

December 27, 2022

Thomas Zeleny
Interim County Counsel
County of Napa
1195 Third Street
Suite 301
Napa, California 94559

Re: Napa County Consent and Waiver Agreement

Dear Tom:

Per my email correspondence and our December 22, 2022 telephone call, the purpose of this letter is to request the consent and waiver of Napa County for Downey Brand's representation of Goodfellow-Teichert-Odin, a Joint Venture ("GTO"), in its complaint for breach of contract against the California Department of Resources Recycling and Recovery ("CalRecycle"). Please signify your authorization and acceptance of this consent and waiver on behalf of Napa County by executing this letter below and returning the fully executed document to me.

INTRODUCTION

Downey Brand represents Napa County on matters before the California Public Utilities Commission relating to utility wildfires, power outages, community resiliency, and related issues. I am the attorney responsible for Napa's CPUC matters.

Downey Brand attorneys Scott McElhern and Christopher Kolkey represent GTO in litigation against CalRecycle, a state agency. Teichert Construction is a joint venture partner with Goodfellow Bros. California, LLC and Odin Construction Solutions, LLC on a fire clean-up project for CalRecycle. The contract underlying the complaint, Agreement No. DRR20070, was for emergency structural debris and hazard tree removal services necessitated by the 2020 wildfires that impacted Northern California, including Napa County. GTO has various affirmative contract claims against CalRecycle (the "CalRecycle Matter")

While Napa County is not involved in the CalRecycle Matter, Messrs. McElhern and Kolkey expect to serve Napa County with a document subpoena in order to obtain evidence for the lawsuit. GTO wishes to issue a subpoena for documents to Napa County, to better understand the facts related to Napa County's participation (or non-participation) in CalRecycle's hazard tree removal program. GTO does not intend to bring Napa County into the

complaint as a party, and Napa County is not a target of the litigation. Nevertheless, we must obtain Napa County's written consent and waiver in order to serve the subpoena on a current client. *See, e.g.,* State Bar of California, Committee on Professional Responsibility and Conduct, Formal Opinion Interim No. 08-0003.

The rules of legal ethics governing attorneys prohibit our firm from representing one current client adversely to another current client, absent both clients' informed written consent after disclosure of the conflict and the opportunity to seek the advice of independent counsel. This is the case even if the representations are unrelated. (*See Rule 1.7(a).*) The California Rules of Professional Conduct also prohibit our firm from representing client if there is a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. (*See Rule 1.7(b).*)

In order to obtain a client's consent and waiver, we must disclose to each affected client the relevant circumstances and reasonably foreseeable adverse consequences of concurrent representation. The purpose of this letter is to make these disclosures, and seek your informed consent to potential and actual conflicts, as described herein.

CONFLICTS OF INTEREST

Theoretically, the following foreseeable and adverse consequences to you could result from our simultaneous representation of two clients with potentially adverse interests in the same matter.

A. Duty of Loyalty

Attorneys have a duty of loyalty requiring them to do their professional best to serve each client they represent. This standard requires our attorneys to pursue each client's position(s) vigorously, which may require attorneys to take advantage of an opposing party's weaknesses, if they are known and it is ethical to do so. Thus, when we represent multiple clients with interests in the same public project, either or both clients might be concerned that could favor one or another client and, as a result, fail to press the one client's interests as vigorously as possible in order to gain favor with the other client.

I currently represent Napa County in the CPUC matters identified above. Messrs. McElhern and Kolkey's representation of GTO in the complaint for breach of contract against CalRecycle will likely involve GTO issuing a subpoena for documents to Napa County. This will create a conflict of interest.

This conflict may be waived by you and GTO in writing, if you each agree, after we have informed you of the impact of the conflict. Both you and GTO have a right to consult independent counsel regarding this conflict waiver if you wish.

Thus, for us to represent Napa County, you must waive the conflict posed by the simultaneous representation of Napa County and GTO. Specifically, Napa County must waive any right you might otherwise have for us to reveal to you the confidences or secrets of GTO, or to use such confidences or secrets of the other to your benefit. Likewise, GTO must provide its

informed consent to the representation, given that the firm may possess material or confidential information from our representation of Napa County.

Thus, for Downey Brand to represent both Napa County and GTO, you must waive the conflict posed under the duty of loyalty in the circumstances described above. Specifically, Napa County must waive any right it might otherwise have to disqualify Downey Brand from representing GTO based on Downey Brand's duty of loyalty to you.

By signing below, you acknowledge the potential consequence described above, and waive any right Napa County might otherwise have to disqualify Downey Brand from representing GTO in matters that are related to the complaint against CalRecycle.

B. Client Communication and the Duty of Confidentiality

California attorneys also have two duties that may conflict when they represent one client against another who is a client in the same or separate matter or that have potentially or actually conflicting positions. First, under the duty of confidentiality, attorneys must guard client confidences and secrets at every peril to themselves. Second, attorneys must keep their client reasonably informed about significant developments related to their clients' representation. Thus, under the duty of confidentiality, we are not allowed to reveal to you any confidences we receive from GTO and conversely, we also are not allowed to reveal to other clients any confidences or secrets we obtain from Napa County. At the same time, if we possess any such confidences or secrets that constitute or relate to significant developments in a client's representation, we would have a duty to disclose those confidences and secrets to that client (either Napa County, or GTO, as the case may be).

Thus, for us to represent both you and GTO, each of you must waive the conflict posed by the collision of these two rules. Specifically, Napa County and GTO must each waive any right you might otherwise have for us to reveal to you the confidences or secrets of the other, or to use such confidences or secrets of the other to your benefit.

The most obvious foreseeable adverse consequence related to such a waiver is that, even if attorneys representing you possess confidences and secrets of the other clients that may be helpful in your representation, they will not reveal to you or use such confidences or secrets.

By signing below, you acknowledge that potential consequence, and waive any right Napa County might otherwise have for us to reveal to you the confidences or secrets of GTO where applicable to Napa County or to use such confidences or secrets of theirs to Napa County's benefit.

We also note that in theory there could be other adverse consequences to you from this representation that we cannot now reasonably foresee.

Please be aware that if litigation or a direct and unwaiveable conflict arises between you and GTO, we would likely be unable to represent either of you, and would have to refer those other clients or parties to another law firm.

CONCLUSION

If you would like to discuss this matter further, we are available to do so. Also, if you wish to discuss this waiver with an independent attorney at another firm prior to signing this letter or waiving any conflicts, we encourage you to do so.

If you agree to waive the conflicts described above, please so signify by executing one of the enclosed duplicates of this letter below and returning it to me. Please do not hesitate to call me if you have any questions or comments regarding the above-issues.

Sincerely,

DOWNEY BRAND LLP



Megan J. Somogyi

MJS

AGREED AND ACCEPTED:

I have read the foregoing letter concerning the conflicts associated with Downey Brand LLP's representation of Napa regarding wildfire and resiliency matters before the California Public Utilities Commission, and the firm's representation of the Goodfellow-Teichert-Odin, a Joint Venture in its complaint for breach of contract against CalRecycle. I am authorized to waive such conflicts on behalf of Napa County and, after having the opportunity to consult with independent counsel, Napa County waives any and all conflicts that may arise from this representation, as set forth in the foregoing letter.

Dated: _____

Thomas Zeleny
Interim County Counsel, County of Napa