

RESOLUTION NO. 2024-119

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA CONSENTING TO WAIVE POTENTIAL CONFLICT OF INTEREST IN CONNECTION WITH GOLDFARB & LIPMAN LLP'S REPRESENTATION OF INTERIM, INC. RELATED TO CONSTRUCTION OF THE MARINA KAI PROJECT IN THE CITY OF MARINA, AND AUTHORIZING CITY ATTORNEY TO EXECUTE SUCH CONSENT.

WHEREAS, the City of Marina is an existing client of Goldfarb & Lipman; and

WHEREAS, the Developer is an existing client of Goldfarb & Lipman; and

WHEREAS, Goldfarb & Lipman is requesting consents of both the City and the Developer for Goldfarb & Lipman to represent the Developer in connection with the construction of a 23-unit permanent supportive housing facility known as Marina Kai in the City of Marina, California (the "Project"). Specifically, Goldfarb & Lipman intends to represent the Developer in connection with the construction and development of the Project, as more specifically described in its request set forth in **Exhibit A** (the "Transaction").; and

WHEREAS, at this time, the Transaction is expected to include a density bonus agreement between the Developer and the City, but no City financial assistance is anticipated in the Transaction. Goldfarb & Lipman will not be representing the City in this Transaction or any associated density bonus agreement, as the City has its own counsel; and

WHEREAS, In accordance with Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 of the Rules of Professional Conduct of the State Bar of California, Goldfarb & Lipman must disclose certain information, and obtain the informed written consents of the City and Developer in order for Goldfarb & Lipman to represent Developer in connection with the Transaction as described above when a potential conflict of interest exists; and

WHEREAS, Goldfarb & Lipman sets forth in **Exhibit A** that should an actual conflict of interest arise related to the Transaction, it would need to obtain the informed written consent of the City and Developer for such actual conflict of interest; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Adopt Resolution No. 2024- , consenting to waiver of potential conflict of interest in connection with Goldfarb & Lipman LLP's representation of Interim, Inc. ("Developer") related to the construction of the Marina Kai development in the City of Marina, and
2. Authorizing City Attorney to execute a consent to waive such potential conflict of interest.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 6th day of November 2024 by the following vote:

AYES, COUNCIL MEMBERS: McAdams, McCarthy, Biala, Visscher, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**goldfarb
lipman
attorneys**

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Goldfarb & Lipman LLP

October 28, 2024

via email

Mr. René A. Ortega
City Attorney
City of Marina
c/o Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Dr. Rhiyan Quiton
Executive Director
Interim, Inc.
604 Pearl St.
Monterey, CA 93940

Re: Consents to Potential Conflict of Interest – Representing Interim, Inc. regarding Marina Kai in the City of Marina

Dear Mr. Ortega and Mr. Quiton:

We write this letter to disclose our representation of the City of Marina (the "City") and of Interim, Inc. (the "Developer") (collectively, the "Parties") and to request the consents of the City and the Developer for Goldfarb & Lipman LLP to represent the Developer in connection with the construction of a 23 unit permanent supportive housing facility known as Marina Kai, to be located on a portion of the site of the Shelter Cove transitional housing facility that Interim, Inc. currently owns and operates in the City of Marina, California (the "Project"). Specifically, Goldfarb & Lipman will represent the Developer in connection with the construction and development of the Project, including reviewing loan and grant agreements and other financial documents including from the California Department of Housing and Community Development and the Central California Alliance For Health, reviewing regulatory agreements and affordability restrictions, advising regarding construction contract negotiation, and providing real estate advice in connection with the Project (the "Transaction"). At this time, the Transaction is expected to include a density bonus agreement between the Developer and the City, but no City financial assistance is anticipated in the Transaction. Goldfarb & Lipman will not be representing the City in this Transaction, as the City has its own counsel.

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The specific purpose of this letter is to advise you of a potential conflict of interest of Goldfarb & Lipman due to the existing and continued relationships that Goldfarb & Lipman has separately with each of you, and the proposed representation of the Developer in the Transaction as described below. To undertake this representation, we are required to (1) disclose in writing our existing relationship with each of you, and (2) obtain the informed written consent of each of you to such potential conflict of interest, as described in this letter. We believe that we will be able to provide competent and diligent representation to the Developer in this matter.

I. Existing Relationships.

The City is an existing client of Goldfarb & Lipman. We have and continue to represent the City in connection with land use and development matters related to the former Fort Ord as well as affordable housing and community development transactions.

In addition, the Developer is an existing client of Goldfarb & Lipman. We have and continue to represent the Developer in connection with affordable housing projects throughout the Monterey County area. Currently, we are representing the Developer in connection with Sun Rose Apartments located in Salinas, California.

II. Potential Conflict of Interest.

While we are unaware of any current conflict of interest created by our existing relationships described in Section I above in connection with the Transaction, as attorneys, we are governed by specific rules relating to our representation of clients when potential conflicts of interest exist. We must disclose certain information, and obtain the informed written consents of each of you to represent the Developer in connection with the Transaction as described in this letter, in accordance with Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 of the Rules of Professional Conduct of the State Bar of California (the "CRPC").

Our representation of the Developer in connection with the Transaction could potentially create a conflict of interest for Goldfarb & Lipman if a dispute occurred between the Developer and the City with regard to entitlements including the anticipated density bonus agreement, or other City matters related to the Project. If information that we have regarding the City becomes relevant in the Transaction, a conflict of interest could arise because we would be unable to disclose such information to the Developer due to our duties of loyalty and confidentiality to the City.

