

**Carson City
Agenda Report**

Date Submitted: September 21, 2012

Agenda Date Requested: October 4, 2012

Time Requested: Consent Agenda

To: Mayor and Board of Supervisors

From: Randal Munn, Chief Deputy District Attorney

Subject Title: For Possible Action: To approve pursuant to Section 3.070(3) of the City Charter a contract amendment to increase the not-to-exceed maximum from \$30,000.00 to \$60,000.00 for the independent contractor agreement first approved by the Board on 8/17/2011 and retroactive to 7/25/2011 between the District Attorney and the law firm of Taggart & Taggart, Ltd., for Special Deputy District Attorney services on an hourly basis, primarily for contract matters involving water rights and related matters. (*Randal Munn and Andrew Burnham*)

Staff Summary: Water rights law is a very specialized area of law practice. The District Attorney's Office does not currently have any staff with necessary expertise in water law. Water rights matters arise infrequently, making hourly basis contracting for such legal expertise the most economical approach to meeting the City's needs. Services will be engaged by the District Attorney's Office, to represent the Public Works Department. The City currently has one pending requests to enter into water banking trust agreements, which requires legal expert review and drafting.

Type of Action Requested:

Resolution

Ordinance- First Reading

Formal Action/Motion

Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve pursuant to Section 3.070(3) of the City Charter a contract amendment to increase the not-to-exceed maximum from \$30,000.00 to \$60,000.00 for the independent contractor agreement first approved by the Board on 8/17/2011 and retroactive to 7/25/2011 between the District Attorney and the law firm of Taggart & Taggart, Ltd., for Special Deputy District Attorney services on an hourly basis, primarily for contract matters involving water rights and related matters

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

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

Fiscal Impact: Hourly contract for professional legal services not-to-exceed a maximum of \$60,000.00. Of that new maximum the City has already incurred and paid approximately \$25,000.00 of legal expenses under the prior authorized limit.

Explanation of Impact: At this time the expertise to efficiently handle complex water law contract matters is not available in-house.

Funding Source: Public Works professional services account

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

Supporting Material:
1) Contract

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

Reviewed By: [Signature] Date: 9-25-12
(Public Works)
[Signature] Date: 9/25/12
(City Manager)
[Signature] Date: 9/25/12
(District Attorney)
[Signature] Date: 9/25/12
(Finance Director)

Board Action Taken:

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

(Vote Recorded By)

AMENDMENT #1 TO PROFESSIONAL SERVICES AGREEMENT

Between

Carson City, a Consolidated Municipality

acting by and through the

Carson City District Attorney

885 East Musser Street, Suite #2030, Carson City, Nevada, 89701 (775-887-2070)

and

Taggart & Taggart, Ltd.

108 North Minnesota St., Carson City, Nevada 89703 (775-882-9900; Fax 775-883-9900).

1. AMENDMENTS. All provisions of the original contract approved by the Carson City Board of Supervisors on 8/17/2011, and retroactive to 7/25/2011, attached hereto as Exhibit A, remain in full force and effect with the exception of the following amendments to paragraph 3 of the original agreement (underlined italics = new language; [strikeout] = omitted language):

3. **Start Date & Fee Structure**. Effective retroactively to July 25, 2011, the date of commencement of work authorized by the District Attorney, upon approval by the Carson City Board of Supervisors, for an *hourly fee* rate of:

\$275.00 per hour for the services of **Paul G. Taggart, Esq.**

\$250.00 per hour for the services of **other shareholder of equal experience and seniority.**

\$150.00 per hour for the services of **associate attorneys;** and

\$75.00 per hour for the services of **legal assistants/paralegals,**

and other prior authorized services under this contract for civil case defense.

Contractor agrees that any monies awarded by the Court or Administrative Law Judge or Arbitrator or paid by any opposing party as attorney's fees award and/or sanctions shall apply to the Contractor's fee as provided in this agreement. Contractor shall, with the District Attorney's full cooperation, and upon mutual agreement, seek payment of all allowable fees and costs from any opposing party or from the Court or Administrative Law Judge or arbitrator by award.

