

**COLORADO RIVER COMMISSION OF NEVADA**

**AGENDA ITEM F**

**FOR MEETING OF JUNE 14, 2022**

**SUBJECT:**

*For Possible Action:* Consideration of and possible action to approve an Amendment No. 7 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada (Commission) extending the contract term to June 30, 2024, for legal services.

**RELATED TO AGENDA ITEM:**

None.

**RECOMMENDATION OR RECOMMENDED MOTION:**

Staff recommends the Commission approve an Amendment No. 7 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., primary attorney Lauren Caster, Esq.; the Office of the Attorney General; and the Commission for legal services; and authorize the Executive Director to sign it on behalf of the Commission.

**FISCAL IMPACT:**

Amending the contract as recommended will extend the term to June 30, 2024, with expenditures occurring in FY 2023-2024. No additional funding is requested for the extended term.

**STAFF COMMENTS AND BACKGROUND:**

**A. Request for Amendment of Contract:**

The requested Amendment No. 7 is an extension of the contract for two more years and is not requesting any additional amount be authorized on the contract. The current balance remaining on the contract is \$65,606 and that is expected to last for the near term. After a ruling from the United States Supreme Court, expected this fall, the Staff can better evaluate whether a further extension or funds need to be added.

**B. For Reference Below Is a More Detailed History of the Case:**

The pending lawsuit was initiated in 2003, and challenged current Colorado River operations, including the 2007 Guidelines, Federal banking regulations (which permit us to bank Nevada's water in Arizona and California) and potentially the agreements and associated river operations relating to Minute 319 with Mexico. In addition, this significant litigation threatens the stability of the Law of the River that the Seven Basin States rely on and may ultimately result in a water adjudication in the District Court or the United States Supreme Court.

The Navajo Nation appealed to the 9<sup>th</sup> Circuit Court, and the case was fully briefed before that court. Oral argument was heard on November 13, 2017. A decision of the Court was issued November 6, 2017, with the decision published on December 4, 2017.

The Ninth Circuit directed the District Court "to consider fully the Nation's breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out." Navajo Nation v. Department of Interior, 876 F.3d at 1173. On remand, the District Court authorized the Nation to file a motion for leave to amend its complaint by April 13, 2018. Responses to that motion are due by May 29, 2018. The Nation may file a reply in support of its motion by June 19, 2018. Civil Minutes (filed Feb. 13, 2018). Rule 15.1, Local Rules of Civil Procedure (D. Ariz.), requires that the Nation attach the proposed third amended complaint to its motion, indicating by redlining how it differs from the Second Amended Complaint.

## **AGENDA ITEM F- STAFF COMMENTS AND BACKGROUND (CONTINUED) :**

### **STAFF COMMENTS AND BACKGROUND (CONTINUED)**

On August 23, 2019, the Arizona District Court issued its Order denying the Navajo's request to amend its complaint and terminated the case. *Navajo Nation v. Department of Interior*, 2019 Westlaw 3997370 (D.Az. 2019). The District Court specifically addressed the Navajo's trust claims and stated: "Since none of these substantive sources of law create the trust duties the Nation seeks to enforce, and the Nation "cannot allege a common law cause of action for breach of trust that is wholly separate from any statutorily granted right", its breach of trust claim must fail, and amendment would be futile (citation omitted)". The case was appealed to the 9th Circuit Court of Appeals on the trust issue .

The 9<sup>th</sup> Circuit reversed the dismissal of the lawsuit by the Arizona court and instructed the District Court to address the Navajo's breach of trust claims. The Federal defendants and the Intervener states filed separate Motions for Rehearing En Banc Earlier this month, which were denied.

On May 17, 2022, the Intervener States including Nevada filed a Petition for Certiorari with the United States Supreme Court focused on two questions:

I. Does the Ninth Circuit Opinion, allowing the Nation to proceed with a claim to enjoin the Secretary to develop a plan to meet the Nation's water needs and manage the Colorado River so as not to interfere with that plan, inherently and necessarily infringe upon this Court's retained and exclusive jurisdiction over the allocation of water from the LBCR mainstream in *Arizona v. California*?

II. Can the Nation state a cognizable claim for breach of trust consistent with this Court's holding in *Jicarilla* based solely on unquantified implied rights to water under the *Winters* Doctrine?

This Contract Amendment #7 is to amend the contract to extend its term to allow Fennemore to continue to defend the case on behalf of the State of Nevada, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority.

**AMENDMENT #7 TO CONTRACT**

Between the State of Nevada acting by and through Its

**Colorado River Commission of Nevada**  
555 East Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Contact: Eric Witkoski  
Phone: (702) 486-2670  
Email: ewitkoski@crc.nv.gov

and

**Office of the Attorney General**  
555 East Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
Contact: David W. Newton  
Phone: (702) 486-2670  
Email: dnewton@crc.nv.gov

and

**Fennemore Craig, P.C.**  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
Contact: Lauren J. Caster  
Telephone: (602) 916-5367  
Email:  
lcaster@fennemorelaw.com

**1. AMENDMENTS.** For and in consideration of mutual promises and/or other valuable consideration, all provisions of the original (dated June 11, 2013) and amended contracts #2, #3, #4, #5 and #6, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

- A. On June 11, 2013, a 24-month contract (FY 2013-2015) between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation for the State of Nevada and the Commission in the Navajo Nation v. U.S., CV-03- 00507 PCT OMS, in the United States District Court, District of Arizona and related matters. The Contract expired on June 10, 2015. The original contract with Fennemore Craig, P.C. was for \$150,000 per fiscal year, for the two-year term of the contract, with a not-to-exceed amount of \$300,000.

- B. Most of the initial work on the case, specifically a Motion to Dismiss, occurred in fiscal year 2014, ultimately exceeding the "not-to-exceed" amount of \$150,000 in the first full fiscal year. The First Amendment modified the amount of the two-year contract, to a not-to-exceed amount of \$239,000, through fiscal year 2014. This \$239,000 reflected approximately \$24,000 billed in fiscal year 2013, approximately \$150,000 billed in fiscal year 2014, and increased fiscal year 2014 funding by \$65,000, for a total not-to-exceed amount of \$239,000 through June 30, 2014. The \$65,000 amount was for fees and costs to cover the remaining legal work on the reply in support of Intervenor State of Nevada's Motion to Dismiss and oral argument.
- C. To cover litigation costs until the District Court ruled on pending dispositive motions, including monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, and preparing any initial filing that may be required to move the case forward, the Contract was amended (Amendment #2 to Contract) to provide an amount of \$20,000 for legal fees and costs for fiscal year 2015 to the end of the term of the Contract (July 1, 2014 - June 30, 2015). The total not-to-exceed amount for the two-year term of the contract was amended to \$259,000. It was anticipated by the Commission that once the Court ruled, the Contract would require further amendment to provide funds to continue the case.
- D. On July 22, 2014, the District Court granted the Federal Defendants' Motion to Dismiss without prejudice and terminated the case. The case was then appealed to the 9th Circuit Court of Appeals. It was fully briefed by the parties and by Fennemore on behalf of the State, the Commission, and the Southern Nevada Water Authority (SNWA). The oral argument before the 9th Circuit was held on February 14, 2017.
- E. A decision by the 9th Circuit Court of Appeals was issued affirming in part, and reversing in part, the District Court's Order. *Navajo Nation v. Department of Interior*, 876 F.3d 1144 (9th Cir. 2017). The 9th Circuit affirmed the lower court's dismissal of all claims challenging the water banking regulations, the Surplus and the 2007 Shortage Guidelines. The 9th Circuit remanded only one claim to the Arizona District Court, that of the Breach of Trust by the Federal Government. The remedy sought by the Navajo remains uncertain, but it is currently seeking a quantification of lower mainstream Colorado River water.
- F. The 9th Circuit directed the District Court "to consider fully the Nation's breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out." *Navajo Nation v. Department of Interior*, 876 F.3d at 1173.
- G. On August 23, 2019, the Arizona District Court issued its Order denying the Navajo's request to amend its complaint and terminate the case. *Navajo Nation v. Department of Interior*, 2019 Westlaw 3997370 (D.Az. 2019). The District Court specifically addressed the Navajo's trust claims and stated: "Since none of these substantive sources of law create the trust duties the Nation seeks to enforce, and the Nation "cannot allege a common law cause of action for breach of trust that is wholly separate from any



statutorily granted right", its breach of trust claim must fail, and amendment would be futile (citation omitted)".

- H. The case was appealed to the 9th Circuit Court of Appeals on the trust issue and on February 17, 2022, the 9th Circuit issued its Amended Opinion reversing the lower court and remanding the case back to the Arizona District Court for further proceedings on the trust issue.
- I. It is anticipated that the State, the Commission and SNWA, as interveners in this action, will participate in any Petition for Certiorari filed with the Supreme Court concerning the February 2022 Order as well as the continuing lower court proceedings. This Contract Amendment #7 is to amend the contract to extend its term to allow Fennemore to continue to defend the case on behalf of the State of Nevada, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority.

