereinafter "the Horton Firm") has been retained to represent the interests of Aaron Blakely and Lynda Crawford in a current litigation entitled Cindy Gates, et al. vs. Aaron Blakely, et al., San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL. The City of San Diego is also a named Defendant in this matter and is being represented by the Office of the San Diego City Attorney.

The City understands and has been informed that a conflict of interest may exist due to the Horton Firm's prior representation of The City of San Diego in past cases that have since resolved. Those cases were entitled Peter Bridge vs. The City of San Diego, San Diego Superior Court, Case No. 37-2014-00027279-CU-PO-CTL, Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL, and Claire Rowland vs. City of San Diego, San Diego Superior Court, Case No. 37-2015-00000690-CU-PO-CTL.

The Horton Firm has also represented clients who have been sued by the City and/or were adverse to the City. The City is informed California State Law requires that an attorney not disclose confidential communications or secrets of a client. The City is further informed that the Rules of Professional Conduct of the State Bar of California require the City's informed written consent before the Horton firm can represent them in the above-described matter. The Horton Firm has disclosed to the City that there is a conflict of interest by the prior representation, although no current representation of the City exists. After informed consent, the City elected and agreed to waive the conflict of interest to allow for the Horton Firm's representation of defendants adverse to the City in the matter of Cindy Gates, et al. vs. Aaron Blakely, et al. By execution of this Waiver, the City expressly acknowledges they have been advised that they have elected to allow the Horton Firm to represent Aaron Blakely and Lynda Crawford for the purpose of representation described herein.

Therefore, the City expressly agrees to waive the conflict of interest which exists due to prior representation of the City by and through the Horton Firm. The City agrees and elects of their own free will after informed consent has been provided to allow the Horton Law Firm to be adverse to the City of San Diego in the matter of Cindy Gates, et al. vs. Aaron Blakely, et al.

In addition to their conflict waiver in the case entitled Cindy Gates, et al. vs. Aaron Blakely, et al., the City expressly agrees to waive conflicts in future cases wherein the Horton Firm may be adverse to the City and/or may be required to file cross-actions and/or claims against the City.

Date: 7/27/18

[Signature]
CITY OF SAN DIEGO
Kris Mitchell
Name of Person Signing
COO
Title

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT,
THE CALIFORNIA CONSTITUTION, AND OTHER LAWS**

Exhibit "E"

Request #17-2042

CLOSED

As of October 30, 2017, 11:39am

Details

I am trying to find copies of documents for the Conflict of Interest Waivers that have been approved by the City in the past 5 years (2012 to 2017). I have been unable to locate them online and hope that you can assist me in locating them or providing copies to me.

Received

July 31, 2017 via web

Departments

City Attorney

Documents

[Documents 17-2042 - 082417.pdf](#)

[Documents PRA request #17-2042 -10/6/17.pdf](#)

[Documents produced 9717 #17-2042.pdf](#)

Staff

Point of Contact

Nancy Shapiro

Timeline

Request Published

Public

October 9, 2017, 9:39am

Request Closed

Public

02a. Released - Redacted

All responsive documents have been released except for portions redacted pursuant to: attorney-client privilege.

October 6, 2017, 9:39am by Nancy Shapiro, Paralegal, Office of the City Attorney

Document(s) Released

Public

Documents PRA request #17-2042 -10/6/17.pdf

October 6, 2017, 9:38am by Nancy Shapiro, Paralegal, Office of the City Attorney

Document(s) Released

Public

Documents produced 9717 #17-2042.pdf

September 7, 2017, 2:00pm by Nancy Shapiro, Paralegal, Office of the City Attorney

Document(s) Released

Public

Documents 17-2042 - 082417.pdf

August 24, 2017, 4:04pm by Catherine Morrison

Tuesday 6/6/2017 #104

(R-2017-617 REV.)
(COR. COPY)

RESOLUTION NUMBER R- 311166

DATE OF FINAL PASSAGE JUN 06 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE
WAIVERS OF POTENTIAL CONFLICTS OF INTEREST.

WHEREAS, the City of San Diego (City) occasionally receives requests for waivers of potential conflicts of interest under the California Rules of Professional Conduct (CRPC); and

WHEREAS, the City's historic practice has been for the Mayor and City Attorney to confer on and execute waiver requests without this practice being formally documented; and

WHEREAS, the City has received requests from two law firms requesting that the City waive potential conflicts of interest on three matters; and

WHEREAS, CRPC, Rule 3-310 requires that the client give informed consent when its attorney or former attorney has a potential conflict of interest; and

WHEREAS, the City received one request from the Procopio law firm requesting a waiver on two matters because the former City Attorney is currently serving as "Of Counsel" for Procopio; and

WHEREAS, the City is informed that the former City Attorney has not and will not participate in any matter of Procopio's that involves the City; and

WHEREAS, the second law firm requesting a waiver from the City is Kane, Ballmer & Berkman (KBB) which formerly represented the City and the Redevelopment Agency in matters involving redevelopment and economic development; and

WHEREAS, KBB seeks to represent a client in a conveyance of land to the City which is completely separate from the matters on which KBB formerly represented the City and Redevelopment Agency; and

WHEREAS, the matters for which waivers are requested require informed consent from the City Council; and

WHEREAS, neither the potential conflict of interest of Procopio or KBB pose a risk of detrimental impact to the City; and

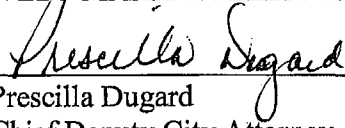
WHEREAS, this Resolution is not subject to Mayoral veto pursuant to City Charter section 280(a)(1); NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, including in its capacity as the Successor Agency to the former Redevelopment Agency, that the waiver of potential conflicts of interest as represented and requested by Procopio and KBB are given; and

BE IT FURTHER RESOLVED, that the Mayor or his designee is authorized to execute the requested waivers on behalf of the City including in its capacity as the Successor Agency to the former Redevelopment Agency.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Prescilla Dugard
Chief Deputy City Attorney

PD:jvg:ccm:jdf

05/25/2017

05/31/2017 COR. COPY

06/16/2017 REV.

