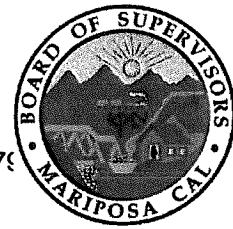




MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1375



RESOLUTION - ACTION REQUESTED 2016-539

MEETING: October 11, 2016

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Approve Professional Services Agreement with Liebert Cassidy Whitmore

RECOMMENDATION AND JUSTIFICATION:

Approve a Professional Services Agreement with Liebert Cassidy Whitmore for legal services in the amount of \$100,000; and authorize the Board of Supervisors Chair to sign the agreement. The amount previously approved in the existing agreement has been exhausted. Liebert Cassidy Whitmore is currently representing the County in various personnel matters.

Liebert Cassidy Whitmore is a premier labor law firm with offices throughout the State and staff has access to expert attorneys at any of their offices.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors has been approving agreements with Liebert Cassidy Whitmore since 1991. The previous agreement was approved by the Board on June 2, 2015 in the amount of \$200,000.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the agreement and instead hire a different law firm. However, a negative action would result in a breakdown of continuity as Liebert Cassidy Whitmore is representing the County in existing personnel matters.

FINANCIAL IMPACT:

Funding is budgeted in the various affected funds.

ATTACHMENTS:

Liebert Professional Svcs Agt (PDF)

CAO RECOMMENDATION

Requested Action Recommended

Mary Hodson

Mary Hodson, CAO

10/4/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 11th day of October 2016 between:

COUNTY: County Administrative Officer
c/o Human Resources/Risk Management Department
P.O. Box 1917
Mariposa, CA 95338

and

CONTRACTOR: Liebert Cassidy Whitmore
6033 W. Century Blvd., Suite 500
Los Angeles, CA 90045

ARTICLE 1. TERM OF CONTRACT

1.01 Term: This Agreement shall become effective on October 11, 2016 and shall terminate upon completion of the projects, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

2.02 Contractor warrants that it has the necessary competence, experience and qualifications for the services to be performed.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Specific Services: Contractor agrees to provide consultation, representational, and legal services including representation in negotiations, administrative and court proceedings at the rates described on Exhibit "A" attached hereto.

3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services.

Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor:

The not to exceed total sum of One Hundred Thousand Dollars (\$100,000) for services as described above. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

- Total sum to be paid upon completion of services,
or
 Incremental payments based on the following schedule:

Monthly invoice per Exhibit A.

4.02 Invoices: Contractor shall submit invoices for all services being rendered from the Contractor to the County.

4.03 Date for Payment of Compensation: County shall endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County.

4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities, required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from County.

5.02 Obligations: County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.03 Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from negligence, errors or omissions in the performance of this Agreement by Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for

the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 5.04** Workers' Compensation: Contractor shall provide workers' compensation insurance as required by the State of California for all services provided hereunder.
- 5.05** Assignment: Contractor understands that County retained the services of Contractor because of Contractor's reputation and expertise in his or her field and, therefore, neither this Agreement nor any duties or obligations under this Agreement may be assigned by Contractor without the prior written consent of County.
- 5.06** State and Federal Taxes: As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:
- County will not withhold FICA (Social Security) from Contractor's payments;
 - County will not make state or federal unemployment insurance contributions on behalf of Contractor;
 - County will not withhold state or federal income tax from payment to Contractor;
 - County will not make disability insurance contributions on behalf of Contractor;
 - County will not obtain workers' compensation insurance on behalf of Contractor.
- 5.07** Records: It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.
- 5.08** Professional Liability Coverage: Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.
- 5.09** Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

ARTICLE 6. OBLIGATIONS OF COUNTY

- 6.01** Cooperation of County: County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

- 7.01** Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
 2. Death of Contractor.
- 7.02** Termination by County for Default of Contractor: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.
- 7.03** Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

ARTICLE 8. GENERAL PROVISIONS


- 8.01** Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02** Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.
- 8.03** Partial Invalidity: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.04 Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

8.05 Governing Law: This Agreement will be governed by and construed in accordance with the laws of the State of California.

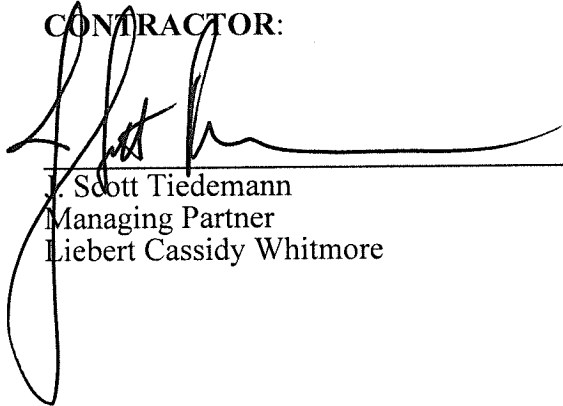
Executed at Mariposa, California, on the date and year first above written.

COUNTY:




John Carrier, Chair
Mariposa County Board of Supervisors

CONTRACTOR:



J. Scott Tiedemann
Managing Partner
Liebert Cassidy Whitmore

APPROVED AS TO FORM:



Steven W. Dahlem
County Counsel

EXHIBIT A
LIEBERT CASSIDY WHITMORE
PUBLIC AGENCY FEE AND COST SCHEDULE*

I. FEE SCHEDULE

Hourly Rates

Partners	\$325.00
Of Counsel	\$285.00
Associates	\$190.00 - \$265.00
Labor Relations/HR Consultant	\$195.00
Paraprofessionals and litigation support staff	\$75.00 - \$150.00

II. COST SCHEDULE

1. Photocopies	\$0.15 per copy
2. Facsimile Transmittal	\$0.25 per page

*Rates are subject to change from time to time. In the event of a rate change, Contractor will provide new rate information to County with at least thirty (30) days written notification.