



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** May 4, 2023

Staff Contact: Carol Akers, Purchasing and Contracts Administrator and Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed amendment, effective April 15, 2023, to Conflict Counsel Attorney Services Contract No. 20300005-C, with Daniel J. Spence, for conflict counsel services effective June 2, 2022 through June 30, 2023, increasing the amount of the contract by \$2,500 for April 2023 and \$5,000 per month for May 1, 2023 through June 30, 2023 to accept indigent defense cases normally handled by the Nevada State Public Defender's Office ("PD"), for a new total contract amount not to exceed \$200,000.08. (Carol Akers, cakers@carson.org and Nancy Paulson, npaulson@carson.org)

Staff Summary: Carson City contracts with the PD to provide representation and services to an indigent person; however, on April 3, 2023, the City received a letter from the PD stating that due to severe understaffing, the PD would no longer be able to accept new cases for Category B through E felonies and gross misdemeanors and will also be seeking to withdraw from some existing felony cases. To ensure indigent defendants receive timely and effective assistance of counsel, Mr. Spence has agreed to take certain cases from the PD to provide legal representation.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the amendment as presented.

Board's Strategic Goal

Efficient Government

Previous Action

June 2, 2022 (Item 13A) - The Board of Supervisors approved Contract No. 20300005-C, with Daniel J. Spence, effective June 2, 2022 through June 30, 2023, for a total contract amount of \$187,500.08.

Background/Issues & Analysis

Pursuant to Carson City's Indigent Defense Services Plan ("Plan"), unless a court is aware of a conflict for the PD or any other reason specified in the Plan as to why the PD should not be appointed as counsel, the court must first appoint the PD to represent an eligible indigent person. Carson City has contracted with the PD to provide representation and services to indigent persons in Carson City for over 25 years. In addition, Carson City has three conflict counsel contracts to represent indigent persons when the PD has a conflict.

The City was notified on March 31, 2023, that effective immediately the PD is unable to accept any new cases and would also be moving to withdraw from existing felony cases. Due to severe understaffing, they would be unable to fulfill their obligations to additional clients which they believe creates a conflict that prevents them from

accepting additional cases. The City's indigent defense coordinator has attempted to assign cases referred from the PD to private attorneys; however, it has been difficult to find attorneys for all the cases.

To ensure indigent defendants receive timely and effective assistance of counsel, the City's three conflict counsel attorneys have indicated that they would be willing to take on the cases from the PD on a short-term basis for an additional cost of \$12,500 each through June 30, 2023.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115; Board of Indigent Defense Services regulations; Carson City Indigent Defense Plan

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: General Fund Conflict Counsel Account 1010610-500361

Is it currently budgeted? No

Explanation of Fiscal Impact: The additional \$12,500 for the contract with Mr. Spence will need to be added to the conflict counsel budget during the June 2023 budget augmentations. In addition, the City has received confirmation from the State that the City will be reimbursed for additional costs incurred due to the inability of the PD to perform indigent defense services to Carson City.

Alternatives

Do not approve the amendment and/or provide alternative direction to staff.

Attachments:

[PD letter 4_3_23.pdf](#)

[20300005-C Amendment 1.pdf](#)

[20300005-C Executed Contract.pdf](#)

Board Action Taken:

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

(Vote Recorded By)



NEVADA STATE PUBLIC DEFENDER

CHRIS ARABIA
STATE PUBLIC DEFENDER
CRARABIA@NSPD.NV.GOV

511 E. ROBINSON ST., STE. 1
CARSON CITY, NV 89701
PH: (775) 684-1080
FAX: (775) 687-4993
PUBLICDEFENDER@NSPD.NV.GOV

April 3, 2023

Nancy Paulson
Carson City Manager
201 N. Carson St., Suite 2
Carson City, NV 89701

Dear Ms. Paulson:

As we discussed on March 31 and effective immediately, this office is unable to accept any new cases of the following types:

- Category B felonies;
- Category C felonies;
- Category D felonies;
- Category E felonies;
- and Gross Misdemeanors.

We will review Category A felony matters on a case-by-case basis to determine how to proceed. We will also be moving to withdraw from some existing felony cases.

These measures are necessary because severe understaffing (aggravated by our inability to offer competitive salaries) leaves us without sufficient personnel to provide effective representation in additional cases. Therefore, we are unable to fulfill our obligations to additional clients and this creates a conflict that prevents us from accepting additional cases.

Our hope is that we will be able to resume our regular intake in 60 days or less, but the length of this pause is presently unknown.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Arabia".