Or.Dept: City Attorney

Doc. No. 1511777_4

Passed by the Council of The City of San Diego on JUN 06 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 06 2017

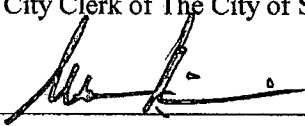
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

<p>Office of the City Clerk, San Diego, California</p> <p style="text-align: right;">311166</p> <p>Resolution Number R-_____</p>
--

SANNA R. SINGER
ASSISTANT CITY ATTORNEY

CATHERINE C. MORRISON
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MARA W. ELLIOTT
CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

July 26, 2017

Robert G. Russell Jr.
PROCOPIO
525 B Street, Suite 2200
San Diego, CA 92101

Attorney Client Conflict Waiver Request

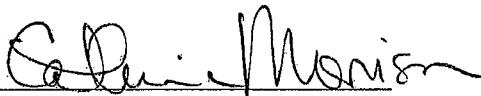
Dear: Mr. Russell:

Enclosed please find the City of San Diego's signed Waiver and Consent to Procopio's representation of Metropolitan/SDPB Fifth Avenue LLC, CP Kelco U.S., Inc., and R.E Staite Engineering, Inc. This waiver is given pursuant to the facts as you set forth in your letter addressed to the City dated April 3, 2017.

Please feel free to contact me if you have any questions regarding this letter or the enclosed waiver.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By 
Catherine C. Morrison
Deputy City Attorney

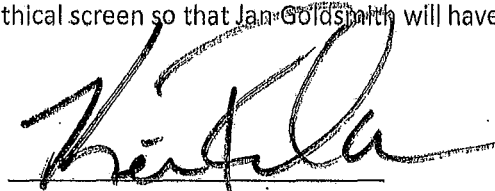
CCM:jvg
Attachment

WAIVER AND CONSENT

On behalf of the City of San Diego, I consent to the representation of Metropolitan/SDPB Fifth Avenue LLC, CP Kelco U.S., Inc., and R.E. Stalte Engineering, Inc. by Procopio, Cory, Hargreaves & Savitch LLP in the matters identified in your letter to Mara W. Elliott, City Attorney of the City of San Diego, dated April 3, 2017. The City of San Diego understands that the matters discussed in your letter are potentially adverse to the City of San Diego, notwithstanding the fact that former City Attorney Jan Goldsmith, who is now "Of Counsel" to Procopio, may have worked on said matters during his time as City Attorney. It is understood and agreed that Procopio will establish an ethical screen so that Jan Goldsmith will have no involvement whatsoever in said matters.

Date:

7/24/17



Mayor Kevin L. Faulconer



PROCOPIO
525 B Street,
Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

CECILIA O. MILLER
Partner
P. 619.525.3801
cecilia.miller@procopio.com

AUSTIN
DEL MAR HEIGHTS
PHOENIX
SAN DIEGO
SILICON VALLEY

January 30, 2017

VIA E-MAIL, FACSIMILE & U.S. MAIL

David J. Karlin, Esq.
Chief Deputy City Attorney
Civil Litigation Division
Office of the City Attorney, City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Email: dkarlin@sandiego.gov
Fax: (619)533-5856

Re: Request for Specific Waiver of Conflicts of Interest

Dear Mr. Karlin:

As you know, Procopio, Cory, Hargreaves & Savitch LLP (the "Firm") currently represents the City of San Diego ("City") with respect to insurance coverage issues and insurance-related litigation including the De Anza litigations. In conjunction with that retention, the Firm requested and the City provided the following:

The undersigned agrees to the foregoing and consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of the clients listed on Exhibit A hereto and further consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of its clients, including, but not limited to, its charter school clients, in future matters involving planning, zoning, environmental review/mitigation, development, land use, code enforcement or CEQA issues, including litigation of such matters, adverse, or potentially adverse, to the City of San Diego. The undersigned further commits to cooperate in an effort to provide similar waivers to Procopio, Cory, Hargreaves & Savitch LLP in other matters under the conditions set out herein.

Correspondence dated May 15, 2013 from C. Miller to A. Jones.

procopio.com



David J. Karlin, Esq.
January 30, 2017
Page 2

Prospective clients of the Firm, Central Management, Inc. ("Central Management") and ST Associates, would like to discuss and potentially retain the Firm in connection with providing legal advice and analysis relative to certain negotiations Central Management and ST Associates will be having with the City of San Diego regarding the extension of leases for the Cedar Shores Apartments located at 2150 Pacific Beach Drive and Orchard Apartments located at 4040 Hancock Street (collectively, the "Lease Negotiations"). Since Central Management and ST Associates are tenants of City properties, the City, on the one hand, and Central Management and ST Associates, on the other may be adverse with respect to the Lease Negotiations.

Obviously, the Firm wishes to continue to represent the City's interests in matters unrelated to the matter in which we are being asked to undertake the representation of Central Management; and ST Associates at the same time, we would like to represent Central Management and ST Associates in the matter in which it has requested the Firm's representation. The matter in which Central Management and ST Associates have requested the Firm's representation is not directly related to any work which we have done, or are doing, for the City.

