

## Exhibit A

### **Summary of Investigation Regarding Conflict of Interest Allegations** **Prepared by Celia W. Lee, Goldfarb & Lipman LLP**

#### Background of Investigation

The City of Cupertino engaged the law firm of Goldfarb & Lipman LLP to investigate whether there were any violations of conflict-of-interest laws in the sale of the two-person household, moderate-income Below Market Rate unit at 20500 Town Center Lane, Unit 262 ("BMR Unit") to Michelle Ma (referred to at times as "Purchaser Ma"), who was an employee of West Valley Community Services ("WVCS") at the time of the sale. WVCS, a non-profit organization of approximately 18 employees, administers the BMR Program for the City of Cupertino in addition to providing other social services in the community. This summary provides an overview of Goldfarb & Lipman LLP's findings and conclusions from the investigation.

The investigation involved interviews of witnesses, observation of the office surroundings at WVCS, and review of a substantial number of documents obtained from various sources, including WVCS, the City, and applicant Kimberly Sandstrom ("Sandstrom"). Documents reviewed include WVCS files pertaining to the formation of the 2015-2016 BMR waiting list via random lottery pursuant to the BMR Manual, records of contacts with potential applicants, and application files for Purchaser Ma and Sandstrom, including income eligibility documentation. The investigation also involved review and analysis of the law pertaining to Government Code section 1090, which prohibits public officials and employees from being financially interested in "any contract made by them in their official capacity or by any body or board of which they are members," and the Political Reform Act, which disqualifies public officials from participating in government decisions in which they have a financial interest.

#### Findings

The investigation revealed that the methodology employed by WVCS and its Housing Program Manager, Christine Nguyen, to create the annual waiting list for BMR ownership units comported with the procedures set forth in the BMR Manual. As part of our investigation, we reviewed the step-by-step process employed by WVCS, as set forth in Sections 2.3 and 2.3.1 of the BMR Manual. The 2015-2016 waiting list of 49 people, comprised of applicants of varying household sizes and income levels, was created by a random lottery. Sandstrom, Purchaser Ma, and other persons who had submitted an Eligibility Form in October 2015 and were deemed eligible to be on the waiting list based

on stated income were assigned priority points according to whether they lived or worked in Cupertino. Within each priority grouping, eligible applicants received a place on the waiting list by random drawing. Sandstrom, who had three priority points, was number 12 on the waiting list. Purchaser Ma had two priority points and was number 23 on the waiting list. While Ma was eleven places down from Sandstrom on the waiting list, Ma was the next person in line after Sandstrom who applied as a household of two persons at a moderate income level. Everyone else between Sandstrom and Ma on the waiting list either was not a household of two persons and/or was not at a moderate income level.

The BMR Unit's owner/seller notified the City and WVCS on January 20, 2016 that she wished to sell the unit, and that she needed to close by March 4, 2016 as a new home purchase out of state was contingent on the sale of the BMR Unit. However, due to her obligation to remedy some building code violations for work she had illegally performed on the unit, it was not available for sale until February 9. Starting on January 20, Nguyen contacted potential applicants for the BMR Unit. As of the time that the unit became available, Sandstrom was the primary applicant, as she was the person highest on the waiting list with a household of two persons at a moderate income level. Purchaser Ma was the first backup applicant, and another individual was the second backup.

Sandstrom (with a family member as the second household member) completed an application for the unit, but upon review and evaluation of her income documentation, WVCS determined that her income exceeded the maximum for that BMR Unit. Thus, she was deemed ineligible to purchase the BMR Unit. Purchaser Ma, as the first backup from the waiting list, also completed an application for the unit, with her adult family member as the second household member. WVCS reviewed Ma and her adult family member's income documentation and concluded their household income fell within the appropriate limit. WVCS approved their purchase of the BMR Unit, and the sale closed on March 29, 2016.

After the City received documentation during Sandstrom's appeal process alleging conflict of interest violations, Goldfarb & Lipman LLP independently reviewed all income eligibility documentation and calculations for both Sandstrom and Purchaser Ma, and concluded that (1) Sandstrom's income exceeded the limits and (2) Ma and her adult family member's income was within the income limits, and they qualified for the unit.

Purchaser Ma first started working for WVCS in 2008 as a Family Support Specialist, a professional social work position. As she progressed in seniority, she came to supervise other, more junior individuals who performed various social work duties at WVCS. From July 2015-onward, Ma's position at WVCS was Director of Client Services. She did not

head any departments within WVCS. All WVCS witnesses confirmed Ma did not have any involvement in the BMR Program as part of her job duties, and there is no evidence that she had any involvement, knowledge, or influence regarding the BMR Program. Ma left WVCS for other social work employment at the end of April 2016.

WVCS had its own conflict of interest policy regarding the BMR Program in effect since July 2011. The policy prohibited upper management (Executive Director and Department Directors) and any staff who participated in administering the BMR Program (*i.e.*, Christine Nguyen and any staff she supervised) from applying. The policy also dictated that there would be no special consideration for any staff member who applied, and a staff member applicant would be subject to the same BMR requirements set forth by the City and WVCS as any other applicant.

A violation of Government Code section 1090 exists if the pertinent individual participated in the making of a contract in their official capacity and also had a financial interest in the contract. Independent contractors or consultants to public entities (such as WVCS) are subject to its restrictions. In terms of the Political Reform Act, one is prohibited from making, participating in, influencing or attempting to use their official position to influence any government decisions in which one has a financial interest. Government Code section 87100 *et seq.*

Our investigation found that there were no violations in this instance. As an initial matter, while her employer was an independent contractor to the City, it is questionable whether Purchaser Ma can be considered as such, as her social work duties at WVCS were not specifically designated to be in service for the City. Assuming for the sake of argument that Ma herself can be considered as an independent contractor to the City by virtue of her employment with WVCS, Ma's purchase of the BMR Unit was not the "making" of a contract in her official capacity. She did not participate in any actions or determinations that led to her place on the waiting list or the successful qualified applicant; she had no control over the selection or qualification process; and she never had any involvement or input in the BMR Program or its administration by WVCS. Everything leading to her purchase of the BMR Unit, other than her initial decision to apply, came about by circumstances outside her control.

Nguyen and Purchaser Ma were friendly co-workers, but there is no evidence Nguyen gave Ma any preference or advantage in the sales or qualification process for the BMR Unit. Rather, the investigation found otherwise. The process of creating the waiting list, which determined Ma's position on the list as the person next in line after Sandstrom for a two-person household and moderate income unit, was random and followed the BMR

Manual procedures. As mentioned previously, this office reviewed WVCS's income calculations for both Sandstrom and Purchaser Ma and determined them to be correct.

### Conclusions

In sum, our investigation found no conflict of interest violations. We acknowledge that on August 2, 2016, the City Council approved changes to the BMR Manual that (1) require that if any employee of any consultant involved with City housing programs is on the BMR waiting list, all review and evaluation of the employee's application must be performed by the City; and (2) in the future, any appeal will be heard first by the Executive Director of WVCS, or by the Community Development Director if a WVCS employee is involved, with a final second level appeal decided by the City Council. The BMR unit will not be sold before the appeal is completed. We believe these actions by the Council are well-advised to avoid any appearance of a conflict in the future.