Chris Arabia

cc: Cody Drews

AMENDMENT FOR CONTRACT

Contract No.: 20300005-C
Title: Contract Conflict Counsel, Daniel J. Spence; Attorney at Law
Amendment No.: 1

If Consideration will be amended, please indicate amount: Increase \$12,500.

Reason for amendment: To increase amount of the contract by \$2,500 for April 2023 and \$5,000 per month for May 1, 2023 through June 30, 2023 to accept indigent defense cases normally handled by the Nevada State Public Defender's Office, for a new total contract amount not to exceed \$200,000.08.

It is also agreed, that all unaffected conditions, requirements, and restrictions of Contract No. 20300005-C remain in full force and effect for the duration of the Contract term.

Amendment will become effective when approved by the Carson City Board of Supervisors and executed by the Carson City Mayor.

CONSULTANT

Approved by:

Conflict Counsel:

Name/Title: Daniel J. Spence, Attorney at Law

Signature: _____ Date: _____

CITY

Approved by:

City Department: Executive Office

Name/Title: Nancy Paulson, City Manager

Signature: _____ Date: _____

Carson City Purchasing and Contracts:

Name/Title: Carol Akers, Purchasing and Contracts Administrator

Signature: _____ Date: _____

Approved as to form by:

District Attorney's Office:

Name/Title: Todd Reese, Deputy District Attorney

Signature: _____ Date: _____

AMENDMENT FOR CONTRACT

Contract No.: 20300005-C
Title: Contract Conflict Counsel, Daniel J. Spence; Attorney at Law
Amendment No.: 1

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of May 4, 2023, approved the acceptance of the attached Amendment for Contract hereinbefore identified as Amendment No. 1 to CONTRACT No. 20300005-C. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to sign this document and record the signature for the execution of this Amendment for Contract in accordance with the action taken.

CARSON CITY, NEVADA

LORI BAGWELL, MAYOR

DATED this 4th day of May 2023.

ATTEST:

WILLIAM SCOTT HOEN, CLERK RECORDER

DATED this 4th day of May 2023.



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** June 2, 2022

Staff Contact: Carol Akers, Purchasing & Contracts Administrator and Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action regarding Conflict Counsel Attorney Services Contract No. 20300005-C for the provision of conflict counsel services in the First Judicial District Court and the Carson City Justice/Municipal Court from June 2, 2022 through June 30, 2022 in the amount of \$12,500 and \$14,583.34 per month thereafter for Fiscal Year ("FY") 2023, for a total amount of \$187,500.08, to be awarded to one of the following attorneys: Daniel J. Spence, Andrew Coates, Christopher Day, Richard Molezzo, Maria Pence or Paul Yohey. (Carol Akers; CAkers@carson.org and Nancy Paulson, NPaulson@carson.org)

Staff Summary: Carson City previously contracted with John E. Malone to provide conflict counsel services to indigent defendants. Mr. Malone recently resigned, effective May 20, 2022. Carson City advertised the position and received letters of interest and resumes from six applicants. The Board of Supervisors ("Board") may award the contract to any of these applicants who submitted a letter of interest. Staff recommends awarding the contract to Daniel J. Spence.

Agenda Action: Formal Action / Motion **Time Requested:** 15 minutes

Proposed Motion

I move to award the contract as presented to Daniel J. Spence [or another applicant at the discretion of the Board].

Board's Strategic Goal

Efficient Government

Previous Action

On September 16, 2021, the Board approved contract (20300005-B) with John E. Malone.

Background/Issues & Analysis

Carson City contracts with three conflict counsel to provide indigent defense services in the First Judicial District Court and the Carson City Justice/Municipal Court. Mr. Malone, one of the attorneys providing these services, tendered his resignation, effective May 20, 2022. Due to the nature of Mr. Malone's cases and clients, it is imperative to have as little lapse as possible in the representation of his former clients.

Pursuant to the new Indigent Defense Representation Plan, the Board is required to select the conflict counsel. An announcement soliciting letters of interest for the contract was published in the Nevada Appeal and circulated to the Washoe County Bar Association and the First Judicial District Bar Association. Letters of interest and resumes were received from Daniel J. Spence, Andrew Coates, Christopher Day, Richard Molezzo, Maria Pence and Paul Yohey. The judges of the First Judicial District and the Carson City

Justice/Municipal Court recommend Daniel J. Spence to the Board. City staff also recommends Mr. Spence because he was previously awarded a prior conflict counsel contract and provided excellent indigent defense services in the courts.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: General Fund Conflict Council Account / 1010610-500361

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Funds from the General Fund Conflict Council Account 1010610-500361 will be allocated to the new conflict counsel contract. The FY 2022 remaining budget from John E. Malone's contract (20300005-B) is \$12,500 and for FY 2023 there is a total of \$175,000.08 available.

