City of FRESNO

REPORT TO THE CITY COUNCIL

| AGENDA ITEM NO. | 1 I |
|---|---|
| COUNCIL MEETING | October 23, 2007 |
| APPROVED BY | |
| DEPARTMENT DIRECTOR | |
| CITY MANAGER | |

**DATE:** October 17, 2007

**FROM:** TERRY A. BOND, DIRECTOR
Personnel Services Department

**BY:** MELANY FELTON, MANAGER
Organizational Development & Training Division

**SUBJECT:** APPROVE CONSULTANT SERVICES AGREEMENTS BETWEEN THE CITY OF FRESNO AND LIEBERT CASSIDY WHITMORE FOR EMPLOYMENT LAW AND ALL-EMPLOYEE ANTI-HARASSMENT AND DISCRIMINATION REFRESHER TRAINING AND AUTHORIZE THE PERSONNEL SERVICES DIRECTOR TO EXECUTE AGREEMENTS ON BEHALF OF CITY

**KEY RESULT AREA(S):**

RESOURCE MANAGEMENT – ESSENTIAL CORE SERVICES CONTRIBUTE TO THE CITY VISION & VALUES

EMPLOYEE SATISFACTION - 75% OF THE CITY'S SUPERVISORY EMPLOYEES WILL HAVE COMPLETED THE APPROVED MINIMUM TRAINING IN SUPERVISORY TECHNIQUES BY JUNE 30, 2008

**RECOMMENDATION**

It is recommended that the City Council approve the Services Agreements between the City of Fresno and Liebert Cassidy Whitmore and authorize the Personnel Services Director to execute the Agreements on behalf of the City.

**EXECUTIVE SUMMARY**

The Service Agreements for Consulting Services with Liebert Cassidy Whitmore will provide City employees with two facets of training: 5 days of employment law training per year over a period of five years through the Central Valley Employment Relations Consortium, and 48 sessions of an All-Employee Anti-Harassment and Discrimination Refresher training to be offered to City employees over a period of three years.

**KEY OBJECTIVE BALANCE**

This amendment will benefit the citizens of Fresno as well as the employees of the City of Fresno. Customer Satisfaction will increase as citizens interact with City employees who, as a result of this training, have increased levels of confidence. Employee Satisfaction will increase as City employees realize this investment in their personal and professional development. Financial Management is evident whereby employees who feel like they are being invested in will be less likely to seek employment elsewhere, thus reducing the need for outside temporary help and costly recruitments. Furthermore, as the Personnel Services Department continues to focus on succession planning, this training will make great strides toward cultivating our next generation of leaders.

Presented to City Council
Date 10/23/07
Disposition Rec. approved

SUBJECT TO MAYOR'S VETO

**BACKGROUND**

The City of Fresno issued a Request for Proposals (RFP) in April of 2007 seeking proposals for employment law training on industry-driven topics. After evaluation of the responses to that RFP, Liebert Cassidy Whitmore was awarded a contract to provide City employees with 5 days of training within the Central Valley Employment Relations Consortium and another contract to provide Anti-Harassment and Discrimination Refresher training.

The City's involvement in the 23 public agency-strong Central Valley Employment Relations Consortium, under the leadership of Liebert Cassidy Whitmore, began in the Fall of 1997 and has consistently provided City employees with 5 days of industry-driven employment law training each year. The topics for the 2007-2008 Consortium are: "Managing the Marginal Employee," "Traditionalist, Boomer, Xer, Millennial—Who are They, Why You Should Care and How You Can Harness Their Collective Power, "Supervisory Skills for the First Line Supervisor/Manager," "Sick and Disabled Employees," "Understanding PERB and Unfair Practices," "Managing Performance Through Evaluation," "A No Holes Barred Approach to Employee Body Piercing, Tattoos and Dress Codes," and "Managing Overlapping Leave Laws and the Discipline Process."

The Anti-Harassment and Discrimination Refresher training, also provided by Liebert Cassidy Whitmore, is scheduled between January of 2008 and December of 2010. Over a period of three years, all City employees will receive a 2 hour training refresher on Anti-Harassment, Discrimination, Reporting, and Retaliation. In total, forty-eight classes will be offered during traditional and non-traditional times to accommodate the variety of City employee schedules.

