



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** May 3, 2018

**Staff Contact:** Adriana Fralick

**Agenda Title:** For Possible Action: Discussion and possible action to approve the District Attorney enter into a contingency fee agreement on behalf of Carson City with the Eglet Prince law firm to pursue legal claims against the manufacturers and distributors of prescription opioids seeking recovery of monetary damages and injunctive relief for the negative impact of opioids on Carson City and the substantial damages opioids have caused to Carson City. (Jason Woodbury, District Attorney).

**Staff Summary:** The opioid epidemic has substantially damaged Carson City and places a heavy financial and sociological burden on Carson City and its resources. The Eglet Prince law firm would pursue legal claims against manufacturers and distributors of prescription opioids and seek to recover monetary damages and injunctive relief on behalf of Carson City for the tortious negative impact of opioids. The contingency fee is for twenty-five percent (25%) of the recovery from the lawsuit.

**Agenda Action:** Formal Action/Motion

**Time Requested:** 10 minutes

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## **Proposed Motion**

I move that the Board direct the District Attorney to enter into a contingency fee agreement with the Eglet Prince law firm on behalf of Carson City for purposes of seeking recovery of monetary damages and injunctive relief to compensate Carson City for the substantial negative impact opioids have actually and proximately caused to Carson City.

## **Board's Strategic Goal**

Quality of Life

## **Previous Action**

N/A

## **Background/Issues & Analysis**

Nevada Counties, including Carson City, continue to be devastated by the adverse effect of the opioid crisis. The City is beginning to accumulate data that identifies quantifiable harm to the City and its resources.

In Nevada, the number of opioid prescriptions has increased. According to Nevada's Prescription Drug Monitoring Program, in 2015, there were 82 painkiller prescriptions for every 100 Nevada residents. Based on a Las Vegas Review Journal article, 2016 data showed that Nevada's opioid prescription rate is 87.5 per 100 residents, compared with 66.5 nationwide. Nevada ranks 2nd highest for hydrocodone, 2nd highest for oxycodone, 4th highest for methadone and 7th highest for codeine, and the 4<sup>th</sup> highest drug overdose mortality rate in the United States, according to the national Governors Association Policy Academy on Prescription Drug Abuse Prevention.

Litigation against the manufacturers and distributors of prescription opioids would seek to recover monetary damages and injunctive relief for the negative impact of opioids on Carson City. The contingency fee is for twenty-five percent (25%) of the recovery from the lawsuit. This contract for professional services is not adapted to award by the competitive bidding process, pursuant to NRS 332.115(1)(b).

**Applicable Statute, Code, Policy, Rule or Regulation**

Carson City Charter Sec. 3.070; NRS Chapter 252; NRS 244.137(6); NRS 244.165; NRS 244.195

**Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number:

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact:

**Alternatives**

Not approve entering into a contingency fee agreement.

**Board Action Taken:**

Motion: \_\_\_\_\_

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

**AGREEMENT  
FOR LEGAL SERVICES  
CONTINGENCY**

THIS CONTINGENCY AGREEMENT (“Agreement”) is made and entered into by and between Carson City, Nevada, a consolidated municipality and political subdivision of the State of Nevada, (“CITY”) and the law firms of Eglet Prince, LLP and Bradley, Drendel, & Jeanney (“CONTRACT COUNSEL” or the “Firm”) for legal services in connection with the Claim (the “Services”). This Agreement shall be effective on the date of Board of Supervisors action, as reflected on the signature page below (“Effective Date”).

