

**PROFESSIONAL SERVICES AGREEMENT FOR THE PROVISION OF
LEGAL SERVICES**

THIS AGREEMENT is entered into between Washoe County, a political subdivision of the State of Nevada ("County") and Brian M. Brown, attorney at law, ("Attorney"), collectively (the "Parties").

WITNESSETH:

WHEREAS, County desires to engage Attorney to render legal professional services in circumstances where the Washoe County District Attorney has notified the Washoe County Manager of a possible or actual conflict of interest, or is otherwise unable to provide legal support and representation for the County; and

WHEREAS, County requires representation in such circumstances (the "Services"); and

WHEREAS, Attorney represents that he is duly qualified, ready, willing and able to provide the Services by virtue of his education, training and experience; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be the date all signatories have signed this Agreement.

ARTICLE 2 - PURPOSE OF AGREEMENT AND SCOPE OF WORK

County seeks to periodically employ Attorney to represent County as its attorney at law in circumstances where the Washoe County District Attorney has or may have a conflict of interest in representing County. The Washoe County Manager or an authorized representative of the County shall notify Attorney of the need for services and provide Attorney with a proposed Scope of Work which describes the representation or services to be provided to County. If Attorney is able and willing to represent the County, he shall sign the scope of work which shall be deemed to incorporate by reference the terms of this Agreement. Upon receipt of the signed Scope of Work, Attorney may begin performance of services and be entitled to compensation as described herein.

ARTICLE 3 - COMPENSATION

County shall pay Attorney \$300.00 per hour for all services rendered pursuant to this Agreement and any scope of work. In no event shall performance of services or representation pursuant to this Agreement exceed a total cost of \$100,000 unless approved by action of the Washoe County Board of Commissioners. Attorney shall submit to County monthly invoices indicating the number of hours worked and other allowed direct expenses. Payment to Attorney shall be made within thirty (30) days after receipt and approval of Attorney's invoice, said approval not to be unreasonably withheld. Payment by County of invoices or requests for payment shall not constitute acceptance by County of work performed by Attorney. No penalty shall be imposed upon the County for payment(s) received by Attorney after thirty days.

ARTICLE 4 - COSTS

4.1 All costs incurred in connection with the services to be provided by Attorney under this agreement, including attorney's initial malpractice premium, shall be paid by County.

4.2 Attorney may employ expert investigators to investigate the facts surrounding the cause of action after seeking advanced approval of County's representative. All such experts shall report exclusively to Attorney. Fees charged by such expert witnesses and investigators shall be paid by County.

4.3 Attorney may employ associate counsel to assist Attorney in the performance of duties at Attorney's own cost and expense unless County agrees to pay those costs in writing.

ARTICLE 5 - INDEPENDENT CONTRACTOR

Attorney is performing the services and duties required under this Agreement as an independent contractor and not as an employee, agent, or partner of the County.

5.1. Except as otherwise provided herein, Attorney may retain employees or other personnel to perform the services required by this Agreement. Such employees or other personnel will be the obligation of the Attorney. Attorney's employees or other personnel are not County employees.

5.2. Except as otherwise provided herein Attorney is responsible for all expenses without reimbursement.

5.3. Neither Attorney nor any personnel are employees of County and Attorney waives any and all claims to benefits otherwise provided to employees of the County, including, but not limited to, health insurance, Nevada Public Employees Retirement System (PERS) or other retirement benefits, unemployment benefits, and liability and worker's compensation insurance.

5.4. Attorney represents and warrants that if Attorney, or any employee of Attorney who will be performing services under this Agreement, is a current employee of the County or was employed by the County within the preceding 24 months, Attorney has disclosed the identity of such persons, and the services that each such person will perform.

5.5. County and Attorney agree that this Agreement does not constitute an exclusive relationship. Nothing in this Agreement shall be construed as a limitation upon the right of the Attorney to engage in any other consulting agreement, service contract, business venture or other activity.

ARTICLE 6 - PERMITS AND LICENSES

Attorney shall maintain active and in good standing all licenses necessary to allow Attorney to perform the Services.

