

RFQ NO. 606808-23
CIVIL DEFENSE LEGAL SERVICES

RETAINER AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2024, by and between CLARK COUNTY, hereinafter referred to as the "COUNTY", and APPLICANT, of the law firm of _____, hereinafter collectively referred to as "ATTORNEY."

WHEREAS, Nev. Rev. Stat. 41.038 provides that a local government such as the COUNTY, may self-insure against the liability and expense of defending a claim against itself or any of its officers, employees or immune contractors; and

WHEREAS, the Clark County District Attorney is responsible for defense of suits brought against the COUNTY and its employees pursuant to Nev. Rev. Stat 252.110 and Nev. Rev. Stat 41.0339; and

WHEREAS the Clark County District Attorney may from time to time seek to assign outside counsel to provide civil litigation representation, support and resources, as well as specialized legal advice to the COUNTY, in excess of the services available in-house; and

WHEREAS, Nev. Rev. Stat. 41.0344 authorizes the District Attorney as chief legal counsel for the COUNTY to recommend employment of special counsel with the Board of County Commissioner's approval as to compensation; and

WHEREAS, the ATTORNEY is experienced in providing legal defense or investigation of liability claims in various practice areas, which may include but not be limited to Civil Rights, Personal Injury/Tort Defense, Employment, Bankruptcy, Eminent Domain, General Contract Disputes, Flood Litigation, Construction Contract Disputes, Public Utilities, Special Improvement District Litigation and other various litigation as determined by the Clark County District Attorney's Office;

NOW THEREFORE, the parties agree as follows:

SECTION I
SCOPE OF SERVICES OF ATTORNEY

The COUNTY hereby retains and employs the ATTORNEY to provide legal representation of the COUNTY and its associated entities, their duly authorized officers, employees, and volunteers, in defense of or prosecution of claims and causes of action as the ATTORNEY's expertise and experience may allow.

The ATTORNEY will provide these services in accordance with the Clark County Litigation Guidelines which are attached hereto and incorporated herein by this reference.

The ATTORNEY will work in conjunction with the Clark County District Attorney's Office and Clark County Risk Management in the performance of services hereunder.

The ATTORNEY will observe and abide by the terms and conditions of all applicable laws, regulations, ordinances and rules of the United States, of the State of Nevada, or any political subdivision thereof, or of any duly constituted public authority or agency.

All materials developed, prepared or acquired during the performance of services under this Agreement, including without limitation, all finished or unfinished documents, research, pleadings, memoranda, briefs, data, studies, surveys, drawings, manuals, maps, models, photographs, and reports (hereinafter collectively called "documents") shall be available to the COUNTY upon request. No documents prepared for the COUNTY shall be released by the Attorney to any third party without the COUNTY'S prior permission.

The services provided pursuant to the Agreement are nonexclusive and the COUNTY is not limited by this Agreement from entering into other agreements for legal services with other attorneys or required by this Agreement to assign any specific litigation matters or volume of litigation matters to the Attorney.

The ATTORNEY will not affect a final compromise of any matter, nor assert any conflict waivers without the prior approval of the COUNTY or its designated representative.

The COUNTY reserves the right to request, and to object to, representation by specific attorneys within the ATTORNEY's firm.

The ATTORNEY will execute a Business Associate Agreement pursuant to the Health Insurance Portability and Accountability Act (HIPAA) requirements.

The ATTORNEY shall provide a list of designated attorneys who along with the ATTORNEY will be available to provide the legal services pursuant to this Agreement. The ATTORNEY shall notify the COUNTY within fourteen (14) calendar days of any change to this his designated list.

SECTION II TERM

COUNTY agrees to retain ATTORNEY for the periods from date of award through June 30, 2028, with the option to renew for 2 one-year periods, unless this Agreement is earlier terminated under the provisions hereof. The ATTORNEY will undertake to represent the COUNTY to the conclusion of each matter assigned, even if the conclusion extends beyond the term of this Agreement.

SECTION III ATTORNEY FEES

ATTORNEY will provide the COUNTY with legal services under this Agreement at the following rates and charges. Hours of service shall be billed based on increments of one/tenth of an hour and should represent actual time spent, rather than a standard charge for the activity performed.

- A. Hourly Rates
 - 1. Partners: \$210.00 per hour
 - 2. Associates: \$180.00 per hour
 - 3. Paralegals: \$ 90.00 per hour
- B. Standard Charges Copies: \$0.15 per page

SECTION IV COSTS OF ACTION

A. Litigation Support

All costs in connection with legal representation shall be paid by the COUNTY in accordance with the Clark County Litigation Guidelines. All single costs in excess of \$500.00 will only be incurred by the ATTORNEY after prior written notice to COUNTY Risk Management, and subject to the COUNTY's right to object to the cost being incurred, said objection to be made by the County within 10 business days from receipt of the notice except for costs related to depositions and deposition transcripts.

B. Travel Costs

Travel expenses for travel outside of the Las Vegas Metropolitan area, involving mileage, air travel, rental cars, or an overnight stay are subject to *prior* approval by Clark County Risk Management, with reimbursement to be made only as follows.

