



OFFICE OF THE
CITY ATTORNEY

411 Main Street - 3rd Floor (530) 896-7600
P.O. Box 3420 Fax (530) 895-4780
Chico, CA 95927 <http://www.ci.chico.ca.us>

AGREEMENT FOR PROFESSIONAL SERVICES

1. Scope of Services. Liebert Cassidy Whitmore ("LCW") shall perform all legal services necessary and appropriate to the Matter for which Special Counsel has been engaged, namely: **Employment Investigations** (the "Services" or the "Matter"). The City of Chico (the "City") has engaged Special Counsel because Special Counsel is uniquely qualified in the area of law required.

2. Not to Exceed Amount. City shall pay to Special Counsel in due course of payments compensation at the hourly rates identified in the staffing profile and reimbursement of costs as further described herein and in the "Guidelines" also attached hereto, not to exceed Twenty-Five Thousand Dollars (\$25,000), unless otherwise agreed by the parties in writing.

3. Term. The term of this Agreement shall begin at 12:01 a.m. on January 13, 2017, and shall end when the Matter is concluded or on fifteen (15) days' prior notice from the City to Special Counsel.

4. Written Budget.

A. Within thirty (30) days of commencing work, Special Counsel shall submit a written budget estimating the total fees and costs expected to be incurred by the City in connection with pursuing the Matter to full completion. The budget shall reflect major assumptions, identify specific work phases and provide an estimate of the cost of each phase. The budget shall be reviewed quarterly by Special Counsel unless intervening events necessitate earlier review or as otherwise directed by the City Attorney or designee.

B. Any updated or revised budget shall point out and explain each material modification or change from previous budgets.

5. In addition to the foregoing and any other requirements set forth in this Agreement, the City Attorney or designee may at any time request a written report, a written budget and timeline for the Matter. If requested, the budget shall include all projected fees and costs to be incurred by Special Counsel for the Matter, commencing on the date that Special Counsel receives the request. The budget and timeline shall include the specific tasks to be performed (including such things as discovery and motions for trial, preparation of documents for transactional services, and anticipated research and investigations). Special Counsel shall identify the projected total hours that will be billed and who will be performing those hours of service, plus fees and costs for each task. The budget and timeline shall be a good faith estimate and as complete as possible. Any deviation from the budget and any deviation over 10% on any task

identified on the budget must be discussed in advance with the City Attorney or designee, and the billing related to that task is subject to adjustment so as to conform to the budget. In addition, the City Attorney or designee may request a written budget and timeline similar to the one described above, but relating specifically to one or more tasks necessary to the Matter.

6. Limitation on Legal Services. The scope of this representation is limited. Attorneys will make factual findings, utilizing Attorneys' legal skills, knowledge, and experience in so doing. Attorneys will not render a legal determination whether there was unlawful discrimination, harassment, violation of public policy, or a violation of any other law or statute for investigations under this Agreement. The City and Attorneys intend that Attorneys' investigations will be covered by the attorney-client privilege and attorney-work product privilege to the extent legally permitted, although Attorneys understand that the City may choose to waive the privilege in the future.

7. Indemnification. Since the purpose of the Attorneys' engagement is to assist the City in determining the facts related to internal personnel complaints, the City agrees to the following indemnity language. The City agrees to indemnify, defend and hold Attorneys, its successors and assigns, and each of its officers and employees, harmless from any and all claims, suits, demands, losses and expenses, including reasonable attorneys' fees, accruing or resulting to any and all persons, firms, or other entity arising out of Attorneys' performance or non-performance of its obligations under this Agreement. The City shall not indemnify Attorneys for any matter involving a claim by the City of professional negligence, or any matter for which Attorneys shall have been adjudicated to have acted in bad faith or engaged in willful misconduct or any conduct outside the scope of its retention under this Agreement. This Agreement in no way limits the Attorneys' liability for professional malpractice under California Rule of Professional Conduct 3-400. The provisions of this section shall survive the expiration or termination of this contract.