ARTICLE 7 - PUBLIC RECORDS

Public Records. Pursuant to NRS 239.010, information or documents received from Attorney may be open to public inspection and copying. The County has a legal obligation to disclose such information unless a particular record is made confidential by law.

ARTICLE 8 - INSPECTION AND AUDIT

8.1 Books and Records.

Attorney agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully

disclose to the County, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

8.2 Inspection and Audit.

Attorney agrees that the relevant books, records, including, without limitation, relevant accounting procedures and practices of Attorney, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Attorney for such records may be found with reasonable notice by the County or its representatives. With regard to any federal funding, any relevant federal agency or any of their authorized representatives may inspect or audit as set forth in this Agreement.

ARTICLE 9 -DISCLAIMER OF WARRANTY

Attorney has made no warranties as to the successful termination of the cause of action, and all expressions made by attorney relative to such termination are matters of attorney's opinion only.

ARTICLE 10 - TERMINATION OR EXTENSION OF CONTRACT

10.1 Termination Without Cause. This Agreement may be terminated for any reason by either party by giving the other party written notice of the intent to terminate. The notice must specify the date upon which the termination will be effective, which date may not be less than 15 calendar days from the date of service of the notice. Only services satisfactorily performed up to the date of receipt of notice shall be compensated by County and such compensation shall be pursuant to the terms of this Agreement. If this agreement is unilaterally terminated by the County, Attorney shall use best efforts to minimize the cost to the County and Attorney will not be paid for any cost that Attorney could have avoided.

10.2 Termination by Non-appropriation. The County may terminate its participation in this Agreement effective immediately by providing written notice if for any reason the County's funding source is not appropriated or is withdrawn, limited, or impaired. The County will make reasonable efforts to ensure payment for services rendered by the Attorney. The Attorney shall agree to hold the County free from any charges or penalties except for those already incurred through the date of notice of cancellation.

10.3 Winding Up Affairs Upon Termination. In the event of termination of this Agreement for any reason, the parties agree that the provisions of this section survive termination:

a. 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 Agreement. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

b. Attorney shall take actions reasonably necessary to protect County's interests and may bill for such actions. Attorney shall satisfactorily complete work in progress at the agreed rate, if so requested by County;

c. Attorney shall preserve, protect and promptly deliver into County possession all documents or other information gathered or obtained as a result of the representation or work performed for County.

ARTICLE 11 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Unless information or documents provided by County is public, Attorney shall consider all information and documents provided by County to be confidential and privileged. Attorney may not waive the privilege without the express consent of the County or its representatives except that Attorney may in consultation with County publicly disclose any information or documents necessary and essential to the representation of the County, or as required by law or ordered to be disclosed in a regulatory or judicial proceeding.

ARTICLE 12 - NOTICE

Notices and other communications in connection with this Agreement shall be in writing and directed to the parties at the addresses stated in this Agreement. Email or facsimile shall be used to provide notice and shall be considered given on the date the notice is sent to the recipient's address as stated in this Agreement.

To County:

Washoe County
1001 East 9th Street
Reno, NV 89512

To Attorney:

Brian M. Brown, Esq.
Law Office of Brian M. Brown
3500 Lakeside Ct. Suite 206
Reno, NV 89509

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Attorney and County.

ARTICLE 16 - GOVERNING LAW-VENUE

Nevada law governs this Agreement and all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 2 – Services to be Performed by Attorney. Venue for all adversarial proceedings arising out of this Agreement or arising out of planning or constructing the Project outlined in Article 2 – Services to be Performed by Attorney shall be in state district court in Washoe County, Nevada.

ARTICLE 17 - MISCELLANEOUS

17.1 Nonwaiver

A waiver by either County or Attorney of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

17.2 Severability

If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable or disregarding it. If an unenforceable provision is modified or disregarded in accordance with this Article 17, the rest of the Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

ARTICLE 18 - INTEGRATION AND MODIFICATION

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This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by each of the Parties. Unless otherwise specified in writing, if there is any inconsistency between the terms of this Agreement and any other agreement between the Parties, the terms of this Agreement shall control.

