

AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES

THIS AGREEMENT FOR SPECIALIZED ATTORNEY SERVICES (“Agreement”) is made and entered by and between the **COUNTY OF MONTEREY**, a political subdivision of the State of California (“COUNTY”), and **LIEBERT CASSIDY WHITMORE**, a professional corporation (“FIRM”).

RECITALS

This Agreement is made with respect to the following facts:

- A. The COUNTY Board of Supervisors may contract for legal services for the COUNTY when it is necessary and appropriate that special legal services be performed for the COUNTY and its officers and employees.
- B. COUNTY desires to retain FIRM to provide legal services to the COUNTY in connection with labor negotiations with Bargaining Units A, B, C, D, E, F, G, H, J, K, L, M, N, Q, S and V.
- C. FIRM and its attorney employees are specially trained, experienced, expert, and competent to perform the legal services required.

NOW, THEREFORE, the parties agree as follows:

1. EFFECTIVE DATE AND TERM

- 1.1. This Agreement shall be effective March 22, 2021 and shall terminate June 30, 2023. This Agreement may be amended from time-to-time upon the mutual agreement of the parties.

2. SERVICES TO BE PERFORMED

- 2.1. Services to be Performed by FIRM. COUNTY hereby hires FIRM to render independent legal services to COUNTY, subject to the terms of this Agreement. The primary attorney providing services hereunder shall be Che Johnson of FIRM, although other attorneys or paralegals in the firm may be utilized on an as-needed basis. FIRM shall perform said services faithfully and well, when needed by and as requested by COUNTY. The services to be performed under this Agreement shall consist of providing legal services in connection with labor negotiations, as outlined and requested by the Human Resources Department. FIRM shall diligently provide such legal services as are necessary and approved by COUNTY in a professional, timely manner. FIRM shall perform all of its services with due regard to ethical guidelines and the client's interests.

- 2.2. No Conflicts of Interest. FIRM does not have an actual or potential interest adverse to COUNTY nor does FIRM presently represent a person or firm with an interest adverse to COUNTY with respect to the matter accepted.
- 2.3. Direction from and Consultation with the Human Resources Department and County Counsel's Office. FIRM shall coordinate and consult with the Human Resources Department and County Counsel's Office in providing services under this Agreement. The primary employees from the Human Resources Department working with FIRM with respect to this agreement shall be **Irma Ramirez-Bough, Director of Human Resources, Kim Moore, Assistant Director of Human Resources, and Ariana Hurtado, HR Program Manager**, although other employees in the Human Resources Department may be designated from time-to-time to work on the matter. The primary contact person for County Counsel's Office is Janet Holmes, Deputy County Counsel.
- 2.4. Reporting Requirements. FIRM shall provide COUNTY with such reports as may be requested by COUNTY in connection with the performance of services hereunder.
- 2.5. Closing Report. If this Agreement is terminated as set forth herein, or if for any reason FIRM is no longer retained by COUNTY with respect to this matter, FIRM shall submit a Closing Report describing the status of the matter, setting forth any information needed by another FIRM to handle the matter. The Closing Report will be expeditiously submitted, together with necessary executed documentation, to the Human Resources Department.
- 2.6. Oral Reports. FIRM shall immediately report orally to the Human Resources Department and County Counsel's Office, in person or by telephone, any event or discovery which is of an urgent nature or requires the immediate attention of COUNTY. FIRM shall promptly follow up such oral report with a Status Report or Status Update reiterating such event or discovery. FIRM shall immediately advise the Human Resources Department in writing if an actual or potential conflict of interest arises or is discovered.

3. COMPENSATION

- 3.1. Compensation to FIRM. As consideration for FIRM's performance of services under this Agreement, COUNTY shall pay to FIRM the fees and necessary expenses calculated in accordance with the hourly rate and expense method of billing: Attorney: \$380. Fees and expenses are to be charged in accordance with the terms of this agreement and in accordance with the hourly rate aforementioned.
- 3.2. Budget. FIRM and COUNTY agree that the initial budget for services pursuant to this Agreement shall not exceed the sum of **\$100,000.00**. FIRM and COUNTY shall revise the budget as necessary to reflect additional fees and expenses required for services, and this Agreement shall be amended accordingly to provide for such budget increases. Proposed budget increases must be approved by COUNTY before increased charges or expenditures are accrued. FIRM shall notify the Human Resources Department in

writing when fifty percent (50%) and seventy-five percent (75%) of the Budget has been spent. If COUNTY does not approve additional fees and expenses required by the project beyond the initial and revised budget, COUNTY hereby consents to FIRM's withdrawal as co-counsel in any cases.

