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COUNTY COUNSEL
MARTINEZ, CALIF.

January 9, 2014

Sharon Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, CA 94553

Scott Hanin, City Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Re: Joint Representation and Potential Conflict of Interest – Ohlone Gardens

Dear Ms. Anderson and Mr. Hanin:

We are writing this letter in response to your request that Goldfarb & Lipman LLP ("Goldfarb & Lipman") jointly represent the County of Contra Costa (the "County") and the City of El Cerrito (the "City") in connection with City and County financing to be provided to a limited partnership affiliate of Resources for Community Development for the development of an affordable housing project in the City of El Cerrito.

The primary purpose of this letter is to request your acknowledgment of and consent to the potential conflict of interest that arises from Goldfarb & Lipman's joint representation of the County and the City in this transaction. Isabel Brown is the attorney working with the County, and Karen Tiedemann is the attorney working with the City. Although different Goldfarb & Lipman attorneys represent the County and the City in the transaction, such representation is still considered joint representation.

The following is a summary of the transaction and the factors to be considered.

I. Background

The El Cerrito Redevelopment Agency (the "Agency") previously provided an acquisition and predevelopment loan of Three Million Five Hundred Thousand Dollars (\$3,500,000) (the "Agency/City Loan") to Ohlone Gardens, L.P. (the "Developer") to fund the acquisition of the real property located at 6431 and 6495 Portola Drive in the City of El Cerrito (the "Property") and the construction on the Property of a 57-unit affordable housing project (the "Development"). The Agency/City Loan is evidenced by an Amended and Restated Predevelopment, Acquisition, and Construction Loan Agreement between the Agency and the Developer, dated June 24, 2009 (the "Original Loan Agreement"). The Original Loan Agreement was amended on March 7, 2011 by a First Amendment to revise certain terms of the financing and schedule. The Original Loan Agreement was amended on April 18, 2012 by a Second Amendment to revise certain terms of the financing and schedule and to recognize the City as the Successor Housing Agency to the Agency pursuant to California Health and Safety Code Section

Facsimile

510 836-1035

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415 788-6336

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213 627-6336

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Goldfarb & Lipman LLP

34176(a) for the purposes of the Agency/City Loan. The Agency/City Loan is also evidenced by a Regulatory Agreement and Declaration of Restrictive Covenants, and a Deed of Trust and Security Agreement (the "City Deed of Trust"), both recorded against the Property on July 1, 2009. The Agency/City Loan has a term of fifty-five (55) years.

The City has separately provided the Developer a loan of State of California, Department of Housing and Community Development Proposition 1C Infill Infrastructure Funds in the amount of Two Million Eight Hundred Sixty Thousand Dollars (\$2,860,000) (the "Infill Loan"). The Infill Loan is evidenced by a Deed of Trust and a Security Agreement recorded against the Property on June 20, 2013. The Infill Loan has a term of fifty-five (55) years.

The County intends to provide the Developer a loan of One Million Four Hundred Forty Thousand Dollars (\$1,440,000) of Home Investment Partnerships Act ("HOME") funds and Seven Hundred Fifty Thousand Dollars (\$750,000) of Housing Opportunities for Persons with AIDS Program ("HOPWA") funds for a total loan amount of Two Million One Hundred Ninety Thousand Dollars (\$2,190,000) (the "County Loan"). The County Loan will be evidenced by a Regulatory Agreement and Declaration of Restrictive Covenants and a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (the "County Deed of Trust") to be recorded against the Property. The County Loan will have a term of fifty-five (55) years.

Both the Agency/City Loan and County Loan will be repayable from excess cash flow from the Development. The City and the County will enter into an Intercreditor Agreement that will set out their agreement as to the sharing of Development cash flow for the repayment of the Agency/City Loan and the County Loan, in proportion to the amount of the Agency/City Loan and the County Loan.

The Intercreditor Agreement will also set forth the City and County agreement as to the co-equal lien position of the City Deed of Trust and County Deed of Trust and the process for addressing foreclosure of the deeds of trust. The City and the County will also enter into a subordination agreement under which the Infill Loan will be subordinated to the County Loan.