**RECITALS**

**WHEREAS**, the CITY seeks to engage CONTRACT COUNSEL to provide legal representation, support and resources, as well as specialized legal advice to the CITY, in connection with the Claim;

**WHEREAS**, CONTRACT COUNSEL is experienced in providing the Services; and

**WHEREAS**, the Services are in the best interest of the City and its residents.

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

**SECTION 1. SCOPE OF SERVICE**

- A. The CITY hereby retains and hires CONTRACT COUNSEL to pursue, with the District Attorney’s approval, any and all civil claims against the manufacturers, distributors, marketers, sellers and detailers that in any way caused or contributed to the CITY’s opioid epidemic and to pursue any and all legal claims, remedies and damages related thereto that are legally available to the CITY (the “Claim”).
- B. CONTRACT COUNSEL will work in conjunction with the CITY’S District Attorney or his designee(s) in the performance of the Services hereunder.
- C. CONTRACT COUNSEL will observe and comply with all applicable law, regulations, rules of professional conduct, ordinances and rules of the United States, of the State of Nevada, of any political subdivision thereof, or of any duly constituted public authority or agency.
- D. CONTRACT COUNSEL will not affect a final compromise of any matter nor assert any conflict waivers without the prior written approval of the District Attorney.

**SECTION 2. ATTORNEY FEES**

The CITY is not to be liable to pay attorney’s fees except from amounts collected for the CITY by CONTRACT COUNSEL for the Claim by virtue of settlement, judgment or award (“Recovery”). Attorney’s fees to be paid to CONTRACT COUNSEL by the CITY for the Services under this Agreement shall be in the total amount of Twenty-Five Percent (25%) of the Recovery (“Contingency Fee”).

The CITY acknowledges and agrees that CONTRACT COUNSEL'S Contingency Fee rate set forth above is not set by law but has been negotiated between the parties. The CITY further acknowledges and agrees that CONTRACT COUNSEL'S Contingency Fee rate is reasonable given (a) the extensive time and resources required to properly litigate the Claims contemplated herein, (b) the complexity of the legal issues presented, (c) the experience and reputation of the Firm, and (d) that any payment of attorneys' fees is contingent upon Recovery. If there is no Recovery, the CITY is **not** responsible to pay any attorneys' fees.

### **SECTION 3. COSTS AND EXPENSES**

The CITY is not responsible for and is not liable to pay court costs, expenses of litigation, or any other costs or expenses for the Services, including City Staff Time (defined below), other than from a Recovery. CONTRACT COUNSEL shall advance all costs necessary to prepare, prosecute and otherwise resolve the Claim and will not be reimbursed for such costs and expenses unless and until there is a Recovery. The City will not be responsible for costs and expenses if the amount of costs and expenses exceeds the amount of the Recovery. Costs advanced by the Firm are expenses necessary to investigate, prepare, prosecute and resolve the Claim, and are to be deducted from the Recovery after the Contingency Fee is deducted, and include, but are not limited to, expenses for: photocopies; long distance telephone; facsimile; postage; overnight mail; photography and video; messenger; power point or computer presentations; investigation services; evidence storage; filing fees (state court fees are waived for the CITY); service of process; bond(s); records; travel; alternative dispute resolution; jury fees; outsourced exhibit preparation; mock trial and/or jury sampling; expert witnesses; expert and non-expert consultants with specialized knowledge or skills that will assist in the prosecution of the Claim including, but not limited to, for example, jury consultants and consultants having specialized knowledge or skills in e-discovery, medicine, rehabilitation, accounting, economics, product liability, pharmaceuticals and regulatory processes; and City Staff Time. The CITY understands that depending on the value and/or complexity of a Claim costs can, and often do, total hundreds of thousands of dollars, and in this case, will likely be millions of dollars. The CITY acknowledges and agrees that CONTRACT COUNSEL may borrow funds from time to time to pay certain costs referred to above and agrees that, in addition to reimbursing the CONTRACT COUNSEL for the amount of such costs, the CITY will also reimburse CONTRACT COUNSEL for any interest charges and related expenses the Firm incurs in connection with such borrowing.

