

## SPECIAL MEETING AGENDA

Pismo Beach Designated Local Authority, as  
Successor Agency to the Pismo Beach Redevelopment Agency  
Monday, June 24, 2013 at 4:30 PM  
Perla Del Mar Chapel  
205 Windward Avenue, Shell Beach, CA 93449

The agenda for special meetings is posted 24 hours prior to each meeting outside of the Perla Del Mar Chapel located at 205 Windward Avenue, Shell Beach, CA 93449, and is available at each meeting. The agenda and related reports are also available at the County Clerk's Office and are available on the County's website at [www.slocounty.ca.gov](http://www.slocounty.ca.gov) and the Designated Local Authority's website at [www.kosmont.com](http://www.kosmont.com). Any writing distributed within 24 hours of the meeting will be made available to the public by placing it with the County Clerk at the time it is distributed to the Designated Local Authority.

### **Call to Order**

**Roll Call:** Tom Murray, Chair  
Janet George, Vice Chair  
Charlie Crabb, Member

### **Public Comment: (No action can be taken)**

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the Board. Individual comments will be limited to a maximum of 5 minutes per person and each person may speak once during this time. Time cannot be yielded to another person. Under State Law, matters presented under this item cannot be discussed or acted upon at this time by the Board. The public will be invited to make comments on agenda items when the item is being considered by the Board. For purposes of the record please state your name when speaking.

### **Informational Items:**

- A. Staff Report re: Update on Department of Finance Denial of ROPS 13-14A line Item for Lucia Mar Unified School District Agreement– Information Item Only, No Action Will Be Taken
- B. Staff Report re: Communication Protocol – Information Item Only, No Action Will Be Taken
- C. Invoice Payment Procedures - Information Item Only, No Action Will Be Taken
- D. Staff Report re: Independent Auditor to Complete 2012-2013 Financial Statements - Information Item Only, No Action Will Be Taken

**Action Items:**

1. **Approval of Minutes of the February 25, 2013 Meeting of the Pismo Beach Designated Local Authority**

Recommendation: It is recommended that the Pismo Beach Designated Local Authority approve the minutes of the February 25, 2013 meeting of the Pismo Beach Designated Local Authority

2. **Approval of contract with Leibold, McClendon and Mann for legal services for the Pismo Beach Designated Local Authority**

Recommendation: It is recommended that the Pismo Beach Designated Local Authority adopt Resolution No. 2013-03 approving a contract between the Pismo Beach Designated Local Authority and Leibold McClendon & Mann, PC for legal services

**Adjournment:**

Americans with Disabilities Act: Any individual, who because of a disability need special assistance to attend or participate in this meeting may request assistance by contacting (805) 710-1082.

Designated Local Authority Staff Contact, Chris Jicha, (951)203-8730, [cjicha@kosmont.com](mailto:cjicha@kosmont.com)

**REPORT TO THE PISMO BEACH DESIGNATED LOCAL AUTHORITY,  
AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY  
OF THE CITY OF PISMO BEACH**

**TO: MEMBERS OF THE DESIGNATED LOCAL AUTHORITY**

**FROM: CHRIS JICHA, DLA STAFF**

**DATE: JUNE 24, 2013**

**SUBJECT: UPDATE ON DEPARTMENT OF FINANCE DENIAL OF ROPS 13-14A  
LINE ITEM FOR LUCIA MAR UNIFIED SCHOOL DISTRICT  
AGREEMENT**

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**Background**

On February 25, 2013, the Designated Local Authority approved the “recognized obligation payment schedule” (“ROPS”) for July 1 – December 31, 2013 (“ROPS 13-14A”). As required by AB 1484, the ROPS 13-14A was submitted to the DOF and the State Controller’s office after approval by the Oversight Board.

