

County of Ventura
AUDITOR-CONTROLLER
MEMORANDUM

To: Michael Powers, County Executive Officer
Christopher Stephens, Director, Resource Management Agency

Date: June 15, 2012

From: Christine L. Cohen

Subject: PERFORMANCE OF LIMITED PROCEDURES REGARDING THE ADMINISTRATION OF THE COUNTY'S CONTRACTS FOR PIRU FILM LIAISON SERVICES

We have completed limited audit procedures applied to the Resource Management Agency ("RMA") and to the County Executive Office ("CEO") regarding the administration of the County's contracts for Piru film liaison services. Our overall objective was to determine whether improvements were necessary to strengthen the administration of the County's contracts for Piru film liaison services. Specifically, we reviewed the County's initial contract with the Piru Neighborhood Council ("the PNC") and the subsequent contract with Dan O'Connell ("O'Connell contract"). The results of our limited audit procedures are summarized below with details provided in the attached report.

EXECUTIVE SUMMARY

Overall, we found that the administration of the County's contracts for Piru film liaison services was not always adequate. Although payments under the O'Connell contract were appropriate, we noted that:

- The PNC was overpaid by \$15,025 from April 2007 through June 2011, and was not required to provide documentation of services rendered.
- The contracts were not properly established through the County's procurement process, resulting in: the lack of encumbrance of funds within the budget; an increased risk of Internal Revenue Service penalties; and the lack of contracting authority for the O'Connell contract.
- The Auditor-Controller's Office was not notified timely of the termination of the contracts, increasing the risk of unauthorized payments.

RMA and CEO management initiated corrective action to address our findings. Corrective action was planned to be completed on May 22, 2012, with Board approval of the revised Planning Fee Schedule to eliminate the high-impact film permit fee.

We appreciate the cooperation and assistance extended by you and your staff during our performance of these limited audit procedures.

Attachment

cc: Honorable John C. Zaragoza, Chair, Board of Supervisors
Honorable Peter C. Foy, Vice Chair, Board of Supervisors
Honorable Steve Bennett, Board of Supervisors
Honorable Linda Parks, Board of Supervisors
Honorable Kathy Long, Board of Supervisors

County of Ventura
Office of the Auditor-Controller



PERFORMANCE OF LIMITED PROCEDURES REGARDING
THE ADMINISTRATION OF THE COUNTY'S CONTRACTS
FOR PIRU FILM LIAISON SERVICES

June 15, 2012

Christine L. Cohen
Auditor-Controller

**PERFORMANCE OF LIMITED PROCEDURES REGARDING
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PERFORMANCE OF LIMITED PROCEDURES REGARDING THE ADMINISTRATION OF THE COUNTY'S CONTRACTS FOR PIRU FILM LIAISON SERVICES

BACKGROUND

In 1995, the County of Ventura ("County") formed an agreement with the Piru Neighborhood Council ("the PNC") to monitor and assist film crews in meeting film permit requirements when filming in the unincorporated town of Piru. Payment to the PNC was to be \$325 per day of filming, which was an authorized surcharge on the film permit fee to reduce the impact of filming on the Piru community. The contract was brought forward and signed by the Chair of the Board of Supervisors, although specific delegation for administration of the contract was not specified. The Resource Management Agency ("RMA") accounted for the fee collections in trust/agency funds, issued the film permits, and requested that payments be remitted to the PNC through trust/agency withdrawals.

In recent years, the PNC experienced a high level of turnover of board members, and in January 2011, the new PNC president notified County Executive Office ("CEO") staff that the PNC's nonprofit status had been revoked since 2005¹. On May 18, 2011, the County terminated the original agreement with the PNC.

Two weeks prior, on May 3, 2011, CEO management entered the County into a contract with Dan O'Connell, an independent contractor, to perform services to monitor and assist film crews as the Piru Film Liaison. Payment was to be \$325 per day of filming and \$200 per "prep" day, with an annual contract maximum of \$25,000. The County terminated the contract with Dan O'Connell on September 12, 2011.

This engagement resulted when the Auditor-Controller became aware of the existence of the contract with the PNC after public testimony by the new PNC president during a meeting of the Board of Supervisors in June 2011.

SCOPE

Our overall objective was to determine whether improvements were necessary to strengthen the administration of the County's contracts for Piru film liaison services. Specifically, we:

- determined whether payments made to the PNC from April 2007 through June 2011 were properly based on permit fees collected, in accordance with the County's agreement with the PNC²; and
- determined whether procedures established in the County's contract with Dan O'Connell ("O'Connell contract") were sufficient to support services rendered, to ensure proper contract payments, and to establish sufficient monitoring.