8. Related Post-Investigation Services. If Attorneys are asked or required to prepare for and/or testify, including, without limitation, at deposition, trial, arbitration or any other proceeding, because of services rendered under this Agreement, or if Attorneys must respond to subpoenas or discovery or otherwise respond or perform services with respect to any matter relating to or arising out of the services performed for City, City agrees to pay Attorneys for all time expended (including preparation time) at Attorneys' then current regular hourly rate and to reimburse Attorneys for reasonable costs and expenses incurred, whether or not the investigation has been concluded. This includes reasonable costs of legal representation. Payment is due upon presentation of a bill for services, costs, and expenses.

9. Arbitration. The parties agree that all disputes that arise between the City and Attorneys, whether financial or otherwise regarding the attorney-client relationship, shall be resolved by binding arbitration. The parties agree to waive their right to a jury trial and to an appeal.

10. Engagement of Other Counsel, Specialists, Experts and Court Reporters.

A. Because the City has engaged Special Counsel due to its expertise and reputation, Special Counsel and the City Attorney or designee will agree on a staffing profile that identifies the partners, associates, and paralegals who are authorized to work on the Matter, including their respective billing rates, which will be attached as an Addendum subsequent to execution of this Agreement. Individuals whose names are not included in the staffing profile may not work on the Matter without the prior approval of the City Attorney, or designee. The City reserves the right to refuse to pay for work performed by any individual whose name is not listed or who has not received such prior approval, or whose rate has not been approved.

B. Special Counsel shall not select, hire or otherwise incur any obligation to pay other counsel, specialists, consultants, or experts for services in connection with the Matter without the prior written approval of the City Attorney or designee. The City reserves the right to refuse to pay for said work performed by any individual or firm.

C. Special Counsel shall use court reporters from the City Attorney's approved list, and shall bill their services at the City's negotiated rates.

11. Withholding. Special Counsel acknowledges and agrees that (a) City will not withhold taxes of any kind from Special Counsel's compensation; (b) City will not secure workers' compensation or pay unemployment insurance to, for or on Special Counsel's behalf; and (c) City will not provide and Special Counsel is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Special Counsel expressly warrants that neither Special Counsel nor any of its/his/her employees or agents shall represent themselves to be employees or agents of City.

12. 75% Contract Amount Notice. The City will not pay Special Counsel for any fees incurred in excess of the total amount allotted to in this Agreement, which is set forth as the "not-to-exceed" amount shown in Section 2 of this Agreement. Special Counsel shall provide thirty (30) days advance written notice to the City Attorney whenever it has reason to believe that fees it expects to incur under this Agreement, when added to all fees and costs previously incurred, will approach exceeding seventy-five percent (75%) of the total not- to-exceed amount. The notice shall state the estimated amount of and the reasons why, additional funds are required to continue performance under this Agreement.

13. Costs Reimbursement. The City will reimburse Special Counsel for the reasonable costs incurred by Special Counsel as a result of its representation of the City in the Matter, in accordance with the Guidelines. Costs shall be actual, without the addition of administrative or overhead charges, and must be documented. The City will not pay for costs that do not contain supporting documentation satisfactory to the City Attorney, or designee.

14. Billing.

A. Special Counsel shall keep a record of time spent on the matter in increments of one-tenth (.1) of an hour.

B. Each task shall be distinctly and completely identified; the City will not pay invoices which contain block billing. The billing entry must contain the name or initials of the individual performing the task, the nature of the task, the date it was performed, and the length of time it took.

C. The City will not pay for the use of attorneys and paralegals to perform Services which are secretarial or administrative.

D. The City reserves the right to audit all invoices. The City will not pay for costs incurred in preparing an invoice, correcting it, or resubmitting it.

E. Special Counsel shall submit invoices no later than the fifteenth (15th) day of the month following the month in which Services were performed and actual costs incurred. If Special Counsel submits invoices after said date, then the invoice(s) may be subject to a discount of ten percent (10%) for each month or portion thereof that the invoice is not timely submitted.

15. Insurance. Notwithstanding anything to the contrary in the Agreement, and as a condition precedent to the effectiveness of the Agreement, Special Counsel shall procure and maintain at its expense for the duration of the Agreement from insurance companies admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A.VIII by A.M. Best Company professional liability or errors and omissions liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

Any self-insurance program, self-insured retention or deductible must be separately approved in writing by the City Attorney or designee and shall protect the City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days' prior written notice to the City, and shall be primary and not contributing to any other insurance or self-insurance maintained by the City, its officials and employees. Special Counsel shall notify the City in writing within five (5) days after any insurance required herein has been voided by the insurer or canceled by the insured.