The Designated Local Authority had been contacted by the Lucia Mar Unified School District (the “District”) regarding that certain Agreement between the Redevelopment Agency of the City of Pismo Beach and the Lucia Mar Unified School District entered into on September 26, 1988 (the “Agreement”). The District had requested that the Agreement be added to the ROPS 13-14A as an enforceable obligation, and, after substantial deliberation, the Designated Local Authority agreed. The Oversight Board later approved the ROPS 13-14A with the Agreement included.

DOF issued a letter dated April 15, 2013 stating that the Agreement was being paid by the County Auditor Controller (“CAC”) as a pass-through and therefore was not eligible for RPTTF funding as requested by its inclusion on the ROPS 13-14A. The CAC has been passing through funds to the District directly, as opposed to the funds being distributed to the former Redevelopment Agency or the DLA and then sent to the School District.

Health & Safety Code Section 34187(b) states that “when all the debt of a redevelopment agency has been retired or paid off, the successor agency shall dispose

of all remaining assets and terminate its existence within one year of the final debt payment. When the successor agency is terminated, all passthrough payment obligations shall cease and no property tax shall be allocated to the Redevelopment Property Tax Trust Fund [RPTTF] for that agency.” Because of the termination of passthrough payments required by such section and possible litigation to be filed by the District against the DLA, DLA staff recommended and the DLA Board agreed it would be appropriate to file a Meet & Confer Request with DOF to appeal DOF’s position with respect to the Agreement.

On April 26, 2013, the DLA Chair, DLA staff, DLA counsel and District counsel met with the DOF in Sacramento. District counsel submitted a memorandum setting forth its arguments as to why the Agreement constitutes a debt instrument, as opposed to a passthrough agreement. The parties spent over an hour discussing the various reasons why the Agreement should not be considered a passthrough agreement.

On May 17, 2013, DOF issued a letter (attached) stating that the Agreement should not be listed on the ROPS.

### **Discussion**

The Meet & Confer process is the only appeal process provided for under applicable law. Because DOF’s determination of May 17, 2013 was made after the Meet & Confer took place, DOF’s determination is currently binding and enforceable against the DLA. The District, if it so desires, can resort to litigation if it continues to object to the DOF’s determination.

Though Health & Safety Code Section 34187(b) described above is also binding upon the DLA, various uncertainties exist with respect to the termination of the existence of the DLA. The County Auditor Controller (“CAC”) cites Health & Safety Code Section 33141, which reads as follows:

“Upon the motion of the legislative body or upon recommendation of the agency, the legislative body of the community may, by ordinance, order the deactivation of an agency by declaring that there is no need for an agency to function in the community, if the agency has no outstanding bonded indebtedness, no other unpaid loans, indebtedness, or advances, and no legally binding contractual obligations with persons or entities other than the community, unless the community assumes the bonded indebtedness, unpaid loans, indebtedness, and advances, and legally binding contractual obligations. A legislative body shall not adopt an ordinance declaring that there is no need for the agency, if in one or more project areas, the agency has not

complied with subdivision (a) of Section 33333.8. An ordinance of a legislative body declaring there is no need for an agency to function in the community shall be subject to referendum as prescribed by law for the ordinances of the legislative body.”

Notwithstanding DOF’s characterization of the Agreement as a passthrough, the CAC has pointed out that the Agreement constitutes a legally binding contractual obligation of the DLA and may also constitute outstanding indebtedness. As a result, the CAC has stated it will continue to pay the District passthrough payments for as long as the DOF continues to approve a ROPS with just the administrative cost allowance on it.

Further, the DLA continues to hold at least one asset, that certain note receivable from People’s Self Help Housing in the amount of \$1,000,000. DLA staff is in the process of determining how best to administer the rights and obligations under the note and evaluating whether it should and can be transferred to the housing successor. Any proposed transfer would be brought to the Board.

As there is no current guidance as to how to effect the termination of the existence of the DLA, and because DOF’s letter of May 17, 2013 does not instruct the DLA to terminate its existence, DLA staff will continue to administer the assets and obligations of the DLA and prepare the ROPS 13-14B prior to its due date. Proposals for the disposition of the note and the ROPS 13-14B will be brought to the DLA Board by staff for the Board’s approval or disapproval.



