



# Board of Directors Special Meeting Agenda

June 24, 2021 7:00 PM / Virtual Meeting via Zoom

---

Register for Zoom webinar [\[HERE\]](#) | Meeting also livestreamed on YouTube [\[LINK\]](#)

More info on public comment and accessibility given at the end of the agenda

## Board Members

Chair: Hon. Marico Sayoc, Los Gatos

Campbell	Hon. Anne Bybee / Alternate: Hon. Susan Landry
Cupertino	Hon. Liang Chao / Alternate: Hon. Kitty Moore
Gilroy	Hon. Marie Blankley / Alternate: Hon. Peter Leroe-Muñoz
Los Altos	Hon. Neysa Fligor / Alternate: Hon. Anita Enander
Los Altos Hills	Hon. Stanley Mok / Alternate: Hon. Lisa Schmidt
Los Gatos	Hon. Marico Sayoc / Alternate: Hon. Rob Rennie
Milpitas	Hon. Carmen Montaña / Alternate: Hon. Evelyn Chua Hon.
Monte Sereno	Rowena Turner / Alternate: Hon. Liz Lawler
Morgan Hill	Hon. Rich Constantine / Alternate: Hon. John McKay Hon.
Mountain View	Margaret Abe-Koga / Alternate: Hon. Ellen Kamei Hon.
Palo Alto	Tom DuBois / Alternate: Hon. Eric Filseth
San Jose	Hon. Chappie Jones / Alternate: Hon. Matt Mahan
Santa Clara	Hon. Kathy Watanabe / Alternate: Hon. Anthony Becker
Saratoga	Hon. Yan Zhao / Alternate: Hon. Tina Walia
Sunnyvale	Hon. Larry Klein / Alternate: Hon. Mason Fong

*Discussion & action may be taken on any of the items below. Times are approximate.*

## WELCOME AND ROLL CALL – (Sayoc, 7:00 PM)

1. Approval of Legal Services Agreement with Gary Baum
2. Appointment of Gary Baum as General Counsel
3. Approval of Amendment to Agreement with Liebert, Cassidy and Whitmore

## PUBLIC COMMENT

## ADJOURNMENT

---

### PUBLIC COMMENT

Members of the public wishing to comment on an item on the agenda may do so in the following ways:

1. Email comments to [audin@citiesassociation.org](mailto:audin@citiesassociation.org)
  - Emails will be forwarded to the Board of Directors
  - IMPORTANT: identify the Agenda Item number in the subject line of your email. All emails received will be entered into the record for the meeting.
2. Provide oral public comments during the meeting:
  - When the Chair announces the item on which you wish to speak, click the “raise hand” feature in Zoom. Speakers will be notified shortly before they are called to speak.
  - When called to speak, please limit your comments to the time allotted (up to 3 minutes, at the discretion of the Chair).
  - Phone participants: Dial \*6 to toggle mute/unmute; \*9 to raise hand

### ACCESSIBILITY

We strive for our meetings and materials to be accessible to all members of the public. Those requiring accommodations to participate in this meeting may contact our Office Assistant at [audin@citiesassociation.org](mailto:audin@citiesassociation.org). Notification at least three business days prior to the meeting will allow us to best meet your needs.



**Agenda Item No: 1**

**Meeting Date: June 24, 2021**

## **Cities Association of Santa Clara County Agenda Report**

### **Approval of Legal Services Agreement with Gary Baum**

**Prepared by: Andi Jordan  
Executive Director**

**TOPIC: Approval of Legal Services Agreement with Gary Baum**  
**SUBJECT: Request for Board Approval of legal services agreement with Gary Baum as General Counsel for the Cities Association of Santa Clara County.**

#### **EXECUTIVE SUMMARY:**

At the June 10, 2021 Board of Directors Closed Session Meeting, the Board of Directors accepted the resignation of interim legal counsel Kat Wellman and approved the Executive Board's recommendation to hire Gary Baum as Legal Counsel. For the Board's consideration today (agenda item 1) is a contract with Gary Baum to serve a permanent General Counsel. If the Board approves the contract with Gary Baum, the Board shall consider formal appointment of Gary Baum as General Counsel.

