

20) **Legal Services Agreement with Leibold McClendon & Mann PC for Legal Services to the Successor Agency**

Approve and authorize the Executive Director to execute the Legal Services Agreement with Leibold McClendon & Mann PC for ongoing legal services to the Successor Agency in such final form as approved by the Executive Director.



REPORT TO SUCCESSOR AGENCY

To: Honorable Chair and Members of the Successor Agency

From: Jason Simpson, Executive Director

Prepared by: Barbara Leibold, Agency Counsel

Date: October 22, 2024

Subject: Legal Services Agreement with Leibold McClendon & Mann PC for Legal Services to the Successor Agency

Recommendation

Approve and authorize the Executive Director to execute the Legal Services Agreement with Leibold McClendon & Mann PC for ongoing legal services to the Successor Agency in such final form as approved by the Executive Director.

Background

Leibold McClendon & Mann PC (LMM) served as General Counsel to the former Redevelopment Agency of the City of Lake Elsinore from July 1, 1997, until the Agency was dissolved on January 31, 2012, pursuant to Assembly Bill 1x 26, as amended by AB 1484. Since dissolution, LMM has provided legal services to the Successor Agency of the Redevelopment Agency of the City of Lake Elsinore.

Discussion

LMM routinely represents the Successor Agency in matters before the Riverside Countywide Oversight Board and the California Department of Finance. In connection with its review of the Successor Agency's Amended ROPS 24-25B, the Department of Finance requested that the Agreement for legal services to the Successor Agency be documented in a separate standalone agreement distinct from LMM's Legal Services Agreement in its capacity as City Attorney.

Legal Services Agreement - LMM

The purpose of the proposed Agreement is to continue the relationship with LMM as Agency Counsel. The scope of services includes all matters relating to the Recognized Obligations Payment Schedule (ROPS), implementation of enforceable obligations (including the Summerly DDA and Stadium agreements), and real property transactions. LMM has provided excellent services to the Agency and has successfully defended the Agency's interests against Department of Finance challenges. LMM possesses the expertise and institutional knowledge necessary to serve the best interests of the Successor Agency.

Fiscal Impact

Funds for these services to the Successor Agency are paid with RPTTF allocated for enforceable obligations through the ROPS process.

Attachments

Attachment 1 - Agreement

Agency's Office

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services (the “Agreement”) is made and entered into as of the 22nd day of October, 2024, by and between the Successor Agency of the Redevelopment Agency of the City of Lake Elsinore, a public body, corporate and politic (the “Agency”), on the one hand, and Leibold, McClendon & Mann, a professional corporation (“LMM”), on the other hand.

RECITALS

- A. The former Redevelopment Agency of the City of Lake Elsinore engaged LMM to perform the duties of the office of Agency General Counsel by Agreement dated July 1, 1997 and by amendment thereafter.
- B. LMM served as General Counsel to the former Redevelopment Agency of the City of Lake Elsinore from July 1, 1997 until the Agency was dissolved on January 31, 2012, pursuant to Assembly Bill 1x 26, as amended by AB 1484. Since its dissolution, LMM has provided legal services to the Successor Agency of the Redevelopment Agency of the City of Lake Elsinore.
- 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.
- D. Agency and LMM desire to enter into this Agreement to provide for continuity in the provision of legal services to the Agency.

AGREEMENT

- 1. Scope of Services. By this Agreement, Agency retains LMM to perform the duties of Agency General Counsel. LMM shall provide said services at the time, place, and in the manner subject to the direction of the Agency Board. In connection with the performance of the duties of the Agency General Counsel, Agency 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 July 1, 2024 and shall continue thereafter until amended or terminated by written agreement.
- 3. Compensation. Compensation to be paid to LMM shall be in accordance with the Schedule of Charges set forth in Exhibit A, which is attached hereto and incorporated herein by reference.
- 4. Method of Payment. LMM shall submit monthly billings to Agency 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 (1/10th) of an hour. Agency shall pay LMM no later than 30 days after approval of the monthly invoice by the Agency Executive Director or designee.