May 17, 2013

Mr. Christopher J. Jicha, Senior Consultant, Kosmont Companies  
Pismo Beach Designated Local Authority  
865 South Figueroa Street, 35th Floor  
Los Angeles, CA 90017

Dear Mr. Jicha:

Subject: Recognized Obligation Payment Schedule

This letter supersedes California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS 13-14A) letter dated April 15, 2013. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Pismo Beach Designated Local Authority (Authority) submitted ROPS 13-14A to Finance for the period of July through December 2013. Finance issued its determination related to those enforceable obligations on April 15, 2013. Subsequently, the Authority requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on April 26, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific item being disputed.

- Item No. 10 – Lucia Mar Unified School District (District) Agreement for \$251,714 for the ROPS period, with an unknown total obligation amount. This item continues to be an obligation not eligible for funding on the ROPS. Section 2.2 of the agreement states that 100 percent of the District's tax increment shall be allocated to the redevelopment agency (RDA) for 20 years, and thereafter, 100 percent shall be allocated to the District through deposit into the Capital Facilities Fund directly by the county auditor controller (CAC).

The Authority contends the September 1998 agreement is an indebtedness obligation meeting the definition of an enforceable obligation. According to the Authority, allocation of the RDA's tax increment to the District is considered repayment for the indebtedness incurred by the RDA for receiving the District's advanced tax increment funds. HSC section 34171 (e) defines an indebtedness obligation as bonds, notes, certificates of participation, or other evidence of indebtedness issued by the RDA to third party investors or bond holders to finance or refinance redevelopment projects. Further, HSC section 34171 (d) (1) (B) defines an enforceable obligation to be loans of money borrowed by the RDA to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms. The agreement does not specify total debt owed by the RDA or any loan terms.

Furthermore, the District has been receiving 100 percent of the tax increment from the project area since 2008 as a pass-through payment. Pursuant to HSC section 34183 (a) (1), the CAC will remit an amount of property tax revenues equal to the amount due to taxing entities pursuant to any pass-through agreements entered into prior to January 1, 1994. Since the amount due is directly distributed by the CAC prior to distribution of Redevelopment Property Tax Trust Fund (RPTTF) to the Authority, this item should not be listed on the ROPS.

Finally, Section 2.11 of the agreement states that in no event shall payments made to the District pursuant to the agreement exceed the amount the District would have received from property taxes had the tax increment funds not been received by the RDA. Therefore, it is unnecessary to request funding through the ROPS process.

Except for the item denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for July through December 2013. Finance's determination is effective for this time period only and should not be conclusively relied on for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS.

The Authority's maximum approved RPTTF distribution for the reporting period is \$16,500 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of July through December 2013</b>	
Total RPTTF funding requested for obligations	\$ 251,714
Minus: Six-month total for items denied or reclassified as administrative cost Item 10	251,714
Total approved RPTTF for enforceable obligations	\$ -
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	31,000
Minus: ROPS II prior period adjustment	(14,500)
<b>Total RPTTF approved for distribution:</b>	<b>\$ 16,500</b>

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment resulting from the CAC's audit of the Authority's self-reported prior period adjustment.

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a

Mr. Christopher Jicha  
May 17, 2013  
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future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Beliz Chappuie, Supervisor or Cindie Lor, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Mr. Tom Murray, Chair, Designated Local Authority, Kosmont Companies  
Ms. Barbara Godwin, Property Tax Manager, County of San Luis Obispo  
California State Controller's Office



**REPORT TO THE PISMO BEACH DESIGNATED LOCAL AUTHORITY,  
AS SUCCESSOR AGENCY TO THE PISMO BEACH REDEVELOPMENT AGENCY**

**TO: DESIGNATED LOCAL AUTHORITY MEMBERS**  
**FROM: CHRIS JICHA, STAFF TO THE DLA**  
**DATE: JUNE 24, 2013**  
**SUBJECT: COMMUNICATION PROTOCOL**

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**BACKGROUND**

The Pismo Beach Designated Local Authority, as Successor Agency to the Pismo Beach Redevelopment Agency ("DLA"), was established by statute to take actions to wind down the affairs of the former Pismo Beach Redevelopment Agency in accordance with the California Health and Safety Code.