CONTRACT COUNSEL must retain receipts for all costs expended. Original receipts are required as stated herein and no reimbursement will be allowed for costs not solely related to the furtherance of CONTRACT COUNSEL'S Services with the CITY in connection with this Agreement. To receive reimbursement for costs under this Agreement, the Firm shall provide the CITY invoices and itemized receipts, as applicable, to support the request for reimbursement of its costs and no reimbursement is allowed for costs not directly related to this Agreement. In the event that there is no Recovery, CONTRACT COUNSEL shall not be reimbursed by the CITY for any costs or expense, including City Staff Time. It is anticipated that it will be necessary for CITY staff to expend time and use CITY resources to assist in the preparation and prosecution of the Claim, including, but not limited to researching, obtaining, locating, reviewing, copying and providing information, documentation and data for use in evaluating, prosecuting and resolving the Claim.

It is agreed that that the time expended by CITY staff to engage in such activities in support of the preparation, prosecution and resolution of the Claim and the costs associated therewith, such as copying costs, will be billed, through an invoice, to CONTRACT COUNSEL with payment to be remitted by CONTRACT COUNSEL to CITY within 30 days of the date of the invoice. The CITY staff time will be billed at the loaded hourly rate that is the amount being paid for the involved CITY Staff members to perform their usual and regular job duties. Where applicable, a CITY staff member's time may be billed at a loaded overtime rate. The foregoing costs are referred to herein as "City Staff Time."

The CITY is not liable or otherwise responsible for the following costs or expenses, and the following will not be reimbursable costs or expenses pursuant to this Agreement and will not be reimbursed to CONTRACT COUNSEL from a Recovery or otherwise by the CITY:

1. CONTRACT COUNSEL'S Contingency Fee is expected to include all personnel costs and benefits of the CONTRACT COUNSEL'S staff and any Outside Counsel (defined below), including but not limited to attorney, para-professional, clerical and administrative personnel, whether employees or independent contractors. Such amounts are not costs or expenses that are reimbursable within the scope of this Agreement. If the Firm retains, contracts with, associates with or affiliates with any outside law firms or attorneys ("Outside Counsel") to assist it with the Claim, the fees of such outside Counsel will not be recoverable by the CONTRACT COUNSEL as costs or expenses.
2. The CITY will not pay for the cost of legal search engines such as Westlaw and LexisNexis. Legal search tools are part of CONTRACT COUNSEL'S overhead costs.
3. The CITY will not pay for sanctions ordered by the Court as a result of attorney conduct that is not directly attributable to CITY responsiveness, support or conduct in the course of the litigation. CONTRACT COUNSEL acknowledges that the CITY'S ability to provide certain information and the use of that information is restricted under applicable law, including HIPAA, as set forth in the "HIPAA COMPLIANCE" Section.
4. If, and to the extent, costs or expenses are incurred for the benefit of clients of CONTRACT COUNSEL other than CITY, those costs and expenses shall be proportionally allocated among the CITY and CONTRACT COUNSEL's other clients based on population.

#### **SECTION 4. SEMIANNUAL COST REPORT**

CONTRACT COUNSEL shall provide the CITY with an itemized list of the costs that have been expended for the prosecution of the Claim, pursuant to this Agreement, semiannually. The report shall include all costs expended up to the date of the report. The first report shall be provided on July 1, 2018 and then every six (6) months thereafter.

#### **SECTION 5. INDEMNITY FOR AWARD OF ATTORNEY FEES AND COSTS**

In the event of a loss, the CITY may be liable for the opposing party's(ies') attorney's fees and costs as required by law. However, the CONTRACT COUNSEL regards the risk of an adverse judgment for attorneys' fees and costs to be minimal given the nature of the contemplated

litigation and thus hereby agrees to pay all such attorneys' fees, costs and expenses and to indemnify CITY from and against them in the unlikely event an adverse judgment, order or other ruling for attorneys' fees, expenses and/or costs, so long as such indemnification is not in violation of federal and/or state law or ethical rules governing the conduct attorneys, including the American Bar Association Model Rules of Professional Conduct and/or the Nevada Rules of Professional Conduct.