¹ Although during this same time period the PNC's status as an incorporated entity was suspended by the State of California, the County's contract was with the PNC, and not specifically with the PNC as a corporation. Therefore, the PNC's suspension as an incorporated entity had no bearing on the County's contract, or on any payments remitted under said contract, with the PNC.

² Details of permit fees collected prior to April 2007 had been destroyed and were not available for our review. Payments we reviewed subsequent to April 2007 accounted for 34 percent of all payments made to the PNC since the implementation of the Ventura County Financial Management System in 1998.

We reviewed: details of permit fees collected by RMA; checks sent as payment for Piru film liaison services; cash receipts; purchase vouchers; various correspondence between RMA and CEO; and the County's contracts for Piru film liaison services. For our limited procedures engagement, we used documents and records for the period March 1995 through September 2011.

FINDINGS

Overall, actions were not always adequate to properly administer the County's contracts for Piru film liaison services. While the two payments totaling \$1,375 under the O'Connell contract were appropriate, the PNC was overpaid by \$15,025 (30%) of the \$50,450 paid to the PNC since April 2007 according to the terms of the contract. RMA also did not require the PNC to submit documentation of services rendered prior to requesting payments to the PNC.

Further, because the contracts were not properly established through the procurement process: funds were not encumbered; the County was at increased risk of Internal Revenue Service ("IRS") penalties; and the O'Connell contract was not properly authorized. In addition, the Auditor-Controller's Office was not notified timely of the termination of either contract, increasing the risk of unauthorized payments.

Following are details of the areas where improvements were needed. RMA and CEO management initiated corrective action as noted.

1. **Inappropriate Contract Payment Practices for the PNC.** RMA had not taken sufficient action to ensure that payments to the PNC were made in accordance with the contract. Specifically, RMA automatically requested remittance of the Piru film permit fees to the PNC without documentation of what services were actually performed. Further, RMA requested remittance of fees in excess of the amount specified in the contract and remittance of fees not specified in the contract, resulting in overpayment to the PNC of \$15,025 for the period reviewed.
 - A. **Unsupported Payments.** RMA improperly requested remittance of Piru film permit fees to the PNC automatically upon collection, rather than upon presentation of an invoice by the PNC. The contract specified: "County will make payment to contractor upon submission of documentation showing services performed by Contractor." Without an invoice or other documentation of services from the PNC, RMA could not ensure that payment was made for services actually rendered.

Management Action. RMA and CEO management stated:

"RMA and CEO partially concur with this finding. The contract with the PNC and associated fee schedule was established and approved by the Board of Supervisors. We see no evidence that administration of the PNC contract was delegated to any specific individual or agency, and it is unclear who or why the original contract was set up to be paid out of trust. None of the staff participating in this engagement were aware of the contract's existence until relatively recently as described below. Thus, RMA was never directed to require documentation prior to remittance of payment to the PNC. Without such direction, and without having been provided a copy of the contract, it is not accurate to state that RMA 'had not taken sufficient action to ensure that payments to the PNC were made in accordance with the contract.'

"In June, 2009, specific CEO staff was assigned to monitor a variety of activities in the town of Piru. Attending monthly PNC meetings, CEO staff recognized issues pertaining to inconsistencies in PNC film liaison services. After working with the PNC for many months, a consistent film liaison volunteer, Dan O'Connell, was assigned to the PNC board, the PNC Agreement was reviewed, and a checklist was developed to create a nexus to actual film services provided and the fee remitted for such services. In May 2010, CEO staff initiated a film permit checklist to remedy staff concerns about remitting payment without documentation. From that date forward, checklists were received and verified by CEO staff and forwarded to RMA before payments were remitted thus establishing a protocol to ensure the services were provided before RMA released funds to the PNC.

"The CEO's office believes significant effort was made by the CEO's office and RMA to perform due diligence in correcting problems with an outdated contract.

"Furthermore, passing fees from RMA to third parties is also not without precedent. As part of the permitting process (i.e., Building and Safety), RMA collects fees on behalf of other agencies such as Fire Protection District and automatically remits fees through daily cash receipt transactions. Annually, the Board adopts RMA's rates and fees which are charged and collected by the agency for services provided. For additional and/or specialized services, RMA enters into contracts per county procurement policies and administers the contract including payment remittance according to the contract terms."

- B. **Overpayment of Filming Day Fees.** RMA generally requested remittance of the incorrect amount of filming day fees to the PNC. During the period reviewed, RMA charged filming companies a surcharge of \$400 per filming day, \$325 of which was to be passed on to the PNC according to the contract. However, for 83 (76%) of the 109 filming days paid to the PNC between April 2007 and June 2011, RMA requested remittance of the entire \$400 fee rather than the \$325 specified in the contract, plus one duplicate \$400 payment. This resulted in overpayment to the PNC of \$6,625.