Kosmont Companies ("Kosmont") serves as staff to the DLA. The DLA must amend its bylaws if it wants to hold regularly scheduled meetings bi-annually or quarterly. As a result of the proposed change in the meeting frequency, the DLA Board has expressed concern that it will timely receive updates on the activities of the DLA.

DLA staff proposes to prepare monthly or quarterly memos, as determined by the DLA, for informational purposes only to keep the Board up-to-date on the DLA's activities.

**DISCUSSION**

In providing informational update memos, the Board should be cautious not to violate the open meeting requirements of the Brown Act.

DLA staff is permitted to send written communication to all members of the Board, but the members of the Board are not permitted to "reply to all," communicate amongst themselves or otherwise deliberate or take action on an item except in an open meeting held in accordance with the Brown Act. Individual questions may be submitted to staff, as may individual requests for an item to be brought to a meeting.

DLA Staff will prepare a proposal suggesting the timing of the Staff Reports and the amendment to the bylaws changing the regular DLA meeting dates and times for the DLA to act on at the next DLA meeting.

Set forth below are key provisions of the Brown Act regarding which activities constitute a "meeting."

**54952.2. Definition - “Meeting”.**

(a) As used in this chapter, “meeting” means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b)(1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed

meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

**REPORT TO THE PISMO BEACH DESIGNATED LOCAL AUTHORITY,  
AS SUCCESSOR AGENCY TO THE PISMO BEACH REDEVELOPMENT AGENCY**

**TO: MEMBERS OF THE DESIGNATED LOCAL AUTHORITY**

**FROM: CHRIS JICHA, DLA STAFF**

**DATE: JUNE 24, 2013**

**SUBJECT: INDEPENDENT AUDITOR TO COMPLETE 2012-2013 FINANCIAL STATEMENTS**

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**Background**

The Designated Local Authority had engaged the San Luis Obispo (SLO) Auditor-Controller to complete its annual financial audits and statements. The SLO Auditor-Controller has notified the DLA that due to new standards for governmental audits required by the Government Accountability Office that the SLO Auditor-Controller can no longer perform these annual audits (see attached email from SLO Auditor-Controller).

**Discussion**

DLA Staff will identify suitable CPA/Auditors with experience in auditing and preparing governmental financial statements and solicit proposals for completing the 2012-2013 audit as required. At the direction of the DLA, staff will evaluate the proposals, identify and recommend the selected firm, negotiate a contract and fees and prepare the recommendation for approval by the DLA at their next scheduled meeting.

## Chris Jicha

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**From:** kbailey@co.slo.ca.us  
**Sent:** Thursday, June 20, 2013 8:03 AM  
**To:** tmurrayinslo@gmail.com  
**Cc:** janetgeorgeca@hotmail.com; Crabbster@me.com; jerb@co.slo.ca.us; kbailey@co.slo.ca.us; mpurkiss@co.slo.ca.us; Chris Jicha  
**Subject:** DLA 2012-2013 Financial Statements

Hi Tom,

To recap our conversation yesterday regarding preparation of the DLA's 2012-2013 financial statements.

The Government Accountability Office issued new standards for government audits which would affect the Auditor-Controller's office in auditing the DLA's 2012-2013 financial statements. Because the District's funds are kept in the County Treasury, the Auditor-Controller's Office would not be considered independent in the performance of the audit, and we would be required to issue a "disclaimer of opinion". What this means is that unlike an independent CPA, we would not be able to offer our opinion as to whether the financial statements are presented fairly.

We believe that it would be in the DLA's best interests to engage an outside auditor for audit of the 2012-2013 financial statements. I've listed several local CPA's below; however, we do not endorse any particular CPA or firm.