Meals, incidentals and lodging reimbursements shall not exceed rates established by the U.S. General Services Administration (GSA) for the primary destination. For current rates, refer to <http://www.gsa.gov/perdiem>. GSA rates vary by location, and for some locations, by time of year. If a city/county is not listed, then the GSA standard rate for continental U.S. applies. Reimbursement for lodging taxes is in addition to this rate, but only up to the lodging taxes applicable based on the GSA rate.

Air travel costs will be limited to coach or economy class only. *Clark County Risk Management must pre- approve the air travel rate before it is incurred.*

Mileage for travel outside the Las Vegas Metropolitan area will be limited to direct routes and reimbursed at IRS standard business rates. Other ground transportation (taxi, shuttle, bus, rental car) at actual costs. Rental car reimbursement is limited to midsize sedan or equivalent.

The ATTORNEY must obtain prior written approval from the COUNTY if more than one employee is to be sent on travel related to the litigation.

Original *itemized* receipts are required for reimbursement of travel expenses as stated herein. The ATTORNEY is reminded that receipts submitted for payment by the COUNTY are public record.

Mileage, meals and incidentals for routine local litigation related activity and travel within the Las Vegas Metropolitan area, will not be reimbursed.

SECTION V BILLING

All billing must be in accordance with NRS 244.250 and any billing received after six (6) months from the date of service may be denied in accordance with NRS 244.250.

A. Attorney Fees

The ATTORNEY will provide monthly itemized billings to COUNTY Risk Management for all services provided during the preceding month, in accordance with Clark County's Litigation Guidelines. The COUNTY agrees to make payment for the ATTORNEY's services and costs within sixty (60) days after receipt of such billings. The County reserves the right to withhold payment pending the ATTORNEY's compliance with the periodic status reporting requirements of the Clark County Litigation Guidelines.

B. Costs

Invoices for outside costs and services incurred by the ATTORNEY shall be forwarded directly to COUNTY Risk Management for payment directly to the outside service provider.

C. Experts and Investigators

The ATTORNEY may employ experts and investigators only upon *prior* approval of the COUNTY in accordance with the Clark County Litigation Guidelines. Fees and costs charged by such experts and investigators shall be forwarded directly to COUNTY Risk Management, and paid by the COUNTY directly to the expert or investigator within thirty (30) days after COUNTY receipt of billing for services rendered.

SECTION VI TERMINATION

This Agreement may be terminated by either party upon thirty (30) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, or by the COUNTY for its convenience.

In the event of termination, the ATTORNEY shall be paid compensation for services performed and properly billed pursuant to the terms of this Agreement to the effective termination date.

The COUNTY reasonably believes that funds can be obtained to make all payments during the term of the Agreement. If the COUNTY does not allocate funds to continue the legal representation, this Agreement shall be terminated when appropriated funds expire.

SECTION VII EVENTS UPON TERMINATION OR EXPIRATION

Upon the expiration or termination of this Agreement the ATTORNEY shall continue to handle all open cases and other legal matters assigned to the ATTORNEY at the rates set forth in this Agreement until the cases and other legal matters have been resolved or upon written notice from the COUNTY. The conclusion of the ATTORNEY'S representation, the ATTORNEY shall return all litigation files to the COUNTY or its designated representative and execute the necessary Substitution of Counsel.

SECTION VIII RECORDS

All books, records documents and accounting procedures and practices of ATTORNEY, relevant to this Agreement, shall be subject to inspection, audit and copying by the COUNTY or its authorized representatives.

SECTION IX OWNERSHIP OF DOCUMENTS

All files, pleadings, discovery, reports, documents and other records prepared or kept by the ATTORNEY in the performance of its obligations under this Agreement shall be the exclusive property of the COUNTY and all such materials shall be remitted to the COUNTY by the ATTORNEY upon expiration or termination of this Agreement. All such materials shall be retained by the ATTORNEY for a minimum of six (6) years from the date any and all appeal rights expire. At the end of this retention term, the COUNTY shall be notified and given sixty (60) days to reclaim the file prior to its destruction by the ATTORNEY.

SECTION X CONFIDENTIALITY

All personnel records, personal data and protected health information (PHI) received, stored or viewed by the ATTORNEY shall be kept in the strictest confidence by the ATTORNEY and its employees and contractors. All such information shall be used and disclosed only for the proper management of the litigation assigned and may not be used or further disclosed other than as necessary in the furtherance of the litigation.

The ATTORNEY shall use appropriate safeguards to prevent the use or disclosure of such confidential information outside the scope of the litigation and shall report to the COUNTY any inappropriate or unauthorized use or disclosure of the information as soon as it learns of such use or disclosure.

The ATTORNEY acknowledges that its services will be subject to termination if it is found to be in violation of the confidentiality terms of the Agreement.

SECTION XI ASSIGNMENT AND SUBCONTRACTING

The ATTORNEY shall neither assign, transfer nor delegate any rights, obligations or duties under this Agreement, nor shall the ATTORNEY subcontract the provision of services under this Agreement, without prior written consent of the COUNTY.

SECTION XII AMENDMENT AND MODIFICATION

No provision of this Agreement will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by the authorized agents of all parties.

