



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Sharon L. Anderson, County Counsel  
Date: May 10, 2016

Subject: Approve and Authorize Conflict Waiver with Goldfarb & Lipman LLP

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE County Counsel or her designee to execute on behalf of the County a form acknowledging a conflict of interest and consent to Goldfarb and Lipman LLP representing the County in connection with a loan of approximately \$3.0 million, which combines Home Investment Partnership Act (HOME) funds, Housing Opportunities for Persons with AIDS Program (HOPWA) funds, Summer Lake Trust Funds and Neighborhood Stabilization Program funds, to the developer of Tabora Gardens, an affordable housing project in Antioch.

**FISCAL IMPACT:**

There is no General Fund impact. The funds being loaned are provided to the County on a formula allocation basis through the U.S. Department of Housing and Urban Development (HUD).

**BACKGROUND:**

The County is an existing client of Goldfarb. Goldfarb represents the County on various legal issues related to redevelopment dissolution, new development financed by the County, and the preparation of legal documents for County-funded housing programs. Because

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **05/10/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II  
Supervisor  
Mary N. Piepho, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 10, 2016

David Twa, County Administrator and Clerk of the Board of  
Supervisors

Contact: Kathleen M. Andrus, Deputy  
County Counsel (925) 335-1800

By: Stephanie Mello, Deputy

Goldfarb's concentration of work is in affordable housing, it is not uncommon for the firm to have an attorney-client relationship with more than one party to a complicated housing transaction.

Attached is a letter from Goldfarb that requests that the County acknowledge and waive the conflicts that exist in a transaction in which Goldfarb will represent the County and the City of

## BACKGROUND: (CONT'D)

Antioch (City), both of which are lending money to the developer of Tabora Gardens, an 85-unit senior affordable housing project in Antioch (the Development). The letter sets forth the attorney-client relationships that could affect the firm's representation of both the County and the City and states that different attorneys within Goldfarb will represent the County and the City. The proposed consent to Goldfarb's dual role is attached to Goldfarb's letter.

In the proposed transaction, the County will loan \$700,000 of HOME funds, \$650,000 of HOPWA funds, \$550,000 of NSP funds and \$1,100,000 of Summer Lake Trust funds, for a total loan of \$3,000,000 (the County Loan) to the developer. Proceeds from the loan will be used to construct the Development. The County Loan will have a 55-year term and will be secured by a deed of trust.

In June 2011, the City loaned \$1,983,755 to the current owner of the property on which the Development will be sited. In June 2011, the City, as Successor Housing Agency to the Antioch Redevelopment Agency loaned \$300,000 to the current owner of the property. Both loans have been fully disbursed. In February 2015, the City, as Successor Housing Agency to the Antioch Redevelopment Agency, committed to loan an additional \$600,000 to the Development. In February 2015, the City committed to loan \$170,000 to the Development (together, the Agency/City Loan.) Goldfarb represented the Agency/City when it made the existing loans and when it committed additional funds to the Development.

The parties expect that the County Loan and the Agency/City Loan will be repayable from excess cash flow (if any) from the Development. Cash flows from this type of development tend to be minimal, as most income generated is used for operating expenses including debt service on commercial bank financing. To effect the sharing of Development cash flow, the City and the County will enter into an intercreditor agreement that will document the repayment of the Agency/City Loan and the County Loan, in proportion to the amount of the Agency/City Loan and the County Loan. Those repayment provisions will also be set out in the County loan agreement. The intercreditor agreement may also set forth an agreement between the City and the County that their respective loans will have a co-equal lien position and the process for addressing foreclosure.

The intercreditor agreement proposed to be used is a standard form that the County has used on multiple other transactions when the County and other public agency funds are part of the project financing. Typically, the intercreditor agreement is not heavily negotiated. The intercreditor agreement and a subordination agreement are the only agreements where both the County and the City are parties. Goldfarb intends to represent both the Agency/City and the County in the preparation of both agreements.

The County Counsel's office has selected Goldfarb to draft the loan documents to be

used by the County when the County makes its loans to the developer due to Goldfarb's familiarity with the Tabora Gardens project. In addition, as discussed above, if the conflict waiver is granted, Goldfarb will also be tasked with the preparation of the intercreditor agreement between the County and the Agency/City and the subordination agreement between the County and the City. All of these documents will be reviewed by the County Counsel's office and approved as to form prior to execution by the County.

CONSEQUENCE OF NEGATIVE ACTION:

Goldfarb would not be able to continue to represent either the County or the City in connection with the project. The result would likely be increased costs for the County and a delay in the completion of the Development.

ATTACHMENTS

Conflict of Waiver