

MEMORANDUM OF UNDERSTANDING FOR PROFESSIONAL AND SUPPORT STAFFING, OFFICE SPACE, EQUIPMENT, SUPPLIES, AND LEGAL SERVICES FOR THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SONOMA FOR FISCAL YEARS 2024-25 THROUGH FISCAL YEAR 2028-29

This Memorandum of Understanding (“Agreement”) is made by and between the Local Agency Formation Commission of the County of Sonoma (“the Commission”) and the County of Sonoma (“the County”).

RECITALS

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“the Act”) requires the Commission to appoint an executive officer, legal counsel, and such other staff as it deems appropriate, and to make its own provision for necessary quarters, equipment, and supplies; and

WHEREAS, the Act allows the Commission to contract with another public agency for personnel and facilities; and

WHEREAS, the Commission desires to comply with the requirements of the Act for Fiscal Years 2024-25 through 2028-29 by continuing to receive professional and support staff, office space, equipment, and supplies from the Office of the County Administrator (“the County Administrator’s Office”), and legal services from the Office of the County Counsel (“County Counsel”); and

WHEREAS, the County is willing to have the County Administrator’s Office provide professional and support staff, office space, equipment, and supplies, and County Counsel provide legal services, to the Commission for Fiscal Years 2024-25 through 2028-29; and

WHEREAS, the Commission intends to appoint its Executive Officer in accordance with the provisions of this Agreement with the understanding that the Executive Officer is a duly qualified individual who will serve as an “at will” employee in order to ensure the independence of such services for the Commission.

AGREEMENT

NOW, THEREFORE, the Commission and the County agree as follows:

1. Professional and Support Staff

(a) The County Administrator’s Office shall provide professional and support staff (“the professional and support staff”) for the day-to-day operations of the Commission. The cost for the professional and support staff shall be funded by appropriations within the Commission’s annual budgets, including supplemental unfunded liability pre-payments approved through the annual budget process by the Board of Supervisors. The formula for calculating supplemental unfunded liability is based on

LAFCO's percentage of countywide pensionable payroll against the supplemental pre-payment amount not already included in the salaries and benefit calculations. Staff will additionally assess any additional unfunded liability at the point of employee separation from LAFCO. Professional staff shall include an employee in the County job class entitled "LAFCO Executive Officer" ("Executive Officer position") and other employees as approved by the Commission and classified under County Human Resources designations. The Commission may refer to the individuals in these positions by such titles as may be appropriate for Commission business. The primary responsibility of the professional and support staff shall be to perform duties required by the Act and one hundred percent of their time will be devoted to duties directly or indirectly related to the Commission. The professional and support staff shall be supervised and primarily directed by the employee in the Executive Officer position. The County Administrator shall not provide any direction to the professional and support staff with respect to policy matters or recommendations on matters before the Commission.

(b) The professional and support staff are County employees and all employment actions pertaining to the professional and support staff are the responsibility of and shall be carried out by the County Administrator. The County Administrator may not, however, permanently remove, replace, substitute, or otherwise change any of the professional and support staff without prior communication with the Commission.

(c) The Commission and the County Administrator shall coordinate the selection of the individual employed in the Executive Officer position. The Commission will provide a recommendation for the selection and the County Administrator will have the opportunity to provide input on the final selection. The County Administrator shall be responsible for making the final selection with the prior concurrence of the Commission. Once the final selection is made, the County Administrator shall appoint the individual to the Executive Officer position. The Commission shall appoint the incumbent of the Executive Officer position as the Commission's Executive Officer in accordance with State Law. The Commission shall be given the opportunity to provide comments to the County Administrator annually on the performance of the individual in the Executive Officer position. The Commission may also provide input or feedback to the County Administrator with respect to the performance of the individual in the Executive Officer position at any other time. In the event that the Commission is dissatisfied with the performance of the individual in the Executive Officer position, and reasonable personnel actions are unsuccessful in resolving the performance issues to the Commission's satisfaction, the Commission and the County Administrator will coordinate the selection and appointment of a new individual for the Executive Officer position.