The purpose of this letter is to notify you of the Firm's potential representation of Central Management and ST Associates in the forthcoming Lease Negotiations and to request the City's waiver of the resulting conflict of interest should the Firm be so retained by Central Management and ST Associates. As attorneys, we are governed by specific rules relating to our representation of clients when actual or potential conflicts of interest exist. In particular, absent the informed written consent of the clients, attorneys may not simultaneously represent clients whose interests conflict even where one matter is totally unrelated to the other. In addition, Rule 3-310 of the Rules of Professional Conduct of the State Bar of California provides, in relevant part, as follows:

"(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

....

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

....

(C) A member shall not, without the informed written consent of each client:



David J. Karlin, Esq.
January 30, 2017
Page 3

....

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter;

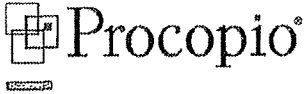
....

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment...."

"Informed written consent" means the client's written agreement to the representation following written disclosure. "Disclosure" means informing the client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client.

The interests of Central Management and ST Associates in the forthcoming Lease Negotiations will be in conflict with the interests of the City. If the City consents to the Firm's representation of Central Management and ST Associates, the Firm will diligently and zealously represent the interests of Central Management and ST Associates in the Lease Negotiations with the City. However, under no circumstances will any privileged or confidential information conveyed by the City to any member of the Firm at any time ever be disclosed to Central Management and ST Associates. In addition, under no circumstances will any attorney of the Firm who has within the last two years performed services for the City or is currently performing services for the City be involved whatsoever in the representation of Central Management and ST Associates in the Lease Negotiations. The Firm will establish an ethical wall to ensure that attorneys performing services for the City (or who have performed services for the City in the past two years) will have no contact whatsoever with attorneys in the firm representing Central Management and ST Associates with respect to the Lease Negotiations which may be adverse to the City.

If you are agreeable to our representation of Central Management and ST Associates in the Lease Negotiations, including any litigation related to the Lease Negotiations, we ask that you provide us with the City's informed written consent to such representation by signing a copy of this letter and returning it to me at your earliest opportunity. Please be advised that, as is the case with all conflict of interest waivers, we recommend that the City consult with independent counsel to review this letter prior to execution of it.



David J. Karlin, Esq.
January 30, 2017
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Certainly, should you have any questions whatsoever concerning this letter, the consent or our representation, please discuss them with me before signing and returning this letter.

Very truly yours,

Cecilia O. Miller,
of Procopio, Cory, Hargreaves & Savitch LLP

cc: Robin M. Madaffer, Esq.

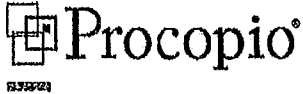
WAIVER AND CONSENT

The undersigned agrees to the foregoing and consents to the representation of Central Management and ST Associates by Procopio, Cory, Hargreaves & Savitch LLP in the Lease Negotiations, including any litigation that may arise out of such dispute, notwithstanding the current representation by Procopio, Cory, Hargreaves & Savitch LLP of the interests of the undersigned in matters unrelated to the subject matter of the dispute in which Procopio, Cory, Hargreaves & Savitch LLP proposes to represent Central Management and ST Associates.

Dated: 23 FEB 17

David Karlin, Esq., Chief Deputy City Attorney
City of San Diego

Scott Chadwick, Chief Operating Officer
City of San Diego



PROCOPIO
525 B Street,
Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

CECILIA O. MILLER
Partner
P. 619.525.3801
cecilia.miller@procopio.com

AUSTIN
DEL MAR HEIGHTS
PHOENIX
SAN DIEGO
SILICON VALLEY

February 28, 2017

VIA E-MAIL, FACSIMILE & U.S. MAIL

George Schaefer, Esq.
Assistant City Attorney
Civil Litigation Division
Office of the City Attorney, City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Email: gschaefer@sandiego.gov
Fax: (619)533-5856

Re: Request for Specific Waiver of Conflicts of Interest

Dear Mr. Schaefer:

As you know, Procopio, Cory, Hargreaves & Savitch LLP (the "Firm") currently represents the City of San Diego ("City") with respect to insurance coverage issues and insurance-related litigation including the De Anza litigations. In conjunction with that retention, the Firm requested and the City provided the following:

The undersigned agrees to the foregoing and consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of the clients listed on Exhibit A hereto and further consents to the representation by Procopio, Cory, Hargreaves & Savitch LLP of its clients, including, but not limited to, its charter school clients, in future matters involving planning, zoning, environmental review/mitigation, development, land use, code enforcement or CEQA issues, including litigation of such matters, adverse, or potentially adverse, to the City of San Diego. The undersigned further commits to cooperate in an effort to provide similar waivers to Procopio, Cory, Hargreaves & Savitch LLP in other matters under the conditions set out herein.

Correspondence dated May 15, 2013 from C. Miller to A. Jones.

procopio.com



George Schaefer, Esq.
February 28, 2017
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An existing client of the Firm, Orlon Construction Corporation ("Orlon Construction"), would like to retain the Firm in connection with providing legal advice and analysis relative to a dispute that has arisen with respect to a contract Orlon has with the City on a project known as "Otay Water Treatment Plant Concrete Work," Purchase Order No. 4500039157 (the "Otay Water Treatment Plant P.O."). The City and Orlon Construction may be adverse with respect to resolution of the dispute concerning the Otay Water Treatment Plant P.O.

Obviously, the Firm wishes to continue to represent the City's interests in matters unrelated to the matter in which we are being asked to undertake the representation of Orlon Construction; at the same time, we would like to represent Orlon Construction in the matter in which it has requested the Firm's representation. The matter in which Orlon Construction has requested the Firm's representation is not directly related to any work which we have done, or are doing, for the City.