ARTICLE 19 - ASSIGNMENT

Neither County nor Attorney shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Attorney from employing such independent Attorneys, associates, and subAttorneys, as he may deem appropriate to assist him in the performance of the Services hereunder.

ARTICLE 20 - OWNERSHIP OF DOCUMENTS AND PRODUCTS

Unless otherwise specified, Attorney assigns to County all rights to all products, reports, documents, photographs, videos, data, and drawings produced by Attorney as a result of its services to County during the term of this Agreement. All such materials shall be delivered into County possession by Attorney upon completion, termination, or cancellation of this Agreement.

ARTICLE 21 - THIRD PARTY RIGHTS

Nothing herein shall be construed to give any rights or benefits to anyone other than County and Attorney.

ARTICLE 22 - INDEMNIFICATION AND INSURANCE

Washoe County has established specific indemnification and insurance requirements for agreements/contracts with contractors to help assure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to assure that Attorneys accept and are able to pay for the loss or liability related to their activities. Exhibit "X" Insurance Specifications is included by reference. All conditions and requirements identified in this exhibit shall be completed prior to the commencement of any work under this Agreement.

ARTICLE 23 - LIMITED LIABILITY

County will not waive and intends to assert available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages. Actual damages for the County's breach of this Agreement shall never exceed the amount of funds that have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

ARTICLE 24 - LOBBYING

Attorney agrees, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Agreement will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influencing for any purpose the following:

24.1 Any federal, state, county or local agency, legislature, commission, counsel or board;

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

24.3 Any officer or employee of any federal, state, county or local agency, legislature, commission, counsel or board.

Attorney agrees to conform to the regarding influence lobbying requirements as set forth in the Byrd Anti-lobbying Amendment, 31 U.S.C. 1352.

ARTICLE 25 – ATTORNEY’S CERTIFICATION

Attorney, its principals and agents, to the best of its knowledge and belief:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- b) Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in (ii) above;
- d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- e) Understand that a false statement on this certification may be grounds for rejection or termination of this Agreement. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

IN WITNESS WHEREOF, the parties have executed this Agreement.

WASHOE COUNTY:

Dated this 4 day of June, 2021

By **Mark Stewart**
Mark Stewart
Purchasing & Contracts Manager

Digitally signed by Mark Stewart
Date: 2021.06.04 13:46:30 -07'00'

ATTORNEY:

Dated this 4th day of June, 2021

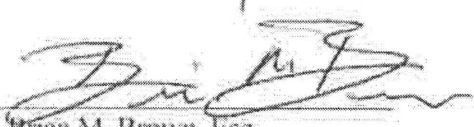
By 
Brian M. Brown, Esq.
ATTORNEY

EXHIBIT A

**INSURANCE/HOLD HARMLESS REQUIREMENTS FOR
RETAINER AGREEMENT FOR PROFESSIONAL LEGAL SERVICES****INDEMNIFICATION**Professional Liability

As respects acts, errors or omissions in the performance of professional services, CONTRACT ATTORNEY agrees to indemnify and hold harmless COUNTY, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability of any kind or nature arising directly out of CONTRACT ATTORNEY'S negligent acts, errors or omissions in the performance of its professional services under the terms of this agreement.

GENERAL LIABILITY

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACT ATTORNEY agrees to indemnify, defend (at COUNTY'S option), and hold harmless COUNTY, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability of any kind or nature arising out of or in connection with CONTRACT ATTORNEY'S performance or failure to perform, under the terms of this agreement, excepting those which arise out of the negligence of COUNTY.

In determining the nature of the claim against COUNTY, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against COUNTY.

GENERAL REQUIREMENTS

COUNTY requires that CONTRACT ATTORNEY purchase Industrial Insurance, General and Auto Liability, and Lawyers Professional Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work here under by CONTRACT ATTORNEY, its agents, representatives, employees or Sub-consultants. The cost of all such insurance shall be borne by CONTRACT ATTORNEY, except as provided in section 4.1 of the Professional Services Agreement for the Provision of Legal Services.