#### **RECOMMENDATION:**

Approve the contract with Gary M. Baum for General Counsel.

#### **BACKGROUND:**

The Cities Association of Santa Clara County Board of Directors included the addition of attorney services in the FY 21 Budget. Prior to the inclusion of attorney services in the FY 21 budget, the CASCC would contract for legal services as needed or rely on city attorneys when available. The decision to include attorney services in the FY 21 (2020-2021) & FY 22 (2021-2022) budget was determined in order for the CASCC to have an attorney representing the CASCC's interest and not an individual city.

If the Board approves the contract with Gary Baum in Agenda Item 1, then the Board shall consider official appointment.

#### **ANALYSIS:**

The addition of legal counsel to the CASCC resources is important to complete numerous projects including the organizational status and also to provide the Board and staff counsel. Mr. Baum has served in numerous jurisdictions in Santa Clara County and has experience establishing a JPA and working with a large group of stakeholders.

This action is consistent with the Board’s action, as reported out from the Closed Session Meeting, to appoint Mr. Baum as legal counsel.

**FISCAL IMPACT:**

Legal counsel rate is \$315.00/hour

**OPTIONS:**

The Board of Directors has the following options to consider on this matter:

1. Approve the contract with Mr. Baum
2. Adopt with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Move to approve the contract with Gary M. Baum as General Counsel Legal Services as described in the contract from June 11, 2021 through June 30, 2023.

**AGREEMENT FOR GENERAL COUNSEL SERVICES BETWEEN THE  
CITIES ASSOCIATION OF SANTA CLARA COUNTY  
AND GARY M. BAUM**

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITIES ASSOCIATION OF SANTA CLARA COUNTY, an unincorporated association (“ASSOCIATION”), and GARY M. BAUM, an individual doing business as Law Offices of Gary M. Baum (“ATTORNEY”).

**RECITALS**

The purpose for which this AGREEMENT is made, and all pertinent recitals, is listed on EXHIBIT A, entitled “RECITALS”, which is attached hereto and incorporated herein.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION 1. SCOPE OF SERVICES.**

The ATTORNEY shall perform those services specified in detail in the attached EXHIBIT B, entitled “SCOPE OF SERVICES.”

**SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be from June 11, 2021 through June 30, 2023, subject to the provisions of Section 11 of this AGREEMENT.

**SECTION 3. COMPENSATION.**

The compensation to be paid to ATTORNEY is shown in the rate and schedule of payment is set out in EXHIBIT C, entitled “COMPENSATION,” which is attached hereto and incorporated herein.

**SECTION 4. METHOD OF PAYMENT.**

Each month, ATTORNEY shall furnish to the ASSOCIATION a detailed statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures, if any. Such statement of services shall be sent to the following address:

Andi Jordan  
Cities Association of Santa Clara County  
PO Box 3144  
Los Altos, CA 94024

**SECTION 5. INDEPENDENT CONTRACTOR.**

It is understood and agreed that the ATTORNEY, in the performance of the work and services agreed to be performed by the ATTORNEY, shall act as and be an independent contractor and not an agent or employee of the ASSOCIATION; and as an independent contractor, the ATTORNEY shall obtain no rights to retirement benefits or other benefits which accrue to the ASSOCIATION's employees, and the ATTORNEY hereby expressly waives any claim it may have to any such rights.

**SECTION 6. ASSIGNABILITY.**

The parties agree that the expertise and experience of ATTORNEY are material considerations for this AGREEMENT. ATTORNEY shall not assign or transfer any interest in this AGREEMENT nor the performance of any of ATTORNEY's obligations hereunder, without the prior written consent of ASSOCIATION, and any attempt by ATTORNEY to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 7. INDEMNIFICATION.**

ATTORNEY shall defend, indemnify and hold harmless ASSOCIATION, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by ATTORNEY's officers, employees or agents. The acceptance of said services and duties by ASSOCIATION shall not operate as a waiver of such right of indemnification.