Alternatives

Do not award the contract and/or provide alternative direction to staff.

Attachments:

Resignation John Malone 4-20220001.pdf

Letter to Board of Supervisors Conflict Counsel Recommendation.pdf

All Submissions.pdf

20300005-C Draft Contract.pdf

Board Action Taken:

Motion: Approve/Award 1) SG
2) MW

Aye/Nay

5-0-0

TW

(Vote Recorded By)

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. 20300005-C

Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

THIS CONTRACT is made and entered into this 2nd day of June, 2022 by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as “**CITY**”, and Daniel J. Spence; Attorney at Law, hereinafter referred to as “**CONSULTANT**”.

WITNESSETH:

WHEREAS, the Purchasing and Contracts Manager for **CITY** is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as “NRS”) 332 and 338 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, this Contract (does involve___) (does not involve _X_) a “public work” construction project, which pursuant to NRS 338.010(17) means any project for the new construction, repair or reconstruction of an applicable project financed in whole or in part from public money; and

WHEREAS, CONSULTANT’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 **CONSULTANT** for **CONTRACT No. 20300005-C** (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 and unless approved by the Carson City Board of Supervisors.

2. SCOPE OF WORK (Incorporated Contract Documents):

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

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

For P&C Use Only
CCBL expires 12/31/22
GL expires 6/12/23
Auto expires 6/12/23
WC expires affidavit

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. 20300005-C

Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

2.4 **CONSULTANT** 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. **CONSULTANT** 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. **CONSULTANT** shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by **CONSULTANT** to **CITY**.

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

2.6 Before commencing with the performance of any work under this Contract, **CONSULTANT** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CONSULTANT** 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 **CONSULTANT** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

2.7 Special Terms and Conditions for Engineers, Architects, and Land Surveying/Testing:
(OMITTED)

2.8 CITY Responsibilities:

2.8.1 **CITY** shall make available to **CONSULTANT** all technical data that is in **CITY'S** possession, reasonably required by **CONSULTANT** relating to the SERVICES.

2.8.2 **CITY** shall provide access to and make all provisions for **CONSULTANT** to enter upon public and private lands, to the fullest extent permitted by law, as reasonably required for **CONSULTANT** to perform the SERVICES.

2.8.3 **CITY** shall examine all reports, correspondence, and other documents presented by **CONSULTANT** upon request of **CITY**, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of **CONSULTANT**.

2.8.4 It is expressly understood and agreed that all work done by **CONSULTANT** 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 **CONSULTANT** 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 The term of this Contract begins on June 2, 2022, subject to Carson City Board of Supervisors' approval (anticipated to be June 2, 2022) and ends on June 30, 2023, unless sooner terminated by either party as specified in Section 7 (CONTRACT TERMINATION).

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No. 20300005-C
Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

4. NOTICE:

4.1 Except any applicable bid and award process where notices may be limited to postings by **CITY** on its 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 **CONSULTANT** shall be addressed to:

Daniel J. Spence, Attorney at Law
318 N. Carson Street, Suite 209
Carson City, NV 89701
775-721-9944
danielspencelaw@gmail.com

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

Carson City Purchasing and Contracts Department
Carol Akers, Purchasing and Contracts Administrator
201 North Carson Street, Suite 2
Carson City, NV 89701
775-283-7362 / FAX 775-887-2286
CAkers@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 Scope of Work Fee Schedule for a total not to exceed maximum amount of One Hundred Dollars and 08/100 (\$187,500.08), in the amount of \$12,500 for the month of June 2022, and \$14,583.34 per month from July 1, 2022 through June 30, 2023, 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** has provided a sample invoice and **CONSULTANT** shall submit its request for payment using said sample invoice.

5.4 Payment by **CITY** for the SERVICES rendered by **CONSULTANT** shall be due within thirty (30) calendar days from the date **CITY** acknowledges that the performance meets the requirements of this Contract or from the date the correct, complete, and descriptive invoice is received by **CITY** employee designated on the sample invoice, whichever is the later date.

5.5 **CITY** does not agree to reimburse **CONSULTANT** for expenses unless otherwise specified.

6. TIMELINESS OF BILLING SUBMISSION:

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. 20300005-C

Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

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 **CONSULTANT** 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 **CONSULTANT**.

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 **CONSULTANT** 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. **CONSULTANT** 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 subcontractant to make claims against **CONSULTANT** for damages due to breach of contract, of lost profit on items of SERVICES not performed or of 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 **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** to provide the goods or SERVICES or any services required by this

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. 20300005-C

Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

7.3.2.3 If **CONSULTANT** 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 **CONSULTANT'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 **CONSULTANT**, or any agent or representative of **CONSULTANT**, 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 **CONSULTANT** 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 7 (seven) 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 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** (Winding Up Affairs Upon Termination) 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 **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance **Section 19** (CITY OWNERSHIP OF PROPRIETARY INFORMATION).