- Caliber Accounting Group      805-888-0200      calibercpas.com
- 
- Glenn Burdette                      805-544-1441      glennburdette.com
- 
- Moss, Levy & Hartzheim, LLP      805-925-2579      mlhcpas.com
- 
- Robert Crosby, CPA              805-543-6100
- 
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Please give me a call if you have any questions.

Thanks,

Kerry

Kerry Bailey, CPA, CIA  
Principal Auditor-Analyst (Audit Chief)  
Auditor-Controller's Office  
Phone 805-788-2979  
Fax 805-781-1220  
[www.slocounty.ca.gov](http://www.slocounty.ca.gov)

[Scanned @co.slo.ca.us]

**REPORT TO THE PISMO BEACH  
DESIGNATED LOCAL AUTHORITY,  
AS SUCCESSOR AGENCY TO THE  
PISMO BEACH REDEVELOPMENT AGENCY**

**TO: DESIGNATED LOCAL AUTHORITY MEMBERS**

**FROM: CHRIS JICHA, STAFF TO THE DLA**

**DATE: JUNE 24, 2013**

**SUBJECT: RESOLUTION OF THE PISMO BEACH DESIGNATED LOCAL AUTHORITY, AS  
SUCCESSOR AGENCY TO THE PISMO BEACH REDEVELOPMENT AGENCY,  
APPROVING A CONTRACT WITH LEIBOLD MCCLENDON & MANN, PC FOR  
LEGAL SERVICES**

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**BACKGROUND**

The Pismo Beach Designated Local Authority, as Successor Agency to the Pismo Beach Redevelopment Agency ("DLA"), was established by statute to take actions to wind down the affairs of the former Pismo Beach Redevelopment Agency in accordance with the California Health and Safety Code.

Kosmont Companies ("Kosmont") was engaged by the California Department of Finance ("DOF") in mid-2012 to serve as staff to the DLA, and Kosmont engaged Leibold McClendon & Mann, PC ("LMM") to serve as General Counsel to the DLA in its capacity as a sub-consultant to Kosmont. At that time, Kosmont understood that its contract ran through June 30, 2013.

In March 2013, DOF advised Kosmont Companies that it would no longer provide staffing for the DLA effective as of January 1, 2013, thereby also terminating LMM's contract to serve as counsel to the DLA. The DLA has already engaged LMM to serve as DLA general counsel for the July 1, 2013 through December 31, 2013 period. That engagement has been approved by the Oversight Board.

**DISCUSSION**

In order to fulfill its obligations with respect to the wind down of the affairs of the former Pismo Beach Redevelopment Agency, the DLA requires the assistance of legal counsel. LMM has been acting as General Counsel to the DLA notwithstanding DOF's termination of the Kosmont contract in March 2013.

A form of legal services agreement is attached hereto and sets forth the cost, timing and other particulars of the proposed engagement of LMM. The rates are the same as those charged as a sub-consultant in 2012.

Section 34177(b) of the Health and Safety Code provides that a Successor Agency may create enforceable obligations to conduct wind-down activities of the former Agency, including acquiring necessary professional staff, and legal staff is necessary to comply with the law and work through the various issues confronting the DLA as it winds down the affairs of the former Pismo Beach Redevelopment Agency.

**RECOMMENDATION**

It is recommended that the Pismo Beach Designated Local Authority, acting as Successor Agency to the Pismo Beach Redevelopment Agency, adopt Resolution No. 2013-03 approving a contract between the Pismo Beach Designated Local Authority and Leibold McClendon & Mann, PC for legal services from January 1, 2013 through June 30, 2013 and authorizing Tom Murray, or his designee, to take all necessary actions with respect thereto.