## **SECTION 6. INDEMNITY**

CONTRACT COUNSEL shall indemnify, defend and hold harmless the CITY, its officers, officials, employees and agents from and against any liability, loss, damage, expense and cost (including without limitation attorney fees, costs, and any other fees of litigation) of every nature to the extent arising out of or in connection with Services negligently performed hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the gross negligence or willful misconduct of the CITY.

## **SECTION 7. EXPERTS AND INVESTIGATORS**

CONTRACT COUNSEL is expected to recommend the appropriate experts. All experts, investigators and other professional service providers shall be screened for conflicts of interest. Expert fees should conform with fees charged by similarly qualified experts in the same specialty.

## **SECTION 8. OTHER COUNSEL**

Other attorneys within the CONTRACT COUNSEL'S firm, or Outside Counsel, may be associated or employed at the CONTRACT COUNSEL'S discretion and expense to prosecute the Claim, as long as Outside Counsel does not have a conflict with the City pursuant to the Nevada Rules of Professional Conduct. It is understood and agreed that there may be a division of the Contingency Fee between the CONTRACT COUNSEL and Outside Counsel, in accordance with the Nevada Rules of Professional Conduct.

## **SECTION 9. TERMINATION**

The attorney-client relationship is one of mutual trust, confidence and respect. For this reason, the CITY retains the right to discharge the CONTRACT COUNSEL and terminate this Agreement at any time and for any reason, and the CITY consents to the withdrawal of the CONTRACT COUNSEL at any time for any reason, provided the CONTRACT COUNSEL has taken reasonable steps to avoid reasonably foreseeable costs and prejudice to the CITY. A party may terminate this Agreement upon written notice. Notice of termination of this Agreement on behalf of the CITY may be given at any time at the discretion of the District Attorney.

## **SECTION 10. EVENTS UPON TERMINATION OR EXPIRATION**

If this Agreement terminates before the CITY obtains a Recovery on its Claim, the CITY will use funds only from its Recovery to compensate CONTRACT COUNSEL for the reasonable value of its services that contributed to obtaining the Recovery. If CONTRACT COUNSEL is terminated by the CITY prior to final resolution (RECOVERY) of the CLAIM, then the CITY shall pay to CONTRACT COUNSEL all of the costs advanced by CONTRACT COUNSEL, as well as attorney fees of Seven Hundred Dollars (\$700.00) per hour, or a reasonable attorney fee, **or** Twenty Five Percent (25%) of the latest offer of settlement, whichever is more. In the event

this Agreement terminates before the CITY obtains a Recovery and the amount of the Recovery is less than the reasonable value of CONTRACT COUNSEL'S services and/or the amount of CONTRACT COUNSEL'S costs and expenses up to the date of termination of this Agreement, the CITY'S liability to CONTRACT COUNSEL is limited to the amount of its Recovery. Notwithstanding anything in this Section to the contrary, the CITY will not pay any costs or fees to CONTRACT COUNSEL if the CITY terminates this Agreement due to a breach of this Agreement by CONTRACT COUNSEL.

Upon the expiration or termination of this Agreement, the CITY, at its discretion, may require CONTRACT COUNSEL to return all litigation files to the CITY or its designated representative and execute the necessary Substitution(s) of Counsel, which CONTRACT COUNSEL shall not unreasonably refuse, condition, withhold, or delay, including if a payment dispute is pending at the time of expiration or any other termination of this Agreement.

#### **SECTION 11. HIPAA COMPLIANCE**

CONTRACT COUNSEL acknowledges that there are departments of the CITY, including, but not limited to, the Fire Department, that are health care providers pursuant to the Health Insurance Portability and Accountability Act, as amended, ("HIPAA"). If it becomes necessary for the CITY to disclose or provide CONTRACT COUNSEL with protected health information (PHI) as defined in HIPAA, CONTRACT COUNSEL shall sign a CITY Business Associate Agreement in a form acceptable to the CITY before the CITY is obligated to provide or disclose any PHI. CONTRACT COUNSEL agrees to protect such PHI as required by applicable law, to not use or disclose such PHI other than as specified in the Business Associate Agreement and permitted by applicable law, and to limit the disclosure of that PHI, including, but not limited to, by seeking a protective order(s) and redacting such PHI before disclosing it. CONTRACT COUNSEL further agrees that the CITY is excused from performing obligations under this Agreement if doing so would violate or otherwise cause the CITY to not comply with its obligations under applicable law, including HIPAA.