**FISCAL IMPACT**

Approval of the Service Agreement will authorize the Personnel Services Director to execute the attached agreement with Liebert Cassidy Whitmore to provide membership in the Central Valley Employment Relations Consortium for the next 5 years. The total cost of these services is not to exceed $30,000 with an aggregate total since 1997 not to exceed $75,000. Funding for the training is appropriated in the FY08 budget.

Approval of the Service Agreement will authorize the Personnel Services Director to execute the attached agreement with Liebert Cassidy Whitmore to provide 48 Anti-Harassment and Discrimination Refresher training to City employees through December of 2010. The total cost of these services is not to exceed $64,800. Funding for the training is appropriated in the FY08 budget.

Attachment: Service Agreements between the City of Fresno and Liebert Cassidy Whitmore for Employment Law as well as Anti-Harassment and Discrimination training.

1 I
10/23/07

CITY OF FRESNO
City Clerk's Office (Original)

# AGREEMENT
# CITY OF FRESNO, CALIFORNIA
# CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the 25th day of September, 2007, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and LIEBERT CASSIDY WHITMORE, a California corporation (hereinafter referred to as "CONSULTANT").

## RECITALS

WHEREAS, CITY desires to obtain professional training services for City employees regarding employment relations, negotiations and personnel administration, hereinafter referred to as "Legal-Based Training" or the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a training and organizational development specialist and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, for the purpose of providing joint training at a reduced cost to public agencies, CONSULTANT has developed a Central Valley Employment Relations Consortium consisting of not less than 23 public agencies in the Central Valley area having similar training needs; and

WHEREAS, CITY has participated in the Consortium since 1997 and CONSULTANT has rendered these training services, under contract, to CITY continuously; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to approval of the City Council and the requirements of Fresno Municipal Code Section 3-109 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Personnel Services Director (hereinafter referred to as "Administrator") or his/her designee.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through June 30, 2012, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed

$30,000, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of : (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any termination or expiration of the Agreement, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information, Ownership of Documents and Copyright license.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized, and any additional insurance as may be required, in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in

**Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S

Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall

ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

By: Terry Bond

Name: Terry Bond

Title: Director

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Edna Sommerville (11/5/07)
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: 10-17-07
Nancy A. Algier Date
Senior Deputy

LIEBERT CASSIDY WHITMORE,
a California corporation

By: Melanie M. Poturica

Name: Melanie M. Poturica

Title: President
(if corporation or LLC, Board Chair, Pres. Or Vice Pres.)

By:

Name: Richard Kreisler

Title: Secretary
(if corporation or LLC, Board Chair, Pres. Or Vice Pres.)

Addresses:

CITY:

City of Fresno
Attention: Terry Bond, Director,
Personnel Services Department
2600 Fresno Street, First Floor
Fresno, CA 93721
Phone: (559) 621-6964
FAX: (559) 498-4775

CONSULTANT:

Liebert Cassidy Whitmore
Attention: Cynthia Weldon,
Director of Marketing and
Training
6033 W. Century Blvd., Suite 500
Los Angeles, CA 90045
Phone: (310) 981-2055
FAX: (310) 216-3377

Attachments:

1. Exhibit A – Scope of Services
2. Exhibit B – Insurance Requirements
3. Exhibit C – Conflict of Interest Disclosure Form

**Exhibit A**

**(Scope of Services)**

Liebert Cassidy Whitmore ("Consultant") shall provide deliverables for Legal-Based Training consistent with performance and fee schedules, as follows:

Five six-hour days of training on a variety of industry-driven topics each year. The Central Valley Employment Relations Consortium topics for 2007-2008 are as follows:

- Wednesday, September 26, 2007 9 am – 12 pm: "Managing the Marginal Employee"
- Wednesday, September 26, 2007 1 pm - 4 pm: "Traditionalist, Boomer, Xer, Millennial—Who are They, Why You Should Care and How You Can Harness Their Collective Power"

