

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
LIEBERT CASSIDY WHITMORE**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 16th day of June, 2020 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and LIEBERT CASSIDY WHITMORE, a Professional Corporation (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide legal services relating to labor relations and employment law, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant’s Proposal, attached hereto as Exhibit “A” and incorporated herein by this reference, as requested by City. Consultant shall obtain City’s approval of the attorneys that will provide legal services to the City pursuant to this Agreement.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement. Notwithstanding the foregoing, in the provision of professional legal services provided hereunder, Consultant does not and cannot guarantee any outcome in any matter and nothing in this Agreement shall be construed to infer, imply or otherwise state anything to the contrary.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. City agrees to pay Consultant in accordance with the following hourly rates, as further detailed in Exhibit A:

- Partners \$370/hour
- Senior Counsel \$320/hour
- Associates \$210-\$300/hour
- Labor Relations Consultant \$240/hour
- Paralegal/E-Discovery Specialist \$125-\$170/hour

Consultant will bill City in one-tenth (1/10) of an hour increments. City agrees to pay Consultant based upon actual time spent on the tasks performed, as assigned by the City Council, City Manager, City Attorney, or other authorized persons. If City requests and Consultant provides other legal services, if any, then the hourly rates set forth herein shall apply unless separately negotiated and established in writing by City and Consultant.

2.2. Training Services. For training services, City agrees to pay Consultant in accordance with the following rates:

- Half day session (3 hours) \$2,050-\$2,600/session
- Full day session (6 hours) \$3,100-\$3,600/session

The rates include preparation and presentation as well one original set of materials for the City to reproduce for the attendees. The rates will be the same whether Consultant conducts an in-person presentation or conducts a presentation via Zoom webinar/meeting. For Zoom webinar/meeting, Consultant's rates include individual connections for up to 500 (meeting) – 1,000 (webinar) people.

2.3. Expenses. City agrees to reimburse Consultant for actual expenses reasonably incurred in the performance of the services set forth herein, including court costs, postage, special deliveries (i.e. Fed-Ex, UPS, DHL, messenger service), other hired deliveries completed at City's request or necessary to comply with court deadlines, faxing documents, and copying costs. Consultant will bill City \$0.25 per page for facsimile transmissions and \$0.15 per page for photocopies. City shall not reimburse Consultant for word processing, clerical tasks, or telephone charges. Before incurring any indebtedness which is of a substantial nature of which is not an ordinary and usual expense, Consultant shall obtain prior approval from the City.

2.4. Method of Billing. Consultant may submit invoices to the City on a monthly basis for actual professional legal services performed. Each invoice shall set forth in detail a description of the nature of the services rendered, the hours required for their rendition, the identity of each person performing the work, the rate charged, and any expenses eligible for reimbursement. City shall pay Consultant's invoice within thirty (30) days from the date City receives said invoice. If City disputes any of Consultant's fees, it shall give Consultant written notice within said 30-day period of any disputed fees set forth on the invoice.

2.5. Records and Audits. Subject to the California Rules of Professional Conduct, records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until

three (3) years after termination of this Agreement.

2.6. File Retention. Upon termination of this Agreement, Consultant will, upon City's request, deliver the files for City matters to City, along with any funds or City property in Consultant's possession. If City requests a file for a matter, Consultant will retain a copy of the file at City's expense. If the City does not request the file for a matter, Consultant will retain the file for that matter for a period of seven (7) years after the termination of this Agreement. City may request delivery of a file at any point during the seven (7) year period. If City does not request the return of the file for a matter before the end of the seven (7) year period, Consultant will have no further obligation to retain the file and may, in its discretion, destroy the file without further notice to City.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and shall continue unless terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

Consultant may terminate this Agreement by providing thirty (30) days' written notice to City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written

authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by

the Consultant.”

- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of

Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Liebert Cassidy Whitmore
6033 W. Century Blvd., 5th Floor
Los Angeles, CA 90045
Tel: (310) 981-2075
Attn: Paul W. Hessing

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5169
Attn: Kasama Lee

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

6.5. Drug-Free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, and hold free and harmless the City, its elected officials, officers, agents, employees, successors and assigns, at Consultant's sole expense, from and against any and all claims, demands, judgments, awards, liability, loss, cost or expense, including attorneys' fees, or any damage whatsoever, including but not limited to death or injury to any person and damage to any property, which in whole or in part result from, or arise out of, the misconduct or negligent acts, errors or omissions of the Consultant or any of its officers, employees, agents, representatives, or subcontractors in the performance of this Agreement. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for damage caused by the sole active negligence or willful misconduct of the City or its elected officials, officers, agents, employees, successors and assigns. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant 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 City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. Subject to the California Rules of Professional Conduct, all findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.21. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.22. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.23. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.24. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.25. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy

in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.26. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.27. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.28. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONSULTANT

Signature

Date: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO CONTENT:

Kasama Lee
Project Manager

Date: _____

DEPARTMENTAL APPROVAL:

Susan Price
Assistant City Manager

Date: _____

APPROVED AS TO PURCHASING:

Carol Molina
Acting Finance Director

Date: _____

EXHIBIT A
CONSULTANT'S PROPOSAL

Liebert Cassidy Whitmore (LCW) provides a full array of legal services for public agencies and welcome the opportunity to assist in these matters for the City of Costa Mesa.

Our firm provides legal services for a multitude of public agencies in and around Orange County and has a strong commitment to our clients. As a local firm, we have the essential knowledge and relationships to serve the City effectively. As California's preeminent public management law firm, we also have a deep bench statewide with over 90 attorneys on staff, giving us the ability to assist in complex issues.

Provided below is a summary of our services and rates.

FIRM OVERVIEW

For forty years, Liebert Cassidy Whitmore has served public agencies and non-profit organizations of California in all aspects of employment law and labor relations. Today, with offices in Los Angeles, San Francisco, Sacramento, Fresno, and San Diego, we are fully prepared to tackle both large and varied assignments. Our clients value not only our expertise and proficiency, but also our integrity and responsiveness. As a full-service law firm, we handle all aspects of our clients' needs and provide innovative, ethical and cost-effective solutions.

We are proud of the depth of experience, varied personalities, and diversity of skills our firm offers our clients. The attorneys with whom you will work devote their careers to public sector labor and employment law. We work with our clients to ensure that they have prompt, quality answers to their questions. Likewise, we strive to minimize the costs to our clients.

Our primary mission is to provide excellent service to our clients. Preventive law is a cornerstone of our firm. We believe in assisting our clients to avoid problems and disputes before they arise. We do this through ongoing communication, training, audits, advice, and cooperative employer-employee relations. We feel we are successfully supporting our clients when we help them need their lawyers less. Nevertheless, we are also equipped to put up a fierce fight for you when defense is needed. LCW is experienced in all aspects of hearings, arbitration and litigation up through jury trials. The firm's success in public sector litigation is unmatched, giving us the ability to take on cases with minimal lead-time and that involve complex matters.

Our attorneys are intimately familiar with the Meyers-Milias-Brown Act (MMBA), the Fair Standard Labor Act (FLSA), the Americans with Disabilities Act, and the range of state and federal constitutional and statutory law that regulates public agencies in California. We delve into these laws repeatedly throughout the day, every day, and regularly advise and defend clients on issues.

Members of the firms also provide robust labor relations representation services in all forms of collective bargaining and impasse resolution processes, such as mediation, factfinding and interest arbitration. LCW has negotiated hundreds of memoranda of understanding with all varieties of general and professional employees. We have negotiated virtually every issue within the scope of bargaining, including wages, hours, health and retirement benefits, leaves and discipline.

LCW would serve as not only your lawyers, but also your trusted advisors. We first set out to understand your unique goals and challenges so that we are able to provide practical legal advice that is aligned with your mission and values. Our deep expertise also allows us to provide legal services in an efficient and cost-effective manner so that you can focus the majority of your time and resources on serving your community.