The amount of this Agreement shall not exceed ~~[\$30,000.00]~~ \$60,000.00 – (the “Maximum Agreement Amount”). It is specifically agreed that if Contractor's invoices for professional time and expenses approach the Maximum Agreement Amount, Contractor will notify the District Attorney of this fact and the parties may elect to amend this Agreement for additional professional services. However, Contractor is not obligated to provide any further professional services under this Agreement after the Maximum Agreement Amount has been reached unless an amendment to this Agreement has been agreed upon by the Contractor and District Attorney and approved by the Carson City Board of Supervisors. If the above-described matters are not completed when the Maximum Agreement Amount is reached and an amended Agreement is not entered into between the Contractor and the parties, this Agreement will terminate and Contractor may withdraw as counsel of record in the litigation in which Contractor is counsel of record without any further obligation. In the event the Contractor withdraws as counsel of record under these circumstances, Contractor will be entitled to payment for all services rendered and the District Attorney will consent to this withdrawal of Contractor from the pending matter or litigation.

2. INCORPORATED DOCUMENTS. Exhibit A (Original Contract) is attached hereto, incorporated by reference herein and made a part of this amended contract.

3. REQUIRED APPROVAL. This amendment to the original contract shall not become effective until and unless approved by the Carson City District Attorney and the Carson City Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to the original contract to be signed and intend to be legally bound thereby.

Paul G. Taggart Date
Taggart & Taggart, Ltd.

Neil A. Rombardo Date
District Attorney – Carson City

Approved as to form by:

Deputy District Attorney Date

Approval of legal fees & costs expenditures:

Andrew Burnham Date
Public Works Director

Approved by the Carson City Board of Supervisors:

Robert Crowell, Mayor Date

PROFESSIONAL SERVICES AGREEMENT

This agreement between **Carson City, a Consolidated Municipality, acting by and through the Carson City District Attorney**, 885 East Musser Street, Suite #2030, Carson City, Nevada, 89701 (775-887-2070) and the law firm of **Taggart & Taggart, Ltd**, 108 North Minnesota St., Carson City, Nevada 89703 (775-882-9900; Fax 775-883-9900).

WITNESSETH:

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

WHEREAS, the District Attorney's office is currently understaffed and is in need of expert legal counsel in matters related to water law; and

WHEREAS, the District Attorney believes the legal services of Taggart & Taggart, Ltd, and Paul G. Taggart, are desired to assist the District Attorney and/or the Carson City Public Works Department for the purpose of advising on Carson City Public Works Department matters related to water rights and water banking trust agreements, without limitation; and

WHEREAS, it is deemed that the services of Taggart & Taggart, Ltd, and Paul G. Taggart, herein specified are both necessary and desirable and in the best interests of Carson City and the District Attorney; and

WHEREAS, Taggart & Taggart, Ltd, and Paul G. Taggart, represent that they are duly qualified, willing and able to render the services as hereinafter described; and

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

1. **Scope of Representation.** The District Attorney agrees to retain the law firm of Taggart & Taggart, Ltd, ("Contractor") to serve as legal counsel to the District Attorney as a Special Deputy District Attorney in water rights matters and other related matters as are mutually agreed to by subsequent individual engagement(s) by correspondence or email, which engagement(s) shall be deemed incorporated into this Agreement. Contractor shall serve in this capacity at will and at the pleasure of the District Attorney and shall report regularly to the District Attorney and obtain the approval of the District Attorney on all related matters. Contractor shall provide service to the City in the capacity of Special Deputy District Attorney until this appointment is revoked or terminated as provided herein. Contractor agrees to support, protect and defend the Constitution and Government of the United States of America and the Constitution and Government of the State of Nevada against all enemies, whether foreign or domestic, and bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of the State notwithstanding, and will faithfully perform all the duties of the office of Special Deputy District Attorney. District Attorney and Contractor agree that Contractor shall coordinate with the Carson City Public Works Department and the District Attorney to allocate workloads and responsibilities as appropriate to minimize the accrual of legal services expenses to the City. Any substitution or additional affiliated counsel must be approved in advance by District Attorney.