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7.5.1.5 **CONTRACTOR** shall provide all court appointment case files to the **CITY** or the new conflict counsel within 7 days of notification to the **CITY** that he or she is terminating the contract or closing practice or within 7 days of notification by the **CITY** that the contract is being terminated.

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 **CONSULTANT** 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 **CONSULTANT**, for the fiscal year budget in existence at the time of the breach. **CONSULTANT'S** tort liability shall not be limited.

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 As required by NRS 338.155, if this Contract involves a "public work" construction project as defined above, **CONSULTANT** shall defend, indemnify and hold harmless the **CITY**, and the employees,

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. 20300005-C

Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorney's fees, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the **CONSULTANT** or the employees or agents of the **CONSULTANT** in the performance of the Contract. 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. However, with respect to any anticipated benefits to **CITY** resulting from the Scope of Work, **CONSULTANT** shall not be responsible or liable to **CITY** for any warranties, guarantees, fitness for a particular purpose or loss of anticipated profits resulting from any termination of this Contract. Additionally, **CONSULTANT** shall not be responsible for acts and decisions of third parties, including governmental agencies, other than **CONSULTANT'S** subcontractors, that impact project completion and/or success.

11.3 Except as otherwise provided in **Subsection 11.5** 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:

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

11.3.2 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.

11.4 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.

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

12.4 **CONSULTANT**, 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, **CONSULTANT'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.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No. 20300005-C
Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

12.5 Neither **CONSULTANT** 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 **CONSULTANT**, 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 **CONSULTANT** shall not commence work before: (1) **CONSULTANT** has provided the required evidence of insurance to **CITY** Purchasing and Contracts, and (2) **CITY** has approved the insurance policies provided by **CONSULTANT**.

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 **CONSULTANT** shall, at **CONSULTANT'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 **CONSULTANT** 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 **CONSULTANT**. **CONSULTANT'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **CONSULTANT** 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 **CONSULTANT** has knowledge of any such failure, **CONSULTANT** 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 liability insurance policy 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.

13.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONSULTANT**, 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 shall provide for a waiver of subrogation as to additional insured, unless:

13.10.1 **CONSULTANT** maintains an additional \$5,000,000.00 umbrella policy in lieu of the

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

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Waiver of Subrogation Clause.

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 **CONSULTANT** 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 **CONSULTANT** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$50,000.00 per occurrence, unless otherwise approved by **CITY**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts, the policy shall not be canceled, non-renewed or 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.

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 acceptable to the State 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, **CONSULTANT** 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:** 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 **CONSULTANT**.

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 **CONSULTANT**. Neither approval by **CITY** nor failure to disapprove the insurance furnished by **CONSULTANT** shall relieve **CONSULTANT** of **CONSULTANT'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 **CONSULTANT** or its subcontractors, 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 requirements.

13.20 COMMERCIAL GENERAL LIABILITY INSURANCE:

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.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

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13.20.5 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

13.21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

13.21.1 *Minimum Limit required:*

13.21.2 One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

13.21.3 Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

13.22 PROFESSIONAL LIABILITY INSURANCE (Architects, Engineers and Land Surveyors)

13.22.1 *Minimum Limit required:*

13.22.2 One Million Dollars (\$1,000,000.00).

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

13.22.4 Discovery period: 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 **CONSULTANT** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of \$500,000.00 each employee per accident for bodily injury by accident or disease.

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

14. BUSINESS LICENSE:

14.1 **CONSULTANT** shall not commence work before **CONSULTANT** 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:

CONSULTANT 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 to be held by **CONSULTANT** to provide the goods or SERVICES or any services of this Contract. **CONSULTANT** 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 **CONSULTANT** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CONSULTANT** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this

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Contract. **CITY** may set-off against consideration due any delinquent government obligation.

If the **CITY** was required by NRS 332.039(1) to advertise or request a proposal for this Agreement, by signing this Agreement, the **CONSULTANT** provides a written certification that the **CONSULTANT** is not currently engaged in, and during the Term shall not engage in, a Boycott of Israel. The term "Boycott of Israel" has the meaning ascribed to that term in Section 3 of Nevada Senate Bill 26 (2017). The **CONSULTANT** shall be responsible for fines, penalties, and payment 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 **CONSULTANT's** non-compliance with this Section.