SECTION XIII APPLICABLE LAW

This Agreement shall be governed by and interpreted according to the laws of the State of Nevada. ATTORNEY agrees that County does not waive any immunity (including, without limitation, sovereign immunity). ATTORNEY further agrees that any litigation arising out of or in any way relating to this Agreement shall be commenced exclusively in a court of competent jurisdiction in Clark County, Nevada.

SECTION XIV INSURANCE

The ATTORNEY will provide the COUNTY with Certificates of Insurance for the coverage as listed below within thirty (30) calendar days after approval of this Agreement by the Board of County Commissioners, or any extension thereof. Thereafter, current certificates shall be maintained with the COUNTY so long as insurance is required pursuant to this Agreement. The certificates for each insurance policy are to be signed by a person authorized by the insurer and licensed by the State of Nevada.

Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificates of insurance. The adequacy of the insurance supplied by the ATTORNEY, including the rating and financial health of each insurance company providing coverage, is subject to the approval of the COUNTY.

With regard to the ATTORNEY's services performed pursuant to this Agreement, the ATTORNEY's insurance shall be primary and ATTORNEY hereby waives any right of subrogation against the County unless arising from County's sole negligence.

The insurance coverage supplied by the ATTORNEY must provide for a thirty (30) day notice to the COUNTY before implementation of a proposal to suspend, void, cancel or reduce in coverage or in limits the required insurance coverage. This notice requirement does not waive the insurance requirements contained herein.

All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$10,000 without the written approval of the COUNTY.

If aggregate limits are imposed on the insurance coverage, then the amount of such limits must not be less than twice the amount of the limits required herein. All aggregates must be fully disclosed, and the amount entered on the required certificate of insurance. Any notice given to ATTORNEY with respect to exhaustion of limits of insurance shall also be sent to COUNTY.

The ATTORNEY shall obtain and maintain, for the duration of this Agreement, the following insurance against claims which may arise from or in connection with the performance of the work hereunder by the ATTORNEY, its agents, representatives, employees or sub-contractors. The cost of such insurance shall be borne by the ATTORNEY.

Professional liability or errors and omissions insurance against claims for injuries or damages arising out of the services rendered by the ATTORNEY, its agents, representative or employees pursuant to ATTORNEY's agreement with the COUNTY.

ATTORNEY shall maintain policy limits of no less than \$1,000,000.00, \$2,000,000 in the aggregate.

General liability insurance in an amount of not less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate

Workers' Compensation insurance, by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with Nevada Revised Statutes Chapters 616A-616D, inclusive. In the event that ATTORNEY is a Sole Proprietor, as defined in NRS 616A.310, ATTORNEY shall be required to submit an affidavit indicating such, and that they are otherwise in compliance with those terms, conditions and provisions.

"Claims made" insurance coverage must continue for a period of three years beyond the termination of the Agreement. Any retroactive date must coincide with or pre-date the beginning of the Agreement and may not be advanced without the consent of the COUNTY.

If the ATTORNEY fails to maintain the insurance coverage required herein, then the COUNTY will have the option to declare the ATTORNEY in breach and terminate the Agreement.

The insurance requirements specified herein do not relieve the ATTORNEY of his responsibility or limit the amount of his liability to the COUNTY or other persons and the ATTORNEY is encouraged to purchase such additional insurance as it deems necessary.

SECTION XV INDEMNIFICATION

Regardless of the coverage provided by any insurance policy, the ATTORNEY shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, employees and volunteers from any and all claims, demands, actions, attorney's fees, costs, and expenses based upon or arising out of alleged errors, omissions or acts of the ATTORNEY or his principals, employees, subcontractors, or other agents while performing services under this Agreement.

SECTION XVI ETHICS OF ATTORNEY

The ATTORNEY shall abide by and perform his duties in accordance with the ethics of the legal profession and all federal, state and municipal laws, regulations and ordinances regulating the practice of law.

SECTION XVII CONFLICTS

During the term of this Agreement the ATTORNEY may not represent a client whose position may be adverse to the COUNTY without obtaining the COUNTY'S written consent to the adverse representation in accordance with Nevada Rules of Professional Conduct 1.7 and 1.8.

SECTION XVIII INDEPENDENT CONTRACTOR

The ATTORNEY is an independent contractor and not an employee of the COUNTY. No permitted or required approval by the COUNTY of documents or services of the ATTORNEY shall be construed as making the COUNTY responsible for the manner in which the ATTORNEY performs services or for any negligence, errors or omissions of the ATTORNEY. Such approvals are intended only to give the COUNTY the right to satisfy itself with the quality of service performed by the ATTORNEY. ATTORNEY agrees and acknowledges that during the term of this Agreement, ATTORNEY shall be entirely responsible for the liability and payment for ATTORNEY'S employees or assistants, of all taxes of whatever kind, arising out of the performances in this Agreement. Other than the payments described in this Agreement, ATTORNEY agrees and acknowledges that ATTORNEY or the ATTORNEY'S employees or assistants shall not be entitled to any COUNTY benefit on account of the services provided hereunder. COUNTY shall not be liable to ATTORNEY, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation, or any benefit due to a COUNTY employee. If COUNTY shall nonetheless become liable for such payments or obligations, ATTORNEY shall promptly pay or reimburse COUNTY for such liability or obligation.