Special Counsel shall deliver to the City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificate and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. The procuring or existence of insurance shall not be deemed or construed as a limitation on Special Counsel's liability or as performance of or compliance with any indemnity provisions herein. City reserves the right to require complete certified copies of all policies at any time. Special Counsel shall make available to the City all books, records, and other information relating to the insurance required herein during normal business hours. Any modification or waiver of the insurance requirements herein shall only be made with the approval of the City Attorney or designee. In addition, Special Counsel shall, at least thirty (30) days prior to expiration of the insurance required

hereunder, furnish to the City certificates of insurance and endorsements evidencing renewal of such insurance.

16. Conflict of Interest. Special Counsel, by executing this Agreement, certifies that, at the time Special Counsel executes this Agreement and for the duration of the Agreement, Special Counsel does not have and will not perform services for any other client which would create a conflict as between the interests of the City hereunder and the interests of such other client, subject to written waiver by the City.

17. Nondiscrimination. In connection with performance of Services and subject to applicable rules and regulations, Special Counsel shall not discriminate on the basis of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or disability. It is the policy of the City to encourage the participation of Minority Business Enterprises and Women-owned Business Enterprises and the City urges Special Counsel to do likewise.

18. Miscellaneous.

A. This Agreement shall not be amended, nor any provision or breach hereof waived except in writing signed by the parties which refers to this Agreement.

B. This Agreement shall be governed by and construed pursuant to the laws of the State of California. Special Counsel shall comply with all laws, ordinances, rules, and regulations covering performance of Services.

C. This Agreement, including the Guidelines and exhibits, if any, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the Services and the Matter.

D. If there is any inconsistency or ambiguity between this Agreement, the Guidelines, or the Addendum, this Agreement shall control.

E. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs (including appeals).

F. The acceptance of Services or payment of money by the City shall not operate as a waiver of any provision of this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

G. The Agreement is intended by the parties to benefit themselves only and is not in any way intended or entered for the purpose of creating any benefit or right for any person or entity that is not a party to this Agreement.

19. Personal Services. The Agreement contemplates the personal services of Special Counsel and Special Counsel's employees, and the parties acknowledge that a substantial inducement to City for entering it was and is the

professional reputation and competence of Special Counsel and Special Counsel's employees. Special Counsel shall not assign any interest herein, or any portion hereof, without the prior approval of the City Attorney. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation. Furthermore, Special Counsel shall not subcontract any portion of the performance required hereunder without the prior approval of the City Attorney or his designee.

20. Data. All materials, information and data prepared, developed or assembled by Special Counsel or furnished to Special Counsel in connection herewith, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material, and memoranda (hereinafter "Data") shall be the exclusive property of City. Data shall be given to City, and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Special Counsel. Copies of Data may be retained by Special Counsel but Special Counsel warrants that Data shall not be made available to any person or entity for use without the prior approval of City.

21. Data Confidential. Special Counsel shall keep the Data confidential and shall not disclose the Data or use the Data directly or indirectly other than in the course of services provided hereunder during the term of the Agreement and for five (5) years following expiration or termination hereof. In addition, Special Counsel shall keep confidential all information, whether written, oral, or visual, obtained by any means whatsoever in the course of Special Counsel's performance hereunder for the same period of time. Special Counsel shall not disclose any or all of the Data to any third party, nor use it for Special Counsel's own benefit or the benefit of others except for the purpose of the Agreement.

22. Breach of Confidentiality. Special Counsel shall not be liable for a breach of confidentiality with respect to Data that:

A. Special Counsel demonstrates Special Counsel knew prior to the time City disclosed it; or

B. Is or becomes publicly available without breach of the Agreement by Special Counsel; or

C. A third party who has a right to disclose does so to Special Counsel without restrictions on further disclosure; or

D. Must be disclosed pursuant to subpoena or court order.

23. No provision or breach of the Agreement, shall be waived, except in writing signed by the parties which expressly refers to the Agreement.