Management Action. RMA management stated:

"RMA partially concurs with this finding. It appears that the Board's adoption of the Piru film permit fee in 1995 was interpreted such that RMA was directed to remit fees directly to the PNC upon collection. Such interpretation is supported by language in the 1995 Board letter which states, in part, 'It is a good planning practice for the County to create a separate fee to reflect increased cost of film permits in areas of frequent filming activities and to contract with a local organization to assist the County in administering film permits. . . The County would collect the fee . . . as part of the film permit process and Contract with the Piru Neighborhood Council for permit administration services rendered.' The adoption of both the fee coupled with the contract was intended to accomplish that objective. It is reasonable to interpret, based upon that language that any high impact film fees are intended to go to the PNC.

"The Piru film permit fee was changed from \$325 to \$400 for FY 2004-05 and adopted by the Board of Supervisors on June 15, 2004. The increase was specifically made at the request of the PNC to reflect their increased costs. As outlined above, RMA understood the Board adoption to provide authority to remit fees to the PNC. RMA remitted the entire \$400 fee until August 2010 at which time RMA corrected the payment and began remitting the correct \$325 amount. However, as indicated elsewhere, it is believed that rather than reflecting an overpayment to the PNC, there

was an oversight in not modifying the PNC contract to be consistent with the revised high impact fee schedule.

"To reiterate, it is our opinion that this does not reflect an overpayment as much as it does an error in not modifying the PNC contract to reflect the revised fees.

"For FY 2012-13, RMA proposes to eliminate this fee from the fee schedule as there has been no negative impact despite the fact that there has been no contract in place to provide high impact film liaison services since September 2011. Experience suggests that modern condition compliance, access to filming information online, and other controls have largely mitigated concerns raised in the 1995 Board letter and thus the high impact fee is no longer necessary."

- C. **Inappropriate Payment of Prep Day Fees.** RMA inappropriately requested remittance of the \$200 daily fee collected for filming "prep" days to the PNC. While the prep day fee may have been established with the intention to further reduce the impact of filming on the Piru community, the contract did not specify that the fee was to be passed on to the PNC. However, RMA requested remittance of the entire \$200 daily fee collected for all (100%) of the 42 prep days paid to the PNC between April 2007 and June 2011. This resulted in overpayment to the PNC of \$8,400.

Management Action. RMA management stated:

"RMA partially concurs with this finding. The Piru film permit fee for prep days was introduced in the FY 2004-05 Planning Fee Schedule that was adopted by the Board of Supervisors on June 15, 2004 although the concept of paying for prep days was anticipated by the original 1995 Board letter wherein it is stated, ' . . . the average film permit in Piru has involved three days of shooting with additional days spent scouting locations, preparing the sites and then breaking down (striking) the sets following filming'. It is important to note that the PNC request which led to the Fee Schedule change specifically asked for fees to cover the costs of 'prep days'. RMA understood, as indicated earlier, the Board action to provide authority to remit all high impact fees to the PNC upon collection. In fact, there is no authority for RMA to retain such fees as they were paid by applicants for third party film liaison services that were not being provided by the County.

"Again, it is believed that rather than an overpayment, there was an oversight in modifying the film liaison contract. For FY 2012-13, RMA, in consultation with CEO staff, proposes to eliminate the high impact film fee from the fee schedule."

2. **Improper Establishment of the Contracts.** The contracts were not properly established through the standard procurement process, and the contract payments were instead set up through trust/agency funds. Trust/agency funds are held in a trustee or agency capacity for others and are not designed to account for payments to independent contractors, as the payees were defined in the contracts. As a result, funds were not encumbered and the County was at increased risk of penalties for potential lack of IRS Form 1099 ("1099") reporting. In addition, had the proper procurement process been followed, proper authority would likely have been established for the O'Connell contract.

- A. **No Encumbrance of Funds.** Because a requisition was not established in the Ventura County Financial Management System ("VCFMS") for the contracts, funds were not encumbered as required by County policy. County Administrative Policy No. Chapter VII(A)-4, *Control of*

Appropriations and Estimated Revenues, states: "All financial commitments must be encumbered." Further, the General Services Agency ("GSA") Procurement Guide states that "no purchases can be made or are authorized until funds have been encumbered by the Auditor-Controller's office on a County purchase order." Without the encumbrance of the funds in the budget, the funds were not properly set aside for payments made under the contract.

Management Action. CEO management stated:

"It is unclear who set up the original PNC contract and why it was established the way it was and CEO staff admits that the subsequent contract with Dan O'Connell was established in the same fashion as the original PNC contract. As indicated earlier, the PNC contract was executed by the Board of Supervisors, without specific delegation to a specific agency for administration. We can only speculate as to why it was not encumbered.

