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City Attorney
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Sharon L. Anderson
County Counsel
Office of the County Counsel
651 Pine Street, 9th Floor
Martinez, CA 94553

Re: Request for Conflict of Interest Waiver regarding Goldfarb & Lipman's
Proposed Action on Behalf of the City of Hercules and the Hercules Successor
Agency

Dear Mr. Tang and Ms. Anderson:

We write this letter to disclose our representation of Contra Costa County (the "County"), the City of Hercules (the "City") and the Hercules Successor Agency, which is the successor to the Hercules Redevelopment Agency (the "Successor Agency"), and to request the consents of the County, the City, and the Successor Agency for Goldfarb & Lipman to represent the City and the Successor Agency in connection with a dispute tangentially involving the County, but primarily involving the City, the Successor Agency, and the California Department of Finance ("DOF").

Specifically, Goldfarb & Lipman will represent the City and the Successor Agency in their lawsuit against DOF arising out of a dispute about whether a city-former redevelopment agency agreement is an enforceable obligation within the meaning of the Redevelopment Dissolution Law, Health & Safety Code section 34161 et seq., and whether DOF should have approved an installment payment plan submitted to DOF by the Successor Agency (the "Lawsuit"). The Lawsuit will name the Contra Costa County Auditor-Controller as a nominal respondent because the Lawsuit seeks orders governing the distribution of property tax revenue allowed under the Redevelopment Dissolution Law, and the Contra Costa County Auditor-Controller is the party charged with the actual distribution of property tax revenue funds to the various taxing entities. Goldfarb & Lipman does not propose to advise or represent the Contra Costa County Auditor-Controller, the County, or any agency sharing a board or general counsel with the County in the Lawsuit. Rather, if the County or any County-related agency elects to actively participate in this litigation, we understand that it will seek representation through counsel other than Goldfarb & Lipman for that

purpose as we would not be able to represent the County in the litigation, and may be required to obtain the County's further consent to representation of the City and the Successor Agency in the Lawsuit or to withdraw from the representation if the County were to actively participate in the Lawsuit.

The specific purposes of this letter is to (1) inform you of a 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 City and the Successor Agency in the Lawsuit; and (2) request your informed written consent to our representation of the City and the Successor Agency in the Lawsuit, as well as our continued representation of the City and the Successor Agency and the County in connection with other unrelated matters, where the County, the City and the Successor Agency are not simultaneously involved (the "Unrelated Matters"), as described in more detail in Section I below. Despite these existing relations, we believe that we will be able to provide competent and diligent representation to the City and the Successor Agency in the Lawsuit. and to continue to provide competent and diligent representation to the City, the Successor Agency and the County in the Unrelated Matters.

I. Existing Relationships

Goldfarb & Lipman has never advised or represented the Contra Costa County Auditor-Controller. However, the County is an existing client of Goldfarb & Lipman. Goldfarb & Lipman has and continues to represent the County on an ongoing basis in connection with providing loans to nonprofit housing developers, and matters relating to the dissolution of the former County Redevelopment Agency and certain other economic development and land transactions, including:

- Pleasant Hill BART matters
- Negotiation of a Disposition and Development Agreement between the County and Community Housing Development Corporation of North Richmond regarding the development of certain real property located at the east side of Fred Jackson Way, between Grove Street and Chesley Avenue, in North Richmond
- Negotiation of a Disposition and Development Agreement between the County and Pacific West Communities, Inc. regarding the development of real property located near West Leland Road and Bailey Road in Bay Point
- Negotiation and preparation of documents for provision of County HOME funds to an affiliate of Resources for Community Development for the rehabilitation of certain improved real property, one property located at 20th Street in the City of Antioch, and one property located at Cavallo Road in the City of Antioch
- Sale of a remnant parcel (1540 6th Street) to neighboring property owner by the County in its capacity as housing successor.
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The City and Successor Agency are also existing clients. Our representation of the Successor Agency and City relate to matters regarding the dissolution of the former Redevelopment Agency of the City of Hercules, such as the various procedures and processes involved with the dissolution, advising on the completion of the Recognized Obligation Payments Schedule, and the Lawsuit.

II. Conflict of Interest.

While we are unaware of any current conflict of interest created by our existing relations described in Section I above, as attorneys, we are governed by specific rules relating to our representation of clients when conflicts of interest exist. We must disclose certain information, and obtain the informed written consents of each of you to represent each of you in connection with the Lawsuit 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"), which are attached to this letter as Exhibit A.