INDUSTRIAL INSURANCE

It is understood and agreed that there shall be no Industrial Insurance coverage provided for CONTRACT ATTORNEY by COUNTY. CONTRACT ATTORNEY agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the COUNTY to make any payment under this Agreement to provide COUNTY with a certificate issued in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.

If CONTRACT ATTORNEY is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance. Such requirement may be waived for a sole proprietor who does not use the services of any employees, subcontractors, or independent contractors and completes an Affirmation of Compliance pursuant to NRS 616B627(2).

MINIMUM LIMITS OF INSURANCE

BRIAN M. BROWN, ATTORNEY AT LAW - 06/21

CONTRACT ATTORNEY shall maintain coverages and limits no less than:

1. General Liability: N/A combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
2. Automobile Liability: \$ N/A combined single limit per accident for bodily injury and property damage. No aggregate limit may apply. Coverage limits for a sole proprietor may be reduced to \$500,000.
3. Lawyers Professional Liability: \$1,000,000 per claim and as an annual aggregate. Premium costs incurred to increase CONTRACT ATTORNEY'S insurance levels to meet minimum contract limits shall be borne by the CONTRACT ATTORNEY at no cost to the COUNTY. CONTRACT ATTORNEY will maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project if available and affordable. The unavailability and/or unaffordability of coverage must be demonstrated by CONTRACT ATTORNEY to COUNTY. In the event that CONTRACT ATTORNEY goes out of business during the term of this Agreement or the three (3) year period described above, CONTRACT ATTORNEY shall purchase at the request and expense of COUNTY, if available, Extended Reporting Coverage for claims arising out of CONTRACT ATTORNEY'S negligent acts, errors and omissions committed during the term of the Lawyers Professional Liability Policy.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY Risk Management Division prior to the start of work under this Agreement. COUNTY reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles and self-insured retention and prior to executing the underlying agreement. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be approved by the COUNTY Risk Manager prior to the change taking effect.

OTHER INSURANCE PROVISIONS

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

1. General Liability Coverages
 - a. COUNTY, its officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of CONTRACT ATTORNEY, including the insured's general supervision of CONTRACT ATTORNEY; products and completed operations of CONTRACT ATTORNEY; or premises owned, occupied or used by CONTRACT ATTORNEY. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its officers, agents, employees or volunteers.
 - b. CONTRACT ATTORNEY'S insurance coverage shall be primary insurance as respects COUNTY, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, agents, employees or volunteers shall be excess of CONTRACT ATTORNEY'S insurance and shall not contribute with it in any way.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, agents, employees or volunteers.
 - d. CONTRACT ATTORNEY'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- e. CONTRACT ATTORNEY'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to COUNTY except for nonpayment of premium.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. COUNTY with the approval of the Risk Manager may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONTRACT ATTORNEY and insurance carrier. COUNTY reserves the right to require that the CONTRACT ATTORNEY'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

CONTRACT ATTORNEY shall furnish COUNTY with certificates of insurance and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms approved by COUNTY. All certificates and endorsements are to be addressed to the specific COUNTY contracting department and be received and approved by COUNTY before work commences. COUNTY reserves the right to require complete, certified copies of all required insurance policies, at any time.

MISCELLANEOUS CONDITIONS

1. CONTRACT ATTORNEY shall be responsible for and remedy all damage or loss to any property, including property of COUNTY, caused in whole or in part by CONTRACT ATTORNEY, any Sub-consultant, or anyone employed, directed or supervised by CONTRACT ATTORNEY.
2. Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACT ATTORNEY may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Sub-consultants under it.
3. In addition to any other remedies COUNTY may have if CONTRACT ATTORNEY fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, COUNTY may, at its sole option:
 - a. Order CONTRACT ATTORNEY to stop work under this Agreement and/or withhold any payments which become due CONTRACT ATTORNEY here under until CONTRACT ATTORNEY demonstrates compliance with the requirements hereof;
 - b. Terminate the Agreement.