AREAS OF LAW

Our attorneys practice in the area of labor and employment law representing public agencies on a full range of legal issues, including but not limited to:

- **General Employee Relations and Disciplinary Actions:** We work closely with employers to provide advice in areas such as hiring applicants, wage and hour, discipline and performance, the disability interactive process, and retirement. LCW provides counsel and advice to manage employee performance and discipline. This includes performance evaluations, performance improvement plans, suspensions, demotions, and terminations.
- **Wage and Hour Laws:** LCW is on the cutting edge of wage and hour laws and best management practices. Our team recognizes the risks and navigates the challenges our clients face on the full spectrum of wage and hour/FLSA issues from overtime to exemption analysis. LCW has extensive experience assisting employers to ensure that their policies and practices comply with wage and hour laws and best management practices through audit services and preventative training.
- **Discrimination, Harassment, Retaliation, and Civil Rights Laws:** We regularly counsel and defend agencies involving all types of workplace discrimination, harassment, and civil rights laws. From age, race, sex, sexual orientation, gender identity, religion and national origin to issues involving harassment and retaliation, our team has successfully litigated and settled hundreds of lawsuits related to these issues. We take a proactive approach by advising and drafting employment policies and providing training to management, supervisors and employees relating to anti-harassment and discrimination.
- **Retirement/Pension Laws:** We advise agencies on public employee retirement plans, including the California Public Employees' Retirement

System (CalPERS), the County Employees Retirement Law of 1937 (1937 Act), and local agency retirement systems. Our firm offers retirement system audits to review compliance with public retirement statutes, regulations, and administrative interpretations.

- **Health and Welfare Benefits:** LCW provides representation, advice, and counsel to employers on all aspects of employee health, medical and welfare benefits, including the complex and evolving Affordable Care Act, HIPAA, compliance with the PEMHCA (a.k.a. CalPERS medical). This also includes consulting on health reimbursement accounts, vesting of retiree health benefits, and structuring and modifying benefits for retirees, current employees, and future employees in order to manage the cost of benefits. We also advise on issues related to employee disabilities, including disability retirement, the interactive process, reasonable accommodations, and employees on extended leave.
- **Public Sector Labor Laws and Procedures:** LCW advises on the Meyers-Milias-Brown Act and labor relations procedures before the Public Employment Relations Board (PERB). We have worked closely with general counsel, City attorneys and City counsel, and have directly handled the representation for our clients in literally hundreds of legal proceedings before civil service and personnel boards, arbitrators, PERB, State and federal EEO and other administrative agencies and the courts. These proceedings have covered the full spectrum of employer-employee relations matters, such as civil service and arbitration appeals, recognition and unit representation matters, unfair labor practice charges and related negotiating issues, employment discrimination matters, whistleblower claims, pension and disability issues, FLSA claims and workplace investigations.
- **Negotiations:** We have specialized experience in doing labor relations work on behalf of public agencies, including representing management in all forms of collective bargaining and impasse resolution processes, such as mediation, factfinding and interest arbitration. Our attorneys are well versed at handling multiple bargaining tables and are experienced in utilization of different bargaining techniques in order to successfully conclude negotiations.

Members of the firm have successfully negotiated hundreds of labor agreements for cities, counties, special districts and school and college districts. Members of the firm are experienced in collaborative/interest based bargaining techniques as well as the more traditional labor negotiations approach. We pride ourselves on successfully establishing our role as an effective advocate for our clients while maintaining a professional relationship with employee organizations and their representatives.

In addition to conducting negotiations for public employers, we continually work with public agencies that employ staff personnel to do their own negotiations. This arrangement has involved all aspects of consultation and related services, including written initial bargaining proposals, reviewing counter-proposals, providing training and advice concerning negotiating strategies, and giving general advice when particular problems arise.

- **Leave of Absence Laws:** Our firm provides comprehensive leave review to address employees who are out on an extended leave of absence. LCW works with agencies to develop a tailored, proactive approach to manage employees on extended leaves. We provide specific advice and strategies to address each employee's circumstances and ensure the agency remains in compliance with all applicable laws.
- **Investigations and Disciplinary Actions:** Our attorneys regularly conduct workplace investigations and are available to assist with investigations that would be appropriately conducted in-house and do not require an impartial investigator. LCW attorneys have conducted and overseen hundreds of confidential investigations involving the full range of workplace issues, including allegations of harassment, discrimination, retaliation, whistleblowing, misconduct, financial improprieties, as well as personnel policy, rules, and code of conduct violations.
- **Conflict of Interest and Open Government Laws:** We regularly provide advice to clients on the Ralph M. Brown Act, the California Public Records Act, the California conflict of interest law (Govt. Code section 1090) as well as other Statutory and Constitutional Ethics Laws. We also advise on organizational conflicts of interest, avoiding bias and unfair competitive advantage in the procurement process.
- **Due Process:** As employers, our clients are also subject to the dictates of the State and Federal Constitutions, including procedural substantive due process, equal protection, first amendment and privacy rights, and the fourth amendment's protection against unreasonable searches, all of which are bases for employment related claims. LCW attorneys help clients by walking through the elements and rules to keep in mind when dealing with due process in the workplace.
- **Unemployment Issues:** Members of the firm provide advice and counsel in regards to unemployment compensation. We provide advice on benefit and eligibility issues as well as the claims process. We have assisted agencies during the administrative appeals process and have represented them in unemployment compensation hearings.

