

**Conflict Waiver:**

**Representation of the County and FCOG regarding contract for**

**REAP Grant.**

FCOG administers state housing grants under the Regional Early Action Planning Grant Program (REAP), which provides one-time grant funding to regional governments for planning activities that will accelerate housing production and facilitate compliance in implementing the sixth cycle of the Regional Housing Needs Allocation

The County of Fresno has submitted an application for a REAP grant. The Office of County Counsel represents the County of Fresno for all purposes.

The Office of County Counsel has been asked to represent FCOG in overseeing the future contracts with entities that receive REAP grants. One of our office's deputy county counsels already represents the FCOG in all matters pursuant to the Board of Supervisors's earlier authorization. This situation is a bit different from the regular representation of FCOG in that no contracts between FCOG and the County are typically entered into. Accordingly, if representation of FCOG is to continue as to the REAP contracts, we have to inform you about our representation and obtain your informed written consent.

**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 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 FCOG 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 FCOG.
- 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 grant contract and the parties have a preexisting governmental relationship with County members sitting on the FCOG 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 FCOG 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 Rule 1.7 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.

ACCEPTED AND RECOMMENDED FOR APPROVAL

---

Tony Boren, Executive Director  
Fresno County Council of Governments

ACCEPTED AND APPROVED

---

David Cardenas, Chairman of the Board  
Fresno County Council of Governments