Current Contract Language from Amendment #6:

3. CONTRACT TERM. This Contract, upon approval of the Board of Examiners and any other necessary approvals, shall be effective through June 30, 2022, unless sooner terminated by either party as specified in paragraph (10).

Amended Contract Language for Amendment #7

3. CONTRACT TERM. This Contract, upon approval of the Board of Examiners and any other necessary approvals, shall be effective through June 30, 2024, unless sooner terminated by either party as specified in paragraph (10).

ADDITION OF EXHIBIT B. Exhibit B - Outside Counsel Guidelines and Billing Practices and Procedures is attached hereto, incorporated by reference herein and made a part of this amended contract.

2. INCORPORATED DOCUMENTS. Exhibits A (Original Contract and Amendments) and B (Outside Counsel Guidelines and Billing Practices and Procedures) are 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 Nevada State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this amendment # 7 to the original contract to be signed and intend to be legally bound thereby.

NEVADA ATTORNEY GENERAL

June 7, 2022  
Date

CDF  
AARON D. FORD

COLORADO RIVER COMMISSION

\_\_\_\_\_  
Date

\_\_\_\_\_  
ERIC P. WITKOSKI, Executive Director

FENNEMORE CRAIG, P.C.

June 2, 2022  
Date

Lauren J. Caster  
LAUREN J. CASTER

Approved as to form:

David W. Newton  
DAVID W. NEWTON  
Senior Deputy Attorney General

6/7/22  
Date

Approved this \_\_\_ day of \_\_\_\_\_ 2022

STATE BOARD OF EXAMINERS

\_\_\_\_\_  
Clerk, Board of Examiners

# EXHIBIT A

**EXHIBIT A**

**AMENDMENT # 6 TO CONTRACT**

**FOR SERVICES OF INDEPENDENT CONTRACTOR**

## **AMENDMENT #6 TO CONTRACT**

Between the State of Nevada acting by and through Its

**Colorado River Commission of Nevada**  
555 East Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Contact: Eric Witkoski  
Phone: (702) 486-2670  
Email: ewitkoski@crc.nv.gov

and

**Office of the Attorney General**  
555 East Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
Contact: Christine Guerri-Nyhus  
Phone: (702) 486-2670  
Email: cguerri@crc.nv.gov

and

**Fennemore Craig, P.C.**  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
Contact: Lauren J. Caster  
Telephone: (602) 916-5367  
Email: lcaster@fclaw.com

**1. AMENDMENTS.** For and in consideration of mutual promises and/or other valuable consideration, all provisions of the original (dated June 11, 2013) and amended contracts #2, #3, #4 and #5, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

- A. On June 11, 2013, a 24-month contract (FY 2013-2015) between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation for the State of Nevada and the Commission in the Navajo Nation v. U.S., CV-03- 00507 PCT GMS, in the United States District Court, District of Arizona and related matters. The Contract expired on June 10, 2015. The original contract with Fennemore Craig, P.C. was for \$150,000 per fiscal year, for the two-year term of the contract, with a not-to-exceed amount of \$300,000.
- B. Most of the initial work on the case, specifically a Motion to Dismiss, occurred in

fiscal year 2014, ultimately exceeding the "not-to-exceed" amount of \$150,000 in the first full fiscal year. The First Amendment modified the amount of the two-year contract, to a not-to-exceed amount of \$239,000, through fiscal year 2014. This \$239,000 reflected approximately \$24,000 billed in fiscal year 2013, approximately \$150,000 billed in fiscal year 2014, and increased fiscal year 2014 funding by \$65,000, for a total not-to-exceed amount of \$239,000 through June 30, 2014. The \$65,000 amount was for fees and costs to cover the remaining legal work on the reply in support of Intervenor State of Nevada's Motion to Dismiss and oral argument.

- C. To cover litigation costs until the District Court ruled on pending dispositive motions, including monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, and preparing any initial filing that may be required to move the case forward, the Contract was amended (Amendment #2 to Contract) to provide an amount of \$20,000 for legal fees and costs for fiscal year 2015 to the end of the term of the Contract (July 1, 2014 - June 30, 2015). The total not-to-exceed amount for the two-year term of the contract was amended to \$259,000. It was anticipated by the Commission that once the Court ruled, the Contract would require further amendment to provide funds to continue the case.
- D. On July 22, 2014, the District Court granted the Federal Defendants' Motion to Dismiss without prejudice and terminated the case. The case was then appealed to the 9th Circuit Court of Appeals. It was fully briefed by the parties and by Fennemore on behalf of the State, the Commission and the Southern Nevada Water Authority (SNWA). The oral argument before the 9th Circuit was held on February 14, 2017.
- E. A decision by the 9th Circuit Court of Appeals was issued affirming in part, and reversing in part, the District Court's Order. *Navajo Nation v. Department of Interior*, 876 F.3d 1144 (9th Cir. 2017). The 9th Circuit affirmed the lower court's dismissal of all claims challenging the water banking regulations, the Surplus and the 2007 Shortage Guidelines. The 9th Circuit remanded only one claim to the Arizona District Court, that of the Breach of Trust by the Federal Government. The remedy sought by the Navajo remains uncertain, but it is currently seeking a quantification of lower mainstream Colorado River water.
- F. The 9th Circuit directed the District Court "to consider fully the Nation's breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out." *Navajo Nation v. Department of Interior*, 876 F.3d at 1173.
- G. On August 23, 2019, the Arizona District Court issued its Order denying the Navajo's request to amend its complaint and terminate the case. *Navajo Nation v. Department of Interior*, 2019 Westlaw 3997370 (D.Az. 2019). The District Court specifically addressed the Navajo's trust claims and stated: "Since none of these substantive sources of law create the trust duties the Nation seeks to enforce, and the Nation 'cannot allege a common law cause of action for breach of trust that is wholly separate from any statutorily granted right', its breach of trust claim must fail, and

amendment would be futile (citation omitted)".

- H. The case has now been appealed to the 9th Circuit Court of Appeals on the trust issue and on February 26, 2020, the Navajo filed their opening brief.
- I. It is anticipated that the State, the Commission and SNWA, as interveners in this action, will timely file an Answering Brief and participate in litigation related meetings and oral arguments. This Contract Amendment #6 is to amend the contract to extend its term to allow Fennemore to continue to defend the case on behalf of the State of Nevada, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority.

**Current Contract Language from Amendment #5:**

3. CONTRACT TERM. This Contract, upon approval of the Board of Examiners and any other necessary approvals, shall be effective through June 30, 2020, unless sooner terminated by either party as specified in paragraph (10).

**Amended Contract Language for Amendment #6**

3. CONTRACT TERM. This Contract, upon approval of the Board of Examiners and any other necessary approvals, shall be effective through June 30, 2022, unless sooner terminated by either party as specified in paragraph (10).

**2. INCORPORATED DOCUMENTS.** Exhibit A (Original Contract and Amendments) 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 Nevada State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this amendment #6 to the original contract to be signed and intend to be legally bound thereby.

NEVADA ATTORNEY GENERAL

\_\_\_\_\_  
Date

\_\_\_\_\_  
AARON D. FORD

COLORADO RIVER COMMISSION

\_\_\_\_\_  
Date

\_\_\_\_\_  
ERIC P. WITKOSKI, Executive Director

FENNEMORE CRAIG, P.C.

March 16, 2020  
Date

Lauren J. Caster  
LAUREN J. CASTER

Approved as to form:

\_\_\_\_\_  
CHRISTINE GUERCI-NYHUS  
Special Counsel Attorney General

\_\_\_\_\_  
Date

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020:

STATE BOARD OF EXAMINERS

\_\_\_\_\_  
Clerk, Board of Examiners



IN WITNESS WHEREOF, the parties hereto have caused this amendment #6 to the original contract to be signed and intend to be legally bound thereby.

NEVADA ATTORNEY GENERAL



4/8/2020  
Date

\_\_\_\_\_  
AARON D. FORD

COLORADO RIVER COMMISSION



4/14/2020  
Date


\_\_\_\_\_  
ERIC P. WITKOSKI, Executive Director

FENNEMORE CRAIG, P.C.