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. **CONSULTANT** 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 **CONSULTANT** (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 **CONSULTANT** upon completion, termination, or cancellation of this Contract. **CONSULTANT** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONSULTANT'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 **CONSULTANT** 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. **CONSULTANT** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONSULTANT** 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:

CONSULTANT shall keep confidential all information, in whatever form, produced, prepared, observed or

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No. 20300005-C
Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

received by **CONSULTANT** to the extent that such information is confidential by law or otherwise required by this Contract.

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 **CONSULTANT** 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 **CONSULTANT** and its subcontractors must be registered in the US Government System for Award Management (SAM) for verification on projects with federal funding.

22.1.3 **CONSULTANT** 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.

22.1.4 **CONSULTANT** 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).

22.1.5 If and when applicable to the particular federal funding and the Scope of Work under this Contract, **CONSULTANT** 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:

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

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CONSULTANT 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.

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. **CONSULTANT** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in this Contract. Any SERVICES performed by **CONSULTANT** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **CONSULTANT**.

26. ALTERNATIVE DISPUTE RESOLUTION (Public Work):

If the SERVICES under this Contract involve a "public work" as defined under NRS 338.010(17), then pursuant to NRS 338.150, a public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring the use of a method of alternative dispute resolution ("ADR") before initiation of a judicial action if a dispute arising between the public body and the **CONSULTANT** engaged on the public work cannot otherwise be settled. Therefore, unless ADR is otherwise provided for by the parties in any other incorporated attachment to this Contract, in the event that a dispute arising between **CITY** and **CONSULTANT** regarding that public work cannot otherwise be settled, **CITY** and **CONSULTANT** agree that, before judicial action may be initiated, **CITY** and **CONSULTANT** will submit the dispute to non-binding mediation. **CITY** shall present **CONSULTANT** with a list of three potential mediators. **CONSULTANT** shall select one person to serve as the mediator from the list of potential mediators presented by **CITY**. The person selected as mediator shall determine the rules governing the mediation.

27. 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. **CONSULTANT** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

28. 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 and approved by the Carson City Board of Supervisors. Conflicts in language between this Contract and any other agreement between **CITY** and **CONSULTANT** 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.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No. 20300005-C
Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

29. 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

Executive Office
Attn: Carol Akers, Purchasing & Contracts Administrator
Purchasing and Contracts Department
201 North Carson Street, Suite 2
Carson City, Nevada 89701
Telephone: 775-283-7362
Fax: 775-887-2286
CAkers@carson.org

By: *Paula Spence* Deputy CFO
Sheri Russell, Chief Financial Officer *for Sheri Russell*
Dated 6/21/2022

CITY'S LEGAL COUNSEL

Carson City District Attorney

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

By: *Tim E. [Signature]*
Deputy District Attorney
Dated 6/3/2022

CITY'S ORIGINATING DEPARTMENT

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

BY: Carol Akers
Purchasing & Contracts Administrator

Account: 1010610 500361

By: *Carol Akers*
Dated 6/21/2022

CONTACT PERSON:

Max Cortes
Telephone: 775-283-7249

PROFESSIONAL SERVICES CONSULTANT AGREEMENT

Contract No. 20300005-C

Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

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

CONTRACTOR

BY: Daniel J. Spence

TITLE: Attorney at Law

CARSON CITY BUSINESS LICENSE #: BL-000148

Address: 177 East Seventh Street

City: Carson City **State:** NV **Zip Code:** 89701

Telephone: 775-721-9944

E-mail Address: danielspencelaw@gmail.com



(Signature of Consultant)

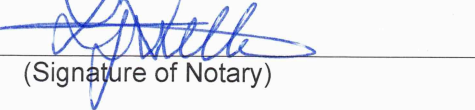
DATED 6-7-22 _____

STATE OF Nevada _____)

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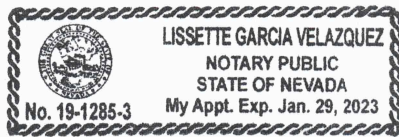
County of Carson City _____)

Signed and sworn (or affirmed before me on this 7th day of June, 2022.



(Signature of Notary)

(Notary Stamp)



PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No. 20300005-B
Title: Conflict Counsel, John E. Malone; Attorney at Law

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of September 16, 2021, approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 20300005-B**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to sign this document and record the signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA


LORI BAGWELL, MAYOR

DATED this 16th day of September 2021.

ATTEST:


AUBREY ROWLATT, CLERK-RECORDER

DATED this 16th day of September 2021.