II. Rules of Professional Conduct

As attorneys, we are governed by specific rules relating to joint representation of clients when we are representing more than one party in a transaction. According to the Rules 3-310(A), (B), (C), and (E) of the Rules of Professional Conduct of the State Bar of California, we must disclose certain information, and obtain the written consent of the County and the City in order to represent both clients.

III. Joint Representation

As discussed above, the County's and the City's consents are being requested because of the potential conflict of interest which may arise due to Goldfarb & Lipman's existing relationships with the County and the City, and the joint representation of each of you in the Development.

A. Existing Relationships

The County is an existing client. We represent the County on numerous housing loan transactions throughout the County.

The City is also an existing client. We represent the City in redevelopment and affordable housing matters.

The existing relationships that Goldfarb & Lipman have with each of you could create a potential conflict of interest as discussed below.

B. Consequences of Joint Representation

As you are aware, the interests and objectives of each of you on certain issues related to the Development are, or may become inconsistent with one another. Therefore, it is important that you thorough understand the consequences of joint representation.

In representing both of you in this Development, Goldfarb & Lipman will strive to provide legal services which are equally beneficially to both the County and the City. In other words, rather than vigorously asserting each of your respective interest in the Development, we will strive to reach agreements on matters that are mutually beneficially to both clients.

At this point, we feel that we can competently represent both the County and the City. There are, however, some consequences of joint representation that the County and the City should consider, and for which the advice of independent legal counsel should be sought.

1. No Secrets. First, Goldfarb & Lipman cannot maintain any secrets between the County and the City in connection with the Development. In other words, anything disclosed by the County and the City to Goldfarb & Lipman that is relevant to the representation must be disclosed to the other party. Therefore, if one party does not wish something relevant disclosed to the other party, then that party should not disclose it to us.

Additionally, in fulfilling our obligations to provide competent legal services, we may have to disclose to each party any information that we have obtained from any party in this transaction or any other transactions which may be relevant or material to this joint representation. Notwithstanding the foregoing, we would be required to obtain your prior written consent before we could make any such disclosures. At this point, we are unaware of any information that would require such disclosure.

2. Adverse Interest. Second, if any actual adverse interest develops between the County and the City, then we will have to determine whether we can continue our representation. If we decide that the interests are too divergent and that we can no longer provide competent legal representation to both of the respective interests, then we will have to withdraw from representing either party in connection with the Development.

3. Attorney-Client Privilege. Finally, with joint representation, the County and the City waive the attorney-client privilege between themselves in connection with this Development. This means that in the event of litigation between the County and the City in connection with the Development, Goldfarb & Lipman could be compelled to testify against a party. Both parties would, however, maintain the attorney-client privilege against third parties who might sue them.

IV. Consents

You should thoroughly review and consider the matters discussed in this letter, and perhaps seek independent counsel before providing your consent. If, after such review, each of you consents to Goldfarb & Lipman representing the County and the City in the manner outlined above, please sign and return the attached consent form acknowledging that you have been advised of (i) Goldfarb & Lipman's past and continuing relationships with the County and the City, (ii) the potential conflict of interest that Goldfarb & Lipman may have in its joint representation of the County and the City in connection with the Development, and (iii) the consequences of such joint representation; and that you nevertheless, want to consent to our joint representation of the County and the City in connection with the Development.

If you have any questions regarding this letter, please call before signing and returning the enclosed copy of this letter.

Sincerely,



ISABEL BROWN



KAREN M. TIEDEMANN

CONSENT

Goldfarb & Lipman LLP ("Goldfarb & Lipman") has apprised the County and the City of: (i) Goldfarb & Lipman's past and continuing relationships with the County and the City; (ii) the potential conflict of interest that Goldfarb & Lipman may have in its joint representation of the County and the City in connection with the Development; and (iii) the consequences of such joint representation. The undersigned nevertheless consent to Goldfarb & Lipman's joint representation of the County and the City in the Development.

We understand that we have the right to seek independent counsel before signing this consent or at any future time.

Dated: _____

CONTRA COSTA COUNTY, a political
subdivision of the State of California

By: _____

Its: _____

Dated: _____

CITY OF EL CERRITO, a municipal corporation

By: _____

Its: _____