

**OVERSIGHT BOARD
TO THE
OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY
AGENDA ITEM: E.2.
MEETING DATE: November 6, 2012, 11:00 a.m.**

TO: Members of the Oversight Board
FROM: Curtis Cannon, Successor Agency Director, (805) 385-7407
Kymberly Horner, Interim Redevelopment Services Manager,
Successor Agency, (805) 385-7407

SUBJECT

Report on Status of Oversight Board Legal Counsel Contract per ABx1 26

RECOMMENDED ACTION(S)

That the Oversight Board:

- (1) Receive, Review and Approve Oversight Board Legal Counsel Agreement.
- (2) Adopt a Resolution Approving Agreement for Retention of Special Counsel.

DISCUSSION

In June of 2012, the City of Oxnard's City Attorney posted on the Cal League City Attorney's list serve, a request that interested attorneys contact him to receive a request for qualifications to perform legal services for the Oversight Board ("Board"). The list serve is a communication which reaches hundreds of public sector attorneys across the state. Six attorneys expressed interest and six attorneys submitted responses to the request for qualifications. On June 13, 2012, the Board acted to authorize solicitation of legal counsel (Resolution No. 9) and established an ad hoc committee of two Board members. Staff conducted oral interviews of all firms which could be reached during the time of the ad hoc committee meeting and the Board members in attendance provided staff direction. The Board requested staff prepare a ranked summary spreadsheet and provide it to the Board at the August 15, 2012 meeting, for its review. Item discussion and approval followed. The Board approved Liebold McClendon & Mann as Board legal counsel.

FINANCIAL IMPACT

Oversight Board agrees to pay Special Counsel in an amount not to exceed \$15,000 for the period of January 1, 2013 - June 30, 2013 subject to approved funding and funds available in the Recognized Obligation Payment Schedule (ROPS) III and up to \$25,000 for the period of July 1, 2013 - December 31, 2013 subject to approved funding in the ROPS IV and funds available in the ROPS IV, for as-needed services provided under this Agreement. Attorneys would be paid at a rate of \$285 per hour. Paralegals would be paid at a rate of \$115 per hour. Meeting and mileage reimbursement would not exceed (60) miles each way and the above hourly rates may only be amended with Board approval.

ATTACHMENTS

1. Oversight Board Legal Counsel Agreement
2. Resolution Approving Agreement for Retention of Special Counsel

ATTORNEY SERVICES AGREEMENT

This Attorney Services Agreement ("Agreement") is made and entered into in the County of Ventura, State of California, by and between the Oversight Board to the Successor Agency of the City of Oxnard ("Oversight Board") and Leibold McClendon & Mann, engaged in the practice of law in the County of Ventura, California, ("Special Counsel").

WHEREAS, Oversight Board desires to engage Special Counsel to represent Oversight Board's interests and to provide legal advice and services to Oversight Board in a variety of legal matters as determined by the Oversight Board; and

WHEREAS, Special Counsel represents that Special Counsel's personnel possess the skills, qualifications and experience necessary to properly perform such services.

NOW, THEREFORE, Oversight Board and Special Counsel hereby agree as follows:

1. Scope of Services

Special Counsel is hereby retained as special counsel for Oversight Board to perform such legal services as may be required in a variety of matters as determined by the Oversight Board.

2. Special Counsel Representative

Special Counsel agrees that David H. Mann shall be Special Counsel's representative and shall be personally responsible for the performance and/or coordination of legal services under this Agreement.

3. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Special Counsel from rendering any services for Special Counsel's own account or to any other person or entity as Special Counsel in its sole discretion shall determine. Special Counsel agrees that performing such services will not materially interfere with services to be performed for the Oversight Board.

4. Direction and Coordination

Special Counsel understands that the Oversight Board is responsible for providing management and direction to Special Counsel. Special Counsel agrees to coordinate the services to be provided with the Oversight Board to the extent required by the Oversight Board, and such services shall be performed to the satisfaction of the Oversight Board.

5. Place of Work

Special Counsel shall perform the services provided for in this Agreement at any place or location and at such times as the Special Counsel shall determine.

6. Permits, Licenses, Certificates

Special Counsel, at Special Counsel's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City of Oxnard business license.

7. Term of Agreement

The term of this Agreement shall commence on November 6, 2012, and shall expire on November 6, 2013 unless sooner terminated pursuant to Section 8.

8. Termination of Agreement and Legal Services

This Agreement may be terminated at any time by written notice from either party to the other with or without cause. In such event, all finished or unfinished documents, data and reports in Special Counsel's possession shall immediately be turned over to the Oversight Board. In the event of such termination, Special Counsel shall be paid for all satisfactory services and costs unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

9. Compensation and Reimbursement

a. Compensation

(1) Oversight Board agrees to pay Special Counsel in an amount not to exceed \$15,000 for the period of January 1, 2013 - June 30, 2013 subject to approved funding and funds available in the Recognized Obligation Payment Schedule (ROPS) III and \$25,000 for the period of July 1, 2013 – December 31, 2013 subject to approved funding in the ROPS IV and funds available in the ROPS IV, for as-needed services provided under this Agreement.

(2) Oversight Board agrees to pay for all services provided by attorneys under this Agreement at the following hourly rates:

| | |
|------------|----------------|
| Attorneys | \$285 per hour |
| Paralegals | \$115 per hour |

(3) Special Counsel will charge one (1) hour of travel for travel time to and from Oxnard per meeting and mileage reimbursement will not exceed sixty (60) miles each way. Special Counsel will bill in increments of 1/10th of an hour.

(4) The above hourly rates may be altered by amendments of this Agreement signed and approved by the Oversight Board.

b. Reimbursement

(1) Oversight Board agrees to reimburse actual cost to Special Counsel for out-of-pocket expenses incurred, including recording fees, messenger or delivery services. Special Counsel will not charge for faxes, long distance phone calls, computer research, clerical support or routine copy jobs under twenty-five (25) pages.

10. Method of Payment

a. Special Counsel agrees to submit monthly a statement of account which clearly sets forth by dates the designated items of services and respective time for each item for which the statement is submitted and the identity of the attorney performing the services.

b. Special Counsel shall mail the invoice for payment to City of Oxnard, Community Development Department, 214 South C Street, Oxnard, California 93030, Attention: Curtis Cannon, Director.

c. Oversight Board shall timely pay Special Counsel for services rendered and costs incurred at the rates and in the amounts provided on a monthly basis in accordance with the statements as approved by the Oversight Board.

11. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, Oversight Board shall not be responsible for expenses incurred by Special Counsel in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by Special Counsel, including, but not limited to rent, and vehicle, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Special Counsel. Special Counsel shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Special Counsel in the performance of such services.

12. Approved Attorneys

a. Special Counsel agrees that the following attorneys shall be the only attorneys assigned to perform services for Oversight Board:

David H. Mann

Barbara Zeid Leibold

John G. McClendon

Joy Heuser Otsuki

b. This list of approved attorneys may be altered by amendments of this Agreement signed and approved by the Oversight Board.

13. Engagement of Other Counsel, Specialists or Experts

Special Counsel agrees not to engage or otherwise incur an obligation to pay other legal counsel, specialists or experts for services in connection with this Agreement without the prior approval of the Oversight Board. Oversight Board shall not pay a mark-up for outside services obtained by Special Counsel.

14. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Special Counsel under this Agreement shall be confidential and shall not be made available to any third person or

organization by Special Counsel without prior written approval of the Oversight Board.

15. Indemnity

Special Counsel agrees to indemnify, hold harmless and defend the Oversight Board, and each member thereof, and every officer, employee, representative or agent of the Oversight Board, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Special Counsel or its agents, employees, subconsultants, consultants and other persons acting on Special Counsel's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which Special Counsel or its agents, employees, subconsultants, consultants and other persons acting on Special Counsel's behalf would be held strictly liable.