PROFESSIONAL SERVICES CONSULTANT AGREEMENT
Contract No. 20300005-C
Title: Conflict Counsel, Daniel J. Spence; Attorney at Law

SAMPLE INVOICE

Invoice Number: _____
 Invoice Date: _____
 Invoice Period: _____

Invoice shall be submitted to:

Carson City District Court
 Attn: Wendy Yang, WYang@carson.org
 885 East Musser St, Suite 2007
 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

Conflict Counsel Contract FY21-FY23

I. CONTRACTOR SERVICES:

- a. The **CONTRACTOR** hereby agrees to perform the services of an attorney in the defense of indigent adults charged with a public offense and when the court for cause is required to disqualify the State Public Defender.
- b. The **CONTRACTOR** agrees to perform the services of an attorney for a child alleged to be delinquent or in need of supervision where the Court orders the appointment of an attorney in accord with NRS 62.085 and when the Court for cause is required to disqualify the State Public Defender.
- c. The **CONTRACTOR** agrees to perform the services of an attorney for a parent or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the court orders the appointment of **CONTRACTOR** pursuant to NRS 432B.420 and when the court for cause is required to disqualify the State Public Defender.
- d. The **CONTRACTOR** agrees to actively participate and attend meetings to adhere to the best practices and standards adopted by the First Judicial District Court, the First Judicial District Court - Juvenile Court Division, and the Carson City Justice/Municipal Court.
- e. The **CONTRACTOR** agrees to perform the services of an attorney for a person against whom proceedings are commenced to revoke any probation which was granted to that person, provided that the Court appoints **CONTRACTOR** on the matter to represent that person at the probation revocation proceedings and the person is indigent and when the Court for cause is required to disqualify the State Public Defender.
- f. The **CONTRACTOR** agrees to perform the duties required by NRS 260.050 (County public defenders).
- g. The **CONTRACTOR** agrees to perform the services of an attorney to represent a child or parent in any proceeding for terminating parental rights, or any rehearing or appeal where the Court orders the appointment of an attorney in accord with NRS 128.100 and when the Court for cause is required to disqualify the State Public Defender.
- h. The **CONTRACTOR** agrees to perform services of an attorney for fees pursuant to NRS 7.125 – 7.165 on cases appointed by the Court for the convenience of the Court, where there is no disqualification of the public defender.

II. SCOPE OF WORK:

The parties agree that the scope of work for the **CONTRACTOR** shall be as follows:

- a. The **CITY** contracts with the **CONTRACTOR** to provide the professional and legal services of an attorney for conflict cases when the First Judicial District Court or the Carson City Justice/Municipal Court for cause is required to disqualify the State Public Defender.
- b. The **CONTRACTOR** shall provide all required professional services as necessary to satisfy the intended purposes of this Contract.

Conflict Counsel Contract FY21-FY23

- c. Such services shall be performed in accordance with this Contract and shall not be altered except by written consent of both parties.
- d. The professional services described in the succeeding paragraphs must be performed in a professional, competent and effective manner given the law applicable to the particular matter for which legal services are being rendered and the applicable rules and standards of professional responsibility.
- e. The **CITY** is contracting for the professional services of the **CONTRACTOR**.
- f. **CONTRACTOR** must personally handle the cases in which **CONTRACTOR** has been appointed as counsel. However, in the event that **CONTRACTOR** is unable to personally appear at any stage of the court proceeding, **CONTRACTOR** may have another conflict counsel or, if **CONTRACTOR** practices law with a law firm, have another lawyer within **CONTRACTOR's** firm appear for **CONTRACTOR**, provided that **CONTRACTOR**, provided that **CONTRACTOR** has adequately briefed the appearing conflict counsel or lawyer to enable the appearing conflict counsel or lawyer to provide effective assistance of counsel. **CONTRACTOR** may not transfer the case to another attorney without substitution of counsel being approved by the court.
- g. However, no additional compensation shall be paid to the **CONTRACTOR** or the other lawyer in **CONTRACTOR'S** firm by virtue of this change.
- h. In performing the professional services described in the Scope of Work to be performed by the **CONTRACTOR** under this Contract shall be as follows:
 - i. Conduct interviews;
 - ii. Perform or supervise the performance of necessary investigation;
 - iii. Conduct necessary preparation;
 - iv. Promptly appear at all Court hearings concerning the assigned matter including, but not limited to, preliminary hearing, arraignment, pretrial writ or motion hearings, trial and sentencing as required to provide a full professional defense of the matter;
 - v. Be required to represent the person in the assigned matter on any appeal to the First Judicial District Court or Nevada Supreme Court whether based upon a preliminary matter, final judgment, or other matters required in this Contract.
 - vi. **CONTRACTOR** shall represent indigent defendants on all matters deemed appropriate by the Court and any other pending or trailing matter that the State Public Defender was previously appointed.
 - vii. The **CONTRACTOR** agrees to staff and maintain an office in Carson City, Nevada and furnish to the Justice Courts, District Courts, Specialty Courts, Juvenile Court, Sheriff's Department and District Attorney a telephone number for use after normal office hours in

Conflict Counsel Contract FY21-FY23

any emergency that may arise where the **CONTRACTOR'S** services are requested pursuant to the terms of this contract.