24. Right to Terminate. Notwithstanding anything to the contrary in the Agreement, City shall have the right to terminate the Agreement for any reason or no

reason at any time by giving fifteen (15) calendar days' prior notice to Special Counsel. In the event of termination pursuant to this Section, City shall pay Special Counsel for services satisfactorily performed up to the effective date of termination for which Special Counsel has not been previously paid but City shall have no obligation to have Special Counsel perform services after notice of termination has been given. The procedures for payment as described in Section 10 and in the Guidelines for Billing shall apply. On the effective date of termination, Special Counsel shall deliver to City all Data developed or accumulated in performance hereunder, whether in draft or final form, or in process.

25. Notice. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Mail, first class, postage prepaid to Special Counsel at Liebert Cassidy Whitmore, Attn: Shelline Bennett, 5250 N. Palm Avenue, Suite 310, Fresno, CA 93704,; and to the City at Alvarez-Glasman & Colvin, Attn: City Attorney, Vincent C. Ewing, 13181 Crossroads Parkway North, Suite 400, West Tower, Industry, CA 91746. Notice may be given by fax to the City Attorney at (562) 692-2244 and to Special Counsel at (559) 449-4535, provided that duplicate notice is simultaneously delivered or mailed. Notice shall be deemed given on the date of personal delivery or forty-eight (48) hours after deposit in the mail. Notice of change of address shall be given as described herein for other notices.

26. Waiver of Breach. The acceptance of any services or payment of any money by City shall not operate as a waiver of any provision hereof, or of any right to damages or indemnity stated herein. The waiver of any breach hereof shall not constitute a waiver of any other or subsequent breach.

27. Termination. Termination or expiration of this Agreement shall not affect rights or liabilities which accrued under it prior to termination or expiration of the Agreement, and shall not extinguish any warranties hereunder.

28. 1099 Form. As required by federal and state law, City is obligated to and will report the payment of compensation to Special Counsel on Form 1099-Misc. Special Counsel shall be solely responsible for payment of all federal and state taxes resulting from payments hereunder. Special Counsel shall submit Special Counsel's Employer Identification Number (EIN), or Special Counsel's Social Security Number if Special Counsel does not have an EIN, in writing to City Attorney or designee. Special Counsel acknowledges and agrees that City has no obligation to pay Special Counsel until Special Counsel provides one of these Numbers.

29. Advertising. Special Counsel shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Attorney or designee.

Signatures on following page

LIEBERT CASSIDY WHITMORE

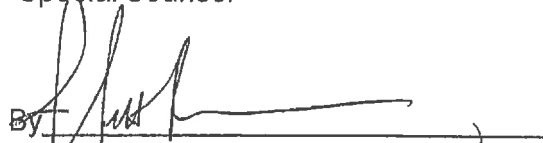
"Special Counsel"

DATED: _____

By

Print Name

Title


F. Scott Tiedeman
Municipal Planner

For the City of Chico:



Mark Orme
City Manager

APPROVED AS TO FORM:



Vincent C. Ewing, City Attorney*

*Approved pursuant to Chico Municipal Code Sec. 2R.04.470

GUIDELINES FOR BILLING

In addition to the provisions stated in this Agreement, the following guidelines for billing apply:

1. The City expects each individual working on the Matter to have the necessary experience to perform the Services required to protect or pursue the City's interests in the Matter in a cost effective manner.
2. The City expects Special Counsel to select the individual most suitable for the task required and the specific needs of the Matter, and to use the maximum efficiencies available. Billings for services performed by the inappropriate level of personnel will be reduced by the City based on rate adjustments for the appropriate level of personnel.
3. The City will not pay for unnecessary review of texts, codes, rules of court, or other fundamental references. The City will pay the hourly rate for specific legal research which is unique to the Matter, assuming that Special Counsel has used maximum efficiencies and that Special Counsel has not already performed research in the same or similar areas of law.
4. The City acknowledges the benefit of communications between attorneys in the firm. The City does, however, expect that intra-office conferences will only be held as needed, and will be kept to a minimum. Intra-office conferences shall be for the purpose of discussing strategy and legal issues which directly further the Matter. The City will not pay for conferences which are supervisory or instructional (including conferences regarding case management). Any invoice which lists an intra-office conference that exceeds these guidelines must contain a full explanation and is subject to reduction by the City. The City will not pay for "team meetings" and the City will scrutinize all intra-office conferences for "value added" to the Matter by the intra-office conference, for the number of individuals attending the intra-office conference, the length of the conference, the subject(s) discussed at the conference and who participated in it and will, in the City's sole discretion, determine if such value was added.
5. The City will not pay for local telephone calls; incoming facsimiles; postage; time spent on filing, calendaring, indexing pleadings, and photocopying; conferences with Clerks of Court or court reporters; proofreading; re-drafting due to substandard work; time billed by summer associates; time for more than one individual at a trial, hearing, court appearance, arbitration, mediation, deposition, third party meeting, conference call or similar event (unless approved in advance by the City); opening, closing or organizing files; or other similar tasks.
6. Vague billing which does not contain sufficient information to allow the City's reviewer of the invoice to determine the nature of the task, the reason for the task and the individual performing the task is subject to reduction by the City. Examples of vague billing include but are not limited to the following: Attention to Matter, Review cases and issues, Conference, Review correspondence,