16. Insurance

a. Special Counsel shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-A, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the City of Oxnard Risk Manager acting as Successor Agency staff for the Oversight Board, unless the Risk Manager waives, in writing, the requirement that Special Counsel obtain and maintain such insurance coverages.

b. Special Counsel shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-A. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-A.

c. Maintenance of proper insurance coverages by Special Counsel is a material element of this Agreement. Special Counsel's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

17. Independent Contractor

a. Oversight Board and Special Counsel agree that in the performance of the services, Special Counsel shall be, and is, an independent contractor, and that Special Counsel and its employees are not employees of Oversight Board. Special Counsel has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Special Counsel.

b. Special Counsel shall be solely responsible for, and shall save Oversight Board harmless from, all matters relating to the payment of Special Counsel's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Special Counsel acknowledges that Special Counsel and Special Counsel's employees are not entitled to receive from Oversight Board any of the benefits or rights afforded

employees of Successor Agency or City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

18. Special Counsel Not Agent

Except as provided for in this Agreement, Special Counsel shall have no authority, expressed or implied, to act on behalf of Oversight Board in any capacity whatsoever as agents or otherwise. Special Counsel shall have no authority, expressed or implied, unless pursuant to this Agreement to bind the Oversight Board to any obligation whatsoever.

19. Conflict of Interest

Special Counsel agrees to scrupulously avoid performing services for any party or entering into any contractual or other relationship with any party which might create a conflict with the rendering of services under this Agreement. Special counsel shall immediately inform the Oversight Board of any conflict of interest or potential conflict of interest which may arise during the term of this Agreement by virtue of any past, present, or prospective act or omission of Special Counsel.

20. Assignability of Agreement

This Agreement contemplates personal performance by Special Counsel's personnel and is based upon a determination of the unique competence and experience of Special Counsel's personnel and upon the specialized personal knowledge of Special Counsel's personnel. Assignment of any or all rights, duties or obligations of Special Counsel under this Agreement shall be permitted only with the express written consent of the Oversight Board.

21. Fair Employment Practices

a. Special Counsel agrees that all persons employed by Special Counsel shall be treated equally by Special Counsel without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City of Oxnard.

b. Special Counsel agrees that, during the performance of this Agreement, Special Counsel and any other parties with whom Special Counsel may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Special Counsel agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Special Counsel shall provide Oversight Board with access to and, upon request,

provide copies to Oversight Board of all of Special Counsel's records pertaining or relating to Special Counsel's employment practices, to the extent such records are not confidential or privileged under State or federal law.

e. Special Counsel agrees to recruit vigorously from protected classes and to encourage businesses owned by persons in a protected class to bid subcontracts.

22. Time of Essence

Special Counsel and Oversight Board agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

23. Covenants and Conditions

Special Counsel and Oversight Board agree that each term and each provision of this Agreement to be performed by Special Counsel shall be construed to be both a covenant and a condition.

24. Governing Law

The Oversight Board and Special Counsel agree that the construction and interpretation of this Agreement and the rights and duties of Oversight Board and Special Counsel hereunder shall be governed by the laws of the State of California.

25. Compliance with Law

Special Counsel agrees to comply with all federal, state and local laws, rules, and regulations, now or hereafter in force, pertaining to the services performed pursuant to this Agreement.

26. Severability

Oversight Board and Special Counsel agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

27. Waiver

Oversight Board and Special Counsel agree that no waiver of a breach of any provision of this Agreement by either Special Counsel or Oversight Board shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either Oversight Board or Special Counsel to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

28. Counterparts

Oversight Board and Special Counsel agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

29. Arbitration

Special Counsel and Oversight Board agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Special Counsel's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

30. Authority to Execute

a. Oversight Board acknowledges that the person executing this Agreement has been duly authorized by the Oversight Board to do so on behalf of the Oversight Board.

b. Special Counsel acknowledges that the person executing this Agreement has been duly authorized by Special Counsel to do so on behalf of Special Counsel.

31. Notices

a. Any notices to Special Counsel may be delivered personally or by mail addressed to Leibold McClendon & Mann, P.C., 23422 Mill Creek Drive, Suite 105, Laguna Hills, California 92653, Attention: David H. Mann.

b. Any notices to Oversight Board may be delivered personally or by mail addressed to City of Oxnard, Community Development Department, 214 South C Street, Oxnard, California 93030, Attention: Curtis Cannon.

32. Amendment

This Agreement may be amended at any time, in writing, by the Oversight Board and Special Counsel.