\_\_\_\_\_  
Date

\_\_\_\_\_  
LAUREN J. CASTER

Approved as to form:

  
CHRISTINE GUERCI-NYHUS  
Special Counsel Attorney General

4/15/2020  
Date

Approved this 30<sup>th</sup> day of April, 2020:

STATE BOARD OF EXAMINERS

  
\_\_\_\_\_  
Clerk, Board of Examiners

**for Susan Brown**

**EXHIBIT A**

**AMENDMENT # 5 TO CONTRACT**

**FOR SERVICES OF INDEPENDENT CONTRACTOR**

## **AMENDMENT #5 TO CONTRACT**

Between the State of Nevada  
Acting By and Through Its

**Colorado River Commission of Nevada**  
**555 East Washington Avenue, Suite 3100**  
**Las Vegas, NV 89101**  
**Contact: Jayne Harkins**  
**Phone: (702) 486-2670; Fax: (702) 486-2695**  
**Email: [jharkins@crc.nv.gov](mailto:jharkins@crc.nv.gov)**

**and**

**Office of the Attorney General**  
**555 East Washington Avenue, Suite 3900**  
**Las Vegas, NV 89101**  
**Contact: Jennifer Crandell**  
**Phone: (702) 486-2670 Fax: (702) 486-2695**  
**Email: [jcrandell@crc.nv.gov](mailto:jcrandell@crc.nv.gov)**

**and**

**Fennemore Craig, P.C.**  
**2394 East Camelback Road, Suite 600**  
**Phoenix, Arizona 85016-3429**  
**Contact: Lauren J. Caster**  
**Telephone: (602) 916-5367 Fax: (602) 916-5567**  
**Email: [lcaster@fclaw.com](mailto:lcaster@fclaw.com)**

- I. AMENDMENTS.** For and in consideration of mutual promises and/or other valuable consideration, all provisions of the original (dated June 11, 2013) and amended contracts #2, #3 and #4 attached hereto as Exhibit A, remain in full force and effect with the exception of the following:
- A.** On June 11, 2013, a 24-month contract (in FY 2013-2015) between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation in *The Navajo Nation v. U.S.*, CV-03-00507 PCT GMS, in the United States District Court, For the District of Arizona and related matters. The Contract was set to expire June 10, 2015. The original contract with Fennemore Craig, P.C. was for \$150,000 per fiscal year, for the two-year term of the contract, with a not-to-exceed amount of \$300,000.

- B. Most of the initial work on the case, vis-à-vis a Motion to Dismiss, occurred in fiscal year 2014, ultimately exceeding the “not-to-exceed” amount of \$150,000 in the first full fiscal year. The First Amendment modified the amount of the two-year contract, to a not-to-exceed amount of \$239,000, through fiscal year 2014. This \$239,000 reflected approximately \$24,000 billed in fiscal year 2013, approximately \$150,000 billed in fiscal year 2014, and increased fiscal year 2014 funding by \$65,000, for a total not-to-exceed amount of \$239,000 through June 30, 2014. The \$65,000 amount was for fees and costs to cover the remaining legal work on the reply in support of Intervenor State of Nevada’s Motion to Dismiss and oral argument.
- C. To cover litigation costs until the District Court ruled on pending dispositive motions, including monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court’s decision, making initial strategy recommendations, and preparing any initial filing that may be required to move the case forward, the Contract was amended (Amendment #2 to Contract) to provide an amount of \$20,000 for legal fees and costs for fiscal year 2015 to the end of the term of the Contract (July 1, 2014 - June 30, 2015). The total not-to-exceed amount for the two-year term of the contract was amended to \$259,000. It was anticipated by the Commission that once the Court ruled, the Contract would require further amendment to provide funds to continue the case.
- D. On July 22, 2014, the District Court granted the Federal Defendants’ Motion to Dismiss without prejudice, and terminated the case. The case was then appealed to the 9<sup>th</sup> Circuit Court of Appeals. It was fully briefed by the parties and by Fennemore on behalf of the CRC and the SNWA. The oral argument before the 9<sup>th</sup> Circuit was held on February 14, 2017.
- E. A decision by the 9<sup>th</sup> Circuit Court of Appeals was issued in the case of *Navajo Nation v. Department of Interior*, 876 F.3<sup>rd</sup> 1167 (9<sup>th</sup> Cir., Dec. 04, 2017). The decision of the Court affirmed in part, and reversed in part, the District Court’s Order. The Court affirmed the lower court’s dismissal of all claims challenging the water banking regulations, the Surplus and 2007 Shortage Guidelines. The Court remanded only one claim to the Arizona District Court, that of the Breach of Trust by the Federal Government. The remedy sought by the Navajo remains uncertain, but it is currently seeking a quantification of lower main stem Colorado River water.
- F. The Ninth Circuit directed the District Court “to consider fully the Nation’s breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out.” *Navajo Nation v. Department of Interior*, 876 F.3d at 1173. Only when the Navajo Nation files its motion for leave to amend and the proposed amended complaint will the parameters of the Navajo’s case be fully understood, and whether it continues to target the Surplus Guidelines and Shortage Guidelines on the basis of the alleged breach of trust.



G. On February 13, 2018 the Arizona District Court convened a status conference of the parties. An Order was issued for a briefing schedule relating Navajo's motion to amend the complaint. On remand, the District Court authorized the Nation to file a motion for leave to amend its complaint by April 13, 2018. Responses to that motion are due by May 29, 2018. The Nation may file a reply in support of its motion by June 19, 2018. Civil Minutes (filed Feb. 13, 2018). Rule 15.1, Local Rules of Civil Procedure (D. Ariz.), requires that the Nation attach the proposed third amended complaint to its motion, indicating by redlining how it differs from the Second Amended Complaint.

H. It is anticipated that the District Court will issue an additional briefing schedule for motions to dismiss, as well as any other necessary schedule in the case, such as a schedule for discovery. This Contract Amendment #5 is to amend the contract to obtain funds to continue to defend the case on behalf of the State of Nevada, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority.

**Current Contract Language From Amendment #4:**

3. CONTRACT TERM. This Contract shall be effective from the date of the Board of Examiners' approval and all other approvals are obtained (anticipated to be July 2016) to June 30, 2018, unless sooner terminated by either party as specified in paragraph (10).

**Amended Contract #5 Language:**

3.CONTRACT TERM. This Contract, upon approval of the Board of Examiners and any other necessary approvals, shall be effective through June 30, 2020, unless sooner terminated by either party as specified in paragraph (10).

**Current Contract Language From Amendment #3:**

6.CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at the hourly rates specified in Attachment "AA" with the total and not-to-exceed Contract amount of \$519,000 for the three-year contract term. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

**Amended Contract #5 Language:**

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at the hourly rates specified in Attachment "AA" with the total and not-to-exceed Contract amount of \$100,000 for the amended two-year contract term. The Contractor shall charge no more than \$2500 for any possible joinder to an Opposition to a Motion to Amend, and no more than \$20,000 for any Motion to Dismiss and Reply, as approved by the Executive Director. The balance of \$77,500 will be authorized for payment to Contractor by the Executive Director, in consultation with the Attorney General, on an approved task-by-task basis. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of such legislative appropriation may require.

2. INCORPORATED DOCUMENTS. Exhibit A (Original Contract and Amendments) 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 Nevada State Board of Examiners.

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

3/15/18  
Date

NEVADA ATTORNEY GENERAL

APL for APC  
ADAM PAUL LAXALT

3/13/18  
Date

COLORADO RIVER COMMISSION

Jayne Harkins  
JAYNE HARKINS, P.E, Executive Director  
For the Colorado River Commission of  
Nevada

FENNEMORE CRAIG, P.C.

March 7, 2018  
Date

Lauren J. Caster  
LAUREN J. CASTER

Approved as to form:

Approved this 5<sup>th</sup> day of  
May, 2018

Jennifer T. Crandell  
JENNIFER T. CRANDELL  
Special Counsel/Attorney General  
Date: 3/7/18

STATE BOARD OF EXAMINERS

James R. Allen  
CLERK

**EXHIBIT A**

**AMENDMENT # 4 TO CONTRACT**

**FOR SERVICES OF INDEPENDENT CONTRACTOR**



**AMENDMENT #4 TO CONTRACT**

Between the State of Nevada  
Acting By and Through Its

**Colorado River Commission of Nevada**  
**555 East Washington Avenue, Suite 3100**  
**Las Vegas, NV 89101**  
**Contact: Jayne Harkins**  
**Phone: (702) 486-2670; Fax: (702) 486-2695**  
**Email: [jharkins@crc.nv.gov](mailto:jharkins@crc.nv.gov)**

**and**

**Office of the Attorney General**  
**555 East Washington Avenue, Suite 3900**  
**Las Vegas, NV 89101**  
**Contact: Jennifer Crandell**  
**Phone: (702) 486-2670 Fax: (702) 486-2695**  
**Email: [jcrandell@crc.nv.gov](mailto:jcrandell@crc.nv.gov)**

**and**

**Fennemore Craig, P.C.**  
**2394 East Camelback Road, Suite 600**  
**Phoenix, Arizona 85016-3429**  
**Contact: Lauren J. Caster**  
**Telephone: (602) 916-5367 Fax: (602) 916-5567**  
**Email: [lcaster@fclaw.com](mailto:lcaster@fclaw.com)**

1. AMENDMENTS. For and in consideration of mutual promises and/or other valuable consideration, all provisions of the original (dated June 11, 2013) and amended contracts #2 and #3, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

- A. On June 11, 2013, a 24-month contract (in FY 2013-2015) between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation in The Navajo Nation v. U.S., CV-03-00507 PCT PGR, in the United States District Court, or the District of Arizona and related matters. The original Contract was set to expire June 10, 2015. The expiration date for the Contract was amended in Contract Amendment #3, and the Contract is now set to expire June 30, 2016.