**SECTION 8. INSURANCE.**

ATTORNEY agrees to have and maintain the policies set forth in EXHIBIT D, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Executive Director or the Director's authorized designee ("Risk Manager") as to form and content.

**SECTION 9. SUBCONTRACTORS.**

- A. Notwithstanding Section 6 above, ATTORNEY may use Albert W. Gieseman, Jr. or Scott D. Pinsky as subcontractors in performing the work under this AGREEMENT and may also use other subcontractors upon prior written approval by ASSOCIATION's Executive Director.
- B. ATTORNEY shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. ASSOCIATION assumes no responsibility whatsoever concerning such compensation.

**SECTION 10. NONDISCRIMINATION.**

The ATTORNEY shall not discriminate, in any way, against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

**SECTION 11. TERMINATION.**

A. ASSOCIATION shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.

B. If ATTORNEY fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, ASSOCIATION may terminate this AGREEMENT immediately upon written notice.

C. ASSOCIATION's Executive Director is empowered to terminate this AGREEMENT on behalf of ASSOCIATION.

D. In the event of termination, ATTORNEY shall deliver to ASSOCIATION copies of all reports, documents, and other work performed by ATTORNEY under this AGREEMENT, and upon receipt thereof, ASSOCIATION shall pay ATTORNEY for services performed and reimbursable expenses incurred to the date of termination.

**SECTION 12. GOVERNING LAW.**

The ASSOCIATION and the ATTORNEY agree that the law governing this AGREEMENT shall be that of the State of California.

**SECTION 13. COMPLIANCE WITH LAWS.**

The ATTORNEY shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

**SECTION 14. CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for ATTORNEY in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by ASSOCIATION, or as required by law.

**SECTION 15. OWNERSHIP OF MATERIALS.**

All reports, documents or other materials developed or discovered by ATTORNEY or any other person engaged directly or indirectly by ATTORNEY to perform the services required hereunder shall be and remain the property of ASSOCIATION without restriction or limitation upon their use.

**SECTION 16. WAIVER.**

ATTORNEY agrees that waiver by ASSOCIATION of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by ASSOCIATION of the performance of any work or services by ATTORNEY shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 17. THE ATTORNEY'S BOOKS AND RECORDS.**

A. ATTORNEY shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to ASSOCIATION for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to ATTORNEY pursuant to this AGREEMENT.

B. ATTORNEY shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to ASSOCIATION, at any time during regular business hours, upon written request by the ASSOCIATION's Executive Director or his or her designee.

D. Where ASSOCIATION has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ATTORNEY's business, ASSOCIATION may, by written request by the ASSOCIATION's Executive Director or his or her designee, require that custody of the records be given to ASSOCIATION. Access to such records and documents shall be granted to any party authorized by ATTORNEY, ATTORNEY's representatives, or ATTORNEY's successor-in-interest.

**SECTION 18. CONFLICT OF INTEREST**

ATTORNEY shall avoid all conflicts of interest or appearance of conflicts of interest in performance of this AGREEMENT. ATTORNEY shall file an Assuming Office Disclosure Statement of Economic Interests (Form 700) within thirty (30) days of the date of this AGREEMENT and annually thereafter by the first of April. Upon termination of this AGREEMENT, ATTORNEY shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700).

**SECTION 19. SPECIAL PROVISIONS.**

There are no special provisions for this AGREEMENT.

**SECTION 20. NOTICES.**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid, addressed to the respective parties as follows:

To the ASSOCIATION:      Andi Jordan  
   Cities Association of Santa Clara County  
   PO Box 3144  
   Los Altos, CA 94024  
   408-766-9534

To the ATTORNEY:         Gary M. Baum  
   19925 Stevens Creek Bl., Ste 100  
   Cupertino, CA 95014-2358  
   408-833-6246 Phone

or to such other address as any party may designate by notice in accordance with this Section.

