



REPORT TO CITY COUNCIL

Approved by:

Wendy Silva
Wendy Silva, Director of Human Resources

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: June 2, 2021

Agenda Number: B-5

SUBJECT:

Special Services Agreement with Liebert Cassidy Whitmore (LCW)

RECOMMENDATION:

Adopt a Minute Order approving the Special Services Agreement with LCW for contract legal services.

SUMMARY:

City staff utilizes the law firm of LCW for legal advice and representation in personnel and employment matters. While the City executes an annual agreement for LCW's training program, the City maintains a separate agreement for special services. The City and LCW last executed a Special Services Agreement in 2009. The proposed agreement updates insurance and indemnity provisions to current preferred language that is more beneficial to the City. The proposed fee schedule is consistent with current fees for services.

DISCUSSION:

LCW specializes in public sector employment law. Their services include management representation relative to disciplinary actions, administrative proceedings, litigation, and the Public Employment Relations Board. The firm employs 103 attorneys and has offices in San Francisco, Los Angeles, San Diego, Sacramento, and Fresno. When selecting representation, staff most often utilizes legal counsel available through the local Fresno office unless special expertise is required from a different LCW office.

City staff utilizes the law firm of LCW for legal advice and representation in personnel and employment matters. This includes advice and representation in disciplinary matters and personnel-related policies. The firm is currently representing the City in labor negotiations and

two discipline-related personnel matters. Because the City Attorney's office acts as legal advisor to the City Council and Civil Service Commission, it would be a potential conflict of interest for the City Attorney's office to also advise staff on personnel and employment matters.

The Agreement for Special Services is necessary for the City's continued utilization of LCW's services for legal advice and representation in personnel and employment matters. Matters are only assigned to LCW upon consultation with the City Manager and/or City Attorney.

FINANCIAL IMPACT:

Funds for employment and personnel related legal services are included in the annual operating budget in the Insurance Reserve Fund. The proposed fee schedule is consistent with current fees for services.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Legal representation in employment and personnel matters is not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

ALTERNATIVES:

Council may direct staff to seek additional providers of specialized legal services.

ATTACHMENTS:

1. Special Services Agreement

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation (“Attorney”), and the CITY OF MADERA, A Municipal Corporation (“City”).

1. Conditions

This Agreement will not take effect, and Attorney will have no obligation to provide services, until City returns a properly signed and executed copy of this Agreement.

2. Attorney’s Services

Attorney agrees to provide City with consulting, representational and legal services pertaining to employment relations matters, including representation in negotiations and in administrative and court proceedings, as requested by City or otherwise required by law.

3. Fees, Costs, Expenses

City agrees to pay Attorney the sums billed monthly for time spent by Attorney in providing the services, including reasonable travel time.

The current range of hourly rates for Attorney time is from Two Hundred Ten to Three Hundred Eighty Dollars (\$210.00 - \$380.00). See Schedule I for a full Fee Schedule. Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective July 1. Attorney will provide the City with written notification of any adjustment in the range of rates. Attorney bills its time in minimum units of one-tenth of an hour.

For Litigation Matters

See Schedule II attached for a description of Attorney's Litigation and E-Discovery Management.

Other Expenses

City agrees to reimburse Attorney for necessary costs and expenses incurred by Attorney on behalf of City. Attorney bills photocopying charges at Fifteen Cents (\$0.15) per page. See Schedule I attached.

Payment by City against monthly billings is due upon receipt of statements, and is considered delinquent if payment is not received within thirty (30) days of the date of the invoice.

4. Insurance Requirements

Without limiting Attorney's indemnification of City, and prior to commencement of Work, Attorney shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Attorney shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General

liability policies shall be endorsed that the City and its officers, officials, employees and agents shall be additional insureds under such policies.

- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. Attorney shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, it's officers, agents, employees, and volunteers.
- \$1,000,000 **Professional Liability (Errors & Omissions)** per claim and in the aggregate. Attorney shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Attorney agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Attorney's bid.

Maintenance of Coverage

Attorney shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Attorney, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Attorney shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

Attorney hereby waives its own right of recovery against the City.

Enforcement of Contract Provisions (non estoppel)

Attorney acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Attorney of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage

feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Attorney maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Attorney.