- B. On Jul 22, 2014, the District Court granted the Federal Defendants' Motion to Dismiss without prejudice, and terminated the case. The Navajo appealed the case to the 9<sup>th</sup> Circuit Court of Appeals, where it has been fully briefed by the parties. The parties have requested oral argument; however no argument has been set as of this date.
- C. This Contract Amendment #4 is only to extend the term of the Contract two years, as we await Court action on this matter.

**Original Contract Language:**

3. **CONTRACT TERM.** This Contract shall be effective from the date of the Board of Examiners' approval and all other approvals are obtained (anticipated to be April 2013) to June 30, 2015, unless sooner terminated by either party as specified in paragraph (10).

**Amended Contract #3 Language:**

3. **CONTRACT TERM.** This Contract shall be effective from the date of the Board of Examiners' approval and all other approvals are obtained (anticipated to be July 2016) to June 30, 2018, unless sooner terminated by either party as specified in paragraph (10).

2. **INCORPORATED DOCUMENTS.** Exhibit A (Original Contract and Amendments) 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 Nevada State Board of Examiners.

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


NEVADA ATTORNEY GENERAL

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
ADAM PAUL LAXALT

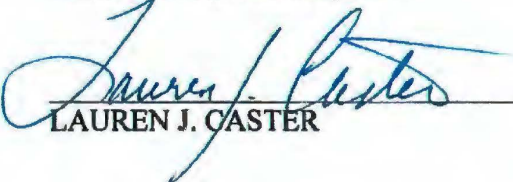
COLORADO RIVER COMMISSION

5/4/16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
JAYNE HARKINS, P.E., Executive Director  
For the Colorado River Commission of  
Nevada

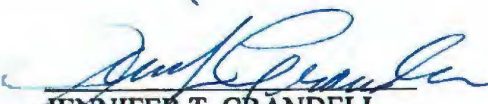
FENNEMORE CRAIG, P.C.

April 5, 2016  
\_\_\_\_\_  
Date

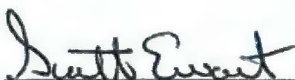
  
\_\_\_\_\_  
LAUREN J. CASTER

Approved as to form:

Approved this 24 day of  
May, 2016

  
\_\_\_\_\_  
JENNIFER T. CRANDELL  
Special Counsel Attorney General

STATE BOARD OF EXAMINERS

  
\_\_\_\_\_  
JAMES R. WELLS,  
Clerk, Board of Examiners for James R. Wells

**EXHIBIT A**

**AMENDMENT #3 TO CONTRACT**

**FOR SERVICES OF INDEPENDENT CONTRACTOR**

**AMENDMENT #3 TO CONTRACT**

**Between the State of Nevada  
Acting By and Through Its**

**Colorado River Commission of Nevada  
555 East Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Contact: Jayne Harkins  
Phone: (702) 486-2670; Fax: (702) 486-2695  
Email: [jharkins@crc.nv.gov](mailto:jharkins@crc.nv.gov)**

**and**

**Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
Contact: Jennifer Crandell  
Phone: (702) 486-2670 Fax: (702) 486-2695  
Email: [jcrandell@crc.nv.gov](mailto:jcrandell@crc.nv.gov)**

**and**

**Fennemore Craig, P.C.  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
Contact: Lauren J. Caster  
Telephone: (602) 916-5367 Fax: (602) 916-5567  
Email: [lcaster@fclaw.com](mailto:lcaster@fclaw.com)**

**1. AMENDMENTS.** For and in consideration of mutual promises and/or other valuable consideration, all provisions of the original and amended contract, dated June 11, 2013, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

- A.** On June 11, 2013, a 24-month contract (in FY 2013-2015) between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation in The Navajo Nation v. U.S., CV-03-00507 PCT PGR, in the United States District Court, For the District of Arizona and related matters. The Contract was set to expire June 10, 2015. The original contract with Fennemore Craig, P.C. was for \$150,000 per fiscal year, for the two-year term of the contract, with a not-to-exceed amount of \$300,000.



- B. Most of the initial work on the case, vis-à-vis a Motion to Dismiss, occurred in fiscal year 2014, ultimately exceeding the "not-to-exceed" amount of \$150,000 in the first full fiscal year. The First Amendment modified the amount of the two-year contract, to a not-to-exceed amount of \$239,000, through fiscal year 2014. This \$239,000 reflected approximately \$24,000 billed in fiscal year 2013, approximately \$150,000 billed in fiscal year 2014, and increased fiscal year 2014 funding by \$65,000, for a total not-to-exceed amount of \$239,000 through June 30, 2014. The \$65,000 amount was for fees and costs to cover the remaining legal work on the reply in support of Intervenor State of Nevada's Motion to Dismiss and oral argument.
- C. To cover litigation costs until the District Court ruled on pending dispositive motions, including monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, and preparing any initial filing that may be required to move the case forward, the Contract was amended (Amendment #2 to Contract) to provide an amount of \$20,000 for legal fees and costs for fiscal year 2015 to the end of the term of the Contract (July 1, 2014 - June 30, 2015). The total not-to-exceed amount for the two-year term of the contract was amended to \$259,000. It was anticipated by the Commission that once the Court ruled, the Contract would require further amendment to provide funds to continue the case.
- D. On July 22, 2014, the District Court granted the Federal Defendants' Motion to Dismiss without prejudice, and terminated the case. This makes the case appealable to the 9<sup>th</sup> Circuit Court of Appeals. Subsequently on August 18, 2014, the Navajo Plaintiffs filed a Motion For Specific Relief Pursuant to Rule 60(b)(6) seeking leave to set aside the judgment in part and amend the Complaint. Based on this new motion, and the likelihood that the Navajo will appeal to the 9<sup>th</sup> Circuit, Fennemore Craig has proposed a budget to cover three possible courses of action or any combination of elements from one or more alternatives: 1) if the District Court grants the Navajo request for an amendment and the Complaint is then amended resulting in the necessity to prepare new Motions to Dismiss in the District Court; 2) the District Court grants the Navajo motion in part certifies the dismissal of one or more claims for immediate appeal to the 9<sup>th</sup> Circuit while simultaneously the Complaint is amended in part and litigation continues in the District Court; or 3) if the District Court denies the Navajo motion and the Navajo file an appeal in the 9<sup>th</sup> Circuit, requiring Fennemore Craig to prepare an appellate brief.
- E. Based on these possible litigation tracks or possible combinations of the elements of these tracks, the Contract is amended (Amendment #3 to Contract) to provide an additional amount of \$260,000 for legal fees and costs for the balance of fiscal year 2015 through fiscal year 2016 (July 1, 2014 - June 30, 2016). The two-year Contract is extended an additional year, for a total of three-years. Total amounts authorized under the Contract for three years, with a not-to-exceed amount, is \$519,000. Funding estimates specifically include argument in the 9<sup>th</sup> Circuit Court of Appeals by Fennemore Craig, P.C. on behalf of the Intervenor-Defendants and disputes regarding the administrative record.

**Original Contract Language:**

3. **CONTRACT TERM.** This Contract shall be effective from the date of the Board of Examiners' approval and all other approvals are obtained (anticipated to be April 2013) to June 30, 2015, unless sooner terminated by either party as specified in paragraph (10).

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) at the hourly rates specified in Attachment "AA" with the total Contract not to exceed \$150,000.00 per Fiscal Year. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

**Amended Contract #3 Language:**

3.**CONTRACT TERM.** This Contract shall be effective from the date of the Board of Examiners' approval and all other approvals are obtained to June 30, 2016, unless sooner terminated by either party as specified in paragraph (10).

6.**CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) at the hourly rates specified in Attachment "AA" with the total and not-to-exceed Contract amount of \$519,000 for the three-year contract term. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

2. **INCORPORATED DOCUMENTS.** Exhibit A (Original Contract and Amendments) 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 Nevada State Board of Examiners.

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

NEVADA ATTORNEY GENERAL

Sept. 5, 2014  
Date

Catherine Cortez Masto  
CATHERINE CORTEZ MASTO

COLORADO RIVER COMMISSION

9/9/14  
Date

Jayne Harkins  
JAYNE HARKINS, P.E, Executive Director  
For the Colorado River Commission of  
Nevada

FENNEMORE CRAIG, P.C.

Sept. 2, 2014  
Date

Lauren J. Caster  
LAUREN J. CASTER

Approved as to form:

Approved this 14 day of  
October, 2014.

