

**Conflict Waiver:**

***Representation of the County and FCTA regarding contract for construction management services.***

Your Board recently authorized Department of Public Works and Planning (PWP) to enter into a contract with the Fresno County Transportation Authority (FCTA) wherein the County will provide construction management services to FCTA for the Golden State Corridor Infrastructure Improvements Project, a project being constructed with Measure C funds.

The Office of County Counsel has been asked to represent the County (Department of Public Works and Planning staff, specifically) in regards to drafting said contract. One of our office's deputy county counsels already represents the FCTA in all matters pursuant to the Board's earlier authorization and would represent it in this contract negotiation as well. This situation is a bit different from the regular representation with FCTA in that no contracts with the County are typically entered into. Accordingly, we have to inform you about our representation and obtain your informed written consent.

**RULES OF PROFESSIONAL CONDUCT**

Rule 3-310 of the California Rules of Professional Conduct provides, in pertinent part:

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

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (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.

**CONSEQUENCES OF THE REPRESENTATION**

We are obliged, under the rule cited above, to inform you of any actual or reasonably foreseeable adverse effects of this representation. It is possible that conflicts between the County and FCTA may develop into disputes. This scenario could have potentially problematic results in regard to our representation of the County. In particular:

- Someone may argue that we would be tempted to favor the interests of one client over the other.
- Our exercise of independent judgment to the County may be impaired or clouded by our pre-existing relationship with FCTA.

- We may not be able to present the appropriate position, claims or defenses for a client in order to avoid taking adverse positions to one of you.
- We may be restricted from forcefully advocating a client's position for fear of alienating the other client.
- We may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.
- There may be an appearance of impropriety in our representation of both clients simultaneously.

Our office believes that we can adequately mitigate any risks of these consequences, especially since this is for such a discrete task. 1) We will have two different attorneys in our office represent each side of the contract; 2) neither attorney will have access to the other's files or documents as regards this contract; and 3) the two attorneys will not discuss the matter with each other, and 4) each attorney will report to different superiors with any issues that arise. Moreover, this is simple reimbursement for cost of services contract and the parties have a preexisting governmental relationship with County members sitting on the FCTA Board. Under these circumstances the parties do not appear to be adverse with respect to this transaction. As regards reviewing the subject contract, the attorney representing FCTA will report to Chief Deputy County Counsel Brian Melikian, and the attorney representing the County will report to County Counsel Daniel Cederborg.

#### **YOUR CONSENT**

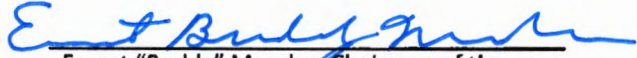
If you wish our office to represent the County in this matter, we need you to sign this consent letter. It is understood that this consent will not prevent County Counsel from representing the County of Fresno now or in the future, and will not waive any protection that you may have with regard to attorney-client communications with us in this matter. Those communications will remain confidential and will not be disclosed to any third party without your consent. The files will be kept separate and there will be no communication regarding the respective representations except as among those persons solely working for that entity.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

COUNTY OF FRESNO



Ernest "Buddy" Mendes, Chairman of the Board of Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By:



Deputy

FOR ACCOUNTING USE ONLY:

ORG No.:

Account No.:

Requisition No.: