



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: 10/05/2017

Staff Contact: Laura Rader and Max Cortes

Agenda Title: For Possible Action: To approve Contract No. 1718-090; Legal Services with Washoe Legal Services for a not to exceed annual amount of \$105,000 through September 30, 2020 to be funded from the Courts Department in the General Fund. These are professional services contracts and therefore not suitable for public bidding pursuant to NRS 332.115 (1) (b). (Laura Rader; Lrader@carson.org and Max Cortes; Mcortes@carson.org).

Staff Summary: During the 2017 Legislative session, the Legislature passed SB 433 and SB 305 unfunded mandates. SB 433, effective July 1, 2017, amended NRS 159.0485. The law requires the Courts to appoint attorneys for protected persons in adult guardianship cases. SB 305, effective October 1, 2017, amended NRS 432B.420 and NRS 128.100. The law requires the Courts to appoint attorneys for children in abuse and neglect court cases as well as termination of parental rights court cases.

In an effort to reduce the fiscal impact to Carson City, the Courts held discussions with the State Public Defender, Nevada Legal Services, and Washoe Legal Services to determine if their agencies would be able to assist with the mandated attorney appointments to represent children and protected persons in adult guardianship cases in Carson City. The State Public Defender advised that they are working on a child advocacy program however, it is not operational yet. The State Public Defender advised that they can assist with the children in 432B cases. Nevada Legal Services advised that the agency could assist and provided a quote of \$174,000 to compensate the attorney services. Washoe Legal Services advised that the agency could assist with all of the types of cases and provided a quote of \$105,000 to compensate the attorney services.

Additionally, Washoe Legal Services advised that they have one grant which is currently active from July 1, 2017 through June 20, 2019 that can assist with some of the costs for the adult guardianship cases only. James Conway, Director of Washoe Legal Services, further advised that he has applied for a second grant for child advocacy in 432B and Termination of Rights cases. He is awaiting notification. If awarded, both grants would offset some of the costs for the appointed attorneys. Mr. Conway would only charge Carson City for the costs that were not covered.

Agenda Action: Formal Action/Motion

Time Requested: 5 minutes

Proposed Motion

I move to approve Contract No. 1718-090; Legal Services with Washoe Legal Services for a not to exceed annual amount of \$105,000 through September 30, 2020 to be funded from the Courts Department in the General Fund.

Board's Strategic Goal

Efficient Government

Previous Action

Background/Issues & Analysis

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 (1) (b)

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: 101-4700-412.08-06

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: If approved, \$105,000 will be tranfered from the General Fund Contingency Account during the January 18 augmentation process. Approved by IFC 9/27/17.

CONTINGENCY

Beginning Balance 7/1/17 \$500,000.00

Approved Uses:

-Voting Equipment <\$85,323.00>

Current Balance: \$414,677.00

Alternatives

Not award contract and provide other direction.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

INDEPENDENT CONTRACTOR AGREEMENT

Contract No.1718-090

Title: Legal Services

THIS CONTRACT is made and entered into this _____ day of _____, 2017, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as "CITY", and Washoe Legal Services, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the Purchasing and Contracts Administrator for **CITY** is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as "NRS") 332 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, CONTRACTOR'S compensation under this agreement (does ___) (does not ___X___) utilize in whole or in part money derived from one or more federal grant funding source(s); and

WHEREAS, it is deemed necessary that the services of **CONTRACTOR** for **CONTRACT No.1718-090** (hereinafter referred to as "Contract") are both necessary and in the best interest of **CITY**; and

NOW, THEREFORE, in consideration of the aforesaid premises, and the following terms, conditions and other valuable consideration, the parties mutually agree as follows:

1. REQUIRED APPROVAL:

This Contract shall not become effective until signed by all parties and insurance certificates are received.

2. SCOPE OF WORK (Incorporated Contract Documents):

2.1 **CONTRACTOR** shall provide and perform the following services set forth in **Exhibit A**, which shall all be attached hereto and incorporated herein by reference for and on behalf of **CITY** and hereinafter referred to as the "SERVICES".

2.2 **CONTRACTOR** represents that it is duly licensed by **CITY** for the purposes of performing the SERVICES.

2.3 **CONTRACTOR** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the SERVICES.

2.4 **CONTRACTOR** represents that it and/or the persons it may employ possess all skills and training necessary to perform the SERVICES described herein and required hereunder. **CONTRACTOR** shall perform the SERVICES faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **CONTRACTOR** shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by **CONTRACTOR** to **CITY**.

For P&C Use Only
CCBL expires _____
NVCL expires <u> N/A </u>
GL expires _____
AL expires _____
WC expires _____

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2.5 **CONTRACTOR** represents that neither the execution of this Contract nor the rendering of services by **CONTRACTOR** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONTRACTOR** is a party or by which **CONTRACTOR** is bound, or which would preclude **CONTRACTOR** from performing the SERVICES required of **CONTRACTOR** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such SERVICES.

