



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Human Resources Department



DATE: July 25, 2011
BOARD MEETING DATE: August 9, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Donna Vaillancourt, Director of Human Resources
Nicole McKay, Employee and Labor Relations Manager

SUBJECT: Agreement with Liebert Cassidy Whitmore

RECOMMENDATION:

Adopt a Resolution authorizing the:

- A) President of the Board to execute a two-year agreement with Liebert Cassidy Whitmore (LCW) to provide labor relations negotiations and consulting services for the term of September 1, 2011 through August 31, 2013, with an option to extend for an additional year, in the amount of \$450,000; and
- B) Human Resources Director or the Director's designee to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

BACKGROUND:

The County has contracted with the same labor relations firm since 1973. In 2000 a Request for Information (RFI) was conducted and the same firm was selected based on experience and costs. The prior Agreement for labor relations services expired on June 30, 2011.

DISCUSSION:

To ensure the County continues to receive outstanding and cost-effective labor relations services, a formal Request for Proposal (RFP) process was conducted in late 2010. The RFP review committee recommended that it would be in the best interests of the County to contract with LCW to provide labor relations negotiations and consulting services based on the firm's experience, staff qualifications, and costs.

LCW was established in 1980 and has offices in San Francisco, Fresno and Los Angeles. Over the last four years, LCW has provided labor relations negotiations and

consulting services to over 80 public agencies throughout California, including several counties: Marin, Napa, Mariposa, Placer, San Joaquin, San Luis Obispo, Tehama, Tulare and Yuba.

LCW has extensive expertise in labor and employee relations. Having LCW as our chief negotiators and strategists will increase our effectiveness at the bargaining table and allow us to make decisions based on current legal practices.

The contractor has assured compliance with the County's Contractor Employee Jury Service Ordinance, as well as all other contract provisions that are required by County ordinance and administrative memoranda, including but not limited to insurance, hold harmless, non-discrimination and equal benefits. County Counsel has reviewed and approved the Resolution and Agreement as to form. Risk Management has reviewed the Contractor's insurance certificate to ensure requirements are met.

The Agreement contributes to the Shared Vision 2025 outcome of a Prosperous Community by providing labor relations services that enhances organizational effectiveness by identifying compensation structures that are sustainable over time and continue to attract and retain this County's most valuable resource, its employees.

Performance Measure(s):

Measure	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Projected
Number of contracts negotiated	3	11	1
Percent of contracts negotiated within established timeframes	100	0	100

FISCAL IMPACT:

The term of the Agreement with Liebert Cassidy Whitmore is from September 1, 2011 to August 31, 2013, with an option to extend for an additional year. Funding for the Agreement will be included in the Human Resources Department FY 2011-12 Budget. The amount of this two-year agreement is not to exceed \$450,000 including the optional third year. There is no impact to the Net County cost.

Exhibit A
Request for Proposal Matrix

1.	General Description of RFP	Labor Relations and Consulting Services
2.	List key evaluation criteria	Service provided Experience providing labor relations services Staffing Pricing
3.	Where advertised	Website
4.	In addition to any advertisement, list others to whom RFP was sent	Atkinson, Andelson, Loya, Ruud & Romo Avery Associates Best Best & Krieger LLP Brenda L Diederichs Burke, Williams & Sorensen, LLP IEDA Kate Harrision Consulting Koff & Associates Kronick Moskovitz Tiedemann & Girard Liebert Cassidy Whitmore Meyers Nave OUTSOURCE Consulting Services, Inc. Renne Sloan Holtzman Sakai LLP The Solis Group Wiley Price & Radulovich, LLP
5.	Total number sent to prospective proposers	15
6.	Number of proposals received	7
7.	Who evaluated the proposals	Carole Groom, President, Board of Supervisors Jean Fraser, Chief of the Health System Nicole McKay, Employee and Labor Relations Manager Donna Vaillancourt, Director of Human Resources Angela Nicholson, Assistant Director Human Resources, Marin County Suzanne Mason, Human Resources Director, Napa County Tim Sullivan, Retired Human Resources Assistant Director, San Mateo County
8.	In alphabetical order, names of proposers (or finalists, if applicable) and location	Brenda L. Diederichs (Chino) Burke, Williams & Sorensen, LLP (Menlo Park) IEDA (Emeryville) Liebert Cassidy Whitmore (San Francisco) Meyers Nave (Oakland) Renne Sloan Holtzman Sakai LLP (San Francisco) Wiley Price & Radulovich, LLP (Alameda)

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION AUTHORIZING THE A) PRESIDENT OF THE BOARD TO EXECUTE A TWO-YEAR AGREEMENT WITH LIEBERT CASSIDY WHITMORE TO PROVIDE LABOR RELATIONS NEGOTIATIONS AND CONSULTING SERVICES FOR THE TERM OF SEPTEMBER 1, 2011 THROUGH AUGUST 31, 2013 WITH AN OPTION TO EXTEND FOR AN ADDITIONAL YEAR, IN AN AMOUNT NOT TO EXCEED \$450,000; AND B) HUMAN RESOURCES DIRECTOR OR THE DIRECTOR'S DESIGNEE TO EXECUTE CONTRACT AMENDMENTS WHICH MODIFY THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT FISCAL PROVISIONS.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, after conducting a Request for Proposal (RFP) process, the Director of Human Resources recommends that the County execute a two-year agreement with Liebert Cassidy Whitmore for the County's labor relations negotiations and consulting services from September 1, 2011 to August 31, 2013 with an option to extend for an additional year;

WHEREAS, there has been presented to this Board of Supervisors for its consideration the agreement and the Board has approved it as to both form and content and desires to enter such agreement; and

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors be and is hereby authorized and directed to

execute said Agreement with Liebert Cassidy Whitmore not to exceed \$450,000 for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto.