The purpose of this letter is to notify you of the Firm's potential representation of Orlon Construction with respect to the Otay Water Treatment Plant P.O. and to request the City's waiver of the resulting conflict of interest should the Firm be so retained by Orlon Construction. As attorneys, we are governed by specific rules relating to our representation of clients when actual or potential conflicts of interest exist. In particular, absent the informed written consent of the clients, attorneys may not simultaneously represent clients whose interests conflict even where one matter is totally unrelated to the other. In addition, Rule 3-310 of the Rules of Professional Conduct of the State Bar of California provides, in relevant part, as follows:

"(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

....

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

....

(C) A member shall not, without the informed written consent of each client:

....

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter;

procopio.com



George Schaefer, Esq.
February 28, 2017
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....

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment...."

"Informed written consent" means the client's written agreement to the representation following written disclosure. "Disclosure" means informing the client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client.

The interests of Orlon Construction with respect to the Otay Water Treatment Plant P.O. will be in conflict with the interests of the City. If the City consents to the Firm's representation of Orlon Construction, the Firm will diligently and zealously represent the interests of Orlon Construction with respect to the dispute that has arisen as to the Otay Water Treatment Plant P.O. However, under no circumstances will any privileged or confidential information conveyed by the City to any member of the Firm at any time ever be disclosed to Orlon Construction. In addition, under no circumstances will any attorney of the Firm who has within the last two years performed services for the City or is currently performing services for the City be involved whatsoever in the representation of Orlon Construction with respect to the Otay Water Treatment Plant P.O.. The Firm will establish an ethical wall to ensure that attorneys performing services for the City (or who have performed services for the City in the past two years) will have no contact whatsoever with attorneys in the firm representing Orlon Construction with respect to the Otay Water Treatment Plant P.O. which may be adverse to the City.

If you are agreeable to our representation of Orlon Construction with respect to the Otay Water Treatment Plant P.O., including any litigation related to the Otay Water Treatment Plant P.O., we ask that you provide us with the City's informed written consent to such representation by signing a copy of this letter and returning it to me at your earliest opportunity. Please be advised that, as is the case with all conflict of interest waivers, we recommend that the City consult with independent counsel to review this letter prior to execution of it.



George Schaefer, Esq.
February 28, 2017
Page 4

Certainly, should you have any questions whatsoever concerning this letter, the consent or our representation, please discuss them with me before signing and returning this letter.

Very truly yours,

Cecilia O. Miller, of Procopio, Cory, Hargreaves & Savitch LLP

WAIVER AND CONSENT

The undersigned agrees to the foregoing and consents to the representation of Orion Construction Corporation by Procopio, Cory, Hargreaves & Savitch LLP with respect to the dispute that has arisen with respect to the Otay Water Treatment Plant P.O., including any litigation that may arise out of such dispute, notwithstanding the current representation by Procopio, Cory, Hargreaves & Savitch LLP of the interests of the undersigned in matters unrelated to the subject matter of the dispute in which Procopio, Cory, Hargreaves & Savitch LLP proposes to represent Orion Construction.

Dated: March 9, 2017

Approved as to Form

George Schaefer, Esq., Assistant City Attorney

City of San Diego

Dated: MAR 17

Scott Chadwick, Chief Operating Officer

City of San Diego

300 S. Grand Avenue, Suite 2700
Los Angeles, CA 90071-3187
Voice (213) 542-5700
Fax (213) 542-5710

COLANTUONO
HIGSMITH
WHATLEY, PC

Michael G. Colantuono
MColantuono@chwlaw.us
(530) 432-7857

December 18, 2015

VIA E-MAIL AND FIRST CLASS MAIL

City of San Diego
c/o Carmen Brock, Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101

Re: Consent to Simultaneous Representation of City of San Diego in
Lawsuits Referenced Below and of Other San Diego County Cities, the
San Diego Tourism Marketing District Corporation, the San Diego Local
Agency Formation Commission, the San Diego County Water Authority,
and the San Diego Unified Port District

Dear Carmen:

As we discussed, I write to propose a form of letter by which the City of San Diego ("you" or "the City") may provide the consents required by the Rules of Professional Conduct for Colantuono, Highsmith & Whatley, PC ("we," "us" or "the firm") to continue to represent the City in these lawsuits:

- *San Diegans for Open Government v. City of San Diego*, San Diego Superior Court (SDSC) Case No. 37-2013-00052721-CU-MC-CTL (SDOG BID case);
and
- *San Diegans for Open Government v. City of San Diego*, SDSC Case No. 37-2013-00062908-CU-MC-CTL (SDOG PBID / 57 MAD case).

As you also know, we represent the San Diego Tourism Marketing District Corporation, the non-profit operator of the City's Tourism Marketing District (TMD Corp.) in *San Diegans for Open Government v. City of San Diego, et al.*, San Diego County

Carmen Brock, Deputy City Attorney
City of San Diego
March 22, 2014
Page 2

Superior Court Case No. 37-2012-00088065-CU-MC-CTL (SDOG TMD case) and we are also advising the TMD Corporation regarding an initiative draft by Cory Briggs regarding the TMD assessment and other economic development and tourism industry issues. Although the TMD Corporation's interests are aligned with the City in that case, we have negotiated with the City on behalf of the TMD Corporation regarding the Operating Agreement by which the City contracts with the TMD Corporation to operate the TMD and these negotiations have also touched on indemnity issues. We cannot represent the City adversely to the TMD Corp. on those issues. Neither the City nor the TMD Corporation has yet taken a position on the Briggs initiative, but it is possible they may have differences regarding it in the future.