- **Litigation:** Our attorneys strive to prevent employment disputes before they arise through education, training, audits, advice, planning, and cooperative employer-employee relations. When employment disputes do arise, our defense efforts are designed to meet each client's particular needs, goals, and budget. We specialize in representing public agencies in the defense of legal actions and enjoy the reputation of a results-oriented, successful litigation firm. We are experts in all phases of litigation in both federal and state courts: pleading, discovery, motion practice, alternative dispute resolution, settlement and trial.

LCW attorneys have handled a number of cases that have culminated in jury trials resulting in defense verdicts. These cases included claims for violation of constitutional rights; violation of the Age Discrimination in Employment Act; violation of the disability provisions contained in the Fair Employment and Housing Act; reverse discrimination; sex discrimination; sexual harassment; national origin discrimination; age discrimination; intentional infliction of emotional distress and retaliation claims under both state and federal laws.

- **Public Safety:** LCW has had the privilege of advising and representing public safety agencies for forty years, proudly earning the trust and respect of several generations of police chiefs and sheriffs. We provide advice and counsel to law enforcement agencies on a myriad of personnel issues, including but not limited to: the *Pitchess* procedures for discovery of confidential peace officer personnel records; Brady issues; internal affairs investigations, responding to critical incidents, like officer-involved shootings; public records; and, the POBR. We represent public safety agencies in hundreds of discipline matters, including cases involving alleged unreasonable or use of force. We also have a thriving labor relations practice and have negotiated many hundreds of labor contracts, defended grievance proceedings, and opposed unfair practice charges, including in the context of public safety unions.

SERVICES PROVIDED

Advice and Counsel

A primary focus of our practice is to provide proactive advice to prevent our clients from becoming parties in an adversarial proceeding. We often accomplish this goal through advice and counsel, policy review and revision, and our renowned training programs.

- **Opinion Letters and Policy Review/Revisions** - Attorneys in the firm, through their interaction with our public sector clients, are aware of the current issues confronting public agencies in California and are skilled at providing clear practical guidance on those issues quickly and effectively. As a result, our firm

frequently provides public agencies with legal advice on a wide arrange of labor and employment law issues through formal opinion letters and policy reviews. We provide review services to effectively meet and address the risks and challenges of this ever-changing legal landscape, drawing on our legal expertise from representing employers in all aspects of labor and employment law. We use systematic auditing processes to ensure compliance with the law and best management practices and provide practical recommendations. Our expertise in this area is reflected in LCW's [Liebert Library](#). The Liebert Library is the firm's online collection of trusted reference materials, including workbooks, sample forms and templates, and model personnel policies.

In addition, our attorneys have extensive experience helping public employer clients audit their policies and practices. We can provide:

- Personnel Policies / Employee Handbook Audits
 - Wage and Hour / Fair Labor Standards Act Audits
 - Labor Agreement / MOU and Collective Bargaining Audits
 - Retirement and Benefits Audits
 - Health Benefit Audits, including HIPAA and the Affordable Care Act
 - Human Resources and Management Audits
- **Preventive Education** - LCW is a pioneer in the field of preventive client education. Through our Employment Relations Consortiums (ERCs), seminar and webinar series, and customized training programs, we offer comprehensive training to public officials, managers, supervisors, and agency professional staff on a regular basis. Last year, we conducted over 800 presentations across the state in areas such as discrimination, sexual harassment, ethics, and performance management.
 - Employment Relations Consortium (ERC) - ERCs are groups of like agencies within a geographic area who join together for the purpose of securing quality employment relations training. Over 900 public agencies, including the City of Costa Mesa, participate in our ERCs. By pooling their resources, agencies can offer a broader range of training topics. Agencies across the state have discovered how to “do more with less” by participating in a local ERC.