- Thursday, November 1, 2007 9 am – 4 pm: "Supervisory Skills for the First Line Supervisor/Manager"

- Wednesday, January 30, 2008 9 am – 4 pm: "Sick and Disabled Employees"
- Wednesday, January 30, 2008 1 pm – 4 pm: "Understanding PERB and Unfair Practices"

- Thursday, March 6, 2008 9 am – 12 pm: "Managing Performance Through Evaluation"
- Thursday, March 6, 2008 1 pm – 4 pm: "A No Holes Barred Approach to Employee Body Piercing, Tattoos and Dress Codes"

- Thursday, May 1, 2008 9 am – 4 pm: Managing Overlapping Leave Laws and the Discipline Process"

The Central Valley Employment Relations Consortium Fee for 2007-2008 is $5,070, and the annual fee for consecutive years shall not exceed an increase of 3% each year. Thus, the total fee under this five-year contract will not exceed $30,000.

**Exhibit B**

**INSURANCE REQUIREMENTS**
**Consultant Service Agreement between City of Fresno**
**and Liebert Cassidy Whitmore**
Legal-Based Training
PROJECT TITLE

**Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

**Minimum Limits of Insurance**

CONSULTANT shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

   $1,000,000 per accident for bodily injury and property damage

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $2,000,000 policy aggregate

**Umbrella or Excess Insurance**

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

**Deductibles and Self-Insured Retentions**

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance polices required hereunder and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

**Other Insurance Provisions**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CONSULTANT'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Ommisions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.

2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

**Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

**Verification of Coverage**

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**

Legal-Based Training
PROJECT TITLE

| | | YES* | NO |
|---|---|---|---|
| 1 | Are you currently in litigation with the City of Fresno or any of its agents? | ☐ | ☐ |
| 2 | Do you represent any firm, organization or person who is in litigation with the City of Fresno? | ☐ | ☐ |
| 3 | Do you currently represent or perform work for any clients who do business with the City of Fresno? | ☐ | ☐ |
| 4 | Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno? | ☐ | ☐ |
| 5 | Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service? | ☐ | ☐ |
| 6 | Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project? | ☐ | ☐ |

* If the answer to any question is yes, please explain in full below.

Explanation: see attached

☒ Additional page(s) attached.

Signature

Melanie M. Poturica
(name)

Liebert Cassidy Whitmore
(company)

6033 W. Century Blvd. Ste. 500
(address)

LA, CA 90045
(city state zip)

## Liebert Cassidy Whitmore

Maiya Yang, one of our Fresno Office associates, is related by marriage to a City Council Member (brother-in-law) and a Fresno Police Officer (brother-in-law).

POLICYHOLDER COPY

SC

STATE COMPENSATION INSURANCE FUND

P.O. BOX 420807, SAN FRANCISCO,CA 94142-0807

# CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 04-01-2007

GROUP: 000388
POLICY NUMBER: 0001336-2007
CERTIFICATE ID: 93
CERTIFICATE EXPIRES: 04-01-2008
04-01-2007/04-01-2008

CITY OF FRESNO
PERSONNEL DEPT ORAG DEV & TRN
2600 FRESNO ROOM 1047
FRESNO CA 93721

SC

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

James Neary
AUTHORIZED REPRESENTATIVE

PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: $1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 04-01-2005 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

RISK MANAGEMENT DIVISION
Approved: ✓
Approved w/Changes:
Signed
4-13-07
Date

EMPLOYER

LIEBERT CASSIDY WHITMORE A PROFESSIONAL CORPORATION
6033 W CENTURY BL # 500
LOS ANGELES CA 90045

SC

(REV.2-05)