2.6 Before commencing with the performance of any SERVICES under this Contract, **CONTRACTOR** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CONTRACTOR** shall give all notice and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this Contract. If **CONTRACTOR** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

2.7 It is expressly understood and agreed that all SERVICES done by **CONTRACTOR** shall be subject to inspection and acceptance by **CITY** and approval of SERVICES shall not forfeit the right of **CITY** to require correction, and nothing contained herein shall relieve **CONTRACTOR** of the responsibility of the SERVICES required under the terms of this Contract until all SERVICES have been completed and accepted by **CITY**.

3. **CONTRACT TERM:**

3.1 This Contract shall be effective from October 5, 2017 to September 30, 2020, unless sooner terminated by either party as specified in **Section 7** (CONTRACT TERMINATION).

4. **NOTICE:**

4.1 Except any applicable bid and award process where notices may be limited to postings by **CITY** on its Finance Department/Bid Opportunities website (www.carson.org), all notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail, by regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

4.2 Notice to **CONTRACTOR** shall be addressed to:

James P. Conway, Executive Director
Washoe Legal Services
299 S. Arlington Ave.
Reno, NV 329-2727
jconway@washoelegalservices.org

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4.3 Notice to **CITY** shall be addressed to:

Carson City Purchasing and Contracts
Laura Rader, Purchasing & Contracts Administrator
201 North Carson Street, Suite 2
Carson City, NV 89701
775-283-7362 / FAX 775-887-2286
Lrader@carson.org

5. COMPENSATION:

5.1 The parties agree that **CONTRACTOR** will provide the SERVICES specified in **Section 2** (SCOPE OF WORK) and **CITY** agrees to pay **CONTRACTOR** the Contract's compensation based upon Time and Materials and the Scope of Work Fee Schedule for a not to exceed annual maximum amount of One Hundred Five Thousand Dollars and 00/100 (\$105,000.00), and hereinafter referred to as "Contract Sum".

5.2 Contract Sum represents full and adequate compensation for the completed SERVICES, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the SERVICES.

5.3 **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.

6. TIMELINESS OF BILLING SUBMISSION:

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CITY** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **CONTRACTOR** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONTRACTOR**.

7. CONTRACT TERMINATION:

7.1 Termination Without Cause:

7.1.1 Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

7.1.2 **CITY** reserves the right to terminate this Contract for convenience whenever it considers termination, in its sole and unfettered discretion, to be in the public interest. In the event that the Contract is terminated in this manner, payment will be made for SERVICES actually completed. If termination occurs under this provision, in no event shall **CONTRACTOR** be entitled to anticipated profits on items of SERVICES not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. **CONTRACTOR** shall require that all subcontracts which it enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subcontractor to make claims against **CONTRACTOR** for damages due to breach of contract, lost profit on items

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of SERVICES not performed, or unabsorbed overhead, in the event of a convenience termination.

7.2 Termination for Nonappropriation:

7.2.1 All payments and SERVICES provided under this Contract are contingent upon the availability of the necessary public funding, which may include various internal and external sources. In the event that Carson City does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Contract, the Contract shall automatically terminate upon **CITY'S** notice to **CONTRACTOR** of such nonappropriation, and no claim or cause of action may be based upon any such nonappropriation.

7.3 Cause Termination for Default or Breach:

7.3.1 A default or breach may be declared with or without termination.

7.3.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

7.3.2.1 If **CONTRACTOR** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or any SERVICES called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

7.3.2.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or SERVICES or any services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

7.3.2.3 If **CONTRACTOR** becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

7.3.2.4 If **CITY** materially breaches any material duty under this Contract and any such breach impairs **CONTRACTOR'S** ability to perform; or

7.3.2.5 If it is found by **CITY** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONTRACTOR**, or any agent or representative of **CONTRACTOR**, to any officer or employee of **CITY** with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

7.3.2.6 If it is found by **CITY** that **CONTRACTOR** has failed to disclose any material conflict of interest relative to the performance of this Contract.

7.4 Time to Correct (Declared Default or Breach):

7.4.1 Termination upon a declared default or breach may be exercised only after providing seven (7) calendar days written notice of default or breach, and the subsequent failure of the defaulting or breaching party, within five (5) calendar days of providing that default or breach notice, to provide evidence satisfactory to the aggrieved party demonstrating that the declared default or breach has been corrected. Time to correct shall run concurrently with any notice of default or breach and such time to correct is not subject to any stay with respect to the

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nonexistence of any Notice of Termination. Untimely correction shall not void the right to termination otherwise properly noticed unless waiver of the noticed default or breach is expressly provided in writing by the aggrieved party. There shall be no time to correct with respect to any notice of termination without cause or termination for nonappropriation.

7.5 Winding Up Affairs Upon Termination:

7.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this **Subsection 7.5** survive termination:

7.5.1.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination; and

7.5.1.2 **CONTRACTOR** shall satisfactorily complete SERVICES in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **CITY**; and

7.5.1.3 **CONTRACTOR** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by **CITY**; and

7.5.1.4 **CONTRACTOR** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with "**Section 19**".

7.6 Notice of Termination:

7.6.1 Unless otherwise specified in this Contract, termination shall not be effective until seven (7) calendar days after a party has provided written notice of default or breach, or notice of without cause termination. Notice of Termination may be given at the time of notice of default or breach, or notice of without cause termination. Notice of Termination may be provided separately at any time after the running of the 7-day notice period, and such termination shall be effective on the date the Notice of Termination is provided to the party unless a specific effective date is otherwise set forth therein. Any delay in providing a Notice of Termination after the 7-day notice period has run without a timely correction by the defaulting or breaching party shall not constitute any waiver of the right to terminate under the existing notice(s).

8. **REMEDIES:**

Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorney's fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. **CITY** may set off consideration against any unpaid obligation of **CONTRACTOR** to **CITY**.

9. **LIMITED LIABILITY:**

CITY will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Contract. Damages for any **CITY** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONTRACTOR**, for the fiscal year budget in existence at the time of the breach. **CONTRACTOR'S** tort liability shall not be limited.

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10. FORCE MAJEURE:

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

11. INDEMNIFICATION:

11.1 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this Section.

11.2 Except as otherwise provided in **Subsection 11.4** below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

11.2.1 a written request for a legal defense for such pending claim(s) or cause(s) of action; and

11.2.2 a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

11.3 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

11.4 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

12. INDEPENDENT CONTRACTOR:

12.1 **CONTRACTOR**, as an independent contractor, is a natural person, firm or corporation who agrees to perform SERVICES for a fixed price according to his or its own methods and without subjection to the supervision or control of the **CITY**, except as to the results of the SERVICES, and not as to the means by which the SERVICES are accomplished.

12.2 It is mutually agreed that **CONTRACTOR** is associated with **CITY** only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted SERVICES pursuant to this Contract. **CONTRACTOR** is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract.

12.3 Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any

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liability for **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONTRACTOR** or any other party.

12.4 **CONTRACTOR**, in addition to **Section 11** (INDEMNIFICATION), shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **CONTRACTOR'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

12.5 Neither **CONTRACTOR** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **CITY**.

13. **INSURANCE REQUIREMENTS (GENERAL):**

13.1 NOTICE: The following general insurance requirements shall apply unless these general requirements are altered by any specific requirements set forth in CITY'S solicitation for bid document, the adopted bid or other document incorporated into this Contract by the parties.

13.2 **CONTRACTOR**, as an independent contractor and not an employee of **CITY**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. **CITY** shall have no liability except as specifically provided in this Contract.

13.3 **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has provided the required evidence of insurance to **CITY** Purchasing and Contracts, and (2) **CITY** has approved the insurance policies provided by **CONTRACTOR**.

13.4 Prior approval of the insurance policies by **CITY** shall be a condition precedent to any payment of consideration under this Contract and **CITY'S** approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of **CITY** to timely approve shall not constitute a waiver of the condition.

13.5 *Insurance Coverage (13.6 through 13.23):*

13.6 **CONTRACTOR** shall, at **CONTRACTOR'S** sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by **CITY**, the required insurance shall be in effect prior to the commencement of work by **CONTRACTOR** and shall continue in force as appropriate until the later of:

13.6.1 Final acceptance by **CITY** of the completion of this Contract; or

13.6.2 Such time as the insurance is no longer required by **CITY** under the terms of this Contract.

13.6.3 Any insurance or self-insurance available to **CITY** under its coverage(s) shall be in excess of and non-contributing with any insurance required from **CONTRACTOR**. **CONTRACTOR'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **CONTRACTOR** shall provide **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONTRACTOR** has knowledge of any such failure, **CONTRACTOR** shall immediately notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.7 *General Insurance Requirements (13.8 through 13.23):*

13.8 **Certificate Holder:** Each certificate shall list Carson City c/o Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 2, Carson City, NV 89701 as a certificate holder.

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13.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONTRACTOR**, The City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

13.10 **Waiver of Subrogation:** Each liability insurance policy, except for professional liability, shall provide for a waiver of subrogation in favor of City.

13.11 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

13.12 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONTRACTOR** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **CONTRACTOR** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by **CITY**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days' notice for non-payment of premium, premium, **CONTRACTOR** or its insurers must provide thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts if any policy will be canceled, non-renewed or if required coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by mail to Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 2, Carson City, NV 89701. When available, each insurance policy shall be endorsed to provide thirty (30) days' notice of cancellation, except for ten (10) days' notice for non-payment of premium, to City.

13.14 **Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers under federal and Nevada law and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

13.15 **Evidence of Insurance:** Prior to commencement of work, **CONTRACTOR** must provide the following documents to Carson City Purchasing and Contracts, 201 North Carson Street, Suite 2, Carson City, NV 89701:

13.16 **Certificate of Insurance:** **CONTRACTOR** shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing and Contracts to evidence the insurance policies and coverages required of **CONTRACTOR**.