Notice of Cancellation

Attorney agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

Timely Notice of Claims

Attorney shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Attorney's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Attorney shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

5. Indemnification

When the law establishes a professional standard of care for Attorney's Services, to the fullest extent permitted by law, Attorney shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Attorney (and its Subconsultants), are responsible for such

damages, liabilities and costs on a comparative basis of fault between the Attorney (and its Subconsultants) and the City in the performance of professional services under this agreement.

6. Arbitration of Professional Liability or Other Claims

Disputes. If a dispute between City and Attorney arises over fees charged for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code, sections 6200 through 6206. The arbitrator or arbitration panel shall have the authority to award to the prevailing party attorneys' fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service shall not be required.

If a dispute arises between City and Attorney over any other aspect of the attorney-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved by arbitration. It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any legal services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. **Both parties to this agreement, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.** Each party is to bear its own attorney's fees and costs.

7. File Retention

After our services conclude, Attorney will, upon City's request, deliver the file for the matter to City, along with any funds or property of City's in our possession. If City requests the file for the matter, Attorney will retain a copy of the file at the City's expense. If City does not request the file for this matter, we will retain it for a period of seven (7) years after this matter is closed. If City does not request delivery of the file for this matter before the end of the seven (7) year period, we will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to City. At any point during the seven (7) year period, City may request delivery of the file.

8. Assignment

This Agreement is not assignable without the written consent of City.

9. Independent Contractor

It is understood and agreed that Attorney, while engaged in performing the terms of this Agreement, is an independent contractor and not an employee of City.

10. Authority

The signators to this Agreement represent that they hold the positions set forth below their signatures, and that they are authorized to execute this Agreement on behalf of their respective parties and to bind their respective parties hereto.

11. Term

This Agreement is effective November 10, 2020, ongoing and may be modified by mutual agreement of the parties. This agreement shall be terminable by either party upon thirty (30) days written notice.

LIEBERT CASSIDY WHITMORE,
A Professional Corporation

CITY OF MADERA,
A Municipal Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE I – FEES & COSTS

1. Hourly Rates (As of Agreement Effective Date)

Partners	\$380.00
Senior Counsel	\$325.00
Associates	\$210.00 - \$305.00
Labor Relations/HR Consultant	\$240.00
Paralegals	\$135.00
E- Discovery Specialists	\$135.00
Law Clerks	\$135.00 - \$175.00

2. COSTS

1. Photocopies	\$0.15 per copy
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SCHEDULE II

LCW LITIGATION and E-DISCOVERY MANAGEMENT

LCW is committed to using state-of-the-art technology to efficiently manage and harness electronically-stored information (“ESI”) in compliance with Federal and State law requirements. LCW partners with an outside managed services provider to provide Relativity, the industry leading e-discovery software, for this purpose. The cost for each matter will depend on the volume and format of the data. For non-complex data up to 50 gigabytes, LCW charges a monthly fee of \$375 on all active litigation matters for data management, including data validation and security, ingestion, de-duplication, culling and streamlining, and creation of Relativity fields for expedited review. For data of 50 gigabytes and over and for complex data requiring specialized services (e.g., payroll data, spreadsheets with underlying formulas, video, advanced searches, etc.), additional charges are incurred and are passed through to the client. For such charges, we will provide an itemized bill from our managed services provider and obtain client approval prior to incurring the charges.

Litigation Case Staffing

LCW has organized its litigation practice to meet the challenges of today’s complex litigation cases. We employ a dedicated Litigation Manager – a non-billing attorney litigator – whose responsibility is to monitor all litigation cases to ensure quality, efficiency, and adherence to client and firm litigation guidelines. Each litigation case is staffed with a Partner, an Associate (or Associates, as required and as approved by the Client), a Paralegal and an E-Discovery Specialist. Our E-Discovery Specialists have extensive experience in the efficient management of electronic data through every stage of the e-discovery life cycle, and they strategize with attorneys and clients on effective ESI protocols. This makes the document review process more efficient and enables our attorneys to target the most relevant data to meet litigation objectives. Working with our e-discovery managed services provider, we are able to provide state-of-the-art data processing and hosting services at below-market rates.