Jennifer T. Crandell  
Jennifer T. Crandell  
Special Counsel Attorney General

STATE BOARD OF EXAMINERS

Julia Teska  
Clerk



**EXHIBIT A**

**AMENDMENT #2 TO CONTRACT**

**FOR SERVICES OF INDEPENDENT CONTRACTOR**

**AMENDMENT #2 TO CONTRACT**

**Between the State of Nevada  
Acting By and Through Its**

**Colorado River Commission of Nevada  
555 East Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Contact: Jayne Harkins  
Phone: (702) 486-2670; Fax: (702) 486-2695  
Email: [jharkins@crc.nv.gov](mailto:jharkins@crc.nv.gov)**

**and**

**Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
Contact: Jennifer Crandell  
Phone: (702) 486-2670 Fax: (702) 486-2695  
Email: [jcrandell@crc.nv.gov](mailto:jcrandell@crc.nv.gov)**

**and**

**Fennemore Craig, P.C.  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
Contact: Lauren J. Caster  
Telephone: (602) 916-5367 Fax: (602) 916-5567  
Email: [lcaster@fclaw.com](mailto:lcaster@fclaw.com)**

1. **AMENDMENTS.** For and in consideration of mutual promises and/or their valuable consideration, all provisions of the original and amended contract, dated June 11, 2013, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

- A. On June 11, 2013, a 24-month contract (in FY 2013-2015) between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation in *The Navajo Nation v. U.S.*, CV-03-00507 PCT PGR, in the United States District Court, For the District of Arizona and related matters. The Contract will expire June 10, 2015.
- B. The original contract with Fennemore Craig, P.C. was for \$150,000 per fiscal year, for the two-year term of the contract, with a not-to-exceed amount of \$300,000.

The First Amendment modifies the amount of the two-year contract, to a not-to-exceed amount of \$239,000, through fiscal year 2014.

- C. The \$239,000 reflects approximately \$24,000 billed in fiscal year 2013, approximately \$150,000 billed in fiscal year 2014, and increased fiscal year 2014 funding by \$65,000, for a total not-to-exceed amount of \$239,000 through June 30, 2014. This amount was for fees and costs to cover the remaining legal work on the reply in support of Intervenor State of Nevada's Motion to Dismiss and oral argument.
- D. To cover litigation costs until such time as the District Court rules on pending dispositive motions, including monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, preparing any initial filing that may be required to move the case forward, and preparing a strategy and submitting a budget to the Commission once the District Court has issued a ruling, the Contract is amended (Amendment #2 to Contract) to provide an amount of \$20,000 for legal fees and costs for fiscal year 2015 to the end of the term of the Contract (July 1, 2014- June 10, 2015). The total not-to-exceed amount for the two-year term of the contract is amended to \$259,000.

**Current Contract Language:**

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at the hourly rates specified in Attachment "AA" with the total Contract not-to-exceed \$150,000.00 per Fiscal Year. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig, P.C. at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

**Amended Contract Language:**

**CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) as specified in Attachment "AA" with the total Contract not-to-exceed \$259,000 for the two-year term of the Contract, or until June 10, 2015. The Contract price provides funding for legal fees and disbursements for fiscal year 2015, in the amount of \$20,000, to cover litigation costs until such time as the District Court rules on pending dispositive motions, including monitoring the case, legal research to support supplemental



authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, preparing any initial filing that may be required to move the case forward and preparing a strategy and submitting a budget to the Commission once the District Court has issued a ruling. Funding for fiscal year 2015 does not include funds to prepare for and participate in oral argument on the Motion to Dismiss. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig, P.C. at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

2. **INCORPORATED DOCUMENTS.** Exhibit A (Original Contract and Amendment) 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 Nevada State Board of Examiners.

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

NEVADA ATTORNEY GENERAL

5/14/14  
Date

  
CATHERINE CORTEZ MASTO

COLORADO RIVER COMMISSION

5/13/14  
Date

  
JAYNE HARKINS, P.E., Executive Director  
For the Colorado River Commission of  
Nevada

FENNEMORE CRAIG, P.C.

Date May 6, 2014

Lauren J. Caster  
LAUREN J. CASTER

Approved as to form:

Approved this 21 day of  
May, 2014.

Jennifer T. Crandell  
Jennifer T. Crandell  
Special Counsel Attorney General

STATE BOARD OF EXAMINERS

Julia Teska  
Clerk for Julia Teska

**EXHIBIT A**  
**AMENDMENT #1 TO CONTRACT**  
**FOR SERVICES OF INDEPENDENT CONTRACTOR**

**AMENDMENT #1 TO CONTRACT**

**Between the State of Nevada  
Acting By and Through Its**

**Colorado River Commission of Nevada  
555 East Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Contact: Jayne Harkins  
Phone: (702) 486-2670; Fax: (702) 486-2695  
Email: [jharkins@crc.nv.gov](mailto:jharkins@crc.nv.gov)**

**and**

**Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
Contact: Jennifer Crandell  
Phone: (702) 486-2670 Fax: (702) 486-2695  
Email: [jcrandell@crc.nv.gov](mailto:jcrandell@crc.nv.gov)**

**and**

**Fennemore Craig, P.C.  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
Contact: Lauren J. Caster  
Telephone: (602) 916-5367 Fax: (602) 916-5567  
Email: [lcaster@fcclaw.com](mailto:lcaster@fcclaw.com)**

**1. AMENDMENTS.** For and in consideration of mutual promises and/or their valuable consideration, all provisions of the original and amended contract, dated June 11, 2013, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

- A.** On June 11, 2013, a contract between the Commission, the Attorney General and Fennemore Craig, P.C. was approved to retain Fennemore Craig, P.C. to provide legal representation in The Navajo Nation v. U.S., CV-03-00507 PCT PGR, in the United States District Court, For the District of Arizona and related matters.
- B.** The current contract with Fennemore Craig, P.C. is for \$150,000 per fiscal year, for the two-year term of the contract, with a not-to-exceed amount of \$300,000. The First Amendment modifies the amount of the two-year contract, to a not-to-exceed amount of \$239,000 for the two-year contract.

- C. The \$239,000 reflects approximately \$24,000 billed in fiscal year 2013, approximately \$150,000 billed in fiscal year 2014, and increases fiscal year 2014 by \$65,000, for a total not-to-exceed amount of \$239,000 through June 30, 2014, for fees and costs to cover the remaining legal work on the reply in support of Intervenor State of Nevada's Motion to Dismiss and oral argument.

**Current Contract Language:**

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) at the hourly rates specified in Attachment "AA" with the total Contract not-to-exceed \$150,000.00 per Fiscal Year. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig, P.C. at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

**Amended Contract Language:**

**CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) as specified in Attachment "AA" with the total Contract not to exceed \$239,000 for the two-year term of the Contract. The Contract price increases the not-to-exceed amount for fiscal year 2014 by \$65,000, for a total of \$215,000 for fiscal year 2014. This new not-to-exceed amount includes all work necessary to research, draft and file the Reply and prepare for and participate in oral argument on the Motion to Dismiss. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig, P.C. at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

2. **INCORPORATED DOCUMENTS.** Exhibit A (Original Contract and Amendment) 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 Nevada State Board of Examiners.

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


NEVADA ATTORNEY GENERAL

12/2/13  
Date

  
CATHERINE CORTEZ MASTO

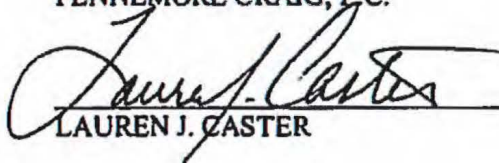
COLORADO RIVER COMMISSION

11/26/13  
Date

  
JAYNE HARKINS, P.E, Executive Director  
For the Colorado River Commission of  
Nevada


FENNEMORE CRAIG, P.C.

Nov. 20, 2013  
Date


  
LAUREN J. CASTER

Approved as to form:

Approved this 14 day of  
January, 2014.

  
Jennifer T. Grandell  
Special Counsel Attorney General

STATE BOARD OF EXAMINERS

  
Clerk

## **ORIGINAL CONTRACT**

## **CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**

**A Contract Between the State of Nevada  
Acting By and Through Its**

**Colorado River Commission**

**and**

**Fennemore Craig, P.C.  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
Telephone: 602-916-5367  
Fax: 602-916-5567**

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" or "Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective from the date of the Board of Examiners' approval and all other approvals are obtained for 24 months, unless sooner terminated by either party as specified in paragraph (10).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified herein.

5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

**ATTACHMENT "AA": SCOPE OF WORK/FEE AGREEMENT  
FOR LEGAL REPRESENTATION/ENGAGEMENT TERMS**

**ATTACHMENT "BB": INSURANCE SCHEDULE**

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) as specified in Attachment "AA" with the total Contract not to exceed \$150,000.00 per Fiscal Year. Contractor shall provide a revised Attachment AA to the Commission by December 31 of each year; and the Commission's Executive Director is authorized to approve subsequent payments to Fennemore Craig at the rates set forth in the revised Attachment AA, provided that the total amount paid is less than the maximum aggregate cost of services approved for Contractor's services by the Board of Examiners. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. **TIMELINESS OF BILLING SUBMISSION.** The parties agree that timeliness of billing is of the essence to this Contract and recognize that the State is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.