III. PROCEDURAL PROVISIONS:

If, in the interests of justice, the **CONTRACTOR** is required to substitute out of an assigned case, the **CONTRACTOR** shall petition the Court for approval of the substitution.

- a. The Court will make reasonable efforts to appoint and substitute in one of the **CONTRACTORS** in the **CITY'S** contracted conflict counsel.
- b. **CONTRACTOR** shall be allowed to substitute out of an assigned case if the Defendant of the assigned case has sought to retain **CONTRACTOR** prior to, or before knowledge of, the assignment. **CONTRACTOR** shall notify the Court in writing of the conflict, and the Court will make reasonable efforts to appoint and substitute in one of the **CONTRACTORS** in the City's contracted conflict counsel.
- c. If the **CITY'S** other contract **CONTRACTORS** cannot properly be substituted into the **CONTRACTOR'S** assigned case, the Court may appoint and order the compensation of a non-contract lawyer.
- d. The Indigent Defense Coordinator may request periodic time summaries from the **CONTRACTOR** in a form prescribed by the Indigent Defense Coordinator.
- e. These time summaries will report the amount of time necessary and reasonable spent for travel, investigation, research, trial preparation and hearings as well as trials.
- f. These time summaries will be provided to the Indigent Defense Coordinator at the conclusion of each assigned case. The time summaries may be requested by the Court.
- g. These time reports may be made available by the Indigent Defense Coordinator for audit by the **CITY'S** representative.
- h. If any State statute in effect now or hereinafter enacted requires public defenders to provide certain information or reports, **CONTRACTOR** agrees to provide and maintain that information at no additional cost to the **CITY**.
- i. **CONTRACTOR** is not required to provide any information which would compromise client confidentiality or violate any laws or rules of professional conduct. In case of a dispute, the **CONTRACTOR** should attempt to resolve the matter with the Court Administrator, or his or her designee and, if necessary, the Board of Supervisors.
- j. Nothing in this section shall be construed in a manner that requires violating the confidence of the client or the attorney-client privilege contained in Court rules or statutes.

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IV. MISCELLANEOUS PROVISIONS:

- a. The **CITY** and the **CONTRACTOR** acknowledge that the City may contract with other lawyers in the same manner and for the same purposes as **CONTRACTOR**.
- b. It is agreed by the **CITY** and the **CONTRACTOR** that this Contract, if entered into, will enable appointments to be made by the Court, on a rotating basis and to eliminate appointment of **CONTRACTOR** in a matter that would create a conflict of interest for **CONTRACTOR** in a particular matter.
- c. When **CONTRACTOR** is appointed as counsel in any case, **CONTRACTOR** must, within 1 day of being appointed, run a conflict check and inform the appointing court if **CONTRACTOR** has a conflict.
- d. Causes of action between the parties to this Contract pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of completion for acts or failures to act occurring prior to completion, or the date of final payment, to the **CONTRACTOR** in a particular manner.
- e. The **CITY** and the **CONTRACTOR**, respectively, bind themselves, their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.
- f. **CONTRACTOR** may engage in the private practice of law which does not conflict with **CONTRACTOR'S** professional services as Conflict Counsel pursuant to this Contract.
- g. If **CONTRACTOR** is required to substitute out of an assigned case, **CONTRACTOR** shall comply with Procedural Provisions within the Scope of Work section of this Contract and with the applicable statutes and court rules .
- h. This Contract represents the entire and integrated agreement between the City and **CONTRACTOR** and supersedes all prior negotiations, representations, contracts, or agreements, either written or oral.
- i. This Contract may be amended only by written instrument signed by both the **CITY** and the **CONTRACTOR**.
- j. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the **CITY** or **CONTRACTOR**.

V. CONSIDERATION:

Monthly Payments:

- a. From June 2, 2022 through June 30, 2022 – The **CITY** agrees to pay the **CONTRACTOR** and the **CONTRACTOR** agrees to accept as full compensation for the performance of legal services under this contract the sum of Twelve Thousand and Five Hundred Dollars and Zero Cent (\$12,500.00) per month.