SECTION XIX EXCLUSIVE BENEFIT OF THE PARTIES/NO THIRD-PARTY RIGHTS

Except as specifically provided in this section, this Agreement is not intended to create any rights, benefits, powers or interests in any third party and this Agreement is entered into for the exclusive benefit of the COUNTY and ATTORNEY. The ATTORNEY acknowledges that the COUNTY has entered into a separate self-insurance pooling agreement with other local government entities to mutually provide for liability coverage, and that the COUNTY is the management agent for the entities participating in the pooling agreement. The ATTORNEY will provide the entities participating in the pooling agreement with legal services according to the rates and terms set forth in the Agreement.

SECTION XX SEVERABILITY

If any portion of this Agreement is found to be invalid, the remainder of the Agreement remains in effect.

SECTION XXI NOTICES

Any notice required or permitted to be given under this Agreement shall be deemed to have been given when received by the party to whom it is directed by personal service, hand delivery or United States Mail at the following addresses:

TO COUNTY: CLARK COUNTY RISK MANAGEMENT
500 South Grand Central Pkwy., 6TH Floor
Las Vegas, Nevada 89155

TO ATTORNEY:

Either party may, at any time and from time to time, change its representative or address by written notice to the other.

SECTION XXII ENTIRE AGREEMENT

This Agreement, and the Clark County Litigation Guidelines which are referenced herein and are hereby incorporated as though fully set forth herein, constitute the entire agreement between the parties and may only be modified, supplemented or amended by a written agreement signed by both parties.

SECTION XXIII SURVIVAL OF CERTAIN PROVISIONS

The obligations of ATTORNEY under the following sections and subsections shall survive the termination or expiration of this Agreement: VII, VIII, IX, X, XIII, XIV, XV, XXIV and XXV

SECTION XXIV COPYRIGHT/INTELLECTUAL PROPERTY

ATTORNEY shall take reasonable measures to protect COUNTY from material risks of COUNTY liability known to ATTORNEY for any copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by ATTORNEY pursuant to this Agreement (other than equipment, materials, information, or ideas supplied or required by COUNTY or its employees or other agents). ATTORNEY and COUNTY agree to furnish timely written notice to each other of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this AGREEMENT.

SECTION XXV MEDIA RELEASES OR PRONOUNCEMENTS

ATTORNEY, its employees, representatives, agents, or subcontractors may not participate in any media event or issue any media release, advertisement, publication, editorial, article, or public pronouncement that pertains to this Agreement or the services, case or project to which this Agreement relates or that mentions the COUNTY without the prior written approval of the COUNTY.

**SECTION XXVI
EXECUTION**

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

ATTORNEY

CLARK COUNTY, NEVADA

By: _____

JESSICA COLVIN

Print Name: _____

Chief Financial Officer

Title: _____

Approved as to Form:
CLARK COUNTY DISTRICT
ATTORNEY

Lisa Logsdon, County Counsel

EXHIBIT A

CLARK COUNTY LITIGATION GUIDELINES

POLICY STATEMENT

These Litigation Guidelines set forth the procedures that govern CLARK COUNTY's relationship with its contracted counsel ("Contract Counsel") and CLARK COUNTY's expectations when retaining Contract Counsel to represent CLARK COUNTY in civil litigation matters.

CLARK COUNTY regards its relationship with each retained attorney and their firm as contractual. Adherence to these Guidelines is a condition of maintaining that relationship. CLARK COUNTY expects Contract Counsel to maintain the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct. Nothing contained in these Guidelines is intended to, nor shall they, restrict Contract Counsel's exercise of professional judgment or infringe upon the attorney-client relationship in any manner.

CLARK COUNTY expects Contract Counsel, and any para-professionals working on CLARK COUNTY claims, to read and comply with these Guidelines. These Guidelines supersede any previously provided Guidelines.

I. GENERAL CONTRACT COUNSEL REQUIREMENTS

1. Upon receipt of a case referral, Contract Counsel will perform a conflict check along with the preliminary review of the referral. If a conflict exists that prevents acceptance of the assignment, Contract Counsel will promptly notify the Chief of Civil Litigation in the Clark County District Attorney's Office - Civil Division (the "Chief Civil Litigation DDA").
2. If no conflict exists, within 10 days of receipt of the case, Contract Counsel will send an acknowledgment letter to the Chief Civil Litigation DDA and any named employee(s) represented by Contract Counsel regarding receipt and acceptance of the file.
3. All statistical, financial, confidential, and/or personal data received, stored or viewed by Contract Counsel shall be kept in the strictest confidence by Contract Counsel and its employees and contractors.
4. Contract Counsel shall use and disclose protected health information (PHI) for the proper management of all claims and matters assigned and shall execute a Clark County PHI Business Associate Agreement in that regard.
5. Contract Counsel acknowledges that CLARK COUNTY reserves the right to request, and to object to, representation by specific attorneys within Contracted Counsel's firm.

II. LITIGATION PLAN/CASE MANAGEMENT

One goal of litigation management is to timely identify those claims for which there is liability and identify and discuss settlement opportunities early in the litigation. Those activities necessary to defend a claim, prosecute a claim, and/or bring it to resolution should be identified and implemented early in the litigation.

The litigation plan should take into consideration applicable statutory liability limits and address applicable governmental immunities that may allow resolution for County defendants without the need for extensive discovery or litigation cost.

Within 90 days of the assignment of a litigation matter, Contract Counsel should prepare a Litigation Plan that outlines the anticipated course of action based on the assumption that the case will go to trial. (*See* Format A.)

III. DISCOVERY

Discovery must be completed promptly and efficiently. Counsel will meet with and interview any named employee(s) and/or relevant employee(s) within 90 days of case assignment. The Chief Civil Litigation DDA should be advised in advance of the date and time of any such meeting(s).

Counsel should conduct general discovery and investigation activities which minimally include:

1. Obtaining relevant documents.
2. Deposing key witnesses.
3. Identifying any potentially culpable parties.
4. Identifying damages.
5. Identifying case strengths and weakness.
6. Propound interrogatories and requests for production tailored to the case.
7. Evaluate all discovery responses, including those from any co-defendants.
8. Recommend appropriate expert witnesses.
9. Propound requests for admission as appropriate.
10. Notify the Chief Civil Litigation DDA whenever discovered information warrants a change to the Litigation Plan.

IV. PARA-PROFESSIONAL SERVICES

Use of the skills of paralegals is an efficient and cost-effective practice. Clark County Risk Management encourages the use of paralegals to perform such activities as:

1. Gathering factual information from which answers to interrogatories may be prepared.
2. Preparing materials to be sent to expert(s) for review.
3. Preparing routine computerized documents such as: interrogatories, production requests, and subpoenas.

4. Summarizing medical or other voluminous records.
5. The above activities list should not be viewed as exhaustive.

V. EXPERTS AND OTHER PROFESSIONAL SERVICE PROVIDERS

Contract Counsel is expected to recommend the appropriate expert. Absent exigent circumstances, the decision to hire experts and other professional service providers must only be made in consultation with and the approval of the Chief Civil Litigation DDA and Clark County Risk Management, prior to retention. For each expert, Contract Counsel will send the Chief Civil Litigation DDA a copy of the expert's C.V. and charges/fee schedule. All experts and other professional service providers should be screened for conflicts of interest.

Expert fees should conform with fees charged by similarly qualified experts in the same specialty and should be considered in light of the extent of CLARK COUNTY's exposure in the case.

VI. STATUS REPORTING

In addition to the Initial Litigation Plan, litigation status reporting is requested as follows:

1. Status Reports

Concise written status reports regarding the procedural posture of each matter being handled by Contract Counsel will be provided to the Chief Civil Litigation DDA at six-month intervals following submission of the Initial Litigation Plan. Subsequent status reports should only emphasize developments since the last report and review whether the case is proceeding in line with the case plan. If there have been no changes or developments since the last status report, the report should so state. The report should conclude by commenting on the current litigation plan, status and recommend any changes that are needed. (*See* Format B.)

2. Status Conferences

Approximately two months before the close of Discovery and then again two months before a scheduled trial date or settlement conference, Contract Counsel and the Chief Civil Litigation DDA will conduct a Case Assessment Conference. Preliminary discussions of this nature should occur at various intervals while the case is pending, as the case status changes, as deemed appropriate by either Contract Counsel or the Chief Civil Litigation DDA.

3. Trial/Appellate Status

The primary format for communication between Trial Counsel and the Chief Civil Litigation DDA during the trial will be a discussion at the end of each trial day. If the Chief Civil Litigation DDA is not present in court at the end of the trial day, the analysis may be conducted by telephone.

A post-trial report is to be prepared by Contract Counsel within ten days of the return of verdict. The report should contain the following information:

- a. If a plaintiff verdict, the names of all defendants found culpable.
- b. The total verdict amount and how it was apportioned among defendants.
- c. Any applicable offset due to prior settlements or plaintiff(s) contributory negligence.
- d. The amount of any applicable judgment interest calculated to the date the judgment will be entered.
- e. A brief summary of the trial indicating key testimony and/or significant events.
- f. Probable post-trial motions and appeals any party may file, with a preliminary analysis of the likelihood of success of the same.
- g. The decision to appeal shall be made upon consultation among trial counsel, the Chief Civil Litigation DDA, Clark County Risk Management and the Clark County Chief Financial Officer.
- h. The selection of Appellate Counsel shall be at the discretion of the Chief Civil Litigation DDA, Clark County Risk Management and the Clark County Chief Financial Officer. However, as a condition of being retained pursuant to these Guidelines, Trial Counsel shall continue to be counsel of record throughout the appellate process and shall work cooperatively with Appellate Counsel. Appellate Counsel shall report regularly to the Chief Civil Litigation DDA on the progress of the case.

4. Case Closure:

Upon final resolution of any litigation matter assigned, Contract Counsel will submit a Final Case Status Report to both the Chief Civil Litigation DDA and Clark County Risk Management, along with copies of all executed and filed settlement documentation.

VII. SETTLEMENT CONSIDERATIONS

Potential settlement of each matter should be identified and considered early in the proceedings and at each stage thereafter. Contract Counsel is expected to timely forward to the Chief Civil Litigation DDA all written settlement offers, and to verbally communicate all oral settlement offers, including any deadlines, along with Contract Counsel's recommendation.

