

December 8, 2006

William W. Way, City Manager  
City of California City  
21000 Hacienda Blvd.  
California City, CA 93505

**Re: Conflict of Interest Waiver: Formation of Joint Financing Authority**

Several months ago, the City and the East Kern Health Care District graciously waived objection to our simultaneous representation of the City and the District with respect to drafting of documents for the District to acquire land from the City. We have not been called upon to do any work in this respect. We mention this because this letter asks for a similar waiver of a different potential conflict of interest. In this case, we are requesting a waiver so that we can form a joint powers authorities between the City and the District to finance a skilled nursing facility within California City.

We need to describe the proposed skilled nursing facility, and how the joint powers authority would operate to provide context for this request. The District hopes to construct a skilled nursing facility comprised of approximately 100 "beds". (The precise number of beds must await a more complete business analysis.) The facility is expected to cost approximately \$15 million dollars to build, and approximately \$5 million dollars per year to operate. The District cannot finance the construction or operation from current revenue. The District's consultants believe income from the new facility will pay for operations and retire construction debt.<sup>1</sup> The District will need to issue debt instruments to obtain money for construction. Consultants believe a joint powers authority comprised of the District and at least one other public agency can issue debt instruments to fund the project.

A joint powers authority is an independent public agency created by contract between two or more public entities.<sup>2</sup> Although there are technical requirements, formation of a joint powers authority is straightforward. The District will request the Authority to issue debt instruments to finance the skilled nursing facility.<sup>3</sup> Security

<sup>1</sup> These conclusions represent the best available opinions of expert consultants. These consultants will continue to refine their opinions as they gather more information.

<sup>2</sup> In the private sector, the separate entity would be known as "joint venture" or "partnership."

<sup>3</sup> The City can also request the Authority to issue debt instruments for city projects.

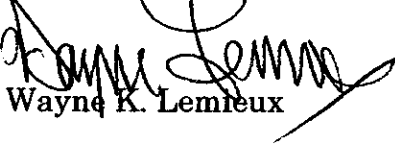
for repayment of the debt instruments will be the responsibility of the District. The District will have to demonstrate to the satisfaction of bond buyers that the skilled nursing facility will generate enough income to repay the debts. The pledge of security by the District will not result in a pledge of security by the City.<sup>4</sup>

We have represented California City since shortly after its formation, and the District since shortly before its formation. These two agencies have had infrequent contact over the years and then usually at the staff level. The formation of a joint powers authority requires legal services, which we can conveniently provide since the proposal will provide financing flexibility to both the District and the City. We believe a conflict will not arise if we assist in the formation of a joint powers authority for the purposes stated above. However, we would prefer to secure a written waiver of objections to potential conflicts as a way of signaling each agency's agreement that a conflict probably will not arise.

Accordingly, if you agree, please place this matter before the council for action. The proposed waiver is attached.

Very truly yours,

LEMIEUX & O'NEILL



Wayne K. Lemieux

WKL:km

cc: Gisela Schultz  
East Kern Health Care District

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<sup>4</sup> The converse is also true if the City causes the Authority to issue debt instruments on behalf of the City; the City will be the sole source of security.

## WAIVER OF POTENTIAL CONFLICT OF INTEREST

The City of California City (herein "City") and the East Kern Health Care District (herein "District") waive objections to the potential conflict of interest which may arise by the dual representation of the Law Firm of Lemieux & O'Neill (herein "Law Firm") as follows:

1. This waiver is limited to the formation of a joint powers authority between the City and the District for the purpose of financing the construction of a skilled nursing facility within the city of California City. This waiver includes the possible representation of the joint powers authority by Law Firm.

2. This waiver commences immediately and exists until the joint powers authority is formed and, thereafter, for so long as the joint powers authority continues to exist. However, either party may retract this waiver upon thirty (30) days prior written notice to the Law Firm.

3. Upon termination of this waiver, the Law Firm shall cease all work on behalf of the Authority and work on behalf of the City or District with respect to the Authority for debt instruments issued by the Authority unless the terminating party consents to allow the Law Firm to continue to represent the non-terminating party with respect to these matters.

4. Law Firm shall provide periodic reports to the City and the District concerning progress and the formation of the joint powers authority, and in the issuance of debt instruments by the joint powers authority after it is formed.

DATED: \_\_\_\_\_

City of California City

By \_\_\_\_\_  
David Evans, Mayor

ATTESTED:  
\_\_\_\_\_

DATED: \_\_\_\_\_

East Kern Health Care District

By \_\_\_\_\_  
Robert E. Smith, President

ATTESTED:  
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