13.17 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing and Contracts to evidence the endorsement of **CITY** as an additional insured per **Subsection 13.9** (Additional Insured).

13.18 **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess insurance policy may be required.

13.19 **Review and Approval:** Documents specified above must be submitted for review and approval by **CITY** Purchasing and Contracts prior to the commencement of work by **CONTRACTOR**. Neither approval by **CITY** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **CONTRACTOR** or its sub-contractors, employees or agents to **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to **CITY** under this Contract or otherwise. **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these

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requirements.

13.20 COMMERCIAL GENERAL LIABILITY INSURANCE:

CONTRACTOR shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence.

13.20.1 *Minimum Limits required:*

13.20.2 Two Million Dollars (\$2,000,000.00) - General Aggregate.

13.20.3 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

13.20.4 One Million Dollars (\$1,000,000.00) - Each Occurrence.

13.20.5 CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)].

13.20.6 City and County of Carson City, Nevada, its officers, employees and immune contractors shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or CG 20 26, or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

13.20.7 This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

13.20.8 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

13.20.9 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Contract. Insurer shall endorse CGL policy as required to waive subrogation against City with respect to any loss paid under the policy.

13.21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

13.21.1 *Minimum Limit required:*

13.21.2 Contractor shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage.

13.21.3 Such insurance shall cover liability arising out of owned, hired, and non-owned autos (as applicable). Coverage as required above shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.

13.21.4 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by

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the automobile liability or other liability insurance obtained by **CONTRACTOR** pursuant this Contract.

13.22 PROFESSIONAL LIABILITY INSURANCE

13.22.1 *Minimum Limit required:*

13.22.2 **CONTRACTOR** shall maintain professional liability insurance applying to all activities performed under this Contract with limits not less than One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000) in the aggregate.

13.22.3 Retroactive date: Prior to commencement of the performance of this Contract.

13.22.4 **CONTRACTOR** will maintain professional liability insurance during the term of this Contract and for a period of three (3) years after termination of this Contract unless waived by the City. In the event of non-renewal or other lapse in coverage during the term of this Contract or the three (3) year period described above, **CONTRACTOR** shall purchase Extended Reporting Period coverage for claims arising out of **CONTRACTOR's** negligence acts, errors and omissions committed during the term of the Professional Liability Policy. The Extended Reporting Period shall continue through a minimum of three (3) years after termination date of this Contract.

13.22.5 A certified copy of this policy may be required.

13.23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

13.23.1 **CONTRACTOR** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

13.23.2 **CONTRACTOR** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONTRACTOR** is a sole proprietor; that **CONTRACTOR** will not use the services of any employees in the performance of this Contract; that **CONTRACTOR** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **CONTRACTOR** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

13.23.3 **CONTRACTOR** waives all rights against City and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

14. BUSINESS LICENSE:

14.1 **CONTRACTOR** shall not commence work before **CONTRACTOR** has provided a copy of his Carson City business license to Carson City Purchasing and Contracts.

14.2 The Carson City business license shall continue in force until the later of: (1) final acceptance by **CITY** of the completion of this Contract; or (2) such time as the Carson City business license is no longer required by **CITY** under the terms of this Contract.

15. COMPLIANCE WITH LEGAL OBLIGATIONS:

CONTRACTOR shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation

INDEPENDENT CONTRACTOR AGREEMENT

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Title: Legal Services

to be held by **CONTRACTOR** to provide the goods or SERVICES or any services of this Contract. **CONTRACTOR** will be responsible to pay all government obligations, including, but not limited to, all taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court. Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **CITY** may set-off against consideration due any delinquent government obligation.

16. WAIVER OF BREACH:

Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

17. SEVERABILITY:

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

18. ASSIGNMENT / DELEGATION:

To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONTRACTOR** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**. The parties do not intend to benefit any third party beneficiary regarding their respective performance under this Contract.

19. CITY OWNERSHIP OF PROPRIETARY INFORMATION:

Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by **CONTRACTOR** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of **CITY** and all such materials shall be delivered into **CITY** possession by **CONTRACTOR** upon completion, termination, or cancellation of this Contract. **CONTRACTOR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONTRACTOR'S** obligations under this Contract without the prior written consent of **CITY**. Notwithstanding the foregoing, **CITY** shall have no proprietary interest in any materials licensed for use by **CITY** that are subject to patent, trademark or copyright protection.

20. PUBLIC RECORDS:

Pursuant to NRS 239.010, information or documents received from **CONTRACTOR** may be open to public inspection and copying. **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONTRACTOR** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONTRACTOR** thereby agrees to indemnify and defend **CITY** for honoring such a designation. The failure to so label any document that is released by **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

21. CONFIDENTIALITY:

CONTRACTOR shall keep confidential all information, in whatever form, produced, prepared, observed or received by **CONTRACTOR** to the extent that such information is confidential by law or otherwise required by this Contract.

