

Carson City Agenda Report

Date Submitted: Feb. 21, 2014

Agenda Date Requested: March 6, 2014

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 an independent contractor agreement retroactive to February 18, 2014 between the District Attorney and the law firm of Maupin, Cox & LeGoy for Special Deputy District Attorney services on an as needed hourly basis, as engaged by the District Attorney's Office, to represent the City in labor matters involving without limitation negotiations, mediation, fact finding, arbitration, and appeals. (*Randal Munn and Melanie Bruketta*)

Staff Summary: Labor law is a very specialized area of law practice. The District Attorney's Office does not currently have any staff with the necessary expertise in labor law with respect to ongoing labor contract negotiations.

Type of Action Requested:

Does This Action Require A Business Impact Statement: () Yes (X) No

Recommended Board Action: I move to approve pursuant to Section 3.070(3) of the City Charter an independent contractor agreement retroactive to February 18, 2014 between the District Attorney and the law firm of Maupin, Cox & LeGoy for Special Deputy District Attorney services on an as needed hourly basis, as engaged by the District Attorney's Office, to represent the City in labor matters involving without limitation negotiations, mediation, fact finding, arbitration, and appeals.

Explanation for Recommended Board Action: The City is currently in ongoing labor contract negotiations which may require the services of expert labor legal counsel to ensure the City's interests are adequately represented. Rick R. Hsu, Esq., shall be the contracted firm's primary counsel representing the City, but may utilize other firm members as needed in his professional judgment in consultation with the District Attorney's Office.

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

CC Charter section 3.070(3): "The district attorney may, subject to the approval of the board, contract for the services of special deputy district attorneys."

Fiscal Impact: Hourly contract for professional legal services not to exceed a maximum of \$50,000.00.

Explanation of Impact: N/A.

Funding Source: City Manager/HR professional services budget (as augmented)

Alternatives: 1) Refer back to District Attorney's office
2) Do not approve Agreement

Supporting Material: Professional Services Agreement

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

Reviewed By: R. M. S. Date: 2/25/14
(Public Works)
Markus Burns Date: 2/25/14
(City Manager)
Randy Munn Date: 2/25/14
(District Attorney)
Mark Burns Date: 2/25/14
(Finance Director)

Board Action Taken:

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

(Vote Recorded By)

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 **Maupin, Cox & LeGoy**, 4785 Caughlin Parkway, Reno, NV 89519 (775-827-2000; Fax 775-827-2185).

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 in need of expert legal counsel in matters related to labor law; and

WHEREAS, the District Attorney believes the legal services of Maupin, Cox & LeGoy are desired to assist the District Attorney and/or the City Manager in labor matters, negotiations, mediation, fact finding, arbitration, and appeals, without limitation; and

WHEREAS, the services of Maupin, Cox & LeGoy herein specified are both necessary and desirable and in the best interests of Carson City and the District Attorney; and

WHEREAS, Maupin, Cox & LeGoy represents that its lawyers 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 Maupin, Cox & LeGoy ("Contractor") to serve as legal counsel to the District Attorney as a Special Deputy District Attorney in labor 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. Rick R. Hsu, Esq. shall primary attorney responsible for representing the City on behalf of the Contractor. 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 City Manager or the City's Human Resources Director 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 February 18, 2014, 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:

\$ 300.00 per hour for the services of **Rick R. Hsu, Esq.;**
\$ 300.00 per hour for the services of **other shareholders of equal or greater experience in public sector interest arbitration/labor disputes**, in particular, **Procter J. Hug, Esq. and Donald A. Lattin, Esq.**
\$ 250.00 per hour for the services of **any other shareholders**; and
\$ 150.00 per hour for the services of **associate attorneys**,

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 \$50,000.00 – (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 City Manager (Finance Department) for 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:

a) 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;

b) On February 18, 2016;

c) 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.

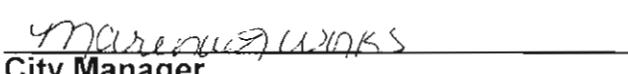
Maupin, Cox & LeGoy - Rick R. Hsu, Esq Date


Neil A. Rombardo Date
District Attorney – Carson City

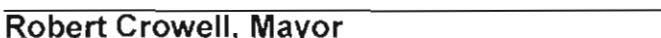
Approved as to form by:


Deputy District Attorney 2/24/14 Date

Approval of legal fees & costs expenditures:


City Manager 2/25/14 Date

Approved by the Carson City Board of Supervisors:


Robert Crowell, Mayor Date