Attachments:           Resolution No. 2013-03  
                                  Agreement for Legal Services

**RESOLUTION NO. 2013-03**

**A RESOLUTION OF THE PISMO BEACH DESIGNATED LOCAL AUTHORITY, AS SUCCESSOR AGENCY TO THE PISMO BEACH REDEVELOPMENT AGENCY, APPROVING A CONTRACT WITH LEIBOLD MCCLENDON & MANN, PC FOR LEGAL SERVICES**

**WHEREAS**, the Pismo Beach Designated Local Authority, as Successor Agency to the Pismo Beach Redevelopment Agency ("DLA"), has been established to take actions to wind down the affairs of the former Pismo Beach Redevelopment Agency in accordance with the California Health and Safety Code; and

**WHEREAS**, from its formation through December 31, 2012, the California Department of Finance contracted with Kosmont Companies to provide staffing for the DLA; and

**WHEREAS**, Leibold McClendon & Mann, PC has been acting as General Counsel to the DLA in its capacity as a sub-consultant to Kosmont Companies since the formation of the DLA; and

**WHEREAS**, as of January 1, 2013, the California Department of Finance will no longer provide staffing for the DLA; and

**WHEREAS**, in order to fulfill its obligations with respect to the wind down the affairs of the former Pismo Beach Redevelopment Agency, the Designated Local Authority requires the assistance of legal counsel; and

**WHEREAS**, Section 34177(b) of the Health and Safety Code provides that a Successor Agency may create enforceable obligations to conduct wind-down activities of the former Agency, including acquiring necessary professional staff; and

**WHEREAS**, the DLA desires to approve a contract with Leibold McClendon & Mann, PC to perform the duties of the office of General Counsel from January 1, 2013 through June 30, 2013; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, THE DESIGNATED LOCAL AUTHORITY, AS SUCCESSOR AGENCY OF THE PISMO BEACH REDEVELOPMENT AGENCY, DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The Recitals set forth above are true and correct and incorporated herein by reference.

**SECTION 2.** The DLA hereby approves a contract with Leibold McClendon & Mann, PC to perform the duties of the office of General Counsel beginning as of January 1, 2013 and continuing until June 30, 2013, subject to the terms and conditions set forth in the Agreement for Legal Services attached hereto. Pursuant to Health & Safety Code Section 34173, the Successor Agency's liability is limited to the total sum of property tax revenues it receives pursuant to Part 1.85 of AB X1 26.



**SECTION 3.** Tom Murray, or his designee, is hereby authorized to enter into such Agreement for Legal Services on behalf of the DLA and take such other actions as may be required by the Health & Safety Code, and any other actions as may be necessary in furtherance of the foregoing contract in accordance with applicable law.

**SECTION 4.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are severable. The DLA hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

**SECTION 5.** This Resolution shall take effect from and after the date of its passage and adoption.

**PASSED, APPROVED AND ADOPTED** at a special meeting of the Designated Local Authority, as Successor Agency to the Pismo Beach Redevelopment Agency, held this 24th day of June, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Chairperson, Designated Local Authority, as  
Successor Agency to the Redevelopment  
Agency of the City of Pismo Beach

ATTEST:

\_\_\_\_\_  
Secretary

Attachment: Agreement for Legal Services

## AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services (the "Agreement") is made and entered into as of the 1st day of January 2013, by and between the Pismo Beach Designated Local Authority, as Successor Agency to the Pismo Beach Redevelopment Agency, a public entity (the "Authority"), on the one hand, and Leibold McClendon & Mann, a professional corporation ("LMM"), on the other hand.

### RECITALS

- A. LMM has been acting as General Counsel to the Authority in its capacity as a sub-consultant to Kosmont Companies since the formation of the Authority. The California Department of Finance ("DOF") has recently confirmed that it will not fund legal and other administrative costs of the Authority beginning January 1, 2013.
- B. Authority has already engaged LMM to perform the duties of the office of General Counsel beginning as of July 1, 2013. As a result of DOF's action, Authority desires to engage LMM directly to perform the duties of the office of General Counsel beginning as of January 1, 2013.
- C. LMM possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