BE IT FURTHER RESOLVED that the Human Resources Director or the Director's designee is authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

* * * * *

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
LIEBERT CASSIDY WHITMORE**

THIS AGREEMENT, entered into this _____ day of _____, 2011, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and LIEBERT CASSIDY WHITMORE, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of the Meyers-Milias-Brown Act (Government Code Sections 3500-3511), hereinafter referred to as the "Act," eleven (11) employee organizations have been designated as recognized employee organizations of the County.

WHEREAS, the County Manager of San Mateo County or his designated representative has been designated as the County's representative in employer-employee relations;

WHEREAS, the County Manager is now and will be in the future engaged in meeting and conferring in good faith with representatives of such recognized employee organizations on matters relating to employment conditions and employer-employee relations;

WHEREAS, it is necessary and desirable that the County obtain the services of qualified persons to consult with and advise the Board of Supervisors and the County Manager in employer-employee relations negotiations, and to assist the County Manager in meeting and conferring in good faith with representatives of recognized employee organizations;

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of Labor Relations Negotiations and Consultation Services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I—§504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed FOUR HUNDRED FIFTY THOUSAND DOLLARS, \$450,000.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from September 1, 2011 through August 31, 2013 with an option to extend for an additional year.

This Agreement may be terminated by Contractor, the County of San Mateo Director of Human Resources or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from Contractor's negligence, errors, or omissions in performing services or work pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000
- (c) Professional Liability \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment “I,” which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits

contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

In the case of County, to:

Nicole McKay, Employee and Labor Relations Manager
Human Resources Department
455 County Center – 5th Floor
Redwood City, CA 94063
Tel: (650) 363-4339
Fax: (650) 363-4822

In the case of Contractor, to:

Liebert Cassidy Whitmore
Richard C. Bolanos
153 Townsend St. – Suite 520
San Francisco, CA 94107-5900

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Liebert Cassidy Whitmore

Contractor's Signature

Date: _____

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A"

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

1. Assist the Director of Human Resources, and/or her/his designees, in advising and consulting with the Board of Supervisors and the County Manager on matters relating to labor negotiations including but not limited to employment conditions and employer-employee relations. This includes in-person and other consultations with Human Resources as deemed necessary by Human Resources personnel, including, but not limited to:
 - a. Meet with designated staff to define management goals and policy for union negotiations;
 - b. Provide research and consultation on current trends, practices, and community standards of other public employers on a variety of labor related issues;
 - c. Meet with designated staff to assist in formulating the management proposals for negotiations;
 - d. Participate in drafting proposals for negotiations;
 - e. Perform necessary fact research for negotiations;
 - f. Assist in the formulation and preparation of cost analysis of management and union proposals;
 - g. Provide progress reports, make recommendations, and receive direction; and
 - h. Provide consultation on grievance handling and other conflict resolution procedures.

2. Meet and confer in good faith for and on behalf of the County, as the designated representative of the County Manager, with representatives of recognized employee organizations of the County of San Mateo, including, but not limited to:
 - a. Attend negotiation sessions as the County's lead negotiator;
 - b. Serve as spokesperson for situational meetings and conferences as they arise, including, but not limited to, the impact of layoffs, statutory changes, pension modification, work schedule changes, revisions of departmental rules and staffing guidelines.
 - c. Act as the County's management advisor in mediation, fact finding and related procedures;

3. Assist the Director of Human Resources in reporting to the Board of Supervisors and the County Manager on the progress of labor negotiations and meeting and conferring in good faith with each of the recognized employee organizations.

Exhibit "B"

I. PAYMENTS

In full consideration of the services provided by Contractor pursuant to this Agreement (Exhibit "A") and subject to Paragraph 3 ("Payments") of this Agreement, County shall pay Contractor in the manner described below, except that any and all such payments shall be subject to the conditions contained in this Agreement.

A. Maximum Obligation

Notwithstanding the method of payment set forth herein, in no event shall County pay or be obligated to pay Contractor more than the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) for services provided under Exhibit A of this Agreement for the term September 1, 2011 through August 31, 2013 and the optional third year.

B. Payment Terms

1. Year 1: County shall pay Contractor based on the rates listed below:

Hourly Rates:

Partners	\$260 - \$300
Of Counsel	\$240 - \$260
Associates	\$160 - \$240
Para Professional	\$100 - \$130

Other Costs:

Photocopies	\$0.15 per page
Facsimile Transmittal	\$0.50 per page

2. Year 2 and Optional Year 3: County and Contractor shall negotiate payment terms to reflect a set annual amount for services provided rather than based on hourly rate.

C. Monthly Reporting

Payment by County to Contractor shall be monthly. Contractor shall bill County on or before the tenth (10th) working day of each month for the prior month. The invoice shall include a summary of services and charges for the month of service. Faxed or electronic invoices are not acceptable.