PRINTED : 03-16-2007

M0410

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID CS
LIEBE-1

DATE (MM/DD/YYYY)
08/10/07

PRODUCER
Nerver Associates, Inc.
641 W. Las Tunas Drive
PO Box 1509
San Gabriel CA 91776
Phone: 626-943-2200 Fax: 626-299-1010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Liebert Cassidy Whitmore
6033 W. Century Blvd., Ste.500
Los Angeles CA 90045

| INSURERS AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Fireman's Fund Insurance | |
| INSURER B: Westport Insurance Company | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | ADD'L INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|---|---|---|---|---|---|---|---|
| A | X | GENERAL LIABILITY<br>X COMMERCIAL GENERAL LIABILITY<br>CLAIMS MADE X OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>X POLICY PRO-JECT LOC | AZC80794454 | 12/14/06 | 12/14/07 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 100,000 |
| | | | | | | MED EXP (Any one person) | $ 10,000 |
| | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | | | | | | GENERAL AGGREGATE | $ 2,000,000 |
| | | | | | | PRODUCTS - COMP/OP AGG | $ INCLUDED |
| A | | AUTOMOBILE LIABILITY<br>ANY AUTO<br>ALL OWNED AUTOS<br>SCHEDULED AUTOS<br>X HIRED AUTOS<br>X NON-OWNED AUTOS | AZC80794454 | 12/14/06 | 12/14/07 | COMBINED SINGLE LIMIT (Ea accident) | $ 1,000,000 |
| | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | GARAGE LIABILITY<br>ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | $ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | $ |
| | | | | | | AGG | $ |
| A | | EXCESS/UMBRELLA LIABILITY<br>X OCCUR CLAIMS MADE<br>DEDUCTIBLE<br>RETENTION $ | AZC80794454 | 12/14/06 | 12/14/07 | EACH OCCURRENCE | $ 2,000,000 |
| | | | | | | AGGREGATE | $ 2,000,000 |
| | | | | | | | $ |
| | | | | | | | $ |
| | | | | | | | $ |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below | | | | WC STATU-TORY LIMITS / OTH-ER | |
| | | | | | | E.L. EACH ACCIDENT | $ |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | $ |
| | | | | | | E.L. DISEASE - POLICY LIMIT | $ |
| B | | OTHER<br>Prof Liability<br>INCLUDES PERSONAL | LLF-010045-4<br>INJURY OF $1,000,000 | 12/10/06 | 12/10/07 | EA CLAIM<br>AGGREGATE | 2,000,000<br>2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Certificate Holder is named as additional insured as respects to General Liability per form AE 9189 0599 attached. *10 Day Notice of Cancellation in the event of a non-payment of premium.

RISK MANAGEMENT DIVISION
Approved
Approved w/Changes:
Signed
8/13/07
Date

## CERTIFICATE HOLDER

CITFR-1

City of Fresno Fresnl Srvc Dept
Organ Development & Training
Division, Attn: Terry Bond
2600 Fresno Street, 1st Floor
Fresno, CA 93721-3602

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE


© ACORD CORPORATION 1988

# ABC MultiCover - AB 91 89 05 99

**This endorsement modifies insurance provided under the following:**

**American Business Coverage**

Your policy is broadened and clarified as follows:

1. **Non Employment Discrimination Liability**

   Unless **Personal Injury or Advertising Injury** is excluded from this policy:

   A. **Section III - Definitions**, Item 17. Personal Injury is amended to include:

      f. **Discrimination**

   B. **Section III - Definitions**, Item 2. Advertising Injury is amended to include:

      e. **Discrimination**

   C. **Section III - Definitions** is amended to include:

      30. **Discrimination** means the unlawful treatment of individuals based on race, color, ethnic origin, gender, religion, age, or sexual preference.

   D. **Section II - Liability Coverage, Part H. Exclusions**, Item 1.p **Personal Injury or Advertising Injury** is amended to include:

      (11) Arising out of discrimination directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured; or

      (12) Arising out of discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling, permanent lodging, or premises by or at the direction of any insured; or

      (13) Arising out of discrimination, if insurance thereof is prohibited by law; or

      (14) Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of discrimination.

2. **Blanket Additional Insured**

   **Section II - Liability Coverage, Part I. Who Is An Insured**, Item 2. is amended to include:

   f. Any person or organization that you are required by a written insured contract to include as an insured, subject to all of the following provisions:

      (1) Coverage is limited to their liability arising out of:

         (a) the ownership, maintenance or use of that part of the premises, or land owned by, rented to, or leased to you; or

         (b) your ongoing operations performed for that insured; or

         (c) that insured's financial control of you; or

         (d) the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s); or

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the Fireman's Fund Insurance Companies as named in the policy

Secretary

President

AB9189 5-99

(e) a state or political subdivision permit issued to you.