### AGREEMENT

1. Scope of Services. By this Agreement, Authority retains LMM to perform the duties of General Counsel and to provide the services described on Exhibit A attached hereto and incorporated herein by reference, all on an as-requested basis. Upon the request of Authority Staff and/or the Authority Board, LMM shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the Authority Board. LMM will not undertake any activities on behalf of the Authority without direction to do so. In connection with the performance of the duties of the General Counsel, Authority agrees to be truthful with LMM, to cooperate with LMM's representation, and to make available, in prompt and businesslike manner, all necessary and available documentation and background data as may be necessary from time to time.
2. Term of Agreement. The terms and conditions under this Agreement shall commence on January 1, 2013 and shall continue thereafter unless amended or terminated until June 30, 2013.
3. Compensation. Compensation to be paid to LMM shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference.
4. Method of Payment. LMM shall submit monthly billings to Authority describing the work performed during the preceding month. LMM's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. Services will be billed in increments of one-tenth (1/10<sup>th</sup>) of an hour. Authority shall pay LMM no later than 30 days after approval of the monthly invoice by Authority Staff Contact Christopher Jicha, his designee or successor in

interest, or such other employee of Kosmont Companies as shall be designated by Larry Kosmont.

5. Termination. This Agreement may be terminated by the Authority immediately for cause or by either party without cause upon thirty (30) days' written notice of termination. Upon termination, LMM shall be entitled to compensation for services performed up to the effective date of termination.

6. Ownership of Documents. All writings prepared by LMM in the course of implementing this Agreement, except working notepad, preliminary draft and internal documents, are the property of the Authority.

7. LMM's Books and Records.

a. LMM shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to Authority for a minimum period of three (3) years, or for any longer period required by law, from the date of payment to LMM under this Agreement.

b. LMM shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit by the Authority executive staff, Authority Auditor or Authority Boardmember(s), at any time during regular business hours, upon written request by the Authority Board. Copies of such documents shall be provided to the Authority for inspection at the offices of Authority when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at LMM's address indicated for receipt of notices in this Agreement. Nothing herein shall require or permit the release or inspection of any privileged document without the express written waiver of such privilege by the Authority Board.

d. Where Authority has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of LMM's business, Authority may, by written request by any of the above-named officers or Authority Board Member(s), require that custody of the records be given to the Authority and that the records and documents be maintained in the offices of Authority.

8. Independent Contractor. It is understood that LMM, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Authority. LMM shall obtain no rights to retirement benefits or other benefits which accrue to Authority's employees, and LMM hereby expressly waives any claim it may have to any such rights.

9. Interests of LMM. LMM (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the County of San Luis Obispo, California or

any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of LMM's services hereunder. LMM further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

10. Professional Ability of LMM. Authority has relied upon the professional training and ability of LMM to perform the services hereunder as a material inducement to enter into this Agreement. LMM shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by LMM under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in LMM's field of expertise.

11. Compliance with Laws. LMM shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. LMM represents and warrants to Authority that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of LMM to practice its profession. LMM represents and warrants to Authority that LMM shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of LMM to practice its profession.

13. Indemnity. LMM agrees to defend, indemnify and hold harmless the Authority, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the Authority, its officers, members, agents, employees or volunteers.

14. Insurance. LMM shall maintain in full force and effect under the terms of this Agreement the following insurance coverages:

a. Such insurance coverage as is required pursuant to the Workers' Compensation Laws of the State of California; and

b. A general liability policy with coverage of not less than \$1,000,000; and

c. Professional liability (errors and omissions) insurance in an amount of not less than \$1,000,000.

15. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Authority: Pismo Beach Designated Local Authority  
c/o Kosmont Companies  
Attn: Chris Jicha

865 South Figueroa Street, Suite 3500  
Los Angeles, CA 90017

With copy to: Kosmont Companies  
Attn: Susan Perry  
865 South Figueroa Street, Suite 3500  
Los Angeles, CA 90017

If to LMM: Leibold McClendon & Mann, P.C.  
Attn: John McClendon  
23422 Mill Creek Drive, Suite 105  
Laguna Hills, CA 92653

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the Authority and LMM. All prior written and oral communications, including the agreement with Kosmont Companies to provide legal services to the Authority through December 31, 2012, correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both LMM and Authority.