The City also has retained us with respect to *City of Chula Vista v. Tracy Sandoval, et al.*, Sacramento County Superior Court Case No. 34-2014-80001723 (the RPTTF case) in which we have sued San Diego County on behalf of the City and other San Diego County cities to challenge the County's calculation of Redevelopment Property Tax Trust Fund allocations on account of post-redevelopment pass-through payment obligations.

We provide support for the Port District on a range of public law questions, including those arising from a contract between the City and the Port for building official services, the application of City fees to developments in the Port and the authority of the Port vis-à-vis the City and the other cities within its boundaries. We serve as General Counsel to the San Diego Local Agency Formation Commission which has authority to approve annexations to the City, detachments from the City, and changes in the City's sphere of influence under the Cortese-Knox-Hertzberg Act. We also represent the San Diego County Water Authority with respect to its dispute with the Metropolitan Water District of Southern California.

The City has previously consented to our simultaneous representations of the City and our other clients with respect to the RPTTF, TMD, BIDs and MADS cases, but the Rules of Professional Conduct require its informed, written consent to these continuing relationships if we take on new matters for the City. Although we do not now propose to do so, we think it wise to update and consolidate our existing conflict

Carmen Brock, Deputy City Attorney
City of San Diego
March 22, 2014
Page 3

waivers and to ensure they address our work for the Port, LAFCO and the Water Authority.

Accordingly, by his signature below, Chief Operating Officer Scott Chadwick grants the City's consent to our simultaneous representation of the City and our other clients as described above and to waive any conflict of interest that may exist among these clients of our firm, accepting that any limitation on our ability to represent the City's interests adversely to our other clients is acceptable to the City in light of the efficiency, cost savings and other benefits to you of joint representation. The City agrees not to share with us any of its confidential information which pertains to matters in which it has adverse interests to our other clients and to look to your office or other independent counsel for any advice it may desire as to those issues.

Further, by Mr. Chadwick's signature, the City agrees that we may represent you in the these cases and represent our existing general and special counsel clients, and new clients, on matters unrelated to this case (including cities in other counties on the same or similar issues and counties other than San Diego on other issues) even if you have a legal conflict or other adversity with that other local government, such as a different position on a claim against an insurance risk pool, a boundary dispute, a commercial dispute or any other disagreement. You agree not to share with us any confidential information unrelated to this case which might impair our ability to represent our existing general and special counsel clients and other local governments in unrelated matters notwithstanding any legal conflict or other adversity between you and those other local governments.

~~You should read these conditions carefully and, if you are a City or other local government, you should consult with your own independent counsel before signing this letter agreement.~~

Please review the foregoing and, if it meets with your approval, have a copy of this letter executed on behalf of the City and returned to me by e-mail, fax or mail. If

Carmen Brock, Deputy City Attorney
City of San Diego
March 22, 2014
Page 4

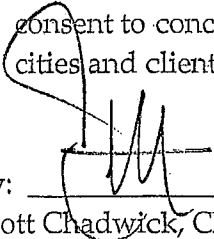
you have any questions, please feel free to call me at the direct-dial number above. We look forward to representing you. Thank you for the opportunity to do so!

Very truly yours,

Michael G. Colantuono

MGC:mgc
Enclosure

On behalf of the City of San Diego I hereby agree to waive conflicts of interest and to consent to concurrent and joint representation of the City of San Diego with other cities and clients as stated above.

By: 
Scott Chadwick, Chief Operating Officer
City of San Diego

WAIVER OF CONFLICT OF INTEREST

This agreement will be referred to as the "Waiver". The City of San Diego ("hereinafter "City") understands that Horton, Oberrecht, Kirkpatrick & Martha (hereinafter "the Horton Firm") has been retained to represent the interests of the City in a current litigation entitled Gaither Allen Rosser, IV vs. Santaluz Maintenance Association, et al., San Diego Superior Court, Case No. 37-2014-00021566-CU-PO-CTL.

The City understands and has been informed that a conflict of interest exists because the Horton Firm represents and has represented the interests of clients adverse to the City in current litigation and multiple past lawsuits. The Horton Firm has also represented clients who have been sued by the City and/or were adverse to the City. The City is informed California State Law requires that an attorney not disclose confidential communications or secrets of a client. The City is further informed that the Rules of Professional Conduct of the State Bar of California require the City's informed written consent before the Horton firm can represent them in the above-described matter. The Horton Firm has disclosed to the City that there is a conflict of interest by the current representation. After informed consent, the City elected and agreed to waive the conflict of interest to allow for the Horton Firm's representation of them in the above-described matter. By execution of this Waiver, the City expressly acknowledges they have been advised they may seek independent counsel and that they have elected to be represented by the Horton Firm for the purpose of representation described herein.

Therefore, the City expressly agrees to waive the conflict of interest which exists between the representation of the City by and through the Horton Firm. The City agrees and elects of their own free will after informed consent has been provided to be represented by the Horton Law Firm in the above-described lawsuit.

~~By executing this Waiver, the City acknowledges that the Horton Law Firm has advised the City they may seek independent counsel. The City elected to continue with the representation the Horton Firm to defend itself against and to represent them in the above-described lawsuit.~~

In addition to their conflict waiver in the above-described lawsuit, the City expressly agrees to waive conflicts in future cases wherein the Horton Firm may be adverse to the City and/or may be required to file cross-actions and/or claims against the City.

DFB
6/23/15

Date:

D.F. Bamberg
CITY OF SAN DIEGO

D. F. BAMBERG

Name of Person Signing

Donald F. Bamberg
Title Assistant City Attorney

CITY OF SAN DIEGO CASES (OPEN AS OF June 16, 2015)

Ricky Hasten-Golston, et al. vs. City of San Diego, et al.

