

**City of Carson City
Agenda Report**

Date Submitted: February 18, 2011 **Agenda Date Requested:** Mar. 3, 2011
Time Requested: Consent Agenda

To: Mayor and Board of Supervisors

From: Randal Munn, Chief Deputy District Attorney

Subject Title: Action to approve pursuant to Section 3.070(3) of the City Charter an independent contractor agreement between the District Attorney and the law firm of Armstrong Teasdale, LLP., for Special Deputy District Attorney services to represent the Public Works Department in contract matters primarily involving a cost-overrun claim by Peek Construction Company dba E. Camino Construction in the North-South Water Transmission Main Project-Phase I. (*Randal Munn and Andrew Burnham*)

Staff Summary: Peek Construction Company (PCC), dba E. Camino Construction, was awarded a \$1.9 million contract in early 2010 to construct the North/South Transmission Main Phase I project which was to be completed September 1, 2010. The project achieved substantial completion on January 7, 2011. During the construction of the project PCC encountered groundwater along Hells Bells Road and dewatering methods were employed by PCC to excavate the trench area and install the required waterline. All bidders were informed to expect to encounter water. PCC is demanding bid-cost overrun compensation for the cost of dewatering and other alleged damages of \$1.7 million, which requires an aggressive defense by the City.

Type of Action Requested:

- | | |
|--|---|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance- First Reading |
| <input checked="" type="checkbox"/> Formal Action/Motion | <input type="checkbox"/> Other (Specify) |

Does This Action Require A Business Impact Statement: () Yes (X) No

Recommended Board Action: I move to approve pursuant to Section 3.070(3) of the City Charter the independent contractor agreement between the District Attorney and the law firm of Armstrong Teasdale, LLP., as a Special Deputy District Attorney to represent the Public Works Department in contract matters primarily involving a cost-overrun claim by Peek Construction Company dba E. Camino Construction in the North-South Water Transmission Main Project-Phase I.

Explanation for Recommended Board Action: The City Charter grants authority to the District Attorney to contract for Special Deputy District Attorneys "subject to the approval of Board." In this case Public Works has agreed to pay for the services from the Water Fund.

Applicable Statute, Code, Policy, Rule or Regulation: Professional Legal Services contracts are exempt from competitive public bidding. NRS 332.115(1)(b).

Fiscal Impact: Hourly contract for professional legal services retroactive to February 14, 2011 for not to exceed maximum of \$100,000.00.


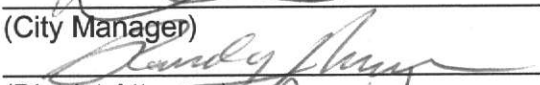
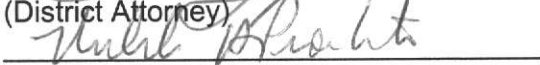

Explanation of Impact: At this time the District Attorney is understaffed and the expertise to efficiently handle this complex public works contract matter is not available in-house.

Funding Source: Water Fund

Alternatives: 1) Refer back to District Attorney's office for further review
2) Do not approve contract

Supporting Material:
1) Contract

Prepared By: Randal Munn, Chief Deputy District Attorney, Civil Division

Reviewed By:  Date: 2-22-11
(Public Works)
 Date: 2/22/11
(City Manager)
 Date: 2/22/2011
(District Attorney)
 Date: 2/22/11
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____ _____

(Vote Recorded By)

PROFESSIONAL SERVICES AGREEMENT

This agreement between **Carson City, a Consolidated Municipality, acting by and through the Carson City District Attorney**, 885 East Musser Street, Suite #2030, Carson City, Nevada, 89701 (775-887-2070) and the law firm of **Armstrong Teasdale, LLP**, 50 W. Liberty St. Suite 950, Reno, Nevada (775-322-7400; Fax 775-322-9049) includes the terms and conditions set forth in the Armstrong Teasdale, LLP legal services engagement letter dated February 17, 2011, which is attached and incorporated herein, and is entered into the date set forth below.

WITNESSETH:

WHEREAS, the Carson City Charter Section 3.070(3) provides that the District Attorney may, subject to the approval of the Board of Supervisors, contract for the services of a special deputy district attorney; and

WHEREAS, the District Attorney's office is currently understaffed and is in need of experienced legal counsel in matters of public works construction law in the pending claim by Peek Construction Company against Carson City Public Works Department regarding alleged bid cost overruns in the construction of the North-South Water Transmission Main Project-Phase I (Contract No. CC-2010-100), which is under threat of litigation, but may be settled by negotiation, mediation, or arbitration; and

WHEREAS, the District Attorney believes the legal services of Armstrong Teasdale, and Richard G. Campbell, Jr., are desired to assist the District Attorney and/or the Carson City Public Works Department for the purpose of defending potential complex litigation; and

WHEREAS, it is deemed that the services of Armstrong Teasdale, LLP and Richard G. Campbell, Jr., herein specified are both necessary and desirable and in the best interests of Carson City and the District Attorney; and

WHEREAS, Armstrong Teasdale, LLP and Richard G. Campbell, Jr., represent that they are duly qualified, willing and able to render the services as hereinafter described; and

NOW, THEREFORE, based upon the foregoing premises and upon the following covenants, the parties mutually agree as follows:

1. **Scope of Representation**. The District Attorney agrees to retain the law firm of Armstrong Teasdale, LLP, ("Contractor") to serve as legal counsel to the District Attorney as a Special Deputy District Attorney in the matter of the claims of Peek Construction Company described herein, and other matters as are mutually agreed to. Contractor shall serve in this capacity at will and at the pleasure of the District Attorney and shall report regularly to the District Attorney and obtain the approval of the District Attorney on all related matters. Contractor shall provide service to the City in the capacity of Special Deputy District Attorney until this appointment is revoked or terminated as provided herein. Contractor agrees to support, protect and defend the Constitution and Government of the United States of America and the Constitution and Government of the State of Nevada against all enemies, whether foreign or domestic, and bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of the State notwithstanding, and will faithfully perform all the duties of the office of Special Deputy District Attorney. District Attorney and Contractor agree that Contractor shall coordinate with the Carson City Public Works Department and the District Attorney to allocate workloads and responsibilities as appropriate to minimize the