

## **AGREEMENT FOR PROVISION OF LEGAL SERVICES**

This AGREEMENT FOR PROVISION OF LEGAL SERVICES ("Agreement") is entered into as of October 1, 2021 by and between LIEBERT CASSIDY WHITMORE a professional corporation, ("Attorney") and CITY OF FULLERTON, a public agency ("Client").

### **1. Scope of Agreement**

Client retains Attorney to provide limited legal services with respect to labor and employment law and related issues as requested by Client. Client designates J. Scott Tiedemann, a partner of Attorney, as Client's Counsel to provide legal services under this Agreement as lead counsel, and he shall have the discretion to utilize the services of other partners, associates, or staff of Attorney upon Client approval in connection with services to be undertaken pursuant to this Agreement. In no event, however, shall Attorney subcontract with any other firm, entity, or person to perform any of Attorney's services required hereunder without Client's express written consent, nor shall Attorney assign or transfer any interest in this Agreement to any such firm, entity, or person without Client's prior written consent.

Attorney recognizes that the City of Fullerton has a contract with its City Attorney and other attorneys, who for the convenience of the Client, provide counsel and services to Client as requested.

Attorney shall perform all services required hereunder as an independent contractor of Client, and shall remain at all times as to Client a wholly-independent contractor with only such obligations as are consistent with that role. Attorney acknowledges and agrees that this agreement does not represent an exclusive agreement with Client to provide legal services and that Client does currently and shall continue to utilize the services of other firms to provide similar services. Those matters for which Attorney is retained by Client to provide legal representation shall be subject to individual mutual agreement by Attorney and Client.

### **2. Duties of Attorney and Client**

Attorney shall provide those legal services required to represent Client in the matters described in Paragraph 1 of this Agreement, including but not limited reviewing and analyzing Client files, data, documents and other materials; providing advice and recommending legal courses of action; drafting notices; attending and participating in meetings, conference calls, and City Council meetings; conducting or directing investigations; reporting on status of work; and representing Client in court and at arbitrations, mediations, administrative hearings, and other related legal proceedings.

Client shall cooperate with Attorney, keep Attorney informed of all developments, documents, or facts that may affect the provision of Attorney's services described in Paragraph 1

of this Agreement, perform all obligations Client has agreed to perform pursuant to this Agreement, and pay in a timely manner all of Attorney's statements for services performed and costs incurred.

### **3. Terms and Conditions**

A. Client will compensate Attorney for the performance of legal services at the rates specified in Attachment A, ranging from \$370 per hour for firm partners to \$130 per hour for paraprofessionals and litigation support through June 30, 2023.. No increases to these fees shall be made thereafter except upon approval by City of Fullerton City Council. Attorney will charge for services performed in increments of one-tenth of an hour.

B. Attorney shall not be obligated to advance costs on behalf of Client; however, for the purposes of convenience and in order to expedite matters, Attorney reserves the right to advance costs on behalf of Client with Client's prior approval in the event a particular cost item exceeds \$200.00 in amount, and without the prior approval of Client in the event a particular cost item totals \$200.00 or less. Typical cost items include, by way of example and not limitation, document preparation and word processing, fax/telecopy charges (at \$1.00 per page), copying charges (at \$0.20 per page), appearance fees, messenger fees, bonds, witness fees, deposition and court reporter fees, transcript costs, expert witness fees, investigative fees, etc.

C. Attorney shall not bill Client for travel, meal or lodging expenses for travel to or within Orange County or Los Angeles County. Other travel expenses shall be excluded unless pre-approved by Client.

D. A detailed description of the attorney work performed and the costs advanced by Attorney will be prepared on a monthly basis as of the last day of the month and will be mailed to Client on or about the fifteenth of the following month. Payment of the full amount due, as reflected on the monthly statements, will be due to Attorney from Client by the last day of each month, unless other arrangements are made.

E. Client agrees to review Attorney's monthly statements promptly upon receipt and to notify Attorney, in writing, with respect to any disagreement with the monthly statement. Failure to communicate written disagreement with Attorney's monthly statement within sixty (60) days of Client's receipt thereof shall be deemed to signify Client's agreement that the monthly billing statement accurately reflects: (a) the legal services performed; and (b) the proper charge for those legal services.

F. Client agrees to fully cooperate with Attorney in connection with the Attorney's representation of Client, including but not limited to attending mandatory court hearings and other appearances and providing necessary information and documentation to enable Attorney to adequately represent Client.

G. Client has the right, at any time, and either with or without good cause, to discharge Attorney as Client's attorney. Attorney and Client shall each execute any documents reasonably necessary to complete Attorney's discharge or withdrawal. Attorney shall, upon demand therefor

by Client, deliver Client's file to Client at or after the termination or conclusion of Attorney's services; provided, however, that in such event Client shall pay the normal charges incurred by Attorney to obtain one complete copy of the file. In the event of such a discharge of Attorney by Client, however, any and all unpaid attorneys' fees and costs owing to Attorney from Client shall be immediately due and payable.