**SECTION 21. VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State court in the County of Santa Clara.

**SECTION 22. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 23. SVRIA**

ASSOCIATION acknowledges that ATTORNEY is General Counsel of the Silicon Valley Regional Interoperability Authority ("SVRIA"), a Joint Powers Authority. While the Parties presently are aware of no apparent conflict of interest, AUTHORITY waives any conflict of interest during the period of ATTORNEY'S services to Authority under this Agreement. The Parties agree that ATTORNEY will not handle any matters for the AUTHORITY

related to SVRIA and that such matters are not a part of the scope of services for ATTORNEY under this Agreement.

**SECTION 23. COUNTERPARTS**

This AGREEMENT may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same AGREEMENT.

**WITNESS THE EXECUTION HEREOF** on the day and year first herein above written.

“ASSOCIATION”  
CITIES ASSOCIATION OF SANTA  
CLARA COUNTY

By: \_\_\_\_\_  
President of the Board of Directors

“ATTORNEY”  
GARY M. BAUM

By \_\_\_\_\_  
Gary M. Baum, an individual

**EXHIBIT A**  
**RECITALS**

WHEREAS, the AUTHORITY desires to obtain General Counsel services; and

WHEREAS, Gary M. Baum has the necessary professional expertise and skill to perform such services; and

NOW, THEREFORE, the purpose of this AGREEMENT is to retain Gary M. Baum as ATTORNEY to the ASSOCIATION to perform those services specified herein.

**EXHIBIT B**  
**SCOPE OF SERVICES**

The ATTORNEY shall provide General Counsel services to the ASSOCIATION including the following services:

**SECTION 1. GENERAL.**

- A. The performance of all services by the ATTORNEY shall be to the satisfaction of the ASSOCIATION.
- B. All of the services to be furnished by the ATTORNEY under this AGREEMENT shall be of the professional standard and quality which prevail among attorneys of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.
- C. The ATTORNEY shall coordinate all services with the Board of Directors, the Executive Board, the Executive Director, and other staff and contractors, as necessary.
- D. The ATTORNEY shall attend or participate in all meetings as directed by the ASSOCIATION and as necessary in order to complete services contemplated herein to the satisfaction of the ASSOCIATION.
- E. The ATTORNEY shall attend all Board of Directors meetings and Executive Board meetings, and during such meetings provide legal advice and opinions to the Boards and/or Executive Director
- F. At the request of the Executive Director the ATTORNEY shall review all preliminary Board and Committee agendas for Brown Act compliance and other legal concerns and to suggest best practices for handling various agenda items.
- G. At the request of the Executive Director the ATTORNEY shall prepare any resolutions for agenda items on the Board or Working Committee Agenda.
- H. The ATTORNEY shall review and provide input on selected staff reports upon request of the Executive Director.
- I. The ATTORNEY shall prepare staff reports upon request of the Executive Director.

**SECTION 2. BASIC SERVICES.**

2.1 The ATTORNEY shall perform all of the specific services in the Tasks listed below, upon either a request from the Board of Directors, Executive Board or at written request of the Executive Director:

2.2 Provide advice regarding provisions of California and Federal Constitutions, statutes, decisions, ordinances, regulations and the formation and implementation of the ASSOCIATION Joint Powers Agreement.

2.3 Review, negotiate and/or draft a wide range of contracts and agreements and coordinate with ASSOCIATION staff and/or ASSOCIATION member staff as needed.

2.4 Prepare resolutions or review resolutions prepared by staff.

2.5 Review and/or prepare policies to: (a) ensure compliance/consistency with the ASSOCIATION Bylaws or organizational documents, current ASSOCIATION policies, applicable federal, state and local law and regulations, and (b) as otherwise requested.

2.6 Prepare, review and/or modify of legal documents utilized by the ASSOCIATION in the course of business to ensure and/or determine compliance/consistency with the ASSOCIATION Joint Powers Agreement, current ASSOCIATION policies, applicable federal, state and local law and regulations. These documents may include, but are not limited to, Board resolutions and meeting minutes, purchase orders, lease agreements, policies, employment applications/forms and ASSOCIATION forms and notices.