2. **Independent Contractor Status.** The officers, agents and employees of Contractor, in performing the services required by this agreement, shall be independent contractors and shall not be deemed officers, agents or employees of the District Attorney or Carson City.

3. **Start Date & Fee Structure.** Effective retroactively to July 25, 2011, the date of commencement of work authorized by the District Attorney, upon approval by the Carson City Board of Supervisors, for an *hourly fee* rate of:

\$275.00 per hour for the services of **Paul G. Taggart, Esq.**

\$250.00 per hour for the services of **other shareholder of equal experience and seniority.**

\$150.00 per hour for the services of **associate attorneys;** and

\$75.00 per hour for the services of **legal assistants/paralegals,**

and other prior authorized services under this contract for civil case defense.

Contractor agrees that any monies awarded by the Court or Administrative Law Judge or Arbitrator or paid by any opposing party as attorney's fees award and/or sanctions shall apply to the Contractor's fee as provided in this agreement. Contractor shall, with the District Attorney's full cooperation, and upon mutual agreement, seek payment of all allowable fees and costs from any opposing party or from the Court or Administrative Law Judge or arbitrator by award.

The amount of this Agreement shall not exceed \$30,000.00 – (the "Maximum Agreement Amount"). It is specifically agreed that if Contractor's invoices for professional time and expenses approach the Maximum Agreement Amount, Contractor will notify the District Attorney of this fact and the parties may elect to amend this Agreement for additional professional services. However, Contractor is not obligated to provide any further professional services under this Agreement after the Maximum Agreement Amount has been reached unless an amendment to this Agreement has been agreed upon by the Contractor and District Attorney and approved by the Carson City Board of Supervisors. If the above-described matters are not completed when the Maximum Agreement

Amount is reached and an amended Agreement is not entered into between the Contractor and the parties, this Agreement will terminate and Contractor may withdraw as counsel of record in the litigation in which Contractor is counsel of record without any further obligation. In the event the Contractor withdraws as counsel of record under these circumstances, Contractor will be entitled to payment for all services rendered and the District Attorney will consent to this withdrawal of Contractor from the pending matter or litigation.

4. **Expenses.** Expenses and disbursements incurred consistent with paragraph Nos. 5 and 6 shall only include filing fees, witness fees, expert witness costs, investigator costs and time, messenger service costs, mediation expenses, computer research fees, and all out-of-pocket expenses incurred on the City's behalf.

5. **Repayment of Expenses.** Contractor will advance the expenses and disbursements of any litigation, including court or tribunal costs, expenses of investigation, and the costs of obtaining, preserving and presenting evidence, including expert evidence.

6. **Conditional Payment of Monthly Statements Provided by Contractor.** Contractor shall submit monthly statements to the District Attorney, itemizing all fees and costs incurred in performance of this contract for which reimbursement is claimed. The District Attorney shall review and approve as appropriate and forward to the Public Works Department for its Direct Payment to the Contractor. Payment for all fees and costs in the matter are subject to repayment to the City based upon the following conditions. Certain disbursements will not be paid unless agreed to in advance. These include:

- a. Photocopy expenses of more than 15 cents per page;

b. Photocopy costs in excess of \$2,000 for a single job;

The City will not reimburse expenses for the following:

- 1) telephone expenses or office supply costs;
- 2) The costs of first-class travel (travel arrangements should be made in advance to take advantage of cost-effective discounts or special rates);

To the extent it is applicable, all expenses, including travel expenses, shall be reimbursed in accordance with the provisions of the City's policies regarding officers and employees.

7. **Recovery of Attorneys' Fees.** In the event that a civil action is instituted to collect any payment due under this contract or to obtain performance under this contract, the prevailing party shall recover, as the court deems appropriate, reasonable attorneys' fees and all costs and disbursement incurred in such action.

8. **Personal Services Contract.** This agreement calls for the personal services of Contractor. Contractor shall make no payments to, or share compensation with, any attorneys other than affiliated counsel or members of Contractor's own firm without prior written approval by the District Attorney.