9. **INSPECTION & AUDIT.**

a. **Books and Records.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records



may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

#### **10. CONTRACT TERMINATION.**

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. **Winding Up Affairs Upon Termination.** In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the Fiscal Year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the Contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. **INDEMNIFICATION.** To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising solely out of any alleged negligent or willful acts or omissions of Contractor, its officers, and employees.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or



principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	<u>ALC</u>
2	Will the Contracting Agency be providing training to the independent contractor?	_____	<u>ALC</u>
3	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	<u>ALC</u>
4	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	<u>ALC</u>
5	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	<u>ALC</u>	_____
6	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	<u>ALC</u>
7	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	<u>ALC</u>

**16. INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment "BB", incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment "BB", incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
  2. Such time as the insurance is no longer required by the State under the terms of this Contract;
- Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor, except that this provision shall not apply to Contractor's professional liability insurance. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**General Requirements:**

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor, except that this provision shall not apply to Contractor's professional liability insurance policy.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause, except that this provision shall not apply to Contractor's professional liability insurance policy.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division, except that this provision shall not apply to Contractor's professional liability insurance policy.
- e. **Policy Cancellation:** Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days' prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown on page one (1) of this Contract:
- f. **Approved Insurer:** Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
  - 2) Currently rated by A.M. Best as "A-VII" or better.



**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage section noted above. This provision shall not apply to Contractor's professional liability insurance policy.

**Mail all required insurance documents to the State Contracting Agency identified in the Contract.**

2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above, except that this provision shall not apply to Contractor's professional liability insurance policy.

3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

**Review and Approval:** Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

**17. COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

**18. WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

**19. SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**20. ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

**21. STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

**22. PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

**23. CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

**24. FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:

- a. 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 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.



c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.
- d. Notwithstanding the foregoing, nothing in this Contract shall preclude Contractor from negotiating on behalf of the State of Nevada and the Commission with the United States Department of the Interior or any other federal, state or local agency for the purpose of settling or otherwise resolving in whole or in part any claims or defenses presented or raised in matters for which the State and the Commission have engaged Contractor under this Contract.

26. **WARRANTIES.**

- a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.


27. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. **GOVERNING LAW; JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract

specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.


IN WITNESS WHEREOF, the Parties have caused this Contract to be executed.

 2/20/2013  
LAUREN J. CASTER Date  
For FENEMORE CRAIG, P.C.

Director and Shareholder

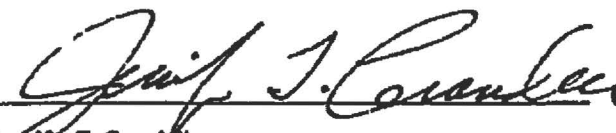
 3/13/13  
JAYNE HARKINS  
For COLORADO RIVER COMMISSION OF NEVADA

Executive Director

  
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

  
Jennifer T. Crandell  
Senior Deputy Attorney General for Attorney General

On 10-11-13

Date

On 2/25/13

Date



## **ATTACHMENT "AA"**

### **SCOPE OF WORK/FEE AGREEMENT FOR LEGAL REPRESENTATION/ENGAGEMENT TERMS**

**Definitions:** "Fennemore" or the "Firm" shall mean Fennemore Craig, P.C. "You" shall mean the State of Nevada and the Colorado River Commission of Nevada ("Commission").

#### **Scope of Work**

The scope of work encompassed by this Contract shall include:

1. Monitoring, reporting on and legal representation of the State of Nevada, the Commission and the Southern Nevada Water Authority, in connection with any negotiations to resolve the water right claims of the Navajo Nation and the Hopi Tribe asserted in *In re General Adjudication of All Rights to Use Water in the Little Colorado River System & Source*, Case No. 6417, Superior Court of Arizona, Apache County, as requested by the Executive Director of the Commission.
2. Provide legal representation of the State of Nevada, the Commission and the Southern Nevada Water Authority, in *Navajo Nation v. United States Department of the Interior et al.*, Case No. CIV 03-0507 PCT PGR, United States District Court, District of Arizona, and any appellate proceedings related to that action as requested by the Executive Director of the Commission.
3. Additionally, provide legal representation to the State of Nevada, the Commission and the Southern Nevada Water Authority in threatened or actual future legal action by the Navajo Nation and/or Hopi Tribes, as requested in writing by the Executive Director of the Commission.
3. Contractor shall provide to the Attorney General's Office or Senior Deputy Attorney General as his/her designee, written, quarterly reports summarizing significant developments in regard to the subject matter of the contract and significant services performed under the Contract.

#### **Fee Agreement**

Fennemore shall bill at the following rates for services under this Contract:

<b>Attorney</b>	<b>2013 Hourly Rate</b>
Lauren J. Caster	\$436.50
Gregory L. Adams	\$315.00
<b>Paralegal</b>	<b>2013 Hourly Rate</b>
Ruth Murphy	\$162.00

Each month Fennemore shall provide a statement of charges incurred in accordance with this Contract for the prior month's services and expenses on or before the last day of the next succeeding month. The Firm requests that you review any billing statements promptly upon receipt to determine if you have any questions or comments. Payment for charges properly billed in accordance with this Contract will be paid promptly after the receipt of the statement. Bills also will include, in addition to billing for professional services, charges for disbursements such as filing fees, computer legal research charges, reasonable travel expenses as limited to the per diem reimbursement rules available to state employees for travel, long distance telephone charges, outgoing telecopier charges (\$.75 per page for transmission plus long distance charges), document reproduction costs (\$.15 per page), messenger charges, and under certain circumstances, secretarial overtime, including related overhead in appropriate instances. Photocopying costs may not exceed \$2,000 for a single job without prior approval. Any changes in these routine charges will be reflected in the monthly billing statements. The Firm makes every effort to include disbursements in the statement for the month in which the disbursements are incurred. However, some disbursements, such as telephone charges, are not available to it until sometime after the month in which the service related to the charge was performed, in which case the disbursement may be reflected in the statement issued in the next succeeding month, in a supplemental statement. Large disbursements to third party providers, such as expert witness fees, require advanced approval of the Commission.

Expenses which the Commission will not reimburse Fennemore for include: Fees for the training of personnel incurred as a result of staffing changes or increases during the term of the contract; fees for time spent educating junior professionals or associates; and fees for more than ten hours of work per day for any individual, except during trial or another extraordinary event.

Occasionally, funds due the client will be deposited with Fennemore for the benefit of the client. Absent other agreement with the client, such funds will be deposited in a general firm trust account, with interest payable to the Arizona Foundation for Legal Services and Education. No advanced retainer fee is being requested by the Firm.

Any estimates of anticipated fees that the Firm provides for budgeting purposes or otherwise are, due to the uncertainties involved, necessarily only an approximation of potential fees. Such estimates are not a maximum or minimum fee quotation.

In the unlikely event of a dispute regarding the amount or payment of fees, the Firm has the right to terminate the legal representation in this matter, subject to its obligation to give you notice, consistent with the Contract, to arrange for alternate representation. The Firm and you mutually agree that any such fee dispute shall be submitted to mandatory non-binding arbitration. Such arbitration shall be conducted in accordance with procedures established by the State Bar of Nevada before an arbitrator or arbitrators selected in accordance with those procedures, who shall hear and resolve the dispute in Clark County, Nevada. The prevailing party in any such arbitration shall be entitled to reasonable attorneys' fees and other costs incurred as a result of the action or proceeding.

#### **Mediation**

As to any claim or dispute arising out of or connected with the Firm's services, other than a fee dispute covered by the preceding paragraph, the Firm and you mutually agree to attempt in good faith to settle the dispute by non-binding mediation before commencing any legal action or other dispute resolution procedure.



## **Conflicts**

Fennemore Craig, P.C. practices in Nevada under the name Fennemore Craig Jones Vargas. The Firm represents clients in a broad range of transactional and disputed matters. Some of these involve the State of Nevada, its subdivisions and agencies, and in many of those situations the State or its subdivisions and agencies are represented by the Office of the Nevada Attorney General. Consistent with ER 1.13, Rules of Professional Conduct and Rule 42, Rules of the Supreme Court of Arizona, Fennemore regards as its clients particular agencies, departments or subdivisions of the State of Nevada, and not the entire State of Nevada, when it has been engaged by such individual agencies, departments or subdivisions. Conversely, when a client engages Fennemore in a matter in which that client's interests are directly adverse to an agency, department, or subdivision of the State of Nevada, Fennemore regards such agency, department, or subdivision as the entity whose interests are adverse to Fennemore's client; it does not consider the State of Nevada as the entity whose interests are so adverse. Accordingly, should Fennemore be engaged by the Office of the Nevada Attorney General to represent the interests of a particular agency, department, or subdivision of the State of Nevada, Fennemore will consider only that agency, department, or subdivision to be its client for purposes of conflicts of interest. It is possible that during the time that the Firm is representing you, some of the Firm's present or future clients will have disputes or transactions with the State of Nevada, its agencies, departments or subdivisions. You agree that the Firm may continue to represent, or may undertake in the future to represent, existing or new clients in any matter, if after consultation with the Commission it is agreed and determined the new matter is not substantially related to the Firm's work pursuant to this Contract and the conflict is specifically waived in writing by the Executive Director. Specifically, you agree that the Firm may represent other clients whose interests are adverse to the State of Nevada in matters unrelated to the Firm's representation of the State of Nevada under this Contract, including in litigation. The Firm agrees, however, that the above consent shall not apply in any instance where, as a result of its representation of you, it has obtained proprietary or other confidential information of a nonpublic nature that, if known to the other client, could be used by the other client in such other matter to your material disadvantage. In engagement letters with many of its other clients, the Firm has asked for similar agreements to preserve its ability to represent you. In addition, you agree that the Firm may disclose the fact of its representation of you, without disclosing the nature of such representation, to other current or future clients that may be adverse to you for the purpose of obtaining such other clients' consent to any conflict of interest that may be presented by the Firm's representation of you and such other client. The Firm will not disclose to the other client any confidential information pertaining to its representation of you.

