

**Conflict Waiver:**

**Representation of the County and FCOG regarding agreement for distribution of Regional Early Action Planning (REAP) grant funds.**

We have been informed that the Fresno Council of Governments (FCOG) may enter into a proposed agreement with the County of Fresno (County), in which FCOG would distribute approximately \$292,500 of state housing grant funds to the County under the Regional Early Action Planning (REAP) program. The County submitted an application for grant funding under the REAP program, which application was approved by the Board of Supervisors on February 23, 2021.

The Office of Fresno County Counsel provides legal services to the County, and also has been asked to represent FCOG with regard to the drafting and review of said agreement. A Deputy County Counsel will be assigned to assist FCOG in the drafting and review of the proposed agreement. A different Deputy County Counsel will be assigned to assist the County in the drafting and review of the proposed agreement.

Accordingly, we are required to inform you regarding the proposal that our Office provide such “dual representation” in this particular instance, and to obtain your informed written consent.

Lastly, a third Deputy County Counsel who normally provides legal representation to the FCOG in all matters, pursuant to a legal services contract between the FCOG and the County of Fresno, will continue to represent FCOG, but he will be excluded from this matter because he also provides legal services to the County.

**RULES OF PROFESSIONAL CONDUCT**

Rule 1.7 of the California Rules of Professional Conduct provides, in pertinent part:

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client 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.
- (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; or

- (2) the lawyer knows or reasonably should know that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm,\* or has an intimate personal relationship with the lawyer.
- (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.

### **CONSEQUENCES OF THE DUAL REPRESENTATION**

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

- 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 FCOG may be impaired or clouded by our primary representation of the County.
- We may not be able to present the appropriate position, claims or defenses for one client in order to avoid taking adverse positions to the other client.
- 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 assigned attorneys in our Office represent each side of the agreement, as well as a third attorney who continues to represent FCOG but independent of the agreement; 2) the attorneys will not have access to the other's files or documents in regard to this agreement; 3) the 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 simply an agreement for the distribution of grant funding, and the parties have a preexisting governmental relationship, with a County Supervisor and thirteen

mayors also serving as part of the membership of FCOG's governing board. Under these circumstances, the parties do not appear to be adverse with respect to this transaction. In regard to reviewing the subject agreement, the attorney representing FCOG will report to a Chief Deputy County Counsel, and the attorney representing the County will report to County Counsel.

**YOUR CONSENT**

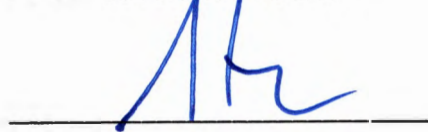
If you wish to have our Office to represent the County in this matter, we will need to have the County Board authorize you to sign this consent letter.

It is understood that this consent will not prevent County Counsel from representing the County now or in the future, and will not waive any protection that the County Board 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 the County Board's 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.

If there is any material change in the circumstances described above, or we become aware of new information that requires a new consent from the parties, the County Board will be notified of that fact immediately, and in such event, our continued representation will be subject to the informed written consent of both involved parties in connection therewith.

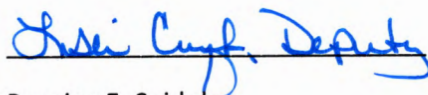
The County Board's approval, and your execution, of this consent letter on behalf of the County will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 1.7 of the California Rules of Professional Conduct previously quoted above.

ACCEPTED AND APPROVED



Steve Brandau  
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