(2) Coverage does not apply to any occurrence or offense:

(a) which took place before the execution of, or subsequent to the completion or expiration of, the written insured contract, or

(b) which takes place after you cease to be a tenant in that premises.

(3) With respect to architects, engineers, or surveyors, coverage does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the rendering or the failure to render any professional services by or for you including:

(a) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and

(b) Supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

3. **Blanket Additional Insured for Vendors**

Unless the **Products-Completed Operations Hazard** is excluded from this policy, **Section II - Liability Coverage, Part I. Who Is an Insured, Item 2.** is amended to include:

g. Any vendor but only with respect to **Bodily Injury** or **Property Damage** arising out of **your products** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:

a. **Bodily Injury** or **Property Damage** for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b. Any express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the vendor;

d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.

e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

If an Additional Insured - Vendors endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

4. **Blanket Waiver of Subrogation**

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions,** is amended to include:

6. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation

a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

b. If required by a written insured contract, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your operations or your work for that person or organization.

5. **Broadened Named Insured**

**Section II - Liability Coverage, Part L Who Is An Insured,** Item 4. is replaced with:

4. All of your subsidiaries, companies, corporations, firms, or organizations, as now or hereafter constituted, qualify as Named Insured under this policy if:

(a) you have the responsibility of placing insurance for each such entity; and

(b) coverage for the entity is not otherwise more specifically provided; and

(c) the entity is incorporated or organized under the laws of the United States of America.

But each entity is insured only while you own, during the policy period, a controlling interest in such entity of greater than 50% of the stock or assets. However:

(a) Coverage under this provision is afforded only until the end of the policy period, or the 12 month anniversary of the policy inception date, whichever is earlier;

(b) Coverage C does not apply to bodily injury or property damage that occurred before you acquired or formed the organization;

(c) Coverage C does not apply to personal injury or advertising injury arising out of an offense committed before you acquired or formed the organization.

6. **Medical Payments**

Unless Coverage D. Medical Payments is excluded from this policy:

A. **Section II - Liability Coverage, Part H. Exclusions,** Item 2.f. is replaced with:

f. Included within the products-completed operations hazard. However, this exclusion does not apply to expenses for dental services.

B. **Section II - Liability Coverage, Part G. Coverage,** Item 2., is amended to include:

c. Coverage D. Medical Payments is primary and not contributing with any other insurance, even if that other insurance is primary also.

7. **Tenant's Legal Liability**

A. **Section III - Liability Coverage, Part J. Liability and Medical Payments Limits of Insurance,** Item 3. is replaced with:

3. The most we will pay under Coverage C - Liability for damages because of property damage to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner:

a. arising out of any Covered Cause of Loss shall be the greater of:

(1) $1,000,000; or

(2) The Tenant's Legal Liability limit shown in the Declarations.

8. **Chartered Aircraft**

**Section II - Liability Coverage, Coverage C, Part H. Exclusions,** Item 1.g. is amended to include:

(5) An aircraft in which you have no ownership interest and that you have chartered with crew.

9. **Coverage Territory Broadened**

**Section III - Definitions**, Item 5.a. is replaced with:

a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, the Cayman Islands and the British Virgin Islands.

10. **Broadened Advertising Injury**

Unless **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 2. is replaced with:

2. **Advertising Injury** means injury arising out of one or more of the following offenses:

a. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

b. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

c. Misappropriation of advertising ideas or style of doing business; or

d. Infringement of trademark, copyright, title or slogan.