2. Office Space, Equipment, and Supplies

The County Administrator's Office shall provide office space and all necessary equipment and supplies for the Commission. The cost for office space, equipment, and supplies for the Commission shall be funded by appropriations within the Commission's annual budgets.

3. Legal Services

(a) County Counsel shall provide legal services to the Commission. The cost for legal services for the Commission shall be funded by appropriations within the Commission's annual budgets.

(b) The Commission understands that County Counsel serves as the County's legal advisor and representative on all civil matters. The Commission also understands that County Counsel serves as the legal advisor for a number of other separate legal entities that are governed by the same five (5) individuals that sit as the Board of Supervisors for the County, such as the Sonoma County Water Agency, the Sonoma County Agricultural Preservation and Open Space District, the Sonoma County Community Development Commission, and others (collectively "Related Public Entities"). In addition, County Counsel may, upon request, represent local government entities that are distinct from County government, such as the Commission. From time to time, the interests of the Commission may potentially conflict with the interest of the County and/or Related Public Entities.

(c) The County and Commission both understand that the Commission regularly considers items that involve the County and Related Public Entities.

(d) Upon execution of the Agreement, the County and Commission agree to execute the Waiver of Conflict attached hereto as Exhibit "A," so that County Counsel may continue to represent the County (or Related Public Entities) and the Commission in the absence of an actual conflict. Should an actual conflict develop between the Commission and the County (or Related Public Entities), the Commission expressly waives its right to disqualify County Counsel from representing the County (or Related Public Entities) in any matter involving the Commission, provided that reasonable measures will be taken to ensure that the Commission is adequately represented. For example, County Counsel may assist the Commission in procuring alternative counsel.

(e) County Counsel will make the scope of representation clear where different County Counsel attorneys are representing different clients in the same matter, and may propose joint representation in some circumstances, provided that there is informed consent from each party, and the scope of the joint representation is clearly delineated. Alternatively, where necessary to preserve confidences, an ethical wall will be created pursuant to County Counsel procedures.

4. Term

This Agreement shall commence on July 1, 2024, and shall continue in full force and effect until June 30, 2029.

5. Entire Agreement

This Agreement is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement pursuant Code of Civil Procedure Section 1856.

6. Amendment

This Agreement may only be amended in writing by an amendment authorized by the Commission and the County's Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

COMMISSION:
Local Agency Formation Commission of the
County of Sonoma

DATED: _____

By: _____
Jean Kapolchok, Chair

COUNTY:
County of Sonoma

DATED: _____

By: _____
David Rabbitt, Chair

APPROVED AS TO FORM:

By: _____
Chief Deputy County Counsel

EXHIBIT "A"
GENERAL WAIVER OF POTENTIAL CONFLICT

WHEREAS, the Office of the Sonoma County Counsel ("County Counsel") serves as the legal advisor and representative in all civil matters for the County of Sonoma ("the County"); and

WHEREAS, County Counsel also serves as the legal advisor for a number of other separate legal entities that are governed by the same five (5) individuals that sit as the Board of Supervisors for the County, such as the Sonoma County Water Agency, the Sonoma County Agricultural Preservation and Open Space District, the Sonoma County Community Development Commission, and others (collectively "Related Public Entities"); and

WHEREAS, County Counsel may, upon request, represent local governmental entities that are distinct from County government, such as the Local Agency Formation Commission of the County of Sonoma ("the Commission"); and

WHEREAS, from time to time, the interests of the Commission may potentially conflict with the interests of the County or Related Public Entities; and

WHEREAS, the Commission acknowledges that a potential conflict of interest may arise from the fact that the County or Related Public Entities may have divergent interests from the Commission in transactions involving the Commission and the County or the Commission and Related Public Entities, such as in a situation where the Commission and the County both require assistance of counsel in negotiating a contract with each other; and

