

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation ("Contractor"), and the COUNTY OF MONTEREY, a political subdivision of the State of California ("County").

1. Contractor's Services

Contractor agrees to provide County with consulting, representational and legal services pertaining to employment relations matters, including representation in negotiations.

2. Fees, Costs, Expenses

In consideration of the labor negotiation services to be provided under this Agreement, the County agrees to pay Contractor retainer fees in the amount of Two Thousand One Hundred Eighty Five Dollars (\$2,185.00) for the period of April 17, 2012 through April 30, 2012, and Four Thousand Three Hundred Seventy Dollars (\$4,370.00) per month for the period of May 1, 2012 through June 30, 2012. This retainer fee includes up to 43.7 hours of Contractor time over the term of this Agreement. Contractor time in excess of 43.7 hours will be billed at the regular hourly rates identified below.

The current range of hourly rates for Contractor time is from One Hundred Eighty to Three Hundred Dollars (\$180.00 - \$300.00) for Attorneys, and from One Hundred Five to One Hundred Forty Dollars (\$105.00 - \$140.00) for time of Paraprofessional staff. Morin Jacob's current hourly rate is \$265.00. Attorneys and paraprofessional staff bill their time in minimum units of one-tenth of an hour. Communications advise (telephone, voice-mail, e-mail) is billed in a minimum increment of three-tenths (.30) of an hour.

County agrees to reimburse Contractor for necessary costs and expenses incurred by Contractor on behalf of County. Contractor bills photocopying charges at Fifteen Cents (\$0.15) per page and facsimile charges at Twenty-Five Cents (\$0.25) per page. A Public Agency Fee Schedule is attached to this Agreement.

Payment by County 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.

Not later than twenty (20) days after the last day of each month, Contractor 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 Contractor 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 this Agreement. The following information shall be set forth accurately in or attached to the billing invoice:

- (a) Identification of subject matter for which Contractor rendered services;
- (b) 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, document filing, and trials; and
- (c) Invoices supporting all outside costs.

The County, through the Office of the County Counsel, shall certify Contractor's claim, either in the requested amount or in such other amount as County Counsel approves in conformity with this Agreement. County Counsel shall promptly submit such certified claim to the Auditor, Risk Manager or third party claims administrator for the County of Monterey. The Auditor, Risk Manager or third party claims administrator shall thereafter pay the balance of the certified claim not later than 30 days after receipt of the certified claim.

3. **Indemnification**

County will indemnify and hold harmless Contractor, its employees and agents, from and against all claims, suits or causes of action arising out of any complaint brought against Contractor during or as a result of the investigation of the complaints alleged in this matter. County will also provide legal representation for Contractor and any of its employees and agents together with County if, during any litigation relating to the investigation or matters being investigated, Contractor or any of its employees or agents providing services under this contract are sued, deposed, or otherwise required to provide information or testimony concerning services under this contract. This provision does not apply if Contractor engages in negligence, willful and/or malicious conduct in the course of its investigation.

Contractor 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, a) the negligent performance of services pursuant to this Agreement, or b) willful and/or malicious conduct in the course of performing this Agreement, by Contractor and/or its agents, employees or subcontractors, excepting only loss, injury or

damage caused by the gross negligence or willful misconduct of County, its officers or employees. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

4. **Insurance**

A. Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor 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, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. 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 the County's Purchasing Manager.

C. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

i. 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 for 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.

ii. 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 \$500,000 per occurrence.

iii. Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with the 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.

iv. 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 CONTRACTOR shall, upon the expiration or earlier termination of this 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 if this Agreement.

D. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to the 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 CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the 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 Contractor 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.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'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 CONTRACTOR'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.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR 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.

CONTRACTOR 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's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

5. Arbitration of Professional Liability or Other Claims

If a dispute between County and Contractor arises over fees charged for services, the aggrieved party shall promptly notify the other party in writing of the dispute. The parties shall promptly meet to review the dispute and resolve it on a mutually acceptable basis. No arbitration may be taken on such dispute until the parties have met and attempted to resolve the dispute in person. If the parties cannot resolve the dispute, 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 County and Contractor over any other aspect of the attorney-County 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. The parties agree that venue for any arbitration shall be Monterey County, CA and that the terms of this Agreement shall be interpreted pursuant to California law.

6. File Retention

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

7. Assignment and Subcontracting

This Agreement is not assignable without the written consent of County. Contractor shall not use any sub-contractors for the performance of services under this Agreement without the written consent of County.

8. Independent Contractor

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

9. **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.

10. **Term**

This Agreement is effective for the period covering April 17, 2012 through June 30, 2012, and may be modified by mutual agreement of the parties. This Agreement shall be terminable by either party upon thirty (30) days written notice. Contractor shall immediately stop or suspend work the provision of services pursuant to this Agreement if requested by County.

11. **Notices**

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 Contractor'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 Contractor'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.

Notices mailed to the parties shall be addressed as follows:

To County:

Leslie J. Girard, Asst. County Counsel
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

To Contractor:

Richard Bolanos
Liebert Cassidy Whitmore
153 Townsend Street, Suite 520
San Francisco, California 94107
Phone Number: (415) 512-3000
Fax Number: (415) 856-0306

12. 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.

LIEBERT CASSIDY WHITMORE,
A Professional Corporation

COUNTY OF MONTEREY

By: _____

By: for Michael Derr

Name: Bruce Barsook

Name: Kristen Aldrich

Title: Managing Partner

Title: Deputy Purchasing Agent

Date: 5/30/12

Date: 6-18-12

APPROVED AS TO FORM
CHARLES J. MCKEE, County Counsel

By _____
Leslie J. Girard
Assistant County Counsel

Notices mailed to the parties shall be addressed as follows:

To County:

Leslie J. Girard, Asst. County Counsel
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

To Contractor:

Richard Bolanos
Liebert Cassidy Whitmore
153 Townsend Street, Suite 520
San Francisco, California 94107
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LIEBERT CASSIDY WHITMORE,
A Professional Corporation

COUNTY OF MONTEREY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM
CHARLES J. MCKEE, County Counsel

By Leslie J. Girard
Chief Assistant County Counsel

Reviewed per to fiscal provisions

Auditor/Controller
County of Monterey

5-25-12

I. PUBLIC AGENCY FEE SCHEDULE

Hourly Rates (As of Agreement Effective Date)

Partners	\$280.00 - 300.00
Of Counsel	\$260.00 - 280.00
Associates	\$180.00 - \$260.00
Paraprofessionals	\$105.00 - \$140.00

II. COST SCHEDULE

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