The City of Costa Mesa is currently part of our Orange County ERC. This group receives:

- Six full days of group training to which an agency can send any number of employees;
- Reference material for all workshop attendees;
- A copy of our monthly newsletter, *Client Update*;
- Unlimited, complimentary telephone consultation; and

- The ability to attend other consortium workshops across the state, space permitting, for no additional fee.
- Seminars and Webinars - Our seminars and webinars allow individual employees to learn about latest breaking legal issues or take a deeper dive on specialized topics (like our Labor Relations series or Wage and Hour seminars). A full list of upcoming classes can be found on our website: www.lcwlegal.com.
- Customized Trainings - While our ERC training module is built on multi-agency training, LCW also offers customized training programs for individual agencies on various topics, including Harassment Training for Supervisors and Non-Supervisors, and AB 1234 Ethics Training for Elected and Appointed Officials. Our trainings include practical examples, hypotheticals, interactive exercises, templates and other tools designed to strengthen the skills of participants. Customized training incorporates your policies and procedures, as well as an original set of materials for your reproduction.

Employment Litigation

The firm's success in public sector litigation is unmatched, giving us the ability to take on cases with minimal lead-time and that involve complex matters. We specialize in representing public agencies in the defense of legal actions and enjoy the reputation of a results-oriented, successful litigation firm. We are experts in all phases of litigation in both federal and state courts: pleading, discovery, motion practice, alternative dispute resolution, settlement and trial. We also specialize in representing public agencies in administrative proceedings involving various Commissions and Departments.

Our particular expertise is in actions brought by employees, former employees, applicants or other individuals alleging employment-related claims. LCW litigators have successfully defended clients involving allegations of harassment, sexual harassment, wrongful termination, discrimination, whistleblower retaliation, and related claims. At any given time, the firm defends over 100 discrimination and other employment related lawsuits in both state and federal court. Members of the firm have tried numerous cases in the last ten years and obtained defense verdicts in a number of jury trials. We also regularly win cases at the initial pleading stage and through summary judgment motions.

LCW understands all of the facets of representing public agencies throughout the litigation process, including representing elected and appointed officials and high-level managers, and appearing before governing bodies. We evaluate the lawsuit at every stage from both a cost and liability perspective so that our clients are continually informed of developments that may affect the litigation strategy and ultimate disposition of the lawsuit. We understand the importance of preparing a case from the outset for summary

judgment, and we work with our clients throughout the process to position them for the best possible outcome based on their goals.

- **LCW's Litigation Approach** – We create a comprehensive litigation plan for every matter setting forth these strategic objectives based on the client's goals and objectives. Discovery, motions and other tasks are tailored to those objectives so that our work is focused and efficient. With the comprehensive litigation plan as the roadmap for the litigation team, we are highly proactive, not reactive, we set and control the pace of the lawsuit, and are accountable to the deadlines in the plan. We are always in close communication with the client regarding the progress of the litigation and the client's priorities and goals.
 - The firm is also committed to professional litigation management and has a strong litigation infrastructure. Our Litigation Manager, an attorney with extensive employment law experience, works closely with the litigation team on compliance with litigation guidelines, budgeting and defense strategy. Her services help ensure that matters are handled effectively and efficiently from inception through resolution or trial, and our clients are not billed for this service.
 - In addition, at regular intervals throughout the matter, a team of our litigators from across the firm convenes to share resources, insights, and strategies about each case. This is a value-added component provided by LCW and again, clients are not billed for this resource. We also have broad experience with experts, including jury consultants, and recommend their use at trial on a case by case basis. Our Litigation Support Specialist and paralegals manage e-discovery and provide specialized trial support at a much lower rate than outside technical consultants.

Negotiations

Our Labor Relations Practice Group specializes in negotiating labor agreements for public agencies across all classes of employees, including a variety of white and blue collar, professional, supervisory and management, and public safety employee bargaining units. Our team of negotiators have worked with public agencies of all sizes and on all issues surrounding labor agreements. We pride ourselves on successfully establishing our role as an effective advocate for the City, while maintaining a professional relationship with employee organizations and their representatives.

Members of our firm have negotiated literally hundreds of memoranda of understanding with all varieties of general and safety employee groups including: AFSCME, IBEW, IUOE, SEIU, CLOCEA, Teamsters, and various police, fire and general employee associations. We have negotiated virtually every issue within the scope of bargaining, including such issues as: wages, hours, health and retirement benefits, leaves and discipline.