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to Authority for entering into this Agreement is the professional reputation, experience and competence of LMM. LMM shall be fully responsible to Authority for all acts or omissions of any subcontractors. Assignments of any or all rights, duties or obligations of the LMM under this Agreement will be permitted only with the express consent of the Authority. LMM shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the Authority. If Authority consents to such subcontract, LMM shall be fully responsible to Authority for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between Authority and any subcontractor nor shall it create any obligation on the part of the Authority to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

19. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

20. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

21. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Luis Obispo.

22. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall

be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

23. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. Authority to Enter Agreement. LMM has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

26. Prohibited Interests. LMM maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for LMM, to solicit or secure this Agreement. Further, LMM warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for LMM, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Authority, during the term of his or her service with Authority, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the date first written above.

AUTHORITY:

PISMO BEACH DESIGNATED LOCAL  
AUTHORITY, as Successor Agency to the  
Pismo Beach Redevelopment Agency

LMM:

LEIBOLD McCLENDON & MANN, a  
professional corporation

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Tom Murray, Chair

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John G. McClendon

## EXHIBIT "A"

### SCOPE OF SERVICES

Upon the request of the Authority, LMM shall perform the legal services necessary to serve the Authority which shall include, but are not limited, to the following:

A. The designated General Counsel or Assistant General Counsel (Attorneys John McClendon and Joy Otsuki) shall attend meetings of the Authority upon the request of the Chairperson, or the Vice-Chairperson if the Chairperson is not available; and

B. Provide legal counsel and representation at other meetings of other public agencies as directed by the Board or Authority executive staff; and

C. Provide legal advice and opinions on all matters affecting the Authority when requested by the Board or Authority executive staff and represent the Authority in administrative proceedings and litigation involving the Authority which may arise from those matters upon which such advice has been given; and

D. Prepare and/or approve as to legal form all resolutions, policies, contracts, agreements and other legal documents and represent the Authority in administrative proceedings and litigation involving the Authority which may arise from those matters upon which such advice has been given; and

E. Represent the Authority in administrative proceedings and civil litigation to which the Authority is a party; and

F. Provide legal advice and opinions on all environmental matters affecting the Authority when requested by the Board or Authority executive staff and represent the Authority in environmental transactions and proceedings involving the Authority as requested by the Board; and

G. Provide legal advice and opinions on all financial matters affecting the Authority when requested by the Board or Authority executive staff and represent the Authority in financial transactions involving the Authority as requested by the Board.

LMM shall not be required to perform the services described above where to do so would be a conflict of interest pursuant to the State Bar Act. When requested by the Board, LMM shall provide the Authority with an estimate of the costs of litigation or other services to be provided.

EXHIBIT "B"

SCHEDULE OF CHARGES

1. Hourly Rate for Legal Personnel

Attorneys: \$240.00

Paralegals: \$120.00

No separate charge shall be made by LMM for secretarial or word processing services.

2. Cost and Expenses

Copy Charges: No charge for routine copy jobs (25 pages or less); \$0.75 for color copies; \$0.15 per page for larger copy jobs or at cost if outside service is used.

Facsimile Charges: No charge.

Long Distance Telephone: No charge.

Travel/Meals/Lodging: Mileage at Federal Reimbursement rate; other travel, meals and lodging at reasonable costs.

Lexis/Westlaw: No charge for electronic legal research within firm's service plan (California).

Standard Postage: No charge.

Messenger/Overnight  
Delivery/court fees and  
litigation costs: Actual Costs.

Adjustments to Rates. The rates provided in this Exhibit shall be automatically adjusted as follows: On July 1, 2013 and every July 1st thereafter during the term of the Agreement, all rates shall be adjusted for changes in the cost of living for the most recently published twelve (12) month period, as shown by the U.S. Department of Labor in its All Urban Consumer Index set forth for the West Census Region.