

GOVERNING BOARD

- Vito Chiesa, Chair**
Supervisor, Stanislaus County
- Deborah Lewis, Vice Chair**
Councilmember, City of Los Banos
- David Couch**
Supervisor, Kern County
- Rosa Escutia-Braaton**
Councilmember, City of Modesto
- Bobby Macaulay**
Supervisor, Madera County

- Buddy Mendes**
Supervisor, Fresno County
- Tania Pacheco-Werner, PhD.**
Appointed by Governor
- Lloyd Pareira**
Supervisor, Merced County

- Alvaro Preciado**
Mayor, City of Avenal
- Gilberto Reyna**
Councilmember, City of Wasco
- Robert Rickman**
Supervisor, San Joaquin County

- Rusty Robinson**
Supervisor, Kings County
- Alexander C. Sherriffs, M.D.**
Appointed by Governor
- Amy Shuklian**
Supervisor, Tulare County

- Liz Wynn**
Councilmember, City of Visalia


Samir Sheikh
Executive Director
Air Pollution Control Officer

Northern Region Office
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 • FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 • FAX (559) 230-6061

Southern Region Office
34946 Flyover Court
Bakersfield, CA 93308-9725
(661) 392-5500 • FAX (661) 392-5585

DATE: March 21, 2024

TO: SJVUAPCD Governing Board 

FROM: Samir Sheikh, Executive Director/APCO
Project Coordinator: Chenecua Dixon

RE: **ITEM NUMBER 20: APPROVE AMENDMENT TO AGREEMENT WITH LIEBERT CASSIDY WHITMORE FOR SPECIALIZED LABOR/MANAGEMENT LEGAL SERVICES**

RECOMMENDATION:

Approve and authorize the Chair to sign an amendment to the agreement with Liebert Cassidy Whitmore in an amount not to exceed \$80,000 for specialized labor/management legal services.

BACKGROUND:

Liebert Cassidy Whitmore is an employment law firm which provides comprehensive legal services and training to employers throughout California. As a leader in their field, the firm has expertise working with public sector employers on the full range of employment related issues including consultation services, customized training, harassment investigations, contract negotiations, and audit services.

Since 1994, the District has utilized the services of Liebert Cassidy Whitmore through its participation in the firm's Consortium Training Program for managers and supervisors. While the vast majority of District's employment issues are handled internally by the Personnel and/or Legal Counsel's Office, on occasion it has also been necessary to utilize the firm's expertise for investigations and consultation services. Based on past experience, the District has been more than satisfied with the quality of products and services provided by Liebert Cassidy Whitmore.

March 21, 2024

DISCUSSION:

The Executive Director/APCO has historically approved the agreements since the District typically spends well under \$20,000 each year for the provision of specialized legal services. The 2023-24 year has been an atypical year due to new mandates, additional training, investigations, and forthcoming labor negotiations. This year the cost will exceed the Executive Director/APCO's authority of \$20,000. Therefore, it is recommended that your Board approve an amendment to the agreement with Liebert Cassidy Whitmore which will provide the Executive Director/APCO with the authority to utilize the firm for the provision of specialized legal services necessary to ensure legal compliance and timely resolution of employment matters. The amendment will increase the agreement by \$60,000 and bring the total to an amount not to exceed \$80,000 for specialized labor/management legal services

FISCAL IMPACT:

While the need for specialized services provided by Liebert Cassidy Whitmore is now estimated to be greater than anticipated at the time the 2023-24 District Budget was adopted, District staff anticipates sufficient savings from other contracted services to cover the additional costs. Therefore, the 2023-24 District Budget contains adequate appropriations for this agreement and no modification to the Budget is necessary.

Attachments:

Attachment A: Amendment 1 to Agreement with Liebert Cassidy Whitmore (2 pages)

Attachment B: Agreement with Liebert Cassidy Whitmore (7 pages)

San Joaquin Valley Unified Air Pollution Control District
Governing Board Meeting
March 21, 2024

**APPROVE AMENDMENT TO AGREEMENT WITH LIEBERT
CASSIDY WHITMORE FOR SPECIALIZED
LABOR/MANAGEMENT LEGAL SERVICES**

Attachment A:

AMENDMENT 1 TO AGREEMENT WITH LIEBERT CASSIDY WHITMORE
(2 pages)

**AMENDMENT NO. 1 TO
AGREEMENT FOR SPECIAL SERVICES
BETWEEN THE SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT
AND LIEBERT CASSIDY WHITMORE**

THIS AMENDMENT is executed by and between Liebert Cassidy Whitmore (Attorney) and the San Joaquin Valley Air Pollution Control District (District), and will amend the prior agreement between the parties entitled Agreement for Special Services which was effective on January 10, 2024.

WHEREAS, the parties desire to amend their agreement to allow the District to employ Attorney as an independent contractor to represent District and provide services as requested by the District as follows:

- Training Consortium (workshops for managers and supervisors, including legally mandated training)
- Customized training
- Employment Investigations (harassment, discrimination, disciplinary)
- Audit Services (Review of existing rules, policies, etc., for legal compliance and/or management appropriateness)
- Telephone Consultation Services
- Reference Materials (workbooks, newsletters)
- Labor Relations and Negotiation Services

NOW, THEREFORE, the parties hereto agree as follows:

1. This amendment shall be effective as of March 21, 2024.
2. **Compensation:** The total not to exceed compensation set forth in Section 3. Fees, Costs, Expenses, is amended to provide for an increase of Sixty Thousand Dollars (\$60,000.00) in total compensation, for a total not to exceed amount of \$80,000.00.
3. That in all other respects the prior agreement of the parties shall remain in full force and effect except as amended herein.