9. **Inspection of Records.** The books, records, documents and accounting procedures of Contractor relevant to this agreement shall be subject to inspection, examination and audit by the City Finance Department, the District Attorney, and by City auditors.

10. **Status Reports.** Contractor shall provide occasional matter/litigation status reports as requested by the District Attorney, as well as copies of all memoranda, pleadings, briefs, reports, studies, photographs,

negatives or other documents or drawings prepared by Contractor in the performance of his obligations under this agreement. These copies shall be the exclusive property of Carson City.

11. **Assignment.** Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this agreement without the prior written consent of the District Attorney and the Carson City Board of Supervisors.

12. **Contractor's Recovery of Fee.** In the event resolution of the litigation occurs through settlement, Contractor agrees, if appropriate, to seek to have Contractor's fee paid by the opposing party as part of the settlement agreement. In the event resolution of the litigation occurs through arbitration award or jury award or other court order, Contractor agrees, if appropriate, to seek a court order requiring the opposing party to pay Contractor's fee.

13. **Termination.** This agreement shall terminate upon the occurrence of any of the following:

If the District Attorney reasonably determines it is in the best interest of the City, or upon thirty (30) days written notice from either party, or

Two years after the date the contract is approved by the Carson City Board of Supervisors. In the event it is determined that this agreement potentially jeopardizes any state or federal grant funds received by the City, if any, the City may immediately terminate this agreement upon providing written notice to the Contractor.

14. **Work Papers.** In the event of termination, all records, documents and copies of work papers, research and other materials prepared by the Contractor prior to the date of termination shall be provided to the District Attorney.

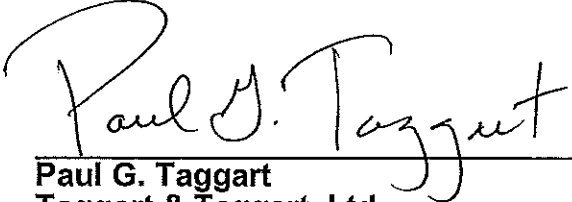
15. **Effective Date.** Except as otherwise provided herein, this Agreement shall not become effective unless and until approved by the Carson City Board of Supervisors.

16. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Nevada, and any recourse to judicial action shall be in the First Judicial District Court of the State of Nevada.

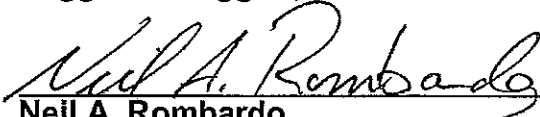
17. **Contractor's Certification.** In the event federal funds are used for payment of all or part of this contract, Contractor certifies, by signing this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction, by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 CFR Par 67, Section 67.510, as published as Part VII of the May 26, 1988, Federal Register (pages 19160-19211).

18. **Evidence of Insurance.** Copies of malpractice insurance will be attached to the agreement with proof of policy of attorney liability insurance for errors and omissions that is issued by an admitted insurance company authorized to transact surplus lines in the State of Nevada in the amount of not less than \$1,000,000, or as determined by the Risk Manager of Carson City, Contractor further agrees to provide proof of workers' compensation insurance as required by Nevada Revised Statutes Chapter 616A through 616D inclusive. If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310 and has elected to not purchase industrial insurance, the sole proprietor must submit an executed "Affidavit of Rejection of Coverage under NRS 616B.627 and NRS 617.210" form.

19. Entire Contract and Modification. This contract constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties and approved by the Carson City Board of Supervisors.

 7/25/11

Paul G. Taggart Date
Taggart & Taggart, Ltd.

 7/26/11


Neil A. Rombardo Date
District Attorney - Carson City

Approved as to form by:

 7/26/11


Deputy District Attorney Date

Approval of legal fees & costs expenditures:

 7/26/11

Andrew Burnham Date
Public Works Director

Approved by the Carson City Board of Supervisors:

 8/17/2011

Robert Crowell, Mayor Date