#### **SECTION 12. OWNERSHIP OF DOCUMENTS**

All files, pleadings, discovery, reports, documents and other records prepared or kept by CONTRACT COUNSEL in the performance of its obligations under this Agreement shall be the exclusive property of the CITY and all such materials shall be remitted to the CITY by CONTRACT COUNSEL upon the CITY'S request and/or upon expiration or termination of this Agreement. All such materials shall be retained by CONTRACT COUNSEL for a minimum of seven (7) years from the date any and all appeal rights expire. At the end of this retention term, the CITY shall be notified and given sixty (60) days to reclaim each file prior to its destruction by CONTRACT COUNSEL.

#### **SECTION 13. BOOKS AND RECORDS**

CONTRACT COUNSEL shall maintain all books, documents, papers, accounting reports and other evidence relating to the Services, and shall permit the CITY and its authorized representatives access to and the right to inspect all such books, documents, papers, accounting reports, and other evidence at all reasonable times during the Agreement period and for seven (7) years from the date any and all appeal rights expire.

#### **SECTION 14. CONFIDENTIALITY**

All personnel records, personal data and protected health information (PHI) received, stored or viewed by CONTRACT COUNSEL shall be kept in the strictest confidence by CONTRACT COUNSEL and its employees and contractors. All such information shall be used and disclosed only for the proper management of the Services assigned and may not be used or further disclosed, other than as necessary, in the furtherance of the Services.

CONTRACT COUNSEL shall use appropriate safeguards to prevent the use or disclosure of such confidential information outside the scope of the Services, and shall report to the CITY any inappropriate or unauthorized use or disclosure of the information as soon as it learns of such use or disclosure.

#### **SECTION 15. COMPLIANCE WITH APPLICABLE LAWS**

CONTRACT COUNSEL shall, in the performance of its obligations hereunder, comply with all applicable laws, including without limitation the Federal Occupational Health and Safety Act, Title VII of the Federal Civil Rights Act of 1964 et seq., including the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 1981, the Age Discrimination in Employment Act of 1967, as amended (“ADEA”), HIPAA, the Americans with Disabilities Act, and Nevada’s Employment Practices Statutes (NRS 613.330 et seq.), as applicable. CONTRACT COUNSEL shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under applicable law. CONTRACT COUNSEL shall be responsible for fines, penalties, and repayment of any State of Nevada or federal funds that may arise (including those that the CITY pays, becomes liable to pay, or becomes liable to repay) as a direct result of the CONTRACT COUNSEL’S non-compliance with this Section.

#### **SECTION 16. ETHICS OF COUNSEL**

CONTRACT COUNSEL shall abide by and perform his duties in accordance with the Nevada Rules of Professional Conduct and all federal, state and municipal laws, regulations and ordinances regulating the practice of law.

CONTRACT COUNSEL shall, without additional compensation, immediately correct or revise any deficiencies, errors, or omissions caused by CONTRACT COUNSEL in its analysis, reports, and services. It is also understood and agreed by both parties that if any error is found, CONTRACT COUNSEL will expeditiously make the necessary correction, at no expense to the CITY, except when such error is the sole cause of the CITY without excuse or legal justification.

#### **SECTION 17. SETTLEMENT**

Settlement of the Claim will not be made without the authorization and consent of the District Attorney. CITY agrees, at CONTRACT COUNSEL’S discretion, to a jury or bench trial, and/or alternative dispute resolution, such as mediation, to facilitate a timely resolution of the Claim.