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- b. From July 1, 2022 through June 30, 2023 - The **CITY** agrees to pay the **CONTRACTOR** and the **CONTRACTOR** agrees to accept as full compensation for the performance of legal services under this contract the sum of Fourteen Thousand Five Hundred Eighty Three Dollars and Thirty-Four Cents (\$14,583.34) per month.
- c. The **CONTRACTOR** must submit a monthly billing to the First Judicial District Court, Attention: Wendy Yang, 885 Musser Street, Suite 2007, Carson City, NV 89701 or by email to WYang@carson.org and CFischer@carson.org. **CITY** has up to 30 days to process payment to **CONTRACTOR** for services rendered.
- d. In the event that a billing is for services provided to an inmate of the Nevada State Prison system, the billing shall state this information so that the **CITY** will be able to obtain reimbursement from the State of Nevada pursuant to NRS 212.070.
- e. The Indigent Defense Coordinator may appoint **CONTRACTOR** under the contract in lieu of the State Public Defender's Office if the **CONTRACTOR** previously represented the defendant.
- f. Billing statement must include; monthly billing costs, hours and rates for special cases pursuant to NRS 7.125 and that have been approved by the Judge. The compensation specified in Monthly Payments (a-d) is in lieu of the statutorily prescribed fees codified in NRS 7.125.
- g. However, if in a particular case the **CONTRACTOR** believes that the complexity of a case, the number of the factual or legal issues in a case, the severity of the offense, the time necessary to provide an adequate defense, or other special circumstances warrant an award of extraordinary fees in excess of the monthly fee paid to **CONTRACTOR** under sections (a)-(d), the **CONTRACTOR** may apply to the Indigent Defense Coordinator for additional fees as provided in the Carson City Indigent Defense Plan. These extraordinary fees may only be awarded if the Indigent Defense Coordinator or the court in which the representation was rendered finds that the amount of the excess, extraordinary payment is both reasonable and necessary to the representation of the client in the case.
- h. **CONTRACTOR** will not request Extraordinary Fees when appointed on Category A felony cases until 25 hours of work has been conducted.
- i. **CONTRACTOR** agrees to indicate that 25 hours of work has been performed and \$2,500.00 deducted from the total Extraordinary Fee Request when submitting these requests.
- j. The **CITY** must receive from **CONTRACTOR** notice of a request to the court for extraordinary fees when such a request is made. Under NRS 7.145 a claim for extraordinary compensation and expenses must not be paid unless it is submitted within 60 days after the appointment is terminated to the Indigent Defense Coordinator. It is hereby agreed by **CONTRACTOR**, **CITY** and **COURT** that **CONTRACTOR** shall submit notice of a request for extraordinary fees to **CITY** when a request for extraordinary fees is submitted to the Indigent Defense Coordinator. These provisions allow the **CITY** to adhere to minimum accounting standards and to properly budget and account for these services.

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- k. The **CONTRACTOR** may secure pre-authorization or reimbursement for extraordinary investigative costs, costs required to secure experts, or costs for other services that are reasonable and necessary for a client's defense in any assigned matter, in the manner codified in NRS 7.135, 7.145 and 7.155 and under the Carson City Indigent Defense Services Plan.
- l. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of the **CONTRACTOR'S** practice as required by this contract are the responsibility of the **CONTRACTOR** and are part of **CONTRACTOR'S** compensation paid pursuant to Monthly Payments of this contract and as provided in NRS 260.040(5).
- m. Mileage and travel expenses of the **CONTRACTOR** are the responsibility of the **CONTRACTOR** and are part of the compensation paid pursuant to Monthly Payments.
- n. The **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified in this Contract.

VI. REQUIREMENTS OF THE DEPARTMENT OF INDIGENT DEFENSE ("DIDS"):

- a. **CONTRACTOR** must comply with the requirements of DIDS for the provision of services to indigent persons in cases described by NRS 180.004 (an adult charged with a criminal offense for whom the appointment of counsel is ordered, or a child (minor) who is alleged to be delinquent or in need of supervision under NRS Title 5), including the workload and reporting requirements of DIDS. **CITY** may request case information reported to DIDS from DIDS or from **CONTRACTOR**.
- b. **CONTRACTOR** must comply with the Carson City Indigent Services Plan, as may be amended.
- c. **CONTRACTOR** must be registered with DIDS and meet the DIDS qualifications for representation of indigent persons.
- d. **CONTRACTOR** must provide legal representation under this **CONTRACT** to all clients in a professional, skilled manner consistent with all applicable regulations, laws, Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411.
- e. **CONTRACTOR** must generally advise a clients not to waive any substantive rights or plead guilty at the initial appearance unless, in the **CONTRACTOR's** judgment, to do otherwise is in the client's best interest.
- f. **CONTRACTOR** must make a reasonable efforts to meet with a client within the first 7 days following the appointment of **CONTRACTOR** as counsel in the case, and may a reasonable effort to communicate with a client at least every 30 days thereafter, unless in the **CONTRACTOR'S** judgment there are no significant updates in the client's case.