33. Entire Agreement

The Oversight Board and Special Counsel agree that this Agreement constitutes the entire Agreement of the parties with respect to the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written.

OVERSIGHT BOARD

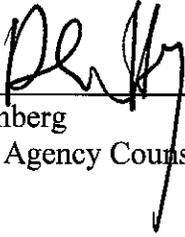
SPECIAL COUNSEL

Dr. Thomas E. Holden
Chairperson



David H. Mann

APPROVED AS TO FORM & CONTENT



Alan Holmberg
Successor Agency Counsel

APPROVED AS TO INSURANCE:

N/A

James Cameron
Successor Agency Risk Manager

RESOLUTION NO. ____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
OVERSIGHT BOARD TO THE OXNARD COMMUNITY
DEVELOPMENT COMMISSION SUCCESSOR AGENCY APPROVING
AGREEMENT FOR RETENTION OF SPECIAL COUNSEL**

WHEREAS, the City of Oxnard Community Development Commission (“Agency”) was a Community Development Commission in the City of Oxnard (“City”), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with section 33000) of Division 24 of the California Health and Safety Code) (“Redevelopment Law”); and

WHEREAS, ABx1 26 (“AB 26”) and ABx1 27 (“AB 27”) were signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with section 34161) and Part 1.85 (commencing with section 34170) (“Part 1.85”) to Division 24 of the California Health and Safety Code (“Health and Safety Code”); and

WHEREAS, the California Redevelopment Association and League of California Cities filed a *lawsuit in the Supreme Court of California (California Redevelopment Association, et al. v. Matosantos, et al., Case No. S194861)* alleging that AB 26 and AB 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding AB 26, invalidating AB 27, and holding that AB 26 may be severed from AB 27 and enforced independently; and

WHEREAS, the Supreme Court generally revised the effective dates and deadlines for performance of obligations in Part 1.85 arising before May 1, 2012, to take effect four months later; and

WHEREAS, as a result of the Supreme Court’s decision, on February 1, 2012, all redevelopment agencies were dissolved and replaced by successor agencies established pursuant to Health and Safety Code section 34173; and

WHEREAS, the City Council of the City adopted Resolution No. 14,135 on January 10, 2012, pursuant to Part 1.85, electing for the City to serve as the successor agency to the Agency upon the dissolution of the Agency under AB 26 (“Successor Agency”); and

WHEREAS, AB 26 adds to the Redevelopment Law Health and Safety Code section 34179, et seq., providing for establishment of an Oversight Board to oversee certain actions of successor agencies and carry out other directions of AB 26; and

WHEREAS; the Oversight Board of the Oxnard Community Development Commission Successor Agency (“Board”) has been created by the appointment under Health and Safety Code section 34179(a) of members sufficient to constitute a quorum; and

WHEREAS, the Board, at its meeting held on June 13, 2012, authorized Successor Agency staff, with Resolution No. 9, to solicit from qualified attorneys or firms proposals for legal services to the Board; and

WHEREAS, the Board at its meeting held on June 13, 2012, an ad hoc committee was formed and board members Turner and Herrera were appointed to review potential candidates with Successor Agency staff and to make recommendations to the Board concerning selection of legal counsel; and

WHEREAS, the ad hoc committee and Successor Agency staff met on August 7, 2012, reviewed potential candidates and at the Board's meeting held on August 15, 2012, made their recommendation to the Board to enter into an agreement by and between the Board and Leibold McClendon & Mann ("the firm"); and

WHEREAS, Successor Agency staff has prepared an Attorney Services Agreement with the firm and presented it to the Board at its meeting of November 6, 2012 for the Board's consideration; and

WHEREAS, the Board has considered the Attorney Services Agreement;

NOW, THEREFORE, the Board of Directors DOES HEREBY FIND, DETERMINE, RESOLVE, AND ORDER as follows:

SECTION 1. The Attorney Services Agreement with Leibold McClendon Mann is hereby approved.

SECTION 2. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the Board at its meeting held on the _____ day of November, 2012, by the following vote:

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Chairperson

ATTEST:

Daniel Martinez, Board Secretary