5. Termination. LMM serves at the will of the Agency Board. This Agreement may be terminated by the Agency 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 Agency.

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 Agency 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 Agency Executive Director, Agency Auditor or Agency Member(s), at any time during regular business hours, upon written request by the Agency Council. Copies of such documents shall be provided to the Agency for inspection at Agency Hall 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 Agency Board.

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

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 Agency. LMM shall obtain no rights to retirement benefits or other benefits which accrue to Agency'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 area covered by this Agreement 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. Agency 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 Agency 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 Agency 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 Agency, 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 Agency, its officers, agents, employees or volunteers.

14. Professional Liability Coverage. LMM shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from LMM's operations under this Agreement, whether such operations by the LMM or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

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 Agency: Successor Agency of the Redevelopment Agency of the City of
Lake Elsinore
Attn: Agency Executive Director
130 South Main Street
Lake Elsinore, CA 92530

If to LMM: Leibold, McClendon & Mann, P.C.
Attn: Barbara Leibold
9841 Irvine Center Drive, Suite 230
Irvine, CA 92680

16. Entire Agreement. This Agreement is an amendment and restatement of the Existing Agreement and constitutes the complete and exclusive statement of Agreement between the Agency and LMM. All prior written and oral communications, including the Existing Agreement, 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 Agency and approved as to form by the Agency Counsel.

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to Agency for entering into this Agreement is the professional reputation, experience and competence of LMM. LMM shall be fully responsible to Agency 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 Agency. LMM shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the Agency. If Agency consents to such subcontract, LMM shall be fully responsible to Agency for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between Agency and any subcontractor nor shall it create any obligation on the part of the Agency 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 Riverside.

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, Agency shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Agency, during the term of his or her service with Agency, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

27. Equal Opportunity Employment. LMM represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. LMM shall also comply with all relevant provisions of Agency's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

SUCCESSOR AGENCY OF THE /:
AGENCY OF THE
CITY OF LAKE ELSINORE:

LEIBOLD, REDEVELOPMENT
MCCLENDON & MANN, P.C.

By: Jason Simpson, Executive Director

By: Barbara Leibold

ATTEST:

Agency Secretary

EXHIBIT "A"

SCHEDULE OF CHARGES

Legal services provided to the Successor Agency shall be compensated at a rate of \$325 per hour for shareholder/partner attorneys and \$275 for associate attorneys; services provided by paralegals shall be compensated at a rate of \$120 per hour.

Third Party Reimbursements. All legal services provided to the Agency for which the Agency receives reimbursement from a third party, as determined according to the mutual agreement of the parties on a case-by-case basis, shall be billed at LMM's then current published standard private client rates, minus ten percent (10%). If LMM believes that a matter falls within the reimbursed services category, LMM shall first seek approval from the Agency Executive Director.

Adjustments to Rates. The rates provided in this Exhibit shall be automatically adjusted as follows: On July 1, 2025 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 Riverside area.

Cost Reimbursement and Exceptions. The Agency shall reimburse LMM for all reasonable and necessary out-of-pocket expenses incurred by LMM in providing legal services. Authorized reimbursable expenses shall include, but are not limited to, printing and copying expenses (at \$0.15 per page, or at cost if provided by third party copy services), mileage expenses at the rate allowed by the Internal Revenue Service (except as provided below), court fees, computerized research time (e.g., Lexis or Westlaw), extraordinary mail or delivery costs (e.g., courier, overnight and express delivery), actual fees and expenses (no mark-up) for consultants retained by LMM, and similar costs relating to the services that are generally chargeable to a client. However, no separate charge shall be made by LMM for secretarial or word processing services, and no mileage shall be charged for attendance at any meeting scheduled within the City of Lake Elsinore.