



**Contra
Costa
County**

To: Board of Supervisors
From: Mary Ann Mason, County Counsel
Date: November 29, 2022

Subject: APPROVE AND AUTHORIZE CONFLICT WAIVER WITH FENNEMORE LLP

RECOMMENDATION(S):

APPROVE and AUTHORIZE the County Counsel, or designee, to execute on behalf of the County a conflict waiver acknowledging a potential conflict of interest and consenting to Fennemore, LLP, doing business as Fennemore Wendel, representing the Contra Costa Transportation Authority while continuing to provide legal services to the County related to eminent domain and real property matters.

FISCAL IMPACT:

There is no fiscal impact.

BACKGROUND:

Fennemore, LLP (Fennemore) provides legal services to the County related to eminent domain and real property matters where the County is acquiring property for County projects. Eminent domain is a specialized area of the law; the firm is one of a limited number of firms with expertise in this area.

The firm was recently engaged by the Contra Costa Transportation Authority (CCTA) to serve as general counsel for CCTA. Because from time to time the interests of the County

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **11/29/2022** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II
Supervisor
Diane Burgis, 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: November 29, 2022

Monica Nino, County Administrator and Clerk of the
Board of Supervisors

Contact: Stephen M. Siptroth, Deputy
County Counsel, (925) 655-2200

By: June McHuen, Deputy

cc:

and CCTA are adverse, to comply with the Rules of Professional Conduct promulgated by the California State Bar, Fennemore is requesting

BACKGROUND: (CONT'D)

that the County acknowledge and waive any known potential conflicts of interest that may be caused by the firm's representation of both the County and CCTA, to the extent such representation is permitted under the State Bar rules.

Under the State Bar's rules, in the absence of the informed written consent of each client, an attorney is prohibited from representing a client if there is a significant risk that the attorney's representation of the client will be materially limited by the lawyer's responsibilities to or relationship with another client, a former client or a third person, or by the lawyer's own interests. (Rule 1.7(b).) Even when a significant risk requiring a lawyer to comply with Rule 1.7(b) is not present, a lawyer is prohibited from representing a client without written disclosure of the relationship to the client where 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. (Rule 1.7(c)(1).)

The potential for a conflict of interest between the County and CCTA exists whenever (i) CCTA is providing funding for projects being carried out by the County, (ii) the County is providing funding for projects being carried out by CCTA, (iii) CCTA uses County-owned real property for a CCTA purpose, and (iv) CCTA and the County negotiate a new or amended project or program agreement. These situations are all unrelated to the work Fennemore does for the County on eminent domain. And in all of these situations, attorneys in the County Counsel's office will serve as counsel for the County to protect the County's interests. For these reasons, this office recommends the County consent to the requested conflict waiver, as described in the attached letter from Fennemore.

If a conflict arises in the future that cannot be waived, or if the firm determines it cannot provide competent and diligent simultaneous representation to both the County and CCTA during the pendency of a particular matter, the firm will withdraw from representing the County, at least until the matter causing the (more serious) conflict is resolved. Should this occur, the County will use other outside counsel to handle any pending eminent domain matters.

CONSEQUENCE OF NEGATIVE ACTION:

The County may need to contract with another law firm for these legal services.

ATTACHMENTS

Fennemore Letter