Arrangements, Telephone call, Discovery, Trial Preparation, Meeting, Update strategy, Motion work, Work on case or project, Pleadings, Work on file or discovery, Prepare for "xxx", Review documents, Legal Research or analysis.

7. All services billed by attorneys and paralegals must be actual legal services requiring the expertise of a legal provider. The City will not pay for more than eight (8) hours of Services per day without a detailed explanation of the need for time over eight hours and may reduce the invoice if the explanation is unsatisfactory, in the City's sole discretion.

8. The City will reimburse for facsimiles sent but not received by Special Counsel and photocopies made at a rate not to exceed \$.12 per page; the number of pages of facsimiles and to whom they were sent, and the number of pages or photocopies made must appear on the invoice. Special Counsel shall limit the making of photocopies and the sending of facsimiles. The City will reimburse actual costs for computerized legal research if it is reasonable and necessary; however, these charges are subject to review by the City.

9. The City will not reimburse for overtime, word processing (document production), supplies, anything identified on an invoice as "miscellaneous", or any other unidentified charges.

10. Special Counsel shall normally use the U.S. Mail and regular attorney services to send and to file papers and other materials. The City reserves the right to reduce excessive charges for messengers and Federal Express or other similar services which are not fully explained or which are not necessary, in the City's determination.

11. A. The City will reimburse travel costs of Special Counsel only as described herein. Travel costs not addressed in these Guidelines are not reimbursable. Travel costs must be reasonable. The City will not reimburse for travel by more than one person of Special Counsel, unless approved in writing by the City Attorney or designee in advance of such travel. The City will not reimburse for excess costs caused by an indirect route chose for Special Counsel's personal reasons.

B. As used in these Guidelines, "local travel" means travel that is 100 miles or less from the office of Special Counsel or from his/her home. "Extended travel" means travel that is more than 100 miles from the office of Special Counsel or from his/her home.

C. The City will not reimburse for local travel. However, the City will reimburse for the actual cost of parking that is necessitated by local travel. The City will not reimburse for meals in connection with local travel. While Special Counsel is on local travel, the City will pay fifty percent ~~(50%)~~ of the hourly rate of Special Counsel.

80%

D. The City must approve all extended travel in advance. The City will reimburse fifty percent (50%) of the actual costs of extended travel, unless Special

Counsel can substantiate the need for full reimbursement. Special Counsel shall use its best efforts to make airline reservations far enough in advance to take advantage of reduced air fares and shall take advantage of other promotional air fares that reduce costs. In any case, travel by air shall be at economy, coach, or other lower fare. The City will not reimburse for travel insurance.

E. Special Counsel should use a rental car while on extended travel only when necessary and when the cost of a rental car will be less than other forms of ground transportation. If the use of a rental car meets the preceding criteria, then the City will reimburse for a compact vehicle for one person, a mid-sized vehicle for two persons, and a standard size vehicle for three or more persons. The City will not reimburse for luxury vehicles, vans, or 4x4 vehicles.

F. The City will reimburse Special Counsel, while on extended travel, for the reasonable, actual costs for meals, excluding the cost of alcoholic beverages, and for lodging at hotels which are moderately priced for the locale, but will not reimburse for laundry or movies.

G. Special Counsel shall submit a travel expense report on the City's form after completing extended travel. Special Counsel shall submit receipts or other evidence of payment relating to each item for which Special Counsel seeks reimbursement.

