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January 3, 2022

via email

Thomas C. Zeleny
Interim County Counsel
County of Napa
1195 Third Street, Suite 301
Napa, CA 94559

Kathleen Kane, General Counsel
Association of Bay Area Governments
375 Beale Street, Suite 800
San Francisco, CA 94105

Re: **Consents to Potential Conflict of Interest – County of Napa and Association of Bay Area Governments**

Dear Mr. Zeleny and Ms. Kane:

We write this letter to request the consents of the County of Napa (the "County") and the Association of Bay Area Governments ("ABAG") (collectively, the "Parties") to Goldfarb & Lipman LLP's ("Goldfarb & Lipman's") representation of the County in submitting to ABAG a proposal to transfer to cities in the County units assigned to the County by ABAG as part of the County's Regional Housing Needs Allocation ("RHNA") (the "Transfer Proposal"). Specifically, Goldfarb & Lipman will represent the County in drafting and presenting the Transfer Proposal to ABAG pursuant to Government Code Section 65584.07(a). Goldfarb & Lipman will not be representing ABAG regarding the Transfer Proposal.¹

The specific purpose of this letter is to advise you of a potential conflict of interest of Goldfarb & Lipman due to the existing and continued relationships that Goldfarb & Lipman has separately with each of you and the proposed representation of the County in the Transfer Proposal as described below. To undertake this representation, we are required to (1) disclose in writing our existing relationship with each of you, and (2) obtain the informed written consent of each of you to such potential conflict of interest, as described in this letter. We believe that we will be able to provide competent and diligent representation to the County in this matter.

I. **Existing Relationships.**

The County is an existing client of Goldfarb & Lipman. We have and continue to represent the County in connection with policies and ordinances involving planning and zoning law and affordable housing and the preparation of necessary documents

^{1 1} The Metropolitan Transportation Commission provides staffing, including legal, services to ABAG pursuant to a contract for services.

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County of Napa
Association of Bay Area Governments
January 3, 2022
Page 2

(such as loan documents and other agreements) related to planning and zoning law and affordable housing. In particular, we have assisted the County for many years in preparing RHNA transfer agreements with cities in the County.

ABAG is also an existing client of Goldfarb & Lipman. Goldfarb & Lipman has represented ABAG regarding preparation of the RHNA but did not represent any parties regarding RHNA appeals. Transfer requests must be made after the approval of the RHNA, which occurred on December 16, 2021, and are subject to the specific criteria contained in Government Code Section 65584.07, which are not utilized in the initial preparation of the RHNA.

We currently represent ABAG in preparing analyses, documents, and presentations regarding new state planning and land use laws.

II. Potential Conflict of Interest.

While we are unaware of any current conflict of interest created by our existing relationships described in Section I above in relation to the Transfer Proposal, as attorneys, we are governed by specific rules relating to our representation of clients when potential conflicts of interest exist. We must disclose certain information and obtain the informed written consents of each of you to represent the County in connection with the Transfer Proposal as described in this letter, in accordance with Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 of the Rules of Professional Conduct of the State Bar of California (the "CRPC").

Our representation of the County in connection with the Transfer Proposal could potentially create a conflict of interest for Goldfarb & Lipman related to, among other matters, information that we have regarding ABAG that could be relevant to the Transfer Proposal, but due to our duty of confidentiality and loyalty, we would be unable to disclose such information to the County. At this time, we do not believe that there is an actual conflict of interest for Goldfarb & Lipman, and we believe that we can competently represent the County in this Transfer Proposal and still maintain our independent judgment and duty of loyalty to each of you in unrelated matters. In addition, we do not believe that we have obtained any confidential information from ABAG which is material to our proposed representation of County in the Transfer Proposal, or from the County that is material to our continued representation of ABAG in unrelated matters.

However, if an actual conflict should arise related to the Transfer Proposal in which: (i) the interest of the County is now adverse to the interest of ABAG, that would affect our independent judgment and our duty of loyalty to each of you in the unrelated matters; (ii) the issue of dispute in this Transfer Proposal is substantially related to the same issue in which we have represented either of you in other matters;

County of Napa
Association of Bay Area Governments
January 3, 2022
Page 3

or (iii) we have obtained any confidential information from ABAG that is material to our representation of the County, or any confidential information from the County that is material to our representation of ABAG, we would need to determine if we could continue to represent the County in relation to the Transfer Proposal. In reaching our decision, we would first need to determine if we could competently continue such representation, notwithstanding the adversity, and after such determination, we would further need to obtain the informed written consent of each of you.

III. Informed Written Consent

You should thoroughly review and consider the matters discussed in this letter and consider seeking independent counsel before providing your consent. If, after such review, each of you consents to Goldfarb & Lipman representing the County in the manner outlined above, please sign and return the attached consent form (i) acknowledging that you have been advised of Goldfarb & Lipman's past and continuing relationships with each of you; (ii) acknowledging that you have been advised to Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 and the potential conflict of interest associated with our representation of the County regarding the Transfer Proposal; and (iii) that you nevertheless consent to our representation of the County in connection with the Transfer Proposal.

If you have any questions regarding this letter or our representation of each of you please call us before signing and returning the enclosed copy of this letter.

Sincerely,



Barbara E. Kautz

CONSENT

Goldfarb & Lipman has explained to each of you: (i) Goldfarb & Lipman's past and continuing relationships with each of you, and (ii) CRPC Rules 1.1, 1.4, 1.6, 1.7, 1.8.2., 1.9 and 1.10 and the potential conflict of interest in relation to Goldfarb & Lipman's proposed representation of the County regarding the Transfer Proposal and the possible consequences of this conflict. Each of the undersigned nevertheless consents to representation by Goldfarb & Lipman of the County regarding the Transfer Proposal and gives approval to such representation as described in this letter.

We understand that we have the right to seek independent counsel before signing this consent or at any future time.

Dated: _____

COUNTY OF NAPA

By: _____
Thomas C. Zeleny
Interim County Counsel

Dated: 1/4/2022

ASSOCIATION OF BAY AREA
GOVERNMENTS

By: 

Kathleen Kane
General Counsel