Our representation of the City and the Successor Agency in the Lawsuit creates a conflict of interest for Goldfarb & Lipman due to the fact that the County is named as a nominal respondent in the Lawsuit. We are requesting a waiver of the conflict of interest as we understand the County will not actively participate in the Lawsuit, similar to other redevelopment dissolution cases in the County.

At this time, we believe that we can competently represent the City and Successor Agency in the Lawsuit and still maintain our independent judgement and duty of loyalty to each of you in the Unrelated Matters. In addition, we do not believe that we have obtained any confidential information from the County which is material to our proposed representation of the City and the Successor Agency in the Lawsuit or in Unrelated Matters, or from the City or the Successor Agency which is material to our representation of the County or in Unrelated Matters.

If (i) the interest of the County becomes adverse to the interest of the City and the Successor Agency in the Lawsuit 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 Lawsuit is substantially related to the same issue in which we have represented any of you in other matters; or (iii) we have obtained any confidential information from the County that is material to our representation of the City and the Successor Agency, or any confidential information from the City and the Successor Agency that is material to our representation of the County, under the CRPC, we would need to determine if we could continue the proposed representation. 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 may further need to obtain the informed written consent of each of you or withdraw from representation of the City and the Successor Agency in the Lawsuit.

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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 City and the Successor Agency in the Lawsuit, 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 of the conflict of interest associated with our representation of the City and the Successor Agency in the Lawsuit; and (iii) that you nevertheless consent to our representation of the City and the Successor Agency in the Lawsuit.

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,

Handwritten signature of Heather J. Gould in cursive, followed by the initials "JKS".

HEATHER J. GOULD
Attorney for the County

Handwritten signature of Dolores Bastian Dalton in cursive.

DOLORES BASTIAN DALTON
Attorney for the City and the Successor Agency

cc: Mr. David Biggs, City Manager

CONSENT

Goldfarb & Lipman has explained to each of you: (i) Goldfarb & Lipman's past and continuing relationships with each of you; (ii) the conflict of interest in relation to Goldfarb & Lipman's proposed representation of the City and the Successor Agency in the Lawsuit and the possible consequences of this conflict as set forth in Section II of the letter. Each of the undersigned nevertheless consents to representation by Goldfarb & Lipman regarding the transaction 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: _____

CITY OF HERCULES

By: _____

Name: _____

Its: _____

Dated: _____

HERCULES SUCCESSOR AGENCY

By: _____

Name: _____

Its: _____

Dated: _____

COUNTY OF CONTRA COSTA

By: _____

Name: _____

EXHIBIT A

RULES 1.1, 1.4, 1.6, 1.7, 1.8.2, 1.9 AND 1.10 OF THE CRPC

Rule 1.1 Competence

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, "competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably necessary in the circumstances.

Rule 1.4 Communication with Clients

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent is required by these rules or the State Bar Act;
 - (2) reasonably consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Rule 1.6 Confidential Information of a Client

- (a) A lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent, or the disclosure is permitted by paragraph (b) of this rule.
- (b) A lawyer may, but is not required to, reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) to the extent that the lawyer reasonably believes the disclosure is necessary to

(b) A lawyer may, but is not required to, reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) to the extent that the lawyer reasonably believes the disclosure is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in death of, or substantial bodily harm to, an individual, as provided in paragraph (c).

(c) Before revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) to prevent a criminal act as provided in paragraph (b), a lawyer shall, if reasonable under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the lawyer's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) as provided in paragraph (b).

(d) In revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) as provided in paragraph (b), the lawyer's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the lawyer at the time of the disclosure.

(e) A lawyer who does not reveal information permitted by paragraph (b) does not violate this rule.

Rule 1.7 Conflict of Interest: Current Clients

(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.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or

other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

Rule 1.8.2 Use of Current Client's Information

A lawyer shall not use a client's information protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of the client unless the client gives informed consent, except as permitted by these rules or the State Bar Act.

Rule 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules or the State Bar Act would permit with respect to a current client, or when the information has become generally known; or

(2) reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these rules or the State Bar Act permit with respect to a current client.

Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon rule 1.9(a) or (b) and arises out of the prohibited lawyer's association with a prior firm, and

(i) the prohibited lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening

procedures employed; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to lawyers associated in a firm with former or current government lawyers is governed by rule 1.11.