H. Attorney reserves the right to discontinue the performance of legal services on behalf of Client upon the occurrence of any one or more of the following events:

- i. Upon order of Court requiring Attorney to discontinue the performance of said legal services;
- ii. Upon a determination by Attorney in the exercise of its reasonable and sole discretion, that state or federal legal ethical principles require it to discontinue legal services for Client;
- iii. Upon the failure of Client to perform any of client's obligations hereunder as respects the payment of Attorney's fees and costs advanced; or
- iv. Upon the failure of Client to perform any of client's obligations hereunder as respects cooperation with Attorney in connection with Attorney's representation of client.

I. In the event that Attorney ceases to perform legal services for Client, as herein above provided, Client agrees that client will promptly pay to Attorney any and all unpaid fees or costs advanced, and retrieve all of client's files, signing a receipt therefore. Further, Client agrees that, with respect to any litigation where Attorney has made an appearance in Court on his behalf, Client will promptly execute an appropriate Substitution of Attorney form.

#### **4. Business License**

A business license is required of every person or firm located outside the City who conducts business on more than an occasional or incidental basis (three days or less in any year) in the City (FMC Sec. 4.06.030). Attorney shall obtain a City of Fullerton business license within three months of the inception of this agreement and shall maintain a current license throughout the term of the agreement.

#### **5. Disclaimer of Guarantee**

Attorney has made no representations, promises, warranties or guarantees to Client, express or implied, regarding the outcome of any Client's matter, and nothing in this Agreement shall be construed as such a representation, promise, warranty, or guarantee.

## **6. Insurance and Indemnification**

Attorney shall procure and maintain throughout the duration of this Agreement 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 the Attorney, his agents, representatives, employees or subcontractors. Attorney shall provide current evidence of the required insurance in a form acceptable to Client and shall provide replacement evidence for any required insurance which expires prior to the expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way the Indemnification and Hold Harmless clause contained herein or the extent to which Attorney may be held responsible for payments of damages to persons or property.

### **A. Minimum Scope and Limits of Insurance**

(1) Commercial General Liability Insurance. Attorney shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form # CG 001, with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

(2) Business Automobile Liability Insurance. Attorney shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

(3) Workers' Compensation and Employers' Liability Insurance. Attorney shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

(4) Professional Liability Insurance. Attorney shall maintain professional liability insurance appropriate to Attorney's profession with a limit of not less than \$2,000,000.

(5) Cyber Liability Insurance. Consultant shall maintain cyber liability insurance coverage with a limit of not less than \$2,000,000 per claim and \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Attorney in this Agreement and shall include but not be limited to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines, penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by Client.

C. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

(1) Commercial General Liability. Client, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Attorney, including materials, parts or equipment furnished in connection with such work or operations. Such coverage as an additional insured shall not be limited to the period of time during which Attorney is conducting ongoing operations for Client but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to Client, its officers, employees and volunteers.

(2) Commercial General Liability. This insurance shall be primary insurance as respects Client, its officers, employees, and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by Client, its officers, employees, and volunteers shall be excess of this insurance and shall not contribute with it.

(3) Professional Liability. If the Professional Liability policy is written on a "claims made" form, Attorney shall maintain similar coverage for one year following expiration or termination of Agreement and shall thereafter submit annual evidence of coverage. Additionally, Attorney shall provide certified copies of the claims reporting requirements contained within the policies.

(4) Workers' Compensation and Employers' Liability Insurance. Insurer shall waive their right of subrogation against Client, its officers, employees, and volunteers for work done on behalf of Client.

(5) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Client.

If Attorney maintains higher limits or has broader coverage than the minimums shown above, Client requires and shall be entitled to all coverage, and to the higher limits maintained by Attorney. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Client.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to Client with current Best's ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of Client, insurance provided by non-admitted or surplus carriers with a minimum Best's rating of no less than A, Class X, may be accepted if Attorney evidences the requisite need to the sole satisfaction of Client.

E. Verification of Coverage

Attorney shall furnish Client with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Attorney shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Client before work commences. Client reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. Indemnification

Attorney shall defend, indemnify, and hold harmless Client, its elected officials, officers and employees from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to person(s) for damages to property (including property owned by Client), arising out of the intentional misconduct or negligent errors and omission committed by Attorney, its officers, employees, and agents, in its performance under this Agreement, except to the extent of such loss as may be caused by Client's own negligence or that of its officers or employees.

**LIEBERT/CASSIDY WHITMORE**

**CITY OF FULLERTON**

By: 

**J. Scott Tiedemann**  
**Partner**

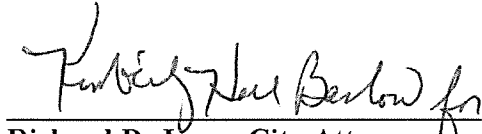
By: \_\_\_\_\_

**Steven Danley**  
**Acting City Manager**

Date: 9/7/21

Date: \_\_\_\_\_

Approved as to form:

  
Richard D. Jones, City Attorney

ATTEST:

\_\_\_\_\_  
Lucinda Williams, City Clerk

## **Attachment A**

### ***LIEBERT CASSIDY WHITMORE***

#### **FEE SCHEDULE** through June 30, 2023

Partners	\$370.00
Senior Counsel	\$320.00
Associates	\$210.00 - \$295.00
Labor Relations/HR Consultant	\$240.00
Paralegals	\$130.00
E-Discovery Specialists	\$130.00
Law Clerks	\$130.00 - \$170.00