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22. FEDERAL FUNDING:

22.1 *In the event federal grant funds are used for payment of all or part of this Contract:*

22.1.1 **CONTRACTOR** certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

22.1.2 **CONTRACTOR** and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

22.1.3 **CONTRACTOR** and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and Executive Order 11478 (July 21, 2014) and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, sexual orientation, gender identity, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

22.1.4 If and when applicable to the particular federal funding and the Scope of Work under this Contract, **CONTRACTOR** and its subcontractors shall comply with: American Iron and Steel (AIS) provisions of P.L. 113- 76, Consolidated Appropriations Act, 2014, Section 1605 – Buy American (100% Domestic Content of iron, steel and manufactured goods); Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America, 23 C.F.R. §635.410 (100% Domestic Content of steel, iron and manufactured products); Federal Transit Administration (FTA) 49 U.S.C. § 5323(j), 49 C.F.R. Part 661 – Buy America Requirements (See 60% Domestic Content for buses and other Rolling Stock).

23. LOBBYING:

23.1 The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

23.1.1 Any federal, state, county or local agency, legislature, commission, council or board;

23.1.2 Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

23.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

24. GENERAL WARRANTY:

CONTRACTOR warrants that it will perform all SERVICES required hereunder in accordance with the prevailing standard of care by exercising the skill and care normally required of individuals performing the same or similar SERVICES, under the same or similar circumstances, in the State of Nevada.

INDEPENDENT CONTRACTOR AGREEMENT

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25. PROPER AUTHORITY:

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **CONTRACTOR** acknowledges that this Contract is effective only for the period of time specified in this Contract. Any SERVICES performed by **CONTRACTOR** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **CONTRACTOR**.

26. GOVERNING LAW / JURISDICTION:

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. **CONTRACTOR** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

27. ENTIRE CONTRACT AND MODIFICATION:

This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. Conflicts in language between this Contract and any other agreement between **CITY** and **CONTRACTOR** on this same matter shall be construed consistent with the terms of this Contract. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

INDEPENDENT CONTRACTOR AGREEMENT

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28. ACKNOWLEDGMENT AND EXECUTION:

This Contract may be executed in counterparts. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

CITY

Acting Chief Financial Officer
Attn: Laura Rader, Purchasing & Contracts Administrator
Purchasing and Contracts
201 North Carson Street, Suite 2
Carson City, Nevada 89701
Telephone: 775-283-7362
Fax: 775-887-2286
Lrader@carson.org

CITY'S LEGAL COUNSEL

Carson City District Attorney

I have reviewed this Contract and approve as to its legal form.

By: _____
Nancy Paulson, Acting Chief Financial Officer

By: _____
Deputy District Attorney

Dated _____

Dated _____

CONTRACTOR will not be given authorization to begin work until this Contract has been signed by Purchasing and Contracts

BY: Laura Rader, CPPB
Purchasing & Contracts Administrator

Account # 101-4700-412.08-06

By: _____

Dated _____

INDEPENDENT CONTRACTOR AGREEMENT

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Undersigned deposes and says under penalty of perjury: That he/she is **CONTRACTOR** or authorized agent of **CONTRACTOR**; that he/she has read the foregoing Contract; and that he/she understands the terms, conditions and requirements thereof.

CONTRACTOR

BY: James P. Conway

TITLE: Executive Director

FIRM: Washoe Legal Services

CARSON CITY BUSINESS LICENSE #: 17-

Address: 299 S. Arlington Ave.

City: Reno **State:** NV **Zip Code:** 89501

Telephone: 775-329-2727

E-mail Address: jconway@washoelegalservices.org

(Signature of Contractor)

DATED _____

STATE OF _____)

)ss

County of _____)

Signed and sworn (or affirmed before me on this _____ day of _____, 20__.

(Signature of Notary)

(Notary Stamp)

INDEPENDENT CONTRACTOR AGREEMENT

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CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of October 5, 2017 approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 1718-090**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this 5th day of October, 2017.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this 5th day of October, 2017.

INDEPENDENT CONTRACTOR AGREEMENT

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Title: Legal Services

SAMPLE INVOICE

Invoice Number: _____

Invoice Date: _____

Invoice Period: _____

Invoice shall be submitted to :
Carson City District Court
Attn: Wendy Yang
885 East Musser St
Carson City NV 89701

Line Item #	Description	Unit Cost	Units Completed	Total \$\$
Total for this invoice				

Original Contract Sum	\$ _____
Less amount previously billed	\$ _____
= contract sum prior to this invoice	\$ _____
Less this invoice	\$ _____
=Dollars remaining on Contract	\$ _____

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES



A 501(c)(3) non-profit organization.