The Chief Civil Litigation DDA will communicate the offer to Clark County Risk Management, and if necessary, schedule a conference between Contract Counsel and Clark County Risk Management and/or the Clark County Chief Financial Officer, to obtain settlement authorization. The time needed to accept or reject a settlement offer may vary. Contract counsel should provide sufficient notice to the Chief Civil Litigation DDA to secure settlement authority.

Contract Counsel is reminded that Settlement Agreements are subject to approval by the Board of Clark County Commissioners, and subject to the public disclosure requirements of NRS 41.0375. The terms of a settlement with Clark County may not, therefore, be kept confidential and must include disclosure of the amount of any attorney's fees and costs to be paid pursuant to the settlement agreement. However, if information has been exchanged in discovery that was subject to a protective order, the settlement agreement should confirm and require the parties to maintain the confidentiality of that information.

Prior to execution, Settlement Agreements and Releases must be reviewed by the Chief Civil Litigation DDA. When requesting settlement checks, Contract Counsel must provide Clark County Risk Management with the Payee(s) name(s), exact amount payable to each payee, a completed IRS W-9 form indicating the Social Security number or Tax ID number for each payee, including any attorney firms to receive payment, and the address of each payee. If settlement involves an employment claim and could be construed to constitute compensation in the form of wages or other employment benefit, Clark County will implement wage tax withholding as part of issuing the settlement check.

VIII. BILLING

CLARK COUNTY's goal is to obtain the best resolution of legal matters at the lowest reasonable cost. Consistent with that goal, Contract Counsel is expected to manage time carefully and to adhere to the following billing guidelines.

1. Invoices

- a. All billings shall reflect the proper case caption and case number and be directed to CLARK COUNTY Risk Management.
- b. Bills for legal services should be sent monthly from the date of assignment.
- c. Fees will be in accordance with the approved fee schedule as set forth in the Retainer Agreement.
- d. A grand total is to appear on the last line of the statement.
- e. CLARK COUNTY shall pay such invoices within sixty (60) days of receipt of the same.
- f. Final invoices should be submitted within 90 days of conclusion of a matter. The invoice should be identified as a "*Final Invoice*."
- g. Bills for legal services and costs must be submitted to CLARK COUNTY Risk Management within six (6) months of the date the services were performed or costs incurred, in accordance with NRS 244.250.

2. Invoice Format

- a. Heading: The first page of the bill must state the firm's Tax Identification Number and the caption of the case.
- b. Body: The bill must be prepared with daily entries showing:
 - i) the date the work was performed;
 - ii) the initials of the person providing the service;
 - iii) description of the work performed (single activities); and
 - iv) the actual time in tenths of an hour.
- c. End of Bill Summary: The bill must include:
 - i) the full name of each attorney, or paralegal whose time is being billed;
 - ii) their hourly rate(s); and
 - iii) the total hours and total amount charged for each during the billing period.

3. Charges for Service

- a. Time Charges:
All charges for services must be recorded based on actual time in one-tenth hour increments.
- b. Block Billing:
Grouping multiple activities under a single time charge is not permitted. The time for each activity must be stated separately.
- c. Descriptions of Services:
Descriptions of services should identify the nature, purpose, and/or subject of the work performed.
- d. Multiple Attendance:
 - i. Only one attorney should attend court appearances, depositions, witness interviews, settlement conferences, mediations and other functions without prior approval from the Chief Civil Litigation DDA.
 - ii. Trial Counsel may bill for only one attorney attending trial absent prior authorization from the Chief Civil Litigation DDA. Payments for additional Counsel (second chair) to attend or participate at trial shall be at the discretion of the Chief Civil Litigation DDA and Clark County Risk Management. Requests for additional Contract Counsel at trial shall be submitted no less than 60 days prior to trial.
- e. Legal Research:
Contract Counsel should advise the Chief Civil Litigation DDA before undertaking a legal research project requiring over six hours of research. Copies of all research memoranda will be provided upon request.
- f. In-Firm Conferences:
Reasonable and necessary in-firm meetings between Contract Counsel and another attorney or para-professional to discuss substantive or procedural aspects of the case that result in a more effective defense will be reimbursed, provided that sufficient detail of the subject of the meeting demonstrates relevance and value.
- g. Travel involving air travel, rental cars, or an overnight stay:
Travel expenses are subject to prior approval by Clark County Risk Management, with reimbursement for travel costs being limited by the travel guidelines and per diem rates applicable to travel by CLARK COUNTY employees. Contract Counsel must advise Clark County Risk Management of the expense to be incurred and obtain their approval for the rate prior to incurring any air travel costs, rental vehicle costs or room reservations.

4. Attorney time NOT Covered:

- a. Attorneys performing administrative tasks.
- b. Two or more attorneys appearing at or working on the same function without prior authorization of the Chief Civil Litigation DDA.

- c. Excessive or unnecessary polishing, review, or modifications of documents or files.
- d. Excessive internal conferencing.
- e. Unfocused or excessive legal research.
- f. Preparing bills and invoices
- g. Research prepared for and billed to other files and used in the current litigation.