- 3.3. Maximum Liability. The maximum amount of COUNTY's liability over the full term of this Agreement (including all items paid under paragraph 3.4) shall include the initial budget amount and any revised budget amount as provided in paragraph 3.2.
- 3.4. Reimbursement for Expenses.
- 3.4.1. COUNTY shall reimburse FIRM for reasonable out of pocket expenses incurred during negotiation sessions, including but not limited to travel, lodging and meal expenses. County and FIRM agree that FIRM shall be reimbursed for travel expenses during this Agreement. FIRM shall be reimbursed for travel expenses as per the "County Travel Policy". A copy of the policy is available online at <https://www.co.monterey.ca.us/home/showpublisheddocument?id=69364> To receive reimbursement, FIRM must provide a detailed breakdown of authorized expenses, identifying what was expended and when, accompanied by receipts for said expenses.
- 3.4.2. COUNTY will not reimburse FIRM for any non-attorney staff time or overtime for secretarial, clerical, or word processing costs connected with preparing required status reports, time spent to provide information for a fee audit, or for work not authorized by COUNTY. COUNTY will pay FIRM for the travel time at fifty percent (50%) of the legal services hourly fee.
- 3.5. Monthly Claims by FIRM. Not later than ten days after the last day of each month, FIRM shall submit to COUNTY a claim, on a form or in a format approved by COUNTY, setting forth in detail the time and expense items incurred by FIRM during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as COUNTY may require. The fees charges shall be calculated correctly, contain no charges previously billed, and be consistent with the approved hourly fee schedule and budget maximum set forth in paragraphs 3.1 and 3.2. The following information shall be set forth accurately in or attached to the billing invoice:
- 3.5.1. Staffing level, hourly rate, and detailed time and activity descriptions for each attorney, paralegal, and/or planner, including but not limited to time spent with respect to conferences, correspondence, telephone calls, hearings, meetings, research, project review, depositions, and document filing; and
- 3.5.2. Invoices supporting all outside costs.
- 3.6. Payment of Monthly Claims by COUNTY. COUNTY, through the Office of the County Counsel and the Human Resources Department, shall certify FIRM's claim,

either in the requested amount or in such other amount as County Counsel and Human Resources Department approve in conformity with this Agreement. The Human Resources Department shall promptly submit such certified claim to the Auditor-Controller's Office. The Auditor-Controller's Office shall thereafter pay the balance of the certified claim not later than 45 days after receipt of the certified claim.

- 3.7. Disputed Payment Amount. If for any claim COUNTY certifies a lesser amount than the amount requested, and if FIRM desires to dispute the amount so certified, FIRM must submit a written notice of protest to COUNTY within 20 days after FIRM's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.
- 3.8. Conflicting Payment Provisions. The provisions regarding payment set forth in this portion of the Agreement prevail over any conflicting provisions that may be found in any of the exhibits to this Agreement.

4. **INDEMNIFICATION AND INSURANCE**

- 4.1. Indemnification. FIRM shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, FIRM's and/or its agents', employees' or subcontractors' negligent acts, errors or omissions in the performance of this Agreement, excepting only loss, injury or damage caused by the gross negligence or willful misconduct of the COUNTY and its officers or employees. The FIRM shall reimburse the County of Monterey for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the FIRM is obligated to indemnify, defend and hold harmless the COUNTY under this Agreement.
- 4.2. Evidence of Coverage. Prior to commencement of this Agreement, FIRM shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, FIRM upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to the COUNTY, unless otherwise directed. This approval of insurance shall neither relieve nor decrease the liability of FIRM.
- 4.3. Qualifying Insurers. All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County of Monterey.
- 4.4. Insurance Coverage Requirements. Without limiting FIRM's duty to indemnify, FIRM shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- 4.4.1. Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 Exemption/Modification (Justification attached; subject to approval).
- 4.4.2. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 Exemption/Modification (Justification attached; subject to approval).
- 4.4.3. Workers' Compensation Insurance, if FIRM employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
 Exemption/Modification (Justification attached; subject to approval).
- 4.4.4. Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the FIRM shall, upon the expiration or earlier termination of the Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.
 Exemption/Modification (Justification attached; subject to approval).
- 4.4.5. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date FIRM completes its performance of services under this Agreement.
- 4.5. Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for FIRM and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance

from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

- 4.6. Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, and their officers, agents, and employees as Additional Insureds with respect to liability arising out of the FIRM's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the COUNTY and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the FIRM's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 4.7. Prior to the execution of this Agreement by COUNTY, FIRM shall file certificates of insurance with the COUNTY showing that the FIRM has in effect the insurance required by this Agreement. The FIRM shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.
- 4.8. FIRM shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by COUNTY, annual certificates to COUNTY. If the certificate is not received by the expiration date, COUNTY shall notify FIRM and FIRM shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by FIRM to maintain such insurance is a default of this Agreement which entitles COUNTY, at its sole discretion, to terminate this Agreement immediately.

5. TERMINATION

- 5.1. Termination by COUNTY. COUNTY may terminate this Agreement at any time for its convenience and without cause. Upon such termination, FIRM shall promptly comply with the provisions of paragraph 2.5. COUNTY shall pay to FIRM all sums then due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.
- 5.2. Termination by FIRM. FIRM may terminate this agreement at any time upon giving thirty (30) days written notice to COUNTY. Upon such termination, and unless COUNTY notifies FIRM in writing that it will not need a substitute co-counsel, FIRM shall continue to provide such services as COUNTY may require until such time as COUNTY is able to identify a substitute co-counsel to render necessary services. COUNTY shall not unreasonably delay in identifying such substitute co-counsel or in providing written notice that it will not require a substitute co-counsel. FIRM shall also immediately comply with the provisions of paragraph 2.5. COUNTY shall pay to

FIRM all sums due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

6. GENERAL PROVISIONS

- 6.1. Non-assignment. FIRM shall not assign or transfer this Agreement, or any part thereof, without the written consent of COUNTY, nor shall FIRM assign any monies due or to become due to FIRM hereunder without the previous written consent of COUNTY.
- 6.2. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make FIRM anything but an independent contractor and in all FIRM's activities and operations pursuant to this Agreement, FIRM shall for no purposes be considered an employee or agent of COUNTY.
- 6.3. Authority to Bind COUNTY. It is understood that FIRM, in the performance of any and all duties under this Agreement, has no authority to bind COUNTY to any agreements or undertakings with respect to any and all persons or entities with whom FIRM deals in the course of business.
- 6.4. Nondisclosure of Information. FIRM shall not disclose, without express written consent of COUNTY, any information relating to COUNTY business which has been submitted by COUNTY to FIRM pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, FIRM shall immediately return to COUNTY all papers, documents and the like belonging to COUNTY.
- 6.5. Notices.
- 6.5.1. Notices permitted or required to be given to the respective parties under this Agreement shall be deemed given (1) when personally delivered to the Monterey County Counsel or to FIRM's principal partner contact; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the office of the Monterey County Counsel in Salinas, California, or to FIRM's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) 3 days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below.
- 6.5.2. Notices mailed to the parties shall be addressed as follows:

To COUNTY:

Leslie J. Girard
County Counsel

To FIRM:

Che Johnson
Liebert Cassidy Whitmore

Office of the County Counsel
County of Monterey
168 West Alisal Street, Third Floor
Salinas, California 93901
Phone Number: (831) 755-5045
Fax Number: (831) 755-5283

5250 N. Palm Ave., Suite 310
Fresno, CA 93704
Phone Number: (559) 256-7805

- 6.5.3. The mailing addresses and fax numbers specified in paragraph 6.5.2 may be changed by either party, by giving notice to the other in the manner provided herein.
- 6.6. Subcontracting. FIRM shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of COUNTY. Any and all subcontracts shall be subject to the provisions contained in this Agreement.
- 6.7. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.
- 6.8. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by FIRM. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.
- 6.9. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.
- 6.10. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.
- 6.11. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.
- 6.12. Exhibits. The following exhibits are attached hereto: N/A

IN WITNESS WHEREOF, COUNTY and FIRM have caused this Agreement to be executed:

COUNTY OF MONTEREY

By: _____ Dated: _____
Leslie J. Girard, County Counsel

LIEBERT CASSIDY WHITMORE

By: _____ Dated: _____
Shelline K. Bennett, Managing Partner

APPROVED AS TO FORM AND LEGALITY

County Counsel

By: _____ Dated: _____
Janet L. Holmes, Deputy County Counsel

APPROVED AS TO FISCAL PROVISIONS

Auditor-Controller

By: _____ Dated: _____