#### **SECTION 18. CONFLICTS**

During the term of this Agreement, CONTRACT COUNSEL may not represent a client whose position may be adverse to the CITY without obtaining the CITY’S prior written consent to the adverse representation in accordance with Nevada Rules of Professional Conduct 1.7 and 1.8.

**SECTION 19. INDEPENDENT CONTRACTOR**

CONTRACT COUNSEL is an independent contractor and not an employee of the CITY. No permitted or required approval by the CITY of documents or Services of CONTRACT COUNSEL shall be construed as making the CITY responsible for the manner in which CONTRACT COUNSEL performs Services or for any negligence, errors or omissions of CONTRACT COUNSEL. Such approvals are intended only to give the CITY the right to satisfy itself with the quality of the service performed by CONTRACT COUNSEL.

**SECTION 20. COOPERATION**

Subject to restrictions imposed by applicable law, such as HIPAA, CITY agrees to cooperate with CONTRACT COUNSEL to provide requested information and to reasonably assist the CONTRACT COUNSEL in the performance of the Services.

**SECTION 21. VALID CLAIM**

CITY and CONTRACT COUNSEL understand that a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process, and CONTRACT COUNSEL agrees to be responsible for all attorneys' fees, costs and expenses in connection therewith.

**SECTION 22. GOVERNING LAW; VENUE**

This Agreement shall be governed by and construed and interpreted in accordance with the substantive and procedural laws of the State of Nevada, without giving effect to its choice or conflicts of law provisions. Any actions regarding the terms of this Agreement shall be initiated in the courts of Carson City, Nevada or the federal district court with jurisdiction over Carson City, Nevada. CONTRACT COUNSEL agrees that it shall not initiate an action against the CITY in any other jurisdiction. CONTRACT COUNSEL irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Carson City, Nevada over any dispute or matter arising under or in connection with this Agreement.

**SECTION 23. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and may only be modified, supplemented or amended by a written agreement signed by both parties.

**SECTION 24. NOTICES**

Any notice required under this Agreement shall be deemed to have been given when received by the party to whom it is directed by personal service, hand delivery or United States Mail at the following addresses:

TO CITY:

Jason D. Woodbury, District Attorney  
Carson City District Attorney's Office  
885 E. Musser Street, Ste. 2030  
Carson City, NV 89701  
Phone: (775) 887-2070  
Fax: (775) 887-2129  
[Email: jwoodbury@carson.org](mailto:jwoodbury@carson.org)

TO CONTRACT COUNSEL: Robert M. Adams, Esq.  
Eglet Prince  
400 South 7<sup>th</sup> Street, 4<sup>th</sup> Floor, Las Vegas, NV 89101  
Phone: (702) 450-5400  
Fax: (702) 450-5451  
Email: badams@egletlaw.com

Either party may, at any time and from time to time, change its representative or address by written notice to the other.

**SECTION 25. AMENDMENT AND MODIFICATION**

No provision of this Agreement will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by the City Attorney and the authorized agents of CONTRACT COUNSEL.

**SECTION 26. SEVERABILITY**

If any portion of this Agreement is found to be invalid, the remainder of the Agreement remains in effect.

**SECTION 27. AUTHORITY**

CONTRACT COUNSEL represents and warrants that the person signing this Agreement on behalf of the CONTRACT COUNSEL has all requisite authority to bind the CONTRACT COUNSEL to the terms and obligations of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

Date of Board of Supervisors Action: \_\_\_\_\_

CARSON CITY, NEVADA

\_\_\_\_\_  
ROBERT L. CROWELL  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
JASON D. WOODBURY  
District Attorney

\_\_\_\_\_  
Date

BRADLEY, DRENDEL, & JEANNEY  
EGLET PRINCE, LLP

\_\_\_\_\_  
ROBERT T. EGLET, ESQ.

\_\_\_\_\_  
Date