IN APPEAL: D066846

Insured : LB One, LLC; Loc Nguyen Corp. dba Payless Property Management
Claimant : Ricky Hasten-Golston and Bryant Byrd, Jr.
Date of Loss : June 28, 2012
Jurisdiction : San Diego Superior Court, Central
Case No. : 37-2013-00038675-CU-PO-CTL
Our File No. : 01-22-3959

Chad Williams, et al. vs. Estate of Alan Hopkins, deceased, et al.

Insured : Nathan Russell Farris Woods
Claimant : Chad Williams, individually and on behalf of the Estate of Hugh
Owen Williams; Robert Williams; and Katelyn White
Date of Loss : January 26, 2014
Jurisdiction : San Diego Superior Court, North County
Case No. : 37-2014-00036872-CU-PO-NC
Our File No. : 01-22-4209



Sullivan Hill Lewin Rez & Engel
A Professional Law Corporation

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15th Floor
San Diego, CA 92101
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☎ 619.231.4372
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JOHN R. ENGEL
ENGEL@SULLIVANHILL.COM
d 619 595.3219

March 16, 2017

Ming K. Tom
Tom VIII Enterprises, L.P.
1524 Dorcas Street
San Diego, CA 92110

Walter C. Chung, Esq.
Senior Deputy Attorney
Office of the City Attorney
City of San Diego
1200 Third Avenue
San Diego, California 92101
wchung@sandiego.gov

Re: Sale of Land by Tom to City of San Diego

Gentlemen:

We write to obtain the informed, written consent of Ming Tom of Tom VIII Enterprises, L.P. ("Tom") and The City of San Diego (the "City") to our simultaneous representation of Tom and the City, and their waiver of any actual or potential conflicts of interest that could arise from such simultaneous representation as detailed herein.

Tom, its affiliates, and the City have been clients of this firm for many years. Tom has asked us to represent it in connection with the sale of real property to City consisting of approximately 80 acres of undeveloped land in the Rancho Penasquitos Community Plan and Black Mountain Road Subarea Plan area of San Diego, California (the "Sale Transaction"). We would only be representing Tom in the Sale Transaction. We are currently representing the City in litigation known as *Ganley v. The City of San Diego*; San Diego Superior Court Case No. 37-2016-00000261-CU-OE-CTL (the "Ganley Action"). The Ganley Action relates to alleged discrimination arising out particular benefits in the City's defined-benefit pension plan. We have previously represented the City in other litigation matters related to the Ganley Action.

The Ganley Action and the Sale Transaction are unrelated. We believe we can represent Tom in connection with the Sale Transaction while simultaneously representing the City in connection with the Ganley Action without comprising our duties of loyalty, competence, zealous advocacy, and confidentiality to Tom and the City. However, because we would be representing both the City and Tom while they were adverse to one another in connection with the Sale Transaction, there may be actual or potential conflicts of interest that could arise. We are ethically required to advise you of the relevant circumstances and the reasonably foreseeable adverse consequences and to obtain your informed written consent to our simultaneous representation of Tom and the City.

386120-v2

This situation is governed by California Rule of Professional Conduct 3-310 (Avoiding the Representation of Adverse Interests), which provides, in part, that a member shall not, without the informed written consent of each client

... accept representation of more than one client in a matter in which the interests of the clients potentially conflict. California Rule of Professional Conduct 3-310(C)(1).

... accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict. California Rule of Professional Conduct 3-310(C)(2).

... represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter. California Rule of Professional Conduct 3-310(C)(3).

... accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment. California Rule of Professional Conduct 3-310(E).

Based on our current knowledge, there is no indication that either of you will be or become adverse to the other in the matters described above (except for the fact that we will be representing only Tom, as seller in the Sale Transaction, and will not be representing the City, as buyer). But there are potential conflicts that could arise. For example, in the course of representing each of Tom and the City, we possess, and there is a risk that we might disclose or use Tom's or City's confidential information in a manner that could be detrimental to the other, despite our duty of confidentiality.

In order to protect your interests and comply with California Rule of Professional Conduct 3-310, we intend to represent Tom and the City under the following conditions:

1. We will not disclose to Tom or the City any confidential information of the other.
2. Anything we learn from Tom or the City that is not learned in confidence and that we believe the other needs to know in connection with our representation, we will tell the other. But if we learn something from Tom or the City that we do not believe is pertinent to our representation of the other or that the other does not need to know, we will not tell the other.
3. The attorneys and staff who work on the Sale Transaction on behalf of Tom will be different than the attorneys and staff who work on the Ganley Action on behalf of the City. If either or both clients so request, we will install a formal ethical wall preventing the attorneys and staff working on the matter from accessing the files and communicating with one another regarding the respective matters.

4. Tom and the City must both agree that we will have no duty to disclose or use any confidential information of one client for the benefit or detriment of the other. For example, if we learned from Tom confidential information regarding the Sale Transaction that could benefit the City, we would not disclose it to the City; the City could not ask us to disclose it; and we would not be a breach of our duties of loyalty, candor, or zealous advocacy to the City by not disclosing it.

5. In representing either of you in other unrelated matters, we will not take any action adverse or detrimental to the other.

6. Neither of you will seek our advice in the other's matter and each of you will be screened from access to the other's confidential information and files.

If there are any other conditions that you would like us to consider, please let us know.


We have tried to identify the potential conflicts and reasonably foreseeable adverse consequences that could arise from our simultaneous representation of each of you in the matters described, but there may be others. In part for this reason, we encourage you each to consult with independent counsel of your choice regarding this letter before signing the waiver and consent which follows. Independent counsel may identify other potential conflicts and reasonably foreseeable adverse consequences that we have not identified.

If you consent to our representation and acknowledge our ability to represent each of you under the circumstances and the conditions described above, please sign a duplicate of the waiver and consent which follows and return it to us. Please keep a duplicate for your records.