Maxine Court Administrator
First Judicial District Court
Carson City Justice/Municipal Court
885 E. Musser Street
Carson City, NV 89701

Re: Proposal for child advocacy and adult guardianship representation

Dear Max:

As we have discussed, please accept this proposal to represent children and adult wards/protected persons in the First Judicial District Court. As discussed in greater detail below, I propose entering into a \$105,000 annual contract (paid quarterly) effective October 5, 2017, for Washoe Legal Services (“WLS”) to perform adult guardianship and child advocacy work in the First Judicial District Court. The scope of work is more precisely spelled out below. Sorry for the length of the proposal, but I wanted to let you know how I’ve calculated the total figure.

Ward Representation

Washoe Legal Services has been representing adult wards in Washoe County for over 4 years. During that time, we have represented close to 100% of all seniors (60 and over) who are the subject of an adult guardianship proceeding in the Second Judicial District Court. Now that there is additional funding for ward representation through SB 433, we anticipate being appointed on 100% of all adult guardianship petitions filed in Washoe County and, so long as we do not have a conflict of interest, we will represent 100% of all adult wards from the time the petition is filed until we are relieved by court order.

I have been wanting to start a similar program in the First Judicial District Court and other surrounding judicial districts. Therefore, and as I outlined to you previously, Washoe Legal Services obtained grant funding from the Nevada Attorney General’s Home Again program with the express purpose of, among other things, representing adult wards in rural Nevada Counties, and I am glad that we are now able to accept appointments from the First Judicial District Court. However, as this grant funding is only temporary (and is not sufficient to represent 100% of all adult wards) I wanted to submit a proposal for providing this service long-term.

When WLS partners with a county to provide any type of service, we generally enter into a contract to accept direct court appointments on a particular type of case and generally place a limit on how many **open** cases we will maintain under the contract. I always draft these contracts with an option for either party to terminate the agreement on 30-days written notice, because I don’t want either party to be obligated in the event of unforeseen financial circumstances.

Although Carson has over 70 guardianship cases filed annually, it is important to keep in mind that SB 433 only requires the appointment of counsel when the petition is initially filed. The attorney can then seek to be relieved by court order at a later date, and the court can grant the withdrawal if it determines that counsel is no longer necessary. In our experience, most of these cases proceed through the system with few issues requiring an attorney after the court rules on the petition. Therefore, although 70 cases are filed annually, I wouldn't think that an attorney would need to keep an open case load of 70 cases, as we would routinely seek leave to withdraw when there no longer appears to be a need for counsel. So, I think a reasonable amount of open cases (to start with) is 50 open cases.

We have determined that our adult guardianship attorneys should limit their caseloads to about 200 open cases. Thus, if we go with a contract that requires WLS to keep an open caseload of 50 cases, that is 25% of a full-time attorney position. It costs WLS about \$110,000 per year to staff a full-time attorney position, when one considers salary, benefits, mileage (which is significant in adult guardianship work), overhead, paralegal support, and administrative costs.

Therefore, I propose entering into an agreement for \$25,000, whereby WLS will accept appointments from the court on adult guardianship cases and maintain an active case-load of 50 open cases. We can always adjust the number of open cases either up or down, and adjust the total amount of the contract accordingly.

If we entered into an agreement such as the one above, it doesn't mean that we wouldn't accept an appointment if we already had 50 open cases from the IJDC. It just means that we wouldn't be contractually obligated to do so. However, WLS has always been fairly flexible under these agreements and we try our best to help the court out whenever possible. Also, and as you have seen, we have been successful in finding alternate funding sources (grants, donations, etc.) to fund our programs, and we would continue to look for such sources to bridge any gaps in funding. Our goal is to represent 100% of the people who need representation, and we will continue to seek grant funding to fill any gaps.

Child Advocacy

WLS has been representing children in 432b cases for more than 10 years, and we now have seven full-time child advocacy attorneys (and one part-time contract attorney) taking cases from five different counties: Washoe, Lyon, Humboldt, Elko, and Pershing.

Child Advocacy (432b and TPR cases) is a little different, because the cases are much more labor intensive than adult guardianship cases. They require hearings every six months and there are frequent meetings between hearings that the attorneys must attend. Also, each case usually includes multiple clients for WLS to represent, and the new legislation requires an attorney for the entirety of the case. So, we wouldn't be able to withdraw like we could in an adult guardianship case.

Our Child Advocacy attorneys keep an open, active caseload of about 90 **clients**, and fewer in rural counties, as they are often driving all over the place, as the children's residential placement

dictates. Our attorney in Lyon, for instance, is required to be in Yerington in the morning, Fernley in the afternoon, and then he's in Reno the next day.

As one 432b "case" will result in multiple 432b clients for WLS, it is difficult to estimate the workload in Carson at this juncture. But our best estimate is that it would be about 75% of a full-time attorney position, which equates to about 70 open *clients*, not 70 total open cases. So, using the same basic calculation as above (and factoring a small "discount" to account for other funding sources) we think that we can do this work at a total annual cost of \$80,000. Again, we can adjust the total number of open cases (and the contract amount) up or down if the court/city wishes to do so. Also, like I said above, just because we place a cap on the cases does not mean that we would not accept an appointment if we are at that cap. We will continue to broaden the funding base of this program so the city is not on the hook for 100% of the cases.