B. **Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Items 1.p.(1) and (2) are replaced with:

(1) Arising out of oral, written, televised or videotaped publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral, written, televised or videotaped publication of material whose first publication took place before the beginning of the policy period;

11. **Broadened Personal Injury**

Unless **Personal Injury** is excluded from this policy, **Section III - Property, Liability and Medical Payments Definitions**, Items 17.b., d. and e. are replaced with:

b. Malicious prosecution or abuse of process;

d. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

12. **Broadened Personal or Advertising Injury**

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy, **Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.p.(4) Exclusions** is deleted in its entirety.

13. **Fellow Employees Coverage**

**Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2.a.(1) is amended as follows:

(1) **Personal Injury** to you or to a co-employee while in the course of his or her employment, or the spouse, child, fetus, embryo, parent, brother, sister or any member of the household of that employee or co-employee as a consequence of such **Personal Injury**, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

14. **Mental Anguish Is Included in Bodily Injury**

**Section III - Definitions**, Item 4. is replaced with:

4. **Bodily injury** means bodily injury, sickness or disease sustained by a person. It includes death or mental anguish which result at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or disease.

15. **Unintentional Failure to Disclose Hazards**

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Unintentional Failure to Disclose Hazards

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

16. **Supplementary Payments, Increase Limits**

**Section II - Liability Coverage, Part G. Coverage, Items 1.e. (2) and (4) are replaced with:**

(2) The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit including substantiated loss of earnings up to $500 a day because of time off work.

17. **Per Location Aggregate**

A. **Section II - Liability Coverage, Part J. Limits of Insurance, Item 4. is amended to include:**

The Aggregate Limit of Insurance applies separately to each location owned by you, rented to you, or occupied by you with the permission of the owner.

B. **Section III - Property, Liability and Medical Payments Definitions, is amended to include:**

31. **Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of railroad.

18. **Amended Duties in the Event of an Occurrence, Offense Claim or Suit**

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, Items 2.a. and b. are replaced with:**

a. In the event of an occurrence, offense, claim, or suit, you must promptly notify us. Your duty to promptly notify us is effective when your executive officers, partners, members, or legal representatives are aware of the General Liability occurrence, offense, claim, or suit. Knowledge of an occurrence, offense, claim, or suit by other employee(s) does not imply you also have such knowledge.

b. To the extent possible, notice to us should include:

(1) How, when and where the occurrence or offense took place;

(2) The names, addresses, and telephone numbers of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the occurrence, offense, claim, or suit.

19. **Common Policy Conditions (AB 00 09 A 01 87), Part H. Other Insurance, Item 2. is replaced with:**

2. Coverage C - Liability

If other valid and collectible insurance is available to any insured for a loss we cover under Coverage C of this Coverage Part our obligations are limited as follows:

a. The insurance provided under this policy is primary if you are required by a written insured contract to include any person or organization as an insured, but only with respect to that insured's liability arising out of the ownership, maintenance, or use of that part of the premises owned by or rented to you, or your work for that insured by or for you. Any other insurance available to that person or organization is excess and noncontributory with this insurance, or;

b. Except for the circumstance described in 2.a., above, the insurance provided under this policy is excess over any other liability insurance available to any insured whether such other insurance is written as primary, excess, contingent or any other basis. An exception applies when any insured specifically has purchased excess insurance to apply in excess of the limits of insurance shown in the Declarations of this Coverage Part for Coverage C.

All other terms and conditions of the policy apply.

*October 24, 2007*

Council Adoption: 10/23/07
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ALAN AUTRY

RECEIVED
2007 NOV -5 PM 3:20
CITY CLERK, FRESNO CA

FROM: REBECCA E. KLISCH, CMC REK
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 10/23/07, Council took legislative action entitled **Appv consultant svcs agrmnt w/Liebert Cassidy Whitmore, employment law training**, Item No. **1I-1**, by the following vote:

| | | |
|---|---|---|
| Ayes | : | Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea |
| Noes | : | None |
| Absent | : | None |
| Abstain | : | None |

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before November 5, 2007. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

**********

**APPROVED:**

**VETOED** for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

Alan Autry, Mayor

Date: 11/5/07

**COUNCIL OVERRIDE ACTION:**

Date: _____

| | | |
|---|---|---|
| Ayes | : | |
| Noes | : | |
| Absent | : | |
| Abstain | : | |