Thank you for giving this matter your attention. If you have any questions or comments, please do not hesitate to contact either of us.

Very truly yours,

SULLIVAN HILL LEWIN REZ & ENGEL
A Professional Law Corporation

By: 
John R. Engel

By: 
Robert P. Allenby

JRE/ddr

Ming K. Tom
The City of San Diego
March 16, 2017
Page 4

Waiver and Consent

The undersigned hereby agree as follows:

1. Sullivan Hill Lewin Rez & Engel ("Sullivan Hill") has informed us in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences arising from its representation of each of us in unrelated matters.
2. We have been given an opportunity to consult with independent counsel of our own choosing regarding the above letter and the wisdom and effect of executing this waiver and consent.
3. We waive the potential conflicts of interest and consent to Sullivan Hill's representation of each of us under the circumstances and subject to the conditions outlined in the above letter.

TOM VIII ENTERPRISES, L.P.

By: _____, 2017
Ming K. Tom, Sole Manager of Ming
Tom Enterprises, LLC, General Partner

THE CITY OF SAN DIEGO

By:  _____, 2017
Its CHIEF OPERATIVE OFFICER

(R-2013-562)
ITEM 110
4/30/13

RESOLUTION NUMBER R- 308136

DATE OF FINAL PASSAGE MAY 16 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AN AGREEMENT FOR LEGAL SERVICES WITH PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, FOR AN AMOUNT NOT TO EXCEED \$250,000; AUTHORIZING AND DIRECTING THE MAYOR TO SIGN THE AGREEMENT; AND AUTHORIZING THE CHIEF FINANCIAL OFFICER TO EXPEND SPECIFIED AMOUNTS UNDER THE AGREEMENT

WHEREAS, the City of San Diego ("City") is a named defendant in five related cases entitled: *Border Business Park, Inc. v. City of San Diego*, San Diego Superior Court Case No. 692794 ("Border III"); *National Enterprises, Inc. v. City of San Diego*, San Diego Superior Court Case No. 730011 ("National"); *Otay Acquisitions LLC v. City of San Diego*, San Diego Superior Court Case No. 753247 ("Otay Acquisition"); *Otay Truck Parking LP v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00095661-CU-EI-CTL ("Otay Truck"); and *Border Business Park, Inc. v. City of San Diego*, San Diego Superior Court Case No. 37-2011-00090494-CU-EI-CTL ("Border IV") (collectively, the "De La Fuente cases"); and

WHEREAS, the City was also a named defendant and counter-claimant in *Insurance Company of the State of Pennsylvania v. City of San Diego*, District Court Case No. 02-CV-0693 BEN (CAB) and a related appeal (collectively, the "ISOP cases"); and

WHEREAS, the ISOP cases involved the City's claims relating to insurance coverage and bad faith for the De La Fuente cases; and

WHEREAS, the law firm of Latham & Watkins LLP has represented the City in defending the De La Fuente cases since 2001; and

WHEREAS, Latham & Watkins also defended and prosecuted the *ISOP* cases on the City's behalf; and

WHEREAS, Cecilia O. Miller, Esq., was a member of the Latham & Watkins litigation team, and provided the City with insurance coverage analysis and representation related to the *De La Fuente* and *ISOP* cases since 2002; and

WHEREAS, Ms. Miller joined the law firm of Procopio, Cory, Hargreaves & Savitch LLP ("Procopio"), in November 2012; and

WHEREAS, the City desires to continue to utilize the services of Ms. Miller for insurance coverage analysis and representation related to the *De La Fuente* and *ISOP* cases; and

WHEREAS, Ms. Miller and Procopio possess the specialized knowledge and experience, beyond that available in the Office of the City Attorney, that is necessary in order to provide insurance coverage services to the City related to the *De La Fuente* and *ISOP* cases; and

WHEREAS, the agreement for legal services ("Agreement"), attached hereto as Attachment A, between the City and Procopio is for an amount not to exceed \$250,000, and shall run from the date the last party signs the Agreement, and it is approved by the City Attorney in accordance with San Diego Charter section 40, until the scope of services defined in the Agreement is complete, but not for a term exceeding five years unless an extension is approved by ordinance of the Council of the City of San Diego pursuant to San Diego Charter section 99; and;

WHEREAS, the funding for the Agreement shall be borne by Public Liability Fund 720045; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council approves the Agreement and authorizes and directs the Mayor or his designee to sign the Agreement for legal services with Procopio, Cory, Hargreaves & Savitch LLP, attached hereto as Attachment A and which is on file with the Office of the City Clerk as Document No. RR-

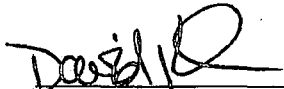
308136

BE IT FURTHER RESOLVED, that Chief Financial Officer is authorized to expend an amount up to \$250,000 for the Agreement with Procopio, Cory, Hargreaves & Savitch LLP

BE IT FURTHER RESOLVED, that the actions authorized here are contingent upon the Chief Financial Officer first furnishing one or more certificates stating that funds necessary for the authorized expenditures are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

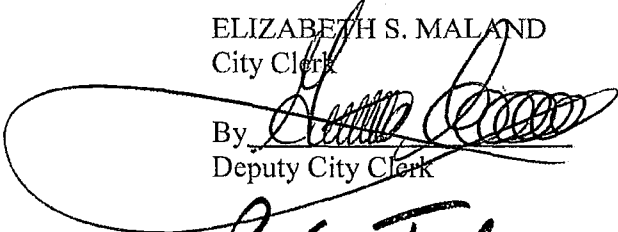


David J. Karlin
Deputy City Attorney

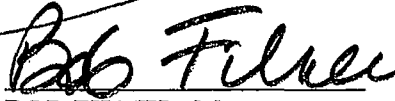
DJK:lla
March 18, 2013
Or.Dept: City Atty.
Doc. No. 532575