2.7 Respond to inquiries from Board Members or Executive Director.

2.8 Provide legal opinions on various subjects as needed, including risk and liability exposure issues.

2.9. Represent the ASSOCIATION in litigation, including administrative and court proceedings following specific authorization by the Board of Directors.

2.10. Provide other legal services, as requested by the Executive Director.

### **SECTION 3. SERVICES PREVIOUSLY RENDERED**

3.1 It is understood and acknowledged by the ASSOCIATION and ATTORNEY that ATTORNEY has commenced some of the services described in this Agreement for the ASSOCIATION in anticipation of the full approval and execution of this Agreement by the parties. ASSOCIATION agrees to compensate ATTORNEY pursuant to the terms set out in this Agreement for those services previously performed by ATTORNEY, on and after June 11, 2021 that the ASSOCIATION determines are wholly consistent with the services that are to be performed and provided by ATTORNEY under this Agreement and that the ASSOCIATION has accepted and approved.

**EXHIBIT C**  
**COMPENSATION**

**Basic Services**

ATTORNEY shall be compensated for authorized Basic Services in accordance with the following Fee Schedule, which Fees shall be billed in 1/10th hour increments:

Hourly Fee Schedule :

Gary M. Baum	\$315 per hour
Albert W. Gieseman, Jr.	\$315 per hour
Partner Level Attorneys	\$315 per hour
Associate Level Attorneys	\$275 per hour
Law Clerks	\$175 per hour
Paralegals	\$165 per hour

The above listed rates shall apply.

**Reimbursable Expenses**

Reimbursable Expenses shall be charged at actual cost unless otherwise indicated and supported by documentation. Reimbursable Expenses include the following: photocopying, court costs, postage, messenger service, and necessary travel (Current IRS Rate). Mileage shall only be charged when it exceeds \$10.00. Mileage will be calculated from the Cupertino office address. Meals and Facsimile costs are not reimbursable.

**EXHIBIT D**

## **INSURANCE REQUIREMENTS**

ATTORNEY, at ATTORNEY's sole cost and expense, shall procure and maintain (or shall cause to be procured and maintained) for the duration of the AGREEMENT (or for such longer periods as may be specified below), at its sole cost and expense, the following insurance coverage.

### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance if required by law; and
4. Professional Liability Errors & Omissions for all professional services.

### **B. Minimum Limits of Insurance**

ATTORNEY shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

There shall be no endorsement reducing the scope of coverage required above unless approved by the Risk Manager.

### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by ASSOCIATION's Risk Manager. At the option of ASSOCIATION, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ASSOCIATION, its officer, employees, agents and contractors; or ATTORNEY shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the ASSOCIATION's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability Coverage

a. The CITIES ASSOCIATION OF SANTA CLARA COUNTY, its officers, employees, agents, volunteers and contractors are to be covered as additional insureds as respect to: Liability arising out of activities performed by or on behalf of, ATTORNEY; premises owned, leased or used by ATTORNEY; and automobiles owned, leased, hired or borrowed by ATTORNEY. The coverage shall contain no special limitations on the scope of protection afforded to ASSOCIATION, its officers, employees, agents and contractors.

b. ATTORNEY's insurance coverage shall be primary insurance as respects ASSOCIATION, its officers, employees, agents, volunteers and contractors. Any insurance or self-insurance maintained by ASSOCIATION, its officers, employees, agents or contractors shall be excess of ATTORNEY's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by ATTORNEY shall not affect coverage provided ASSOCIATION, its officers, employees, agents, or contractors.

d. Coverage shall state that ATTORNEY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages. Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to ASSOCIATION.

**E. Subcontractors**

ATTORNEY shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.