WHEREAS, transactional matters generally do not raise any specific potential for litigation between the parties, it is important for both parties to understand the potential conflict before agreeing to waive it; and

WHEREAS, County Counsel may assign a Deputy County Counsel to advise and represent the Commission, but that attorney will not represent solely the Commission, and will represent the County in other matters; and

WHEREAS, a Deputy County Counsel advising the Commission may have broad familiarity with County procedures, policies, and interests, and a Deputy County Counsel advising the County may have broad familiarity with Commission procedures, policies, and interests, and this knowledge has both advantages and disadvantages for each client; and

WHEREAS, County Counsel does not propose to have multiple parties represented by the same attorney in Commission matters, but if that were to occur, each client must agree that County Counsel may reveal such information to the other joint clients, unless disclosure is otherwise prohibited under the applicable rules. In other words, a condition of joint representation is the agreement of each of the joint clients that everything disclosed by

any of the joint clients to County Counsel, during the course of the representation, that is material and relevant to the matter, may be disclosed to the other jointly-represented clients.; and

WHEREAS, an actual conflict would arise if an assigned Deputy County Counsel received inconsistent direction between the Commission and the County on the same matter, and the possibility of this situation arising (however unlikely) is a potential conflict; and

WHEREAS, in the event of an actual conflict the Commission will need to obtain alternative representation; and

WHEREAS, the County and Commission wish County Counsel to provide legal services notwithstanding such potential conflict; and

WHEREAS, in order to provide prompt legal services to all parties on transactions involving the parties, County Counsel is requesting a waiver from the Commission and the County;

NOW, THEREFORE, the County and Commission hereby acknowledge that the nature of such potential conflicts has been explained, in particular by reference to the legal opinion set forth in *Civil Service Commission of San Diego County v. County of San Diego* (1984) 163 Cal. App. 3d 70, 78-79, which states, in part:

“The principle precluding representing an interest adverse to those of a current client is based not on any concern with the confidential relationship between attorneys and client but rather on the need to assure the attorney’s undivided loyalty and commitment to the client. (*Jeffry, supra*, 67 Cal.App.3d at pp. 9- 10, 136 Cal.Rptr. 373; see also *Grievance Com. of Bar of Hartford County v. Rottner* (Conn. 1964) 203 A.2d 82, 84.) The attorney who represents a client with interests adverse to another current client encounters the very real danger “that he will be tempted, perhaps unconsciously, to favor the interest of a particularly important client over the adverse or potentially adverse interest of a less favored client.” (*Developments in the Law--Conflicts of Interest in the Legal Profession* (1981) 94 Harv. L. Rev. 1244, 1296.) Here there is every reason to believe that County Counsel would be tempted to favor the interests of the County in giving advice to the [Civil Service] Commission. The Commission’s primary, if not sole function, is to pass judgment on the conduct of the County toward its employees. Every Commission decision has the potential of being adverse to one of the County’s constituent agencies. Because County Counsel is directly responsible to the Board of Supervisors, it is difficult to conceive how any member of the County Counsel’s office can render independent advice to the Commission. The structure of the system would appear necessarily to skew such advice in favor of the County and against the county employees. And even in those circumstances where County Counsel renders advice to the Commission favoring the employee, such advice places him in a position adverse to his client, the County.”

The Commission, County, and Related Public Entities hereby agree to waive any potential conflicts of interest arising from County Counsel providing representation and legal advice to the Commission.

The Commission further agrees to waive the right to disqualify County Counsel from representing the County or any Related Public Entity over any conflict between the Commission and the County or between the Commission and any such Related Public Entities.

COMMISSION: Local Agency Formation Commission of the County of Sonoma

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Local Agency Formation Commission of the
County of Sonoma

DATED: _____

By: _____
Jean Kapolchok, Chair

COUNTY:
County of Sonoma

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