We believe that our experienced and practical approach to negotiations, as well as our problem-solving orientation, results in a smoother and more expeditious negotiating process, fewer sustainable grievances or unfair labor practice charges, and ultimately, a more cost-effective method of collective bargaining.

- **Our Approach** - Our approach to negotiations are generally as follows, subject to the particular preferences in any agency, which can and do bring about modifications to our role:
 - Meet with City staff and/or governing officials prior to commencement of negotiations in order to better understand (and perhaps formulate) the goals and objectives of the agency in addressing the potential bargaining issues, and to be made aware of the financial/political limitations upon reaching those goals and objectives.
 - Provide leadership in formulating the strategies that will be employed in meeting said goals and objectives at the bargaining table. (This may include asking that various agency negotiation team members or resource personnel prepare budget presentations, detailed cost/revenue analyses or other financial data that may be discussed during negotiations).
 - Administer and/or oversee classification and compensation studies to gather the data necessary to formulate and present the agency's bargaining objectives and proposals.
 - Review and analyze all pertinent charter provisions, ordinances, rules and regulations, and existing memoranda of understanding, in order to verify their impact upon the goals and objectives that are being pursued.
 - Act as principal spokesperson and strategist during the bargaining process.
 - Participate in closed sessions to provide guidance to and receive direction from elected officials.
 - Represent the City at impasse proceedings (including preparation and representation through the impasse process, preparation of press releases, supervising media relations, meeting with elected officials, and making those appearances provided for by the City employee relations ordinance, as requested by the City).

Grievance Arbitrations

We assign grievance arbitrations based on the personnel involved, legal issues involved, and level of expertise required. Where the matter is "high profile," we welcome the City Manager or their designee to meet with our key personnel at no cost so that the City Manager or their designee can select an attorney. On other matters, either the Managing Partner or Lead Partner, in conjunction with the City Manager, will decide who should handle any given hearing or disciplinary matter.

Generally, our work in this area would include:

- Review applicable agency personnel rules; applicable MOU, grievance documents, and advise appropriate agency personnel.
- Prepare, review, and/or edit grievance responses when requested.
- Represent the City in grievances that go to arbitration pursuant to personnel rules and applicable MOU.
- Prepare witnesses for grievance arbitration.
- Prepare direct and cross examination and exhibit books for grievance arbitration.
- If necessary, prepare pre-hearing brief.
- Present the case in arbitration.
- If necessary, prepare post hearing brief.

Federal and State Wage and Hour Law

LCW is the preeminent law firm providing Fair Labor Standards Act services to public employers in California. Our role as a leading public sector FLSA firm began immediately following the United States Supreme Court decision in *Garcia v. San Antonio Metropolitan Transit Authority* in March 1985, which applied the FLSA to public agencies. Our firm promptly conducted workshops across the state on behalf of the California League of Cities to advise public agencies on how to comply with the FLSA. Since that time, our firm has been active in legislative efforts to mitigate the harsh impact of the FLSA on public agencies.

While we deal with specific FLSA questions and issues from our clients nearly every day, many public agencies benefit from our reference publication “The Fair Labor Standards Act: A Public Sector Compliance Guide.” We author two guides: one specific to California employers and a national version, which is published by the National Public Employer Labor Relations Association. We also provide full day training programs for managers and supervisors with an all-encompassing understanding of the FLSA, and our FLSA audits that identify compliance issues and recommend practical solutions.

The concept of creating an FLSA audit arose as a result of our representation of numerous public agencies in FLSA litigation. We recognized that there are so many nuances to the FLSA for public sector employers that compliance cannot be determined by casual observation. An in-depth investigation and analysis is necessary to ensure full compliance with the law. Our firm has developed an FLSA audit protocol to evaluate whether a public agency is in compliance with the various provisions of the FLSA. The audit process we designed includes thorough investigation and analysis and practical recommendations to achieve such compliance.

In addition to our FLSA expertise, we also advise California public agencies on their compliance with the California Labor Code and Wage Orders, as applicable.