**Agenda Item No: 2**

**Meeting Date: June 24, 2021**

## **Cities Association of Santa Clara County Agenda Report**

### **Appointment of Gary Baum as General Counsel**

**Prepared by: Andi Jordan  
Executive Director**

**TOPIC: Appointment of Gary Baum as General Counsel**

**SUBJECT: Request for Board Approval to approve the appointment of Gary Baum as General Counsel for the Cities Association of Santa Clara County.**

#### **EXECUTIVE SUMMARY:**

At the June 10, 2021 Board of Directors Closed Session Meeting, the Board of Directors accepted the resignation of interim legal counsel Kat Wellman and approved the Executive Board's recommendation to hire Gary Baum as Legal Counsel. For the Board's consideration today (agenda item 1) is a contract with Gary Baum to serve a permanent General Counsel. If the Board approves the contract with Gary Baum, the Board shall consider formal appointment of Gary Baum as General Counsel.

#### **RECOMMENDATION:**

Approve the appointment of Gary M. Baum for General Counsel.

#### **BACKGROUND:**

The Cities Association of Santa Clara County Board of Directors included the addition of attorney services in the FY 21 Budget. Prior to the inclusion of attorney services in the FY 21 budget, the CASCC would contract for legal services as needed or rely on city attorneys when available. The decision to include attorney services in the FY 21 (2020-2021) & FY 22 (2021-2022) budget was determined in order for the CASCC to have an attorney representing the CASCC's interest and not an individual city.

If the Board approves the contract with Gary Baum in Agenda Item 1, then the Board shall consider official appointment.

#### **ANALYSIS:**

The addition of legal counsel to the CASCC resources is important to complete numerous projects including the organizational status and also to provide the Board and staff counsel. Mr. Baum has served in numerous jurisdictions in Santa Clara County and has experience establishing a JPA and working with a large group of stakeholders.

This action is consistent with the Board’s action, as reported out from the Closed Session Meeting, to appoint Mr. Baum as legal counsel.

**FISCAL IMPACT:**

Legal counsel rate is \$315.00/hour

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Appoint Mr. Baum as General Counsel.
2. Adopt with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Move to appoint Gary M. Baum as General Counsel Legal Services as described in the contract from June 11, 2021 through June 30, 2023.



Agenda Item No:     3    

Meeting Date: June 24, 2021

## Cities Association of Santa Clara County Agenda Report

**Approval of Amendment to Increase Agreement with Liebert Cassidy Whitmore from \$3,000 to \$6,000**

Prepared by: Gary M. Baum  
General Counsel

**TOPIC:** Approval of Amendment to Increase Agreement with Liebert Cassidy Whitmore from \$3000 to \$6000

**SUBJECT:** Request for Board Approval to approve an amendment to the Agreement with Liebert Cassidy Whitmore to increase compensation from not to exceed \$3,000 to \$6,000

**RECOMMENDATION:**

Approve the amendment to the Liebert Cassidy Whitmore Agreement to increase compensation from not to exceed \$3,000 to \$6,000 and authorize the Board President to execute the amendment.

**BACKGROUND:**

As the Board is aware, Liebert Cassidy Whitmore was retained for assistance with labor issues. This amendment is required in order to complete the assignments provided.

**ANALYSIS:**

Liebert, Cassidy Whitmore has nearly exhausted their original not to exceed amount and has requested an increase in the not to exceed level to \$6,000. It is likely that this will cover the costs to complete this matter. .

**FISCAL IMPACT:**

The fiscal impact of this approval is \$3,000.

**OPTIONS:**

The Board of Directors has the following options to consider on this matter:

1. Staff's recommended action to approve the amendment and authorize execution
2. Modify the amendment
3. Direct staff to return with more information.
4. Take no action.

Should the Board decide against approving this amendment, then the work by Liebert Cassidy Whitmore would be concluded prior to completion.

**RECOMMENDED ACTION:**

Approve the amendment to the Liebert Cassidy Whitmore Agreement to increase the not to exceed amount from \$3,000 to \$6,000 and authorize the Board President to execute the amendment.