As we discussed earlier, WLS just applied for grant funding (through the Victims of Crime Act (VOCA)) to fully fund this work in Carson, but if that grant is approved, it will only last for 10 months. I'll let you know ASAP if it is approved.

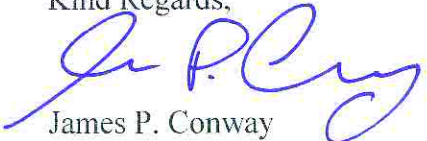
Conclusion

If the VOCA grant is approved, we won't be in a huge hurry, as I think we can shoulder the burden for these cases with funding from VOCA and Home Again. But, I would like to get something in place by early 2018, because what I don't want to do is hire staff under these grants and then have to lay them off because there is no funding in place when the grant ends.

If you want to go ahead with either, or both, of these proposals, please let me know and I will draft a proposed contract. We can either do one contract for both areas or two separate contracts for each. One other thing, when I draft agreements of this type, I put in a provision stating **that WLS is not responsible for hiring conflict counsel** if we cannot accept a case due to a conflict of interest. So please keep that in mind for budgeting purposes.

If you want to see copies of similar contracts that I have in place with other counties just let me know. And, of course, if you, the judges, and/or any members of the city administration want to meet to discuss this proposal in more detail, I am happy to do so.

Kind Regards,



James P. Conway
Executive Director
Washoe Legal Services

Staff Summary – Washoe Legal Services

During the 2017 Legislative session, the Legislature passed SB 433 and SB 305 unfunded mandates. SB 433, effective July 1, 2017, amended NRS 159.0485. The law requires the Courts to appoint attorneys for protected persons in adult guardianship cases. SB 305, effective October 1, 2017, amended NRS 432B.420 and NRS 128.100. The law requires the Courts to appoint attorneys for children in abuse and neglect court cases as well as termination of parental rights court cases.

In an effort to reduce the fiscal impact to Carson City, the Courts held discussions with the State Public Defender, Nevada Legal Services, and Washoe Legal Services to determine if their agencies would be able to assist with the mandated attorney appointments to represent children and protected persons in adult guardianship cases in Carson City. The State Public Defender advised that they are working on a child advocacy program however, it is not operational yet. The State Public Defender advised that they can assist with the children in 432B cases. Nevada Legal Services advised that the agency could assist and provided a quote of \$174,000 to compensate the attorney services. Washoe Legal Services advised that the agency could assist with all of the types of cases and provided a quote of \$105,000 to compensate the attorney services.

Additionally, Washoe Legal Services advised that they have one grant which is currently active from July 1, 2017 through June 20, 2019 that can assist with some of the costs for the adult guardianship cases only. James Conway, Director of Washoe Legal Services, further advised that he has applied for a second grant for child advocacy in 432B and Termination of Rights cases. He is awaiting notification. If awarded, both grants would offset some of the costs for the appointed attorneys. Mr. Conway would only charge Carson City for the costs that were not covered.

Information is as follows:

SB 433

Sec. 23. NRS 159.0485 is hereby amended to read as follows:

1. *Upon the filing of a petition* for the appointment of a guardian for a proposed *protected person who is an adult*, the court shall *appoint an attorney for* the proposed *protected person unless* the proposed *protected person* wishes to *retain or has already retained an attorney of his or her own choice*.

2. *The* court *shall*:

(a) If the proposed protected person resides in a county that has a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons who are adults and the program is able to accept the case, appoint an attorney who works *the organization operating the program to represent the proposed protected person*. *After such an appointment, if it is ascertained that the proposed protected person wishes to have another attorney represent him or her, the court shall appoint that* attorney to represent

the **protected person**. An attorney **appointed pursuant to this subsection** shall represent the proposed **protected person** until relieved of the duty by court order.

(b) If the proposed protected person resides in a county that does not have a program for legal services for the indigent which provides legal services for protected persons and proposed protected persons who are adults, or if such a program exists but the program is unable to accept the case, the court shall determine whether the proposed protected person has the ability to pay the reasonable compensation and of an attorney from his or her estate. If the proposed protected person:

(1) Has the ability to pay the reasonable compensation and expenses of an attorney, the court shall order an attorney to represent the proposed protected person and require such compensation and expenses of the attorney to be paid from the estate of the proposed protected person.

(2) Does not have the ability to pay the reasonable compensation and expenses of an attorney, the court may use the money retained pursuant to subparagraph (2) of paragraph (a) of subsection 3 of NRS 247.305 to pay for an attorney to represent the proposed protected person.