RATES AND CHARGES

Pricing offered on a time-and-materials basis would be based on our firm’s hourly billable rates:

PARTNERS	\$370
SENIOR COUNSEL.....	\$320
ASSOCIATES.....	\$210 - \$300
LABOR RELATIONS CONSULTANT	\$240
PARALEGAL/E-DISCOVERY SPECIALIST.....	\$125 - \$170

Invoices are payable upon receipt and due within 30 days.

Other Costs and Charges

Telephone consultation, court litigation and administrative proceedings, and attendance at Board meetings will be billed at the attorney’s hourly rate.

The firm utilizes the most up-to-date technology to aid in the delivery of legal services. For example, we utilize Sharefile, a document-sharing portal, for the secure and quick transmission of material. Documents are sent electronically, through Sharefile or email, unless specifically requested otherwise, or when electronic transmission is not an option. Should we need to send a fax, these are billed at the rate of \$.25 per page for outgoing faxes. Likewise, if needed copying is charged at fifteen cents (\$.15) per page. Additional prints, postage and special deliveries (i.e. Fed-Ex, UPS, DHL, messenger service), and other hired deliveries completed at the request of the client or necessary to comply with court or other deadlines will also be billed to the client.

Additionally, unlike many firms, we do not bill for secretarial time or telephone charges. Our firm bills for travel time at the attorney’s hourly rate - for the time it takes to travel from the closest office to our client and back, or the time it takes from the attorney’s residence to our client and back, whichever is less. Importantly, we do not double bill for our travel time; our travel billing is prorated by the time we spend on billable work for the agency or other clients, like phone calls and dictation.

We understand the need to manage the cost of legal services and frequently work with clients to create budgets and cost strategies that suit them. For our work with the City, a partner will oversee an associate in any work assigned. When possible we will utilize an associate or a paralegal to assist with matters so that the client can benefit from the lower billing rate. We are also aware that there are times that it is financially prudent for the client to have a higher billing partner complete a task than a lower billing associate due to the fact that the partner may be able to complete the task in less time than an associate.

Instead, we will pair the associate with a partner but only bill the client for one attorney. This allows our associate to learn without the client paying for that education.

For litigation matters, LCW uses Relativity, the industry-leading litigation e-discovery software, for this purpose. This software aids our clients in ensuring secure storage of data and decreased attorney time, making document review more efficient and cost-effective. The cost for each matter will depend on the volume and format of the data. For non-complex data up to 50 GB, LCW charges a monthly fee of \$375 for data management, including data validation and security, ingestion, culling and streamlining, creation of Relativity fields for expedited review, and hosting. For data of 50 GB and over and for complex data requiring specialized services (e.g., payroll data or spreadsheets with underlying formulas), additional charges are incurred and are passed through to the client. For such charges, we will provide an itemized bill from our managed services provider and obtain client approval prior to incurring the charges.

Members of the firm frequently conduct presentations on labor and employment law matters. These presentations are billed as flat fees and are based on the length of the presentation, with associate presenters at the lower end of the scale and partner at the higher end:

3 hour (half day) = \$2,050 - \$2,600

6 hour (full day) = \$3,100 - \$3,600

The rate includes all preparation and presentation as well as one original set of materials for you to reproduce for the attendees. This rate is the same whether you have us conduct an in-person presentation or conduct via Zoom webinar/meeting. For the later, it includes individual connections for up to 500 (meeting) - 1,000 (webinar) people.

CONCLUSION

Liebert Cassidy Whitmore is proud of the depth of experience, varied personalities, and diversity of skills our firm offers our clients. The attorneys we propose for the City of Costa Mesa are experts in and knowledgeable about the latest issues affecting public sector management. Our attorneys work with clients to ensure that they have prompt, quality answers to their questions. We are a proactive firm and we believe in assisting our clients to avoid problems and disputes before they arise. Likewise, we strive to minimize the costs to our clients.

We recognize that your purpose is to serve the needs of the community and so our goal is to help you achieve this mission. We are most rewarded when we have the opportunity to collaborate with our clients to create solutions that make them successful.

Liebert Cassidy Whitmore offers our commitment to the City of Costa Mesa to provide you with superior service, timely and efficient work product and professional people with whom to work. We would welcome the opportunity to work with you.

If we can provide additional information or if you would like to interview with any of our attorneys please contact Cynthia Weldon, Director of Marketing at (310) 981-2055 or cweldon@lcwlegal.com.

EXHIBIT B

CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa’s commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor’s and/or sub-grantee’s workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.