**ATTACHMENTS:**

1. Amendment to Agreement
2. Original Agreement

# ATTACHMENT 1

## AMENDMENT NO. 1 TO AGREEMENT FOR SPECIAL SERVICES BETWEEN THE CITIES ASSOCIATION OF SANTA CLARA COUNTY AND LIEBERT CASSIDY WHITMORE

**THIS AMENDMENT** is executed by and between Liebert Cassidy Whitmore (Attorney) and the Cities Association of Santa Clara County (Association), and will amend the prior agreement between the parties entitled Agreement For Special Services which was effective on February 10, 2021.

**WHEREAS**, the parties desire to amend their agreement to allow or provide for the continued consulting, representational and legal services;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. This amendment shall be effective as of June 22, 2021.
2. **Compensation:** The fifth paragraph of Section 3. Fees, Costs, Expenses, shall be amended in its entirety as follows:

The total compensation payable by Association to LCW for the Services, including all legal fees, costs and expenses, SHALL NOT EXCEED the sum of \$6,000.00 ("not to exceed amount") without express written authorization and approval by the Associations' Executive Board.

3. That in all other respects the prior agreement of the parties shall remain in full force and effect except as amended herein.

LIEBERT CASSIDY WHITMORE,  
A Professional Corporation

CITIES ASSOCIATION OF SANTA CLARA  
COUNTY

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# ATTACHMENT 2

## AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation (“Attorney” or “LCW”), and the CITIES ASSOCIATION OF SANTA CLARA COUNTY, (“Association”).

### **1. Conditions**

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

### **2. Attorney’s Services**

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

### **3. Fees, Costs, Expenses**

Association agrees to pay Attorney the sums billed monthly for time spent by Attorney in providing the services, including reasonable travel time.

The current range of hourly rates for Attorney time is from Two Hundred Ten to Three Hundred Eighty Dollars (\$210.00 - \$380.00). Morin Jacob’s hourly rate is \$380.00 and Amy Brandt’s is \$255.00. See Schedule I for a full Fee Schedule. Attorney reviews its hourly rates on an annual basis and, if appropriate, will adjust them effective January 1, 2022. Attorney will provide the Association with written notification of any adjustment in the range of rates. Attorney bills its time in minimum units of one-tenth of an hour.

**For Litigation Matters**

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

**Other Expenses**

Association agrees to reimburse Attorney for only those necessary costs and expenses incurred by Attorney on behalf of Association that are listed in Schedule I. LCW will attend all meetings electronically, rather than in person, so that no travel expenses will be incurred. . See Schedule I attached.

**Total Compensation**

The total compensation payable by Association to LCW for the Services, including all legal fees, costs and expenses, SHALL NOT EXCEED the sum of \$3,000.00 ("not to exceed amount") without express written authorization and approval by the Association's Executive Board.

Payment by Association against monthly billings is due upon receipt of statements, and is considered delinquent if payment is not received within thirty (30) days of the date of the invoice.

**4. Professional Liability Insurance**

**Insurance.** LCW shall, throughout the duration of this Agreement, maintain insurance to cover Association (including its agents, representatives, subconsultants, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which LCW shall comply; however, the minimum insurance levels shall not relieve LCW of any other performance responsibilities under this Agreement, and LCW may carry, at its own expense, any

additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by LCW, and prior to the commencement of any services, LCW shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Association. LCW shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

**(A). Minimum Insurance Levels.** LCW shall maintain insurance at the following minimum levels:

**10(A) (1). Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) coverage in an amount not less than \$500,000 per accident for bodily injury and \$100,000 for property damage.

**10(A) (2). Workers’ Compensation** coverage if required by the State of California.

**10(A) (3). Professional Liability** coverage for damages that may be the result of errors, omissions, or negligent acts of LCW in an amount not less than \$1,000,000 per claim.

**(B)(1).** LCW's insurance is primary to any other insurance available to the Association with respect to any claim arising out of this Agreement. Any insurance maintained by the Association shall be excess of the LCW's insurance and shall not contribute with it.

**(B)(2).** LCW's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the Association. During the term of this Agreement, LCW will not materially

alter any of the policies or reduce any of the levels of coverage afforded by her insurance policies.

