

CLARK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

Petitioner: Denis Cederburg, Director of Public Works

Recommendation:

Approve and authorize the Chair to sign the First Amendment to Indemnification Agreement among Clark County, Gibraltar Perimeter Security (Jim Bryer, CFO/General Counsel), Shackelford, Bowen, McKinley & Norton, LLP (Henry L. Ehrlich, Partner), and Heim, Payne & Chorush LLP (Eric Enger, Partner), modifying legal representation for the County in the Nevada U.S. District Court case of RSA Protective Technologies, LLC v. Clark County, filed in the U.S. District court relating to patent infringement allegations pertaining to bollard installation projects along Las Vegas Boulevard. (For possible action)

FISCAL IMPACT:

Fund #:	N/A	Fund Name:	N/A
Fund Center:	N/A	Funded PGM/Grant:	N/A
Amount:	N/A		
Description:	N/A		
Additional Comments:	N/A		

BACKGROUND:

During 2017 and 2018, the County awarded public works construction projects to CMMCM LLC d/b/a Muller Construction, Las Vegas Paving Corporation, Unicon, LLC, and MMC, Inc. (all "Contractors") for a series of bollard installation projects along Las Vegas Boulevard from Spring Mountain Road to 800 feet south of Harmon Avenue. Each of the Contractors obtained their bollard materials and installation information from Gibraltar Perimeter Security ("Gibraltar"). In 2020, RSA Protective Technologies, LLC brought a lawsuit in federal court against the County, RSA Protective Technologies, LLC v. Clark County, Case No. 2:20-cv-00143-RFB-EJY, alleging patent infringement relating to the bollards.

On May 19, 2020, the Board of County Commissioners approved an indemnification agreement between the County and Gibraltar whereby Gibraltar agreed to defend the County in the above-stated lawsuit as well as indemnify and hold harmless the County for any damages and liability arising from the lawsuit. That agreement included a provision stating that the law firm of Winstead, P.C., a Texas professional corporation would represent the interests the County. The attached First Amendment to Indemnification Agreement modifies legal representation and provides that instead of Winstead, P.C., the law firms of Shackelford, Bowen, McKinley & Norton, LLP, and Heim, Payne & Chorush LLP, which has specific expertise and experience with intellectual property litigation, as co-counsel, will represent the County. Both firms represent Gibraltar in a related U.S. District Court case in Delaware (that does not name the County) in which Gibraltar seeks declaratory judgment that the bollards made by Gibraltar do not infringe on the RSA patent. The litigation against the County is currently stayed pending disposition of the Delaware case.

The District Attorney's Office has reviewed and approved the first amendment to indemnification agreement as to form.

Cleared for Agenda

09/21/2021

File ID#

21-1320