



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 17, 2012

ITEM NUMBER: CC - 7

SUBJECT: RETENTION OF LIEBERT CASSIDY WHITMORE FOR LEGAL SERVICES

DATE: APRIL 11, 2012

FROM: OFFICE OF THE CEO

PRESENTATION BY: THOMAS R. HATCH, CHIEF EXECUTIVE OFFICER

FOR FURTHER INFORMATION CONTACT: TOM HATCH (714) 754-5328

RECOMMENDATION:

Authorize the City Attorney to execute an Agreement for Special Services with Liebert Cassidy Whitmore for consultation, representation, and legal services pertaining to employment relations matters, including representation in negotiations and in administrative and court proceedings.

BACKGROUND:

Recently, the City has been meeting with recognized employee organizations to discuss terms of employment. In order to adequately represent the City's interest in these past discussions, the City CEO determined that it was prudent to retain the services of Liebert Cassidy Whitmore. The city seeks to continue these discussions. As a result, the CEO recommends council retain Liebert Cassidy Whitmore for the duration of these discussions and negotiations going forward.

ANALYSIS:

The Agreement for Special Services outlines the limited scope of Liebert Cassidy Whitmore's representation of the City. In particular, the Agreement states that Liebert Cassidy Whitmore will only represent the City in the upcoming labor negotiations and, potentially, any administrative and court proceedings, as requested by the City or otherwise required. Liebert Cassidy Whitmore will bill the City with the following hourly rates:

- Attorney work: \$180.00 to \$300.00
- Paraprofessional Staff: \$105.00 to \$140.00

Billing is measured in increments of 1/10 of an hour. Communication advice (telephone, voice-mail, e-mail) will be billed in the minimum increments of 3/10 of an hour. Further, the City would be required to reimburse Liebert Cassidy Whitmore for the necessary costs and expenses incurred. Photocopying is billed at \$0.15 per page. Facsimiles are billed at \$0.50 per page.

The Agreement requires any disputes regarding fees charged for services rendered between the City and Liebert Cassidy Whitmore to be handled by arbitration in accordance with the California State Bar Fee Arbitration Program, as set forth in the California Business & Professions Code. Further, the prevailing party in such arbitration would be entitled to attorneys' fees, costs, and any interest incurred. If a dispute arises over any other aspect of the relationship established by the Agreement (including, but not limited to, a claim of a breach of professional duty), that dispute will also be resolved by arbitration. In particular, a dispute regarding any alleged breach of professional duty must be determined via arbitration.

ALTERNATIVES CONSIDERED:

The Council could choose not to approve the Agreement for Special Services, in which case, Liebert Cassidy Whitmore's work on behalf of the City would simply not commence.

FISCAL REVIEW:

The potential fees to be paid to Liebert Cassidy Whitmore for attorney time is between \$180.00 and \$300.00 per hour. For paraprofessional staff, the range is \$105.00 to \$140.00 per hour. The City will also be charged \$0.15 per photocopied page and \$0.50 per facsimile page. A more detailed breakdown of Liebert Cassidy Whitmore's fee structure is attached with the Agreement.

LEGAL REVIEW:

The City Attorney's office has reviewed and approved the retention agreement as to form.

CONCLUSION:

Council is requested to approve the Agreement for Special Services, to authorize the City Attorney to sign it on behalf of the City, and to authorize the City CEO to pay any fees billed by Liebert Cassidy Whitmore in connection with the services.

THOMAS R. HATCH
Chief Executive Officer

THOMAS P. DUARTE
City Attorney

DISTRIBUTION: Assistant CEO
City Attorney
City Clerk
Staff

ATTACHMENT: 1 Agreement for Special Services

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation ("Attorney"), and JONES AND MAYER ("Client").

1. Conditions

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

2. Attorney's Services

As regards matters affecting the City of Costa Mesa, California, Attorney agrees to provide Client with consulting, representational and legal services pertaining to employment relations matters, including representation in negotiations and in administrative and court proceedings, as requested by Client or otherwise required by law.

3. Fees, Costs, Expenses

Client 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 One Hundred Eighty to Three Hundred Dollars (\$180.00 - \$300.00), and from One Hundred Five to One Hundred Forty Dollars (\$105.00 - \$140.00) for time of paraprofessional staff. Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective July

1. Attorney will provide the Client with written notification of any adjustment in the range of rates. Attorneys and paraprofessional staff bill their time in minimum units of

one-tenth of an hour. Communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of three-tenths (.30) of an hour.

Client agrees to reimburse Attorney for necessary costs and expenses incurred by Attorney on behalf of Client. Attorney bills photocopying charges at Fifteen Cents (\$.15) per page and facsimile charges at Fifty Cents (\$0.50) per page. A Public Agency Fee Schedule is attached to this Agreement.

Payment by Client 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.

The California Business & Professions Code requires us to inform you whether we maintain errors and omissions insurance coverage applicable to the services to be rendered to you. We hereby confirm that the firm does maintain such insurance coverage.

4. **Arbitration of Professional Liability or Other Claims**

Disputes. If a dispute between Client 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 Client 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.

5. File Retention

After our services conclude, Attorney will, upon Client's request, deliver the file for the matter to Client, along with any funds or property of Client's in our possession. If Client requests the file for the matter, Attorney will retain a copy of the file at the Client's expense. If Client 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 Client 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 Client. At any point during the seven (7) year period, Client may request delivery of the file.

6. Assignment

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

7. **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 Client.

8. **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.

9. **Term**

This Agreement is effective January 13, 2012, 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

JONES AND MAYER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I. PUBLIC AGENCY FEE SCHEDULE

Hourly Rates (As of Agreement Effective Date)

Partners	\$300.00
Of Counsel	\$265.00
Associates	\$180.00 - \$245.00
Paraprofessionals	\$105.00 - \$140.00

II. COST SCHEDULE

1. Photocopies	\$0.15 per copy
2. Facsimile Transmittal	\$0.50 per page