LIEBERT CASSIDY WHITMORE,
A Professional Corporation

SAN JOAQUIN VALLEY AIR POLLUTION
CONTROL DISTRICT

By _____

By _____
Vito Chiesa
Governing Board Chair

Print: _____

Date _____

Title: _____

Recommended for approval:

By _____
Samir Sheikh
Executive Director/APCO

Date _____

Approved as to accounting form:

By _____
Ryan Buchanan
Director of Administrative Services

Date _____

Approved as to the legal form:

By _____
Annette Ballatore
District Counsel

Date _____

San Joaquin Valley Unified Air Pollution Control District
Governing Board Meeting
March 21, 2024

**APPROVE AMENDMENT TO AGREEMENT WITH LIEBERT
CASSIDY WHITMORE FOR SPECIALIZED
LABOR/MANAGEMENT LEGAL SERVICES**

Attachment B:

AGREEMENT WITH LIEBERT CASSIDY WHITMORE
(7 pages)

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation (“Attorney” or “LCW”), and the SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT (“Agency”).

1. Conditions

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

2. Attorney’s Services

Attorney agrees to provide Agency with consulting, representational and legal services pertaining to employment relations matters, including representation in negotiations and in administrative and court proceedings, as requested by Agency or otherwise required by law.

3. Fees, Costs, Expenses

Agency agrees to pay Attorney the sums billed monthly for time spent by Attorney in providing the services, including reasonable travel time, not to exceed \$20,000.00, unless mutually agreed upon by both parties.

The current range of hourly rates for Attorney time is from Two Hundred Sixty to Four Hundred Thirty-Five Dollars (\$260.00 - \$435.00). See Schedule I for a full Fee Schedule. Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective July 1. Attorney will provide the Agency with written notification of any adjustment in the range of rates. Attorney bills its time in minimum units of one-tenth of an hour.

For Litigation Matters

See Schedule II attached for a description of Attorney's Litigation and E-Discovery Management.

Other Expenses

Agency agrees to reimburse Attorney for necessary costs and expenses incurred by Attorney on behalf of Agency. Attorney bills photocopying charges at Fifteen Cents (\$0.15) per page. See Schedule I attached.

Payment by Agency 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.

4. Professional Liability Insurance

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

5. Arbitration of Professional Liability or Other Claims

Disputes. If a dispute between Agency and Attorney arises over fees charged for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code, sections 6200 through 6206. The arbitrator or arbitration panel shall have the authority to award to the prevailing party attorneys' fees, costs and interest

incurred. Any arbitration award may be served by mail upon either side and personal service shall not be required.

If a dispute arises between Agency and Attorney over any other aspect of the attorney-Agency 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.

6. File Retention

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

7. Assignment

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

8. Independent Contractor

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

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 January 10, 2024, ongoing and may be modified by mutual agreement of the parties. This agreement shall be terminable by either party upon thirty (30) days written notice.

LIEBERT CASSIDY WHITMORE,
A Professional Corporation

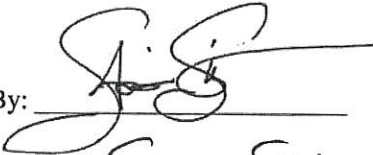
By: 

Name: Shelline Bennett

Title: Managing Partner
Pleasanton/Sacramento

Date: 1-11-24

SAN JOAQUIN VALLEY AIR
POLLUTION CONTROL DISTRICT

By: 

Name: SAMIR STEIKIT

Title: EXECUTIVE DIRECTOR / APCD

Date: 1/11/2024

SCHEDULE I – FEES & COSTS

1. Hourly Rates (As of Agreement Effective Date)

Partners	\$435.00
Senior Counsel	\$365.00
Associates	\$260.00 - \$345.00
Labor Relations/HR Consultant	\$280.00
Paralegals	\$145.00
E- Discovery Specialists	\$145.00
Law Clerks	\$145.00 - \$185.00

2. COSTS

1. Photocopies	\$0.15 per copy
----------------	-----------------

SCHEDULE II

LCW LITIGATION and E-DISCOVERY MANAGEMENT

LCW is committed to using state-of-the-art technology to efficiently manage and harness electronically-stored information (“ESI”) in compliance with Federal and State law requirements. LCW partners with an outside managed services provider to provide Relativity, the industry leading e-discovery software, for this purpose. The cost for each matter will depend on the volume and format of the data. For non-complex data up to 50 gigabytes, LCW charges a monthly fee of \$450 on all active litigation matters for data management, including data validation and security, ingestion, de-duplication, culling and streamlining, and creation of Relativity fields for expedited review. For data of 50 gigabytes and over and for complex data requiring specialized services (e.g., payroll data, spreadsheets with underlying formulas, video, advanced searches, etc.), additional charges are incurred and are passed through to the Agency. For such charges, we will provide an itemized bill from our managed services provider and obtain Agency approval prior to incurring the charges.

Litigation Case Staffing

LCW has organized its litigation practice to meet the challenges of today’s complex litigation cases. We employ a dedicated Litigation Manager – a non-billing attorney litigator – whose responsibility is to monitor all litigation cases to ensure quality, efficiency, and adherence to Agency and firm litigation guidelines. Each litigation case is staffed with a Partner, an Associate (or Associates, as required and as approved by the Agency), a Paralegal and an E-Discovery Specialist. Our E-Discovery Specialists have extensive experience in the efficient management of electronic data through every stage of the e-discovery life cycle, and they strategize with attorneys and Agencies on effective ESI protocols. This makes the document review process more efficient and enables our attorneys to target the most relevant data to meet litigation objectives. Working with our e-discovery managed services provider, we are able to provide state-of-the-art data processing and hosting services at below-market rates.