

**City of Carson City
Agenda Report**

Date Submitted: August 22, 2014

Agenda Date Requested: September 4, 2014
Time Requested: 10 Minutes

To: Mayor and Supervisors
From: Nick Marano, City Manager
Tad Fletcher, Chief of Alternative Sentencing
Max Cortes, Court Administrator

Subject Title: For possible action: Action to approve Amendment No. 1 to the Agreement entered in between the First Judicial District Court and the Carson City Justice and Municipal Court (“Courts”), Carson City and the Department of Alternative Sentencing (“DAS”).

Staff Summary: It is the Courts’ request that the Agreement be amended to include indemnification language to protect the Courts from exposure to civil liability.

Type of Action Requested: (check one)

Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve Amendment No.1 to the Agreement entered in between the Courts, the City and the DAS.

Explanation for Recommended Board Action: The Amendment provides clarification to the Agreement regarding the City’s indemnification of the Courts in the event an incident occurs involving the Courts’ bailiffs or marshals while performing duties with the DAS. The Courts are protected by absolute judicial immunity while their bailiffs and marshals are performing judicial functions. The DAS, pursuant to NRS 211A.080, is a department under the executive branch. Absolute judicial immunity may not extend to duties performed by the Courts’ bailiffs and marshals while working with the DAS. Such assistance has been occurring for the last 15 years without incident. Because an argument for absolute judicial immunity might fail, it would be appropriate to extend indemnification to cover the Courts when their bailiffs or marshals are assisting the DAS.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 211A.080 and NRS 41.0339

Fiscal Impact: Not known.

Funding Source: General Fund.

Supporting Material: Amendment No. 1.

Prepared By: Max Cortes, Court Administrator

Reviewed By: James T. Russell Date: 8-22-2014
James T. Russell, First Judicial District Court Judge, Dept I)
James E. Wilson Jr. Date: 8/22/14
James E. Wilson Jr., First Judicial District Court Judge, Dept II
John Tatro Date: 8/25/14
John Tatro, Justice/Municipal Court Judge, Dept II
Thomas R. Armstrong Date: 8/25/2014
Thomas R. Armstrong, Justice/Municipal Court Judge, Dept I
Nick Marano Date: 8/26/14
Nick Marano, City Manager
Joseph T. Ward Jr. Date: 8/26/14
Neil Lombardo, District Attorney
Nick Providenti Date: 8/26/14
Nick Providenti, Finance Director

Board Action Taken:

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

(Vote Recorded By)

1 AMENDMENT No. 1

2 This Amendment made and entered into this 21st day of August, 2014, by and
3 between the First Judicial District Court and Justice and Municipal Court ("Courts"),
4 Carson City ("City") and the Department of Alternative Sentencing ("DAS").

5 WITNESSETH:

6 WHEREAS, the Courts, City and DAS desire to amend "Section 1.1
7 Recognitions" of the original Agreement entered into on June 5, 2014.

8 WHEREAS, it is deemed that said amendment is both necessary and is in the
9 best interests of the Courts, City and DAS.

10 NOW, THEREFORE, in consideration of the aforesaid, the parties agree as
11 follows:

12 This Amendment shall not become effective until and unless approved by the
13 Carson City Board of Supervisors. The parties agree to amend "Section 1.1
14 Recognitions" of the original Agreement to add the following:

15 IT IS AGREED to the fullest extent permitted by law, the City shall indemnify,
16 hold harmless and defend the Courts from and against all liability, claims, actions,
17 damages, losses, and expenses, including, without limitation, reasonable attorneys'
18 fees and costs, arising out of any alleged negligent, willful, or unlawful act or omission
19 performed by the Courts' bailiffs and marshals in the course and scope of their work for
20 the City's DAS. The City will defend the Courts' bailiffs and marshals in connection with
21 any claim arising out of any act or omission performed in the course and scope of their
22 work for the DAS as required pursuant to NRS 41.0339.

23
24 IT IS ALSO AGREED that, qualified immunity aside, at all other times when the
25 Courts' bailiffs and marshals, or any judicial officers, are performing functions for the
26 Courts or acting at the direction from the Courts they would be entitled to absolute
27 quasi-judicial immunity – looking to the nature of the function performed and not to the
28

1 identity of the actor performing it. DAS employees, depending on the functions being
2 performed by them, might be shielded by absolute quasi-judicial immunity.

3 IT IS ALSO AGREED, that all unaffected conditions, requirements, and
4 restrictions of the Original Agreement remain in full force and effect for the duration of
5 the Agreement term.

6 We, the undersigned, as authorized representatives of the Court, City, and DAS,
7 do hereby approve and enter into this Amendment No.1.

9 CITY OF CARSON

FIRST JUDICIAL DISTRICT COURT

10 By: _____
11 Robert Crowell, Mayor

By: James T. Russell
Honorable James T. Russell

12 Date: _____

Date: August 21, 2014

14 JUSTICE AND MUNICIPAL COURT

FIRST JUDICIAL DISTRICT COURT

15 By: John Tatro
16 Honorable John Tatro

By: James E. Wilson, Jr.
Honorable James E. Wilson, Jr.

17 Date: 8/21/14

Date: August 21, 2014

19 JUSTICE AND MUNICIPAL COURT

DEPARTMENT OF ALTERNATIVE
SENTENCING

20 By: Thomas R. Armstrong
Honorable Thomas R. Armstrong

By: Tad N. Fletcher
Tad N. Fletcher, Chief
Department of Alternative Sentencing

22 Date: 8-21-2014

Date: 8-23-14

24 APPROVED AS TO LEGAL FORM:

Neil Rombardo, District Attorney

25 By: Joseph J. W...

26 Date: 8/26/14