



Legislation Details (With Text)

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Title:	CONSIDER APPROVAL OF A CONTRACT SERVICES AGREEMENT WITH LIEBERT CASSIDY WHITMORE RATIFYING AUTHORIZATION OF SOUTH BAY EMPLOYMENT RELATIONS CONSORTIUM MEMBERSHIP AND HUMAN RESOURCES SPECIAL SERVICES (CITY COUNCIL)				
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Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, June 21, 2022

Consent

SUBJECT:

CONSIDER APPROVAL OF A CONTRACT SERVICES AGREEMENT WITH LIEBERT CASSIDY WHITMORE RATIFYING AUTHORIZATION OF SOUTH BAY EMPLOYMENT RELATIONS CONSORTIUM MEMBERSHIP AND HUMAN RESOURCES SPECIAL SERVICES (CITY COUNCIL)

I. SUMMARY

The Human Resources Department has historically executed a "Consortium Agreement" with labor relations legal firm, Liebert Cassidy Whitmore (LCW), for services included in a "membership" to the "South Bay Employment Relations Consortium," providing access certain training and HR materials. The LCW agreement that is provided to agencies that participate in the consortium to sign has general provisions that allow for basic services to be included within the membership level selected by the City. However, it also includes a provision for unrestricted and unlimited "additional services" to be performed at applicable LCW hourly billable rates, which services and charges can be triggered by a simple phone call or e-mail to LCW.

The City's procurement policies do not allow for open ended contracts approved by Directors, or by the City Manager if the costs incurred exceed the City Manager's

purchasing authority; such agreements must be explicitly approved by the City Council, and even then are disfavored, as the City's practices are to require a set not-to-exceed contract sum to ensure appropriate fiscal and budgetary controls.

The "additional services" provided by LCW under the fiscal year 2021-22 consortium agreement, which was approved and signed by the City Manager (Exhibit No. 3), have exceeded the allowable City Manager authorization limit of \$25,000. Additionally, the "membership fee" incurred for fiscal year 2020-21 was not properly authorized, as the consortium agreement for that year was approved/signed by the then-Director of Human Resources, who lacked the requisite authority to do so. (Exhibit No. 2).

To correct this oversight, staff is recommending City Council approve a new Contract Services Agreement with LCW to incorporate and approve/ratify the various additional services provided and costs incurred within these two fiscal years, fully replacing and superseding the agreements attached as Exhibit No.'s 2 and 3, so that the firm can be paid and closed out. The agreement covers only the period from July 1, 2020 to June 30, 2022. Staff may desire to execute a new consortium agreement with LCW for the "membership" future fiscal years, but if so, that would be part of a separate action and the "additional services" provision of the LCW form agreement would need to omit the "additional services" provision to ensure no unexpected service fees are incurred in the future.

II. RECOMMENDATION

1. APPROVE the Contract Services Agreement between the City and Liebert Cassidy Whitmore (Exhibit No. 1; the "Agreement"); and
2. AUTHORIZE the Mayor to execute the Agreement following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

On July 7, 2020, the City's then-Director of Human Resources & Risk Management signed an "Agreement for Special Services" with LCW (Exhibit No. 2; the "2020 Agreement") thereby purporting to bind the City to the 2020 Agreement, when in fact the Director did not have authority to approve or enter into such agreement on behalf of the City, nor to authorize the expenditure of funds.

Fortunately, the only cost incurred by the City under the terms of the 2020 Agreement was a "South Bay Employment Relations Consortium" ("ERC") Membership Fee in the amount of \$3,350, which was paid by the City to Consultant pursuant to the purported authorization of the Director. The membership fee was for the period of July 1, 2020 through June 30, 2021, which was also the term of the 2020 Agreement. The 2020 Agreement expired and

was not renewed, although a new agreement was entered into as discussed below.

On June 1, 2021, the City's then-City Manager signed an "Agreement for Special Services" ("2021 Agreement"), providing for the City to pay a ERC Membership Fee in the amount of \$3,515 for the period of July 1, 2021 through June 30, 2022, which was/is also the term of the 2021 Agreement (which is set to expire June 30, 2022). The City Manager has authority to bind the City to procurement contracts involving expenditure of up to \$25,000, pursuant to Section 319(B) of the City's Charter and Section 2606 of the City's Municipal Code. However, the 2021 Agreement contains a section entitled "Additional Services," providing that Consultant "shall, as and when requested by the City, make itself available to the City to provide representational, litigation, and other employment relations services. The City will be billed for the actual time such representation services are rendered, including reasonable travel time, plus any necessary costs and expenses authorized by the Agency."

Pursuant to this provision, City incurred and was billed for services rendered related to personnel investigation services and appeals hearing support in an amount exceeding the \$25,000 limit of the City Manager's expenditure authority. Accordingly, the "Additional Services" rendered ostensibly pursuant to the 2021 Agreement, to the extent exceeding \$25,000, were in fact unauthorized. The amount incurred as of the date of this report was over \$26,000, with multiple further invoices expected to be received by the time the billing for the fiscal year is concluded.

To rectify this contract and procurement error, City staff now desires to formalize, ratify and approve the foregoing expenditures for services rendered for the period of July 1, 2020 through June 30, 2022, through a City form Contract Services Agreement (attached Exhibit 1), which is intended to supersede and cancel both the 2020 Agreement and the 2021 Agreement in their entirety, and to thereby constitute the sole and exclusive agreement between the City and LCW. The proposed agreement contains a not -to-exceed contract sum of \$40,000, which is expected to be sufficient to authorize payment of the "membership fees" for both fiscal years and all "additional services" performed for Fiscal Year 2021-22. **V. FISCAL IMPACT**

The Contract Services Agreement is for an amount not to exceed \$40,000.00 during the Fiscal Year 2020-21 and 2021-22 contract period. Sufficient funds are available within the Human Resources Fiscal Year 2021-22 operating budget within account 101-65-680-101-6004.

VI. EXHIBITS

1. LCW Contract Services Agreement (pgs.4-19)
2. FY2020-21 ERC Membership/Consortium Agreement (pgs. 20-21)
3. FY2021-22 ERC Membership/Consortium Agreement (pgs. 22-29)

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