At this time, we do not believe that there is an actual conflict of interest for Goldfarb & Lipman, and we believe that we can competently represent the Developer in this Transaction and still maintain our independent judgement and duty of loyalty to each of you in unrelated matters. In addition, we do not believe that we have obtained any confidential information from the City which is material to our proposed representation of Developer in the Transaction, or from the Developer that is material to our continued representation of the City in unrelated matters.

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However, if an actual conflict should arise related to the Transaction in which: (i) the interest of the City is now adverse to the interest of Developer, that would affect our independent judgment and our duty of loyalty to each of you in the unrelated matters; (ii) the issue of dispute in this Transaction is substantially related to the same issue in which we have represented either of you in other matters; or (iii) we have obtained any confidential information from Developer that is material to our representation of the City, or any confidential information from the City that is material to our representation of Developer, we would need to determine if we could continue to represent the Developer in the Transaction. In reaching our decision, we would first need to determine if we could competently continue such representation, notwithstanding the adversity, and after such determination, we would further need to obtain the informed written consent of each of you.

III. Informed Written Consent

You should thoroughly review and consider the matters discussed in this letter, and consider seeking independent counsel before providing your consent. If, after such review, each of you consents to Goldfarb & Lipman representing the Developer in the manner outlined above, please sign and return the attached consent form (i) acknowledging that you have been advised of Goldfarb & Lipman's past and continuing relationships with each of you; (ii) acknowledging that you have been advised to Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 and the potential conflict of interest associated with our representation of the Developer in the Transaction; and (iii) that you nevertheless consent to our representation of the Developer in connection with the Transaction.

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

Sincerely,



KAREN M. TIEDEMANN



BEN FUNK

CONSENT

Goldfarb & Lipman has explained to each of you: (i) Goldfarb & Lipman's past and continuing relationships with each of you, and (ii) CRPC Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 and the potential conflict of interest in relation to Goldfarb & Lipman's proposed representation of the Developer in the Transaction and the possible consequences of this conflict. Each of the undersigned nevertheless consents to representation by Goldfarb & Lipman of the Developer in the Transaction and gives approval to such representation as described in this letter.

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

Dated: _____

CITY OF MARINA

By: _____

Name: _____

Its: _____

Dated: _____

INTERIM, INC.

By: _____

Name: Rhiyan Quiton

Its: Executive Director

November 1, 2024

Item No. **10f(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of November 6, 2024

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2024-,
CONSENTING TO WAIVER OF POTENTIAL CONFLICT OF
INTEREST IN CONNECTION WITH GOLDFARB & LIPMAN LLP'S
REPRESENTATION OF INTERIM, INC. RELATED TO THE
CONSTRUCTION OF THE MARINA KAI PROJECT IN THE CITY OF
MARINA, AND AUTHORIZING CITY ATTORNEY TO EXECUTE
SUCH CONSENT.**

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt Resolution No. 2024- , consenting to waiver of potential conflict of interest in connection with Goldfarb & Lipman LLP's representation of Interim, Inc. ("Developer") related to the construction of the Marina Kai development in the City of Marina, and
2. Authorizing City Attorney to execute a consent to waive such potential conflict of interest.

BACKGROUND:

The City of Marina is an existing client of Goldfarb & Lipman. The firm has and will continue to represent the City in connection with land use and development matters related to the former Fort Ord as well as affordable housing and community development transactions.

In addition, the Developer is an existing client of Goldfarb & Lipman. The firm has and will continue to represent the Developer in connection with affordable housing projects throughout the Monterey County area. Currently, Goldfarb & Lipman is representing the Developer in connection with Sun Rose Apartments located in Salinas, California.

Goldfab & Lipman is requesting consents of both the City and the Developer for Goldfarb & Lipman to represent the Developer in connection with the construction of a 23-unit permanent supportive housing facility known as Marina Kai in the City of Marina, California (the "Project"). Specifically, Goldfarb & Lipman intends to represent the Developer in connection with the construction and development of the Project, including reviewing loan and grant agreements and other financial documents including from the California Department of Housing and Community Development and the Central California Alliance For Health, reviewing regulatory agreements and affordability restrictions, advising regarding construction contract negotiation, and providing real estate advice in connection with the Project (the "Transaction"). At this time, the Transaction is expected to include a density bonus agreement between the Developer and the City, but no City financial assistance is anticipated in the Transaction. Goldfarb & Lipman will not be representing the City in this Transaction or any associated density bonus agreement, as the City has its own counsel.

The request is attached as **EXHIBIT A.**

ANALYSIS:

In accordance with Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 of the Rules of Professional Conduct of the State Bar of California, Goldfarb & Lipman must disclose certain information, and obtain the informed written consents of the City and Developer in order for Goldfarb & Lipman to represent Developer in connection with the Transaction as described above when a potential conflict of interest exists.

Goldfarb & Lipman sets forth in **EXHIBIT A** that should an actual conflict of interest arise related to the Transaction in which the following occur: (1) the interest of the City becomes adverse to the interest of Developer, that would affect Goldfarb & Lipman's independent judgment and their duty of loyalty to the City and Developer in the unrelated matters; (2) the issue of dispute in the Transaction is substantially related to the same issue in which Goldfarb & Lipman has represented the City or Developer in other matters; or (3) Goldfarb and Lipman has obtained any confidential information from Developer that is material to its representation of the City, or any confidential information from the City that is material to its representation of Developer, it will need to evaluate whether it could continue to represent the Developer in the Transaction. In such an event, it would need to obtain the informed written consent of the City and Developer for such actual conflict of interest.

CONCLUSION:

This request is submitted for City Council consideration and action.

FISCAL IMPACT:

None

Respectfully submitted,

René Alejandro Ortega
City Attorney
City of Marina