

October 27, 2023

Via Email

George Rodericks
City Manager
Town of Atherton
80 Fair Oaks Lane
Atherton, CA 94027

RE: Conflict of Interest Waiver – David Arata

Dear George:

As described in our email correspondence and phone discussion, David Arata has asked Burke, Williams & Sorensen, LLP (“BWS”), specifically Eric Phillips, to represent Mr. Arata in connection with the property located at 23 Oakwood Boulevard (the “Oakwood Property Matter”) in the Town of Atherton (“Town”).

The Oakwood Property Matter would involve reviewing and commenting on the Town’s draft housing element and objective development standards in an effort to facilitate the Town’s adoption of such documents in a manner that satisfies state requirements while preserving flexibility for future housing development on the property. As you know, I and other BWS attorneys represent the Town in connection with unrelated labor and employment and general municipal law matters (collectively, the “Town Matters”).

In order for BWS to represent Mr. Arata in the Oakwood Property Matter, and at the same time represent the Town in the Town Matters and other potential, similar future matters, both Mr. Arata and the Town must waive any potential or existing conflicts of interest. Mr. Arata has agreed to execute a waiver regarding these matters.

The California Rules of Professional Conduct, which regulate the conduct of members of the State Bar, provide specific guidance as to actual and potential conflicts of interest. California Rules of Professional Conduct Rule 1.7 governs the conduct of

October 27, 2023

Page 2

member of the California State Bar regarding conflicts of interest. Rule 1.7 prohibits attorneys “without informed written consent” to represent a client:

- a. “if the representation is directly adverse to another client in the same or a separate matter” or
- b. “if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client, a former client or a third person, or by the lawyer’s own interests.”

The Rule further provides:

- c. “Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:
 - (1) “the lawyer has, or knows that another lawyer in the lawyer’s firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter”
- d. “Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
 - (1) “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) “the representation is not prohibited by law; and
 - (3) “the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.”

Under Rule 1.7, representation is permitted if both clients provide informed written consent by executing a written conflict of interest waiver and: (1) the firm reasonably believes that it will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by the firm in the same litigation.

October 27, 2023

Page 3

BWS reasonably believes (1) that it will be able to provide competent and diligent representation to Mr. Arata and to the Town in the separate matters; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by BWS in the same litigation. Accordingly, if Mr. Arata and the Town execute written waivers, the representation of Mr. Arata in the Oakwood Property Matter is permissible.

In this type of potential conflict where we are representing two current clients on unrelated matters, we acknowledge that there may be a perception that client information might be shared among attorneys representing such clients, or that we may favor one client over another. We assure you that we adhere to our California statutory obligation to maintain inviolate the Town's confidential information. In connection with the above, the Town should also know that information relating to our representation of any and all clients is protected as required by Business and Professions Code Section 6068(e). We also will make every effort to treat Mr. Arata and the Town equally without favoring either one over the other to any party's disadvantage.

You may waive the conflict of interest arising from our firm's representation of Mr. Arata on the Oakwood Property Matter by signing this letter where indicated below and returning it to me via email. We request that the Town provide informed written consent of the following:

- The potential exists that the Town's interests may become adverse to Mr. Arata's interests in the Oakwood Property Matter, and, in the event of any litigation or arbitration proceedings between the Town and Mr. Arata, BWS would not represent either the Town or Mr. Arata in connection with such proceedings; and
- The Town agrees that BWS may continue to represent Mr. Arata in connection with other unrelated matters in the event that any conflict develops between the Town and Mr. Arata in connection with the Oakwood Property Matter.

If the Town agrees to this conflict waiver request, please sign and return an electronic pdf copy of this letter to me at the email address above. Please note that this letter may be disclosed at the discretion of BWS in connection with any judicial, administrative, or regulatory matter in which the potential conflict becomes relevant.

October 27, 2023

Page 4

If you have any questions or wish to discuss the contents of this letter further, please contact me at (202) 262-1961. We greatly value the firm's relationship with the Town, and appreciate your consideration of this request. Thank you very much.

Sincerely,

BURKE, WILLIAMS & SORESENSEN, LLP

Mark Wilson

On behalf of the Town of Atherton, I am authorized and hereby waive the conflict arising from BWS' representation of David Arata as described above.

The Town of Atherton

By: _____

Name: _____

Title: _____

Date: _____, 2023