Fennemore sometimes represent lawyers and law firms, and it is sometimes represented by other lawyers and law firms in matters unrelated to its representation of you. Because the Firm does not believe these representations will materially limit its responsibilities to you or will otherwise adversely affect its representation of you, the Firm does not believe these representations present conflicts of interest. If the Firm enters into representation of a new client that it believes may created a potential conflict with the interests of the Commission, Fennemore will consult with the Commission and request a written waiver of any potential conflict. Fennemore will consult with the Attorney General's Office regarding potential conflicts of interest, and at all times act in accordance with the Nevada Rules of Professional Conduct.

### **Post-Engagement Matters**

Unless the Firm's engagement is by its nature a continuing one (as when it is initially engaged to handle one of a series of separate matters that will be referred to the Firm in connection with an ongoing project) or unless the Contract specifically reflects that the Firm's engagement is intended to continue beyond the current matter, the Firm's engagement will cease upon completion of the matter for which you have engaged it. Upon conclusion of the tasks the Firm has been asked to perform in connection with this engagement, it will have no duty to inform you of future developments or changes in the law affecting any of your interests including your interests in the matter subject to this engagement. To the extent that the Firm voluntarily provides you with newsletters, documents or information concerning such matters following the conclusion of this engagement, such provision shall be considered a matter of courtesy only and shall not be considered the fulfillment or basis of any duty or the re-establishment of any attorney-client relationship.

### **Retention and Destruction of Documents**

Following the conclusion of this engagement, any otherwise nonpublic information you have supplied to the Firm which is retained by it will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment of outstanding fees and costs. The Firm's own files pertaining to the matter, which include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work reports, prepared by or for the internal use of lawyers, will be retained by the Firm. If you do not request the return of your records, your records will be destroyed following the period of time specified by Paragraph 9.c of the Contract and the Firm's document retention/destruction policy. The latter period may vary depending on the nature of the engagement involved. In any event, all files may be destroyed seven years following the conclusion of the engagement.

### **Opinions**

During the course of the Firm's representation of you, it may express opinions or beliefs concerning litigation or various courses of action and the results that might be anticipated. Any such statement is intended to be an expression of opinion only, and should not be construed by you as a promise or guaranty.

### **Confidentiality**

Fennemore will maintain all information regarding your representation confidential in accordance with the Arizona Rules of Professional Conduct. From time to time the Firm may have discussions with other lawyers for the purpose of considering their employment by Fennemore, or law firms for the purpose of considering a potential combination with such law firms. During the course of those discussions it may be necessary to disclose your identity as a client or fee and billing information relating to the Firm's representation of you. Such disclosure shall be subject to a confidentiality agreement between the Firm and such other lawyers or law firms, and you agree that the Firm may disclose such limited information for these purposes.



### **Multi-Party Representation**

Under the Rules of Professional Conduct, the Firm is permitted to represent multiple clients in a matter as long as it can adequately represent the interests of each client and each client knowingly consents, in writing, to the joint representation. If this matter involves the Firm's representation of multiple clients, either at the commencement or during the course of the representation, the Firm believes, based on the information available to it at the time of undertaking the joint representation, that there are no conflicts of interest among the clients that would prevent it from undertaking their joint representation. Accordingly, the Firm will share all material information relating to the representation with all clients; although its communications with one or more of you are protected by the attorney-client privilege vis-à-vis all third parties, information any one of you shares with the Firm is not protected by the privilege among yourselves. While the interests of the multiple clients may be similar in many respects, they may not be identical and a conflict may develop at some later date. If at any time Fennemore or the Commission becomes aware of any conflict or potential conflict between your interests and those of another client, we mutually agree to communicate immediately so that it can determine whether it can continue to represent any of the clients. If the parties disagree on any issue, the Firm will ask you to resolve your differences among yourselves, without its assistance. If you cannot resolve your differences, the Firm will not be able to represent any one of you as to that issue. If the differences are serious enough, the Firm may be required by applicable ethics rules to withdraw from the matter completely.

**ATTACHMENT "BB"**  
**INSURANCE SCHEDULE**

**INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, solely by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, or employees. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State, except that this waiver of subrogation rights does not apply to losses arising from Contractor's professional negligence, including without limitation Contractor's work covered by its professional liability insurance policy.

**INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

- A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

**2. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease — Each Employee	\$100,000
Disease — Policy Limit	\$500,000

**3. Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources, except that this provision shall not apply to Contractor's professional liability insurance.

- C. NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to:

Jayne Harkins, P.E., Executive Director  
Colorado River Commission of Nevada  
555 East Washington Ave., Suite 3100  
Las Vegas, Nevada 89101

- D. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to (Jayne Harkins, Executive Director, Colorado River Commission of Nevada, 555 E. Washington Avenue, Suite 3100, Las Vegas, NV 89101). The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies or Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above. This provision shall not apply to Contractor's professional liability insurance policy.
- G. APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Risk Management Division or the Attorney General's Office, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.



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**AMENDMENT TO**  
**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**Between the State of Nevada Acting By and Through Its**  
**COLORADO RIVER COMMISSION and FENNEMORE CRAIG, P.C.**

1. THIS AMENDMENT TO CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR, is made between the State of Nevada, acting by and through its Colorado River Commission, hereinafter referred to as the "Commission," the Attorney General of the State of Nevada, Catherine Cortez Masto, (Attorney General) and Fennemore Craig, P.C., a professional corporation, hereinafter referred to as the "Contractor."

**AMENDED EXPLANATORY RECITALS**

2. (a) WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions, subject to the approval of the Nevada State Board of Examiners, to engage the services of natural persons, firms or corporations as independent contractors; and
- (b) WHEREAS, the Commission has determined that the services of Contractor are necessary, desirable and in the best interest of the State of Nevada and the Commission; and
- (c) WHEREAS, pursuant NRS 538.151 the Attorney General is the attorney for the Commission and shall designate one or more deputy attorney generals to conduct actions, proceedings, and hearings for the Commission; and

1           (d) WHEREAS, pursuant to NRS 41.03435, NRS 228.110(1) and NRS  
2 228.110(2) the Attorney General, who has been designated as the legal advisor for the  
3 Commission, may employ special deputy counsel when she determines that it is impracticable,  
4 uneconomical or could constitute a conflict of interest for the legal service to be rendered by the  
5 Attorney General or deputy attorney general, and where employed in a matter outside of the  
6 State of Nevada and when such contract is funded by the Commission, a customer funded  
7 agency; and

8           (e) WHEREAS, pursuant to NRS 228.180 and NRS 228.190 the Attorney  
9 General, in the name of the State, is authorized to intervene in any action establishing and  
10 determining the rights of the State of Nevada in and to the water of all interstate streams located  
11 partly in Nevada where such waters or part thereof are claimed by any other state; and

12           (f) WHEREAS, the contract with Contractor shall be for the Commission and  
13 the Attorney General to engage out-of-state counsel, as a special deputy counsel, located in the  
14 State of Arizona, for representation in *The Navajo Nation v. U.S.*, CV-03-00507 PCT JWS, in the  
15 United States District Court, for the District of Arizona, because it would be impracticable and  
16 uneconomical for services to be rendered solely by the deputy attorney generals assigned; and

17           (g) WHEREAS, on March 12, 2013, the Commission, a non-general fund  
18 agency of the State, approved the Contract with the Contractor to represent the State of Nevada,  
19 the Commission and the Southern Nevada Water Authority in *The Navajo Nation v. U.S.* and  
20 related matters, and has agreed to pay contractor from customer funds only; and

1 (h) WHEREAS, the Commission, the Contractor and the Attorney General  
2 have determined that the Contract be amended to include the Attorney General as a Party to the  
3 Contract;

4 IN CONSIDERATION of the mutual covenants herein contained, the parties hereto  
5 agree to the amendments as follows:

6  
7 **TITLE AND SIGNITURE PAGES**

8 **CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**

9  
10 A Contract Between the State of Nevada  
11 Acting By and Through Its

12  
13 **ATTORNEY GENERAL; its**

14  
15 **COLORADO RIVER COMMISSION OF NEVADA**

16  
17 **and**

18  
19 **FENNEMORE CRAIG, P.C.**

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21  
22 **ATTACHMENT AA:**  
23 **Scope of Work**

24  
25 The scope of work encompassed by this Contract shall include:

26 1. Monitoring, reporting on and legal representation, as a special deputy counsel, of  
27 the State of Nevada, the Commission, and the Southern Nevada Water Authority, in connection  
28 with any negotiations to resolve the water right claims of the Navajo Nation and the Hopi Tribe  
29 asserted in *In re General Adjudication of All Rights to Use Water in the Little Colorado River*  
30 *System & Source*, Case No. 6417, Superior Court of Arizona, Apache County, as requested by  
31 the Executive Director of the Commission.