5. Litigation Expenses Covered:

- a. Long distance telephone charges.
- b. Parking fees with receipt. Note: Airport parking will be paid only at the McCarran International Airport economy parking rate – Daily Rate: \$10.00.
- c. Photocopying of materials to be sent to witnesses or parties in the case, at \$0.15 cents per page.
- d. Facsimile charges, at \$0.50 per page.
- e. Pre-approved overnight courier or express delivery charges.
- f. Court Reporter costs are to be incurred with the CLARK COUNTY contracted reporting firm, and invoices to be forwarded by the firm to Clark County Risk Management for direct payment.
- g. Transcription charges for transcribing Court hearings as deemed necessary by Contract Counsel. Trial transcriptions require prior authorization of the Chief Civil Litigation DDA.

6. Litigation Expenses NOT Covered:

- a. Sanctions ordered by the Court as a result of attorney conduct which is not attributable to County responsiveness, support or conduct in the course of the litigation.
- b. Excessive, unreasonable, or unapproved expenses not incurred in accordance with these guidelines.
- c. Secretarial and routine clerical functions.
- d. Local telephone charges.
- e. Cellular phone charges.
- f. In-house messenger/courier.
- g. Routine local travel expenses, including mileage.
- h. Books, materials and CLE, unless previously authorized by Clark County Risk Management.
- i. Office supplies.

** Itemized Invoices and/or receipts to support reimbursements are required to receive reimbursement for any expenses incurred. Invoices submitted for reimbursement become public record.*

*** Clark County Risk Management reserves the right to reduce bills for excessive billing, duplicate billings, etc. and to request back up documentation for any activity billed or reimbursement requested. Clark County Risk Management also reserves the right to deny payment of all or part of any statements reflecting services or expenses incurred which are not in compliance with these litigation guidelines.*

IX. ACKNOWLEDGEMENT

The undersigned representative of the stated Contract Counsel firm, being duly authorized to execute this acknowledgement and acceptance of the foregoing terms of the Clark County Litigation Guidelines, hereby acknowledges that the Guidelines have been read and understood and that the Contract Counsel firm agrees to abide by these Guidelines in the performance of legal services to Clark County.

DATED this _____ day of _____, 2024.

LAW FIRM

By: _____
_____ Esq.

Nevada State Bar No.
Address

FORMAT A: INITIAL REPORT

- A. Complaint Allegations:
 - 1. Summarize the complaint allegations and factual basis for the litigation
 - 2. Identify all parties
 - 3. Identify applicable governmental defenses, immunities and liability limits
- B. Preliminary Investigation
 - 1. Summarize the information developed during the preliminary investigation, identifying key witnesses anticipated.
- C. Litigation Plan:
 - 1. Identify each significant activity counsel proposes to initiate (e.g., investigation, motion, discovery)
 - 2. Identify motions which have been or are likely to be initiated by other parties and their potential for success
 - 3. Identify the manner in which applicable governmental defenses, immunities and liability limits will be addressed in order to minimize the cost of litigation
- D. Recommendations for Early Case Disposition

FORMAT B: CONTRACT COUNSEL PROCEDURAL STATUS REPORTS

- A. Update the Legal Issues Raised / Remaining
Significant Documentation Exchanged or Available
Discovery Remaining and Anticipated Timeline to Complete
- B. Updated Evaluation of Damages Claimed, to include:
 - General Damages
 - Special Damages
 - Punitive Damages
- C. Settlement Options and/or Dispositive Motions Considered

EXHIBIT B

Business Associate Agreement

This Agreement is made effective the date of the last signature below, by and between **Clark County, Nevada** (hereinafter referred to as "Covered Entity"), with its principal place of business at 500 S. Grand Central Parkway, Las Vegas, Nevada, 89155, and _____, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Rules"); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act, as well as the Genetic Information Nondiscrimination Act of 2008 ("GINA," Pub. L. 110-233), provide for modifications to the HIPAA Rules; and

WHEREAS, the Secretary, U.S. Department of Health and Human Services, published modifications to 45 CFR Parts 160 and 164 under HITECH and GINA, and other modifications on January 25, 2013, the "Final Rule," and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "Business Associate" of Covered Entity as defined in the HIPAA Rules (the agreement evidencing such arrangement is entitled "Underlying Agreement"); and

WHEREAS, Business Associate will have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement:

THEREFORE, in consideration of the Parties' continuing obligations under the Underlying Agreement, compliance with the HIPAA Rules, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Rules and to protect the interests of both Parties.

I. DEFINITIONS

“HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

“Protected Health Information” means individually identifiable health information created, received, maintained, or transmitted in any medium, including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. “Protected Health Information” includes without limitation “Electronic Protected Health Information” as defined below.

“Electronic Protected Health Information” means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Rules) or maintained in Electronic Media.

The following terms used in this Agreement shall have the same meaning as defined in the HIPAA Rules: Administrative Safeguards, Breach, Business Associate, Business Associate Agreement, Covered Entity, Individually Identifiable Health Information, Minimum Necessary, Physical Safeguards, Security Incident, and Technical Safeguards.