**(C). Qualifications of Insurers.** All insurance companies providing coverage to LCW shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VI."

**5. Standard of Care/Indemnification.** It is understood and agreed that LCW has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that Association relies upon the professional skills of LCW to do and perform LCW's work in a skillful and professional manner consistent with the standard of care of the industry, and LCW thus agrees to so perform the work. LCW shall indemnify the Association, and its officials, volunteers, officers, and employees for damages that result from errors, omissions, or negligent acts of LCW.

**6. Arbitration of Professional Liability or Other Claims**

**Disputes.** If a dispute between Association and Attorney arises over fees charged for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code, sections 6200 through 6206. The arbitrator or arbitration panel shall have the authority to award to the prevailing party attorneys' fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service shall not be required.

If a dispute arises between Association and Attorney over any other aspect of the attorney-client relationship, including, without limitation, a claim for breach of

professional duty, that dispute will also be resolved by arbitration. It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any legal services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. **Both parties to this agreement, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.** Each party is to bear its own attorney's fees and costs.

7. **File Retention**

After our services conclude, Attorney will, upon Association's request, deliver the file for the matter to Association, along with any funds or property of Association's in our possession. If Association requests the file for the matter, Attorney will retain a copy of the file. If Association does not request the file for this matter, we will retain it for a period of seven (7) years after this matter is closed. If Association does not request delivery of the file for this matter before the end of the seven (7) year period, we will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to Association. At any point during the seven (7) year period, Association may request delivery of the file.

8. **Assignment**

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

9. **Independent Contractor**

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

10. **Authority**

The signators to this Agreement represent that they hold the positions set forth below their signatures, and that they are authorized to execute this Agreement on behalf of their respective parties and to bind their respective parties hereto.

11. **Term**

This Agreement is effective February 10, 2021, ongoing and may be modified by mutual agreement of the parties. This agreement shall be terminable by either party upon thirty (30) days written notice.

LIEBERT CASSIDY WHITMORE,  
A Professional Corporation

CITIES ASSOCIATION OF  
SANTA CLARA COUNTY

By: \_\_\_\_\_

By: Marico Sayoc  
Marico Sayoc (Mar 2, 2021 18:00 PST)

Name: \_\_\_\_\_

Name: Marico Sayoc

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: Mar 2, 2021

**SCHEDULE I – FEES & COSTS**

1. **Hourly Rates (As of Agreement Effective Date)**

<b>Partners</b>	<b>\$380.00</b>
<b>Senior Counsel</b>	<b>\$325.00</b>
<b>Associates</b>	<b>\$210.00 - \$305.00</b>
<b>Labor Relations/HR Consultant</b>	<b>\$240.00</b>
<b>Paralegals</b>	<b>\$135.00</b>
<b>E- Discovery Specialists</b>	<b>\$135.00</b>
<b>Law Clerks</b>	<b>\$135.00 - \$175.00</b>

2. **COSTS**

[Or “Electronic copies will be used whenever possible to eliminate or reduce any copying costs.”]

## SCHEDULE II

### LCW LITIGATION and E-DISCOVERY MANAGEMENT

LCW is committed to using state-of-the-art technology to efficiently manage and harness electronically-stored information (“ESI”) in compliance with Federal and State law requirements. LCW partners with an outside managed services provider to provide Relativity, the industry leading e-discovery software, for this purpose. The cost for each matter will depend on the volume and format of the data. For non-complex data up to 50 gigabytes, LCW charges a monthly fee of \$375 on all active litigation matters for data management, including data validation and security, ingestion, de-duplication, culling and streamlining, and creation of Relativity fields for expedited review. For data of 50 gigabytes and over and for complex data requiring specialized services (e.g., payroll data, spreadsheets with underlying formulas, video, advanced searches, etc.), additional charges are incurred and are passed through to the client. For such charges, we will provide an itemized bill from our managed services provider and obtain client approval prior to incurring the charges.

#### Litigation Case Staffing

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