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 30 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/16/13
(date)


BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

(R-2013-559)
ITEM 102
4/30/13

RESOLUTION NUMBER R- 308127

DATE OF FINAL PASSAGE MAY 16 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AN AGREEMENT FOR LEGAL SERVICES WITH PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, FOR AN AMOUNT NOT TO EXCEED \$250,000; AUTHORIZING AND DIRECTING THE MAYOR TO SIGN THE AGREEMENT; AND AUTHORIZING THE CHIEF FINANCIAL OFFICER TO EXPEND SPECIFIED AMOUNTS UNDER THE AGREEMENT

WHEREAS, the City of San Diego ("City") is a named defendant in three cases related to a mobilehome park in Mission Bay entitled: *De Anza Cove Homeowners Association, et al. v. City of San Diego*, San Diego Superior Court Case No. GIC 821191 ("De Anza"); *Aglio, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00081994-CU-EI-CTL ("Aglio"); and *Scottsdale Insurance Co. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00093941-CU-IC-CTL ("Scottsdale"); and

WHEREAS, the City retained the law firm of Latham & Watkins LLP to represent the City in defense of *Scottsdale* case; and

WHEREAS, the City also retained Latham & Watkins to pursue excess insurance coverage claim with the California State Association of Counties ("CSAC"); and

WHEREAS, Cecilia O. Miller, Esq., was a member of the Latham & Watkins litigation team, and provided the City with insurance coverage analysis and representation related to the *De Anza*, *Aglio* and *Scottsdale* cases, and the CSAC claim; and

WHEREAS, Ms. Miller joined the law firm of Procopio, Cory, Hargreaves & Savitch LLP ("Procopio"), in November 2012; and

WHEREAS, the City desires to continue to utilize the services of Ms. Miller for insurance coverage analysis and representation related to the *De Anza, Aglio* and *Scottsdale* cases, and the CSAC claim; and

WHEREAS, Ms. Miller and Procopio possess the specialized knowledge and experience, beyond that available in the Office of the City Attorney, that is necessary in order to provide insurance coverage services to the City related to the *De Anza, Aglio* and *Scottsdale* cases, and the CSAC claim; and

WHEREAS, the agreement for legal services (“Agreement”), attached hereto as Attachment A, between the City and Procopio is for an amount not to exceed \$250,000, and shall run from the date the last party signs the Agreement, and it is approved by the City Attorney in accordance with San Diego Charter section 40, until the scope of services defined in the Agreement is complete, but not for a term exceeding five years unless an extension is approved by ordinance of the Council of the City of San Diego pursuant to San Diego Charter section 99; and;

WHEREAS, the funding for the Agreement shall be borne by Public Liability Fund 720045; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council approves the Agreement and authorizes and directs the Mayor or his designee to sign the Agreement for legal services with Procopio, Cory, Hargreaves & Savitch LLP, attached hereto as Attachment A and which is on file with the Office of the City Clerk as Document No. RR-

308127

BE IT FURTHER RESOLVED, that Chief Financial Officer is authorized to expend an amount up to \$250,000 for the Agreement with Procopio, Cory, Hargreaves & Savitch LLP

BE IT FURTHER RESOLVED, that the actions authorized here are contingent upon the Chief Financial Officer first furnishing one or more certificates stating that funds necessary for the authorized expenditures are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By David R. Riley
John E. Riley
Deputy City Attorney

JER:jep
March 27, 2013
Or.Dept: City Atty.
Doc. No. 537811

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 30 2013.

ELIZABETH S. MALAND
City Clerk

[Signature]
By
Deputy City Clerk

Approved: 5/10/13
(date)

Bob Filner
BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

- I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

- I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 20____, at _____, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DONNA FRYE

Type or Print Name

Donna Frye

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.
I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20____, I served the foregoing document described as _____

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

- BY MAIL
I deposited such envelope in the mail at _____, California.
The envelope was mailed with postage thereon fully prepaid.
As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- Executed on _____, 20____, at _____, California.
(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
Executed on _____, 20____, at _____, California.
(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
(Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG
FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER

PROOF OF SERVICE

1. My name is Ruth Flores. I am over the age of eighteen. I am employed in the State of California, County of San Benardino.

2. My business residence address is Briggs Law Corporation, 99 East "C" Street, Suite 111, Upland, CA 91786.

3. On February 8, 2019, I served an original copy a true and correct copy of the following documents: Verified First Amended Complaint for Declaratory and Injunctive Relief and Petition For Writ of Mandate under the California Public Records Act, The California Constitution, And Other Laws.

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

by personal service. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

by U.S. mail. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of Upland, California.

by overnight delivery. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

by facsimile transmission. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

by e-mail delivery. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of the State of California that the foregoing is true and correct.

Date: February 8, 2019

Signature: Ruth Flores

1 **SERVICE LIST**

2 *Donna Frye v. City of San Diego et al.*
3 San Diego County Superior Court Case No. 37-2017-00041323-CU-MC-CTL

4 Mara W. Elliott
5 George F. Schaefer
6 Catherine A. Richardson
7 Office of the City Attorney
8 1200 Third Avenue, Suite 1100
9 San Diego, California 92101-4100
10 Telephone: (619) 533-5800
11 Facsimile: (619) 533-5856
12 cityattorney@sandiego.gov
13 gschaefer@sandiego.gov
14 crichardson@sandiego.gov

*Attorneys for Defendant and
Respondent City of San Diego*

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