3. If an attorney is appointed pursuant to paragraph (a) of subsection 2 and the proposed protected person has the ability to pay the compensation and expenses of an attorney, the organization operating the program for legal services may request that the court appoint a private attorney to represent the proposed protected person, to be paid by the proposed protected person.

4. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the **protected person** or proposed **protected person** all or part of the expenses associated with the appointment of the attorney.

SB 305

Section 1. NRS 432B.420 is hereby amended to read as follows:

1. A parent or other person responsible for the welfare of a child who is alleged to have abused or neglected the child may be represented by an attorney at all stages of any proceedings under NRS 432B.410 to 432B.590, inclusive. Except as otherwise provided in subsection **3**, if the person is indigent, the court may appoint an attorney to represent the person.

2. A child who is alleged to have been abused or neglected shall be deemed to be a party to any proceedings under NRS 432B.410 to 432B.590, inclusive. The court **shall** appoint an attorney to represent the child. The child **must** be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive. **The attorney representing the child** has the same authority and rights as an attorney representing **any other** party to the proceedings.

3. If the court determines that the parent of an Indian child for whom protective custody is sought is indigent, the court:

(a) Shall appoint an attorney to represent the parent; **and**

(b) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney, as provided in the Indian Child Welfare Act.

4. Each attorney, other than a public defender *or an attorney compensated through a program for legal aid described in NRS 19.031 and 247.305*, if appointed under the provisions of subsection 1 *or 2*, is entitled to the same compensation and payment for expenses from the county as provided in NRS 7.125 and 7.135 for an attorney appointed to represent a person charged with a crime.

Sec. 2. NRS 432B.500 is hereby amended to read as follows:

1. After a petition is filed that a child is in need of protection pursuant to NRS 432B.490, the court shall appoint a guardian ad litem for the child. The person so appointed:

- (a) Must meet the requirements of NRS 432B.505 or, if such a person is not available, a representative of an agency which provides child welfare services, a juvenile probation officer, an officer of the court or another volunteer.
- (b) Must not be a parent or other person responsible for the child's welfare
- (c) Must not be an attorney appointed to represent the child pursuant to NRS 432B.420.***

2. A guardian ad litem appointed pursuant to this section shall:

- (a) Represent and protect the best interests of the child until excused by the court;
- (b) Thoroughly research and ascertain the relevant facts of each case for which the guardian ad litem is appointed, and ensure that the court receives an independent, objective account of those facts;
- (c) Meet with the child wherever the child is placed as often as is necessary to determine that the child is safe and to ascertain the best interests of the child;
- (d) Explain to the child the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in the case;
- (e) Participate in the development and negotiation of any plans for and orders regarding the child, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner;
- (f) Appear at all proceedings regarding the child;
- (g) Inform the court of the desires of the child, but exercise independent judgment regarding the best interests of the child;
- (h) Present recommendations to the court and provide reasons in support of those recommendations;
- (i) Request the court to enter orders that are clear, specific and, when appropriate, include periods for compliance;
- (j) Review the progress of each case for which the guardian ad litem is appointed, and advocate for the expedient completion of the case; and
- (k) Perform such other duties as the court orders.

Sec. 3. NRS 128.023 is hereby amended to read as follows:

1. If proceedings pursuant to this chapter involve the termination of parental rights of the parent of an Indian child, the court shall:

- (a) Cause the Indian child's tribe to be notified in writing in the manner provided in the Indian Child Welfare Act. If the Indian child is eligible for membership in more than one tribe, each tribe must be notified.

(b) Transfer the proceedings to the Indian child's tribe in accordance with the Indian Child Welfare Act.

(c) If a tribe declines or is unable to exercise jurisdiction, exercise its jurisdiction as provided in the Indian Child Welfare Act.

2. If the court determines that the parent of an Indian child for whom termination of parental rights is sought is indigent, the court:

(a) Shall appoint an attorney to represent the parent; **and**

(b) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney, as provided in the Indian Child Welfare Act.

Sec. 4. NRS 128.100 is hereby amended to read as follows:

1. *Except as otherwise provided in subsection 2, in* any proceeding for terminating parental rights, or any rehearing or appeal thereon, or any proceeding for restoring parental rights, the court may appoint an attorney to represent the child as his or her counsel . The child may be represented by an attorney at all stages of any proceedings for terminating parental rights. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

2. *In any proceeding for the termination of parental rights to a child who has been placed outside of his or her home pursuant to chapter 432B of NRS, or any rehearing or appeal thereon, or any proceeding for restoring parental rights to such a child, the court shall appoint an attorney to represent the child as his or her counsel. The child shall be deemed to be a party to any proceeding described in this section and must be represented by an attorney at all stages of such proceedings. The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings.*

3. If the parent or parents of the child desire to be represented by counsel, but are indigent, the court may appoint an attorney for them.

4. Each attorney appointed under the provisions of this section is entitled to the same compensation and expenses from the county as provided in NRS 7.125 and 7.135 for attorneys appointed to represent persons charged with crimes.