II. ACKNOWLEDGMENTS

Business Associate and Covered Entity acknowledge and agree that in the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

Business Associate acknowledges and agrees that all Protected Health Information that is disclosed or made available in any form (including paper, oral, audio recording or electronic media) by Covered Entity to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

Business Associate has read, acknowledges, and agrees that the Secretary, U.S. Department of Health and Human Services, published modifications to 45 CFR Parts 160 and 164 under HITECH and GINA, and other modifications on January 25, 2013, the “Final Rule,” and the Final Rule significantly impacted and expanded Business Associates’ requirements to adhere to the HIPAA Rules.

III. USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- (a) Business Associate agrees that all uses, and disclosures of Protected Health information shall be subject to the limits set forth in 45 CFR 164.514 regarding Minimum Necessary requirements and limited data sets.

- (b) Business Associate agrees to use or disclose Protected Health Information solely:
 - (i) For meeting its business obligations as set forth in any agreements between the Parties evidencing their business relationship; or
 - (ii) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement or the Underlying Agreement (if consistent with this Agreement and the HIPAA Rules).
- (c) Where Business Associate is permitted to use Subcontractors that create, receive, maintain, or transmit Protected Health Information: Business Associate agrees to execute a "Business Associate Agreement" with Subcontractor as defined in the HIPAA Rules that includes the same covenants for using and disclosing, safeguarding, auditing, and otherwise administering Protected Health Information as outlined in Sections I through VII of this Agreement (45 CFR 164.314).
- (d) Business Associate will acquire written authorization in the form of an update or amendment to this Agreement and Underlying Agreement prior to:
 - (i) Directly or indirectly receiving any remuneration for the sale or exchange of any Protected Health Information; or
 - (ii) Utilizing Protected Health Information for any activity that might be deemed "Marketing" under the HIPAA rules.

IV. SAFEGUARDING PROTECTED HEALTH INFORMATION

- (a) Business Associate agrees:
 - (i) To implement appropriate safeguards and internal controls designed to prevent the use or disclosure of Protected Health Information other than as permitted in this Agreement, the Underlying Agreement or by the HIPAA Rules.
 - (ii) To implement "Administrative Safeguards," "Physical Safeguards," and "Technical Safeguards" as defined in the HIPAA Rules designed to protect and secure the confidentiality, integrity, and availability of Electronic Protected Health Information (45 CFR 164.308, 164.310, 164.312). Business Associate shall document policies and procedures for safeguarding Electronic Protected Health Information in accordance with 45 CFR 164.316, as applicable.
 - (iii) To notify Covered Entity of any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system ("Security Incident") upon discovery of the Security Incident; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence and attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any other combination of the above, so long as no such incident results in unauthorized access to, or use and disclosure of PHI.

(b) When a known and confirmed impermissible acquisition, access, use, or disclosure of Protected Health Information ("Breach") occurs, Business Associate agrees:

- (i) To notify the Covered Entity HIPAA Program Management Office within 15 days of discovery of the Breach, and
- (ii) Within 15 business days of the discovery of the Breach, provide Covered Entity with all required content of notification in accordance with 45 CFR 164.410 and 45 CFR 164.404, and
- (iii) To reasonably cooperate with Covered Entity's analysis and final determination on whether to notify affected individuals, media, or Secretary of the U.S. Department of Health and Human Services.
- (iv) To pay all reasonable actual costs associated with the notification of affected individuals and reasonable actual costs associated with mitigating potential harmful effects to affected individuals.

V. RIGHT TO AUDIT

(a) Business Associate agrees:

- (i) To provide Covered Entity with timely and appropriate access to records, electronic records, HIPAA assessment questionnaires provide by Covered Entity, personnel, or facilities sufficient for Covered Entity to gain reasonable assurance that Business Associate is in compliance with the HIPAA Rules and the provisions of this Agreement. This access may be provided by Business Associate electronically if possible. If an audit does occur, the Covered Entity will include a follow up audit in approximately six months to a year after the original review. The follow up audit would only include a review of items identified in the original audit.
- (ii) That in accordance with the HIPAA Rules, the Secretary of the U.S. Department of Health and Human Services has the right to review, audit, or investigate Business Associate's records, electronic records, facilities, systems, and practices related to safeguarding, use, and disclosure of Protected Health Information to ensure Covered Entity's or Business Associate's compliance with the HIPAA Rules.

VI. COVERED ENTITY REQUESTS AND ACCOUNTING FOR DISCLOSURES

(a) At the Covered Entity's Request, Business Associate agrees:

- (i) To comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to Section 164.522 of the HIPAA Rules to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity.

(ii) To make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Rules. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information electronically available to the Covered Entity.

(iii) To make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Rules.

(iv) To account for disclosures of Protected Health Information and make an accounting of such disclosures available to Covered Entity as required by Section 164.528 of the HIPAA Rules. Business Associate shall provide any accounting required within 15 business days of request from Covered Entity.

VII. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Underlying Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Underlying Agreement immediately.

At termination of this Agreement, the Underlying Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible.

VIII. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Rules, the Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of Nevada. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Agreement fails to comply with the HIPAA Rules, such Party shall notify the other Party in writing. For a period of up to thirty days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Rules, then either Party has the right to terminate upon written notice to the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____