"In January 2011, the PNC experienced a 100% turnover in their board members and the new PNC president notified the CEO's office that the PNC's nonprofit status had been revoked in 2005. Staff immediately consulted County Counsel who initially determined that since the PNC lost its nonprofit status, their Agreement was null and void. The CEO's office acted on this finding and notified the PNC of this preliminary determination.

"Later County Counsel determined that the County's contract itself was with the PNC and not specifically with the PNC as a corporation and therefore, the PNC's suspension as an incorporated entity had no bearing on the County's Agreement, or on any payments remitted under that Agreement. However, the notification to the PNC created a catalyst to completely review the entire program and to question the PNC's capacity to provide the services on a consistent basis. It was determined that an independent contractor would better serve the community and thus the PNC contract was officially terminated on May 18, 2011. On May 3, 2011, CEO management entered into a contract with Dan O'Connell, an independent contractor, to perform the film liaison services he had been performing on a volunteer basis with the PNC. Although the contract was executed on May 3, no work was to be performed under his contract until the PNC Agreement had been cancelled. Despite Mr. O'Connell's acceptable performance as a voluntary film liaison under the PNC's contract, it became increasingly difficult for him to perform his duties as an independent contractor due to the disgruntled members of the PNC that no longer received compensation. Mr. O'Connell's contract was canceled under mutual agreement on September 12, 2011 and there has been no film liaison for Piru since that date. Any high impact film fees are being reimbursed to applicants. There have been no unusual complaints therefrom and it is the intent of staff to remove this fee from the fee schedule beginning in FY 2012-13.

"It is stated that failure to encumber the PNC contract resulted in funds not being set aside for payment under their contract. Given the way that the contract and payment was being processed, there was no obligation to make payment unless fees were collected; because fees were placed in trust, they could not be used for any other purpose.

"Proper procedures have since been put in place to ensure that future contracts are encumbered and properly executed in accordance with County policy."

B. **1099 Reporting Risk.** Because the contract payments were made through trust/agency funds, the County's system for identifying payments to independent contractors that must be reported to the IRS could not function properly. The IRS requires the County to issue a 1099 to every independent contractor paid \$600 or more during a calendar year. Failure to do so could lead to IRS penalties of \$100 per 1099 not filed per calendar year. However, as payments under neither the PNC nor the O'Connell contract were made through the appropriate VCFMS accounts payable system, controls were not in place to monitor whether a 1099 was necessary. Specifically, for each contract:

- When the PNC lost tax-exempt status from 2005 through 2011 and failed to notify the County of such, the PNC was not properly issued a 1099. However, had the contract been properly established using the County's procurement process, the County would have been better equipped to comply with IRS regulations.
- Although the County properly issued a 1099 for O'Connell contract payments for 2011 as a result of this engagement, establishing the contract outside of the appropriate procurement process hindered the County's ability to comply with 1099 reporting requirements.

Management Action. CEO management stated:

"As stated earlier the initial Board approved contract with the PNC from 1995 was set up to be paid out of trust and due to lack of historic information we can only speculate about the logic used in doing so. It is true, however, that the new contract with Mr. O'Connell, to replace that with the PNC, was established the same way.

"Proper procedures have since been put in place to ensure future contracts are properly established in accordance with County requirements."

C. **Improper Contracting Authority.** A CEO employee without statutory or other purchasing authority signed the O'Connell contract, in noncompliance with County purchasing regulations. The County permits only those employees with statutory authority, those in certain specified positions, and those who are deputized purchasing agents to have contracting authority. With those limited exceptions, contracting authority lies with the GSA Procurement Services Division. Unless a contract is properly authorized, the County is at increased risk of contracting for services that do not meet the County's needs and regulatory requirements.

Management Action. CEO management stated: "This contract was cancelled four months after its establishment, with Mr. O'Connell being compensated just \$1,375 before its cancellation. Procedures have since been put in place to ensure that future contracts are properly established and executed."

3. **Lack of Notification Upon Termination of the Contracts.** Although CEO staff properly notified appropriate RMA employees upon termination of the contracts, CEO staff did not notify the Auditor-Controller's Office. Because the payments were made through trust/agency funds and not through the VCFMS accounts payable system, additional controls were not in place to notify the Auditor-Controller's Office of the termination of the contracts. The Auditor-Controller's Office needed to be

timely notified upon termination of the contracts to prevent the potential for unauthorized payments through trust/agency funds. (Note: We confirmed that no inappropriate payments were made for services rendered after the date of termination of the contracts.)

Management Action. CEO management stated: "CEO staff is not aware of a requirement to notify the Auditor-Controller's office of the cancellation of the contracts but is willing to do so in the future."

AUDITOR'S EVALUATION OF MANAGEMENT ACTION

We believe that management actions were responsive to the findings. Management planned to complete corrective action on May 22, 2012, with Board approval to eliminate the high-impact film permit fee.