1           2.     Provide legal representation, as a special deputy counsel, of the State of Nevada,  
2     the Commission and the Southern Nevada Water Authority in *The Navajo Nation v. United*  
3     *States Department of the Interior et al.*, Case No. CV-03-00507 PCT JWS, United States District  
4     Court, District of Arizona, and any appellate proceedings related to that action, as requested by  
5     the Executive Director of the Commission.

6           3.     Additionally, provide legal representation, as a special deputy counsel, to the  
7     State of Nevada, the Commission and the Southern Nevada Water Authority in threatened or  
8     actual future legal action by The Navajo Nation and/or Hopi Tribes, as requested in writing by  
9     the Executive Director of the Commission.

10          4.     Contractor shall provide to the Attorney General's Office or Senior Deputy  
11     Attorney General as his/her designee, written, quarterly reports summarizing significant  
12     developments in regard to the subject matter of the contract and significant services performed  
13     under the Contract.

14                   **ORIGINAL CONTRACT TO REMAIN IN EFFECT**

15          5.     Except as otherwise herein amended, the original Contract executed by the  
16     Executive Director on March 13, 2013 and Fennemore Craig, P.C. on February 20, 2013, shall  
17     remain the same and fully in effect.

18                   **JURISDICTION**

19          6.     The laws of the State of Nevada govern this Amendatory Contract.

20                   **HEADINGS**

21          7.     The section headings in this Amendatory Contract are intended for convenience only  
22     and must not be taken into consideration in any interpretation of the contract or any of its  
23     provisions.

24           IN WITNESS WHEREOF, the parties have caused this Contract to be executed and will  
25     become effective upon execution by the State Board of Examiners.

26     //

27     //

28     //

ATTORNEY  
GENERAL'S  
OFFICE



LAS VEGAS,  
NEVADA



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NEVADA ATTORNEY GENERAL

5/24/13  
Date

*Catherine Cortez Masto*  
CATHERINE CORTEZ MASTO

COLORADO RIVER COMMISSION

5/24/13  
Date

*Jayne Harkins*  
JAYNE HARKINS, P.E., Executive Director  
For the Colorado River Commission of Nevada

FENNEMORE CRAIG, P.C.

May 20, 2013  
Date

*Lauren J. Caster*  
LAUREN J. CASTER

Approved as to form:

Approved this 11<sup>th</sup> day of  
June, 2013.

*Jennifer T. Candel*  
Jennifer T. Candel  
Senior Deputy Attorney General

STATE BOARD OF EXAMINERS

*Jeth*  
Clerk

# SECRETARY OF STATE



## NEVADA STATE BUSINESS LICENSE

**FENNEMORE CRAIG, P.C.**

**Nevada Business Identification # NV20061183222**

**Expiration Date: 08/31/2020**

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

Valid until the expiration date listed unless suspended, revoked or cancelled in accordance with the provisions in Nevada Revised Statutes. License is not transferable and is not in lieu of any local business license, permit or registration.

**License must be cancelled on or before its expiration date if business activity ceases. Failure to do so will result in late fees or penalties which, by law, cannot be waived.**



Certificate Number: B20191015294722

You may verify this certificate  
online at <http://www.nvsos.gov>

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed the Great Seal of State, at my  
office on 10/15/2019.

*Barbara K. Cegavske*

BARBARA K. CEGAVSKE  
Secretary of State





January 31, 2020

Fennemore Craig, P.C.  
2394 East Camelback Road  
Suite 600  
Phoenix, AZ 85016-3429

To Whom It May Concern:

### CONFIRMATION OF INSURANCE

We hereby confirm that Fennemore Craig, P.C. has Professional Liability Coverage under Policy ALA#1271 with an annual limit of \$40,000,000 per claim and \$80,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The self-insured retention under such Policy is \$500,000 each claim up to an aggregate of \$1,000,000 and \$100,000 each claim thereafter.

The Policy effective date is from January 1, 2020 to January 1, 2021.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY LTD.,  
A RISK RETENTION GROUP**

By: Nancy Montroy Date: 1/31/2020

Nancy J. Montroy  
Vice President - Director of Underwriting

311 S Wacker Drive, Suite 5700  
Chicago, IL 60606-6629  
tel 312 697 6900  
fax 312 697 6901

[alas.com](http://alas.com)

COLORADO RIVER  
COMMISSION  
DEC 14 2018  
RECEIVED

**FENNEMORE CRAIG, P.C.**

2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
(602) 916-5000

**Lauren J. Caster**  
Direct Phone: (602) 916-5367  
Direct Fax: (602) 916-5567  
lcaster@fclaw.com

**Law Offices**  
Denver (303) 291-3200  
Las Vegas (702) 692-8000  
Nogales (520) 281-3480  
Phoenix (602) 916-5000  
Reno (775) 788-2200  
Tucson (520) 879-6800

December 11, 2018

Ms. Jennifer T. Crandell  
Colorado River Commission of Nevada  
% State of Nevada  
555 E. Washington Ave., Suite 3100  
Las Vegas, Nevada 89101

Re: 2019 billing rates

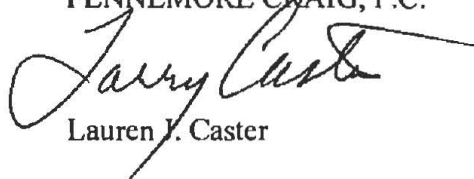
Dear Ms. Crandell:

Enclosed is a list of the 2019 hourly rates for Fennemore Craig personnel most likely to perform services for the Commission. The right column sets forth 90% of standard rates, which is what applies to the *Navajo Nation v. U.S. Department of Interior* matter. Obviously we recognize that we are operating within the approved budget.

We appreciate the opportunity to serve the Colorado River Commission of Nevada, State of Nevada and the Southern Nevada Water Authority. If you have any questions, please let me know.

Very truly yours,

FENNEMORE CRAIG, P.C.

  
Lauren J. Caster

Enclosure

14458880

**ENVIRONMENTAL/UTILITY**

<b>Practice Group</b>	<b>Personnel</b>	<b>Hourly Rate</b>	<b>90% of Hourly Rate</b>
Environ/Util	Anderson, Robert	525	472.50
Environ/Util	Billingsley, Rhett A.	445	400.50
Environ/Util	Black, Patrick	525	472.50
Environ/Util	Caster, Lauren	550	495.00
Environ/Util	DeBlasi, Michelle	505	454.50
Environ/Util	Fargotstein, Phillip	540	486.00
Environ/Util	Ferrigni, Lauren	300	270.00
Environ/Util	Heiserman, Brian J.	320	288.00
Environ/Util	Hood, Sean T.	450	405.00
Environ/Util	James, Norman	630	567.00
Environ/Util	Marra, Marc	405	364.50
Environ/Util	Meidinger, Dawn	460	414.00
Environ/Util	Pearce, John	630	567.00
Environ/Util	Pew, Bradley J.	300	270.00
Environ/Util	Stewart, Annie	240	216.00
Environ/Util	Thomas, Scott	445	400.50

# EXHIBIT B

## **EXHIBIT B**

### **Outside Counsel Guidelines and Billing Practices and Procedures**

#### **I. INTRODUCTION**

The State of Nevada ("State"), by and through the Office of the Attorney General ("OAG"), is pleased that Fennemore Craig, P.C. ("Outside Counsel") has agreed to represent the State and the Colorado River Commission of Nevada ("Commission") as Outside Counsel under NRS 41.03435. *See generally* original Contract for Services of Independent Contractor, dated June 11, 2013 ("Contract"), and amended contracts #1, #2, #3, #4, #5, and #6, attached to Amendment #7 to Contract as Exhibit A. The following are Outside Counsel Litigation Guidelines and Billing Practices and Procedures ("Guidelines") for providing legal services to the State or its agencies. *See* NRS 41.0339, 228.110.

The relationship between a client and law firm must be a somewhat flexible one in order to respond to the idiosyncrasies of each matter in a manner that will best serve the client's goals and provide a fair fee for the law firm's legal services. The high cost of modern litigation in both time and money, however, requires that the relationship have a basic structure that is understood by both client and the law firm. As explained in the State Administrative Manual ("SAM"), "[i]t is the policy of the State of Nevada to limit and monitor costs associated with the hiring of professional and expert services, including private attorneys who provide services to the State as independent contractors." SAM § 0325 (State Agencies, Boards, and Commissions with Independent Contracts for Outside Legal or Professional Services).<sup>1</sup>

The State is willing to discuss deviations from these Guidelines if such deviations will further the chances for success in the matter or will prevent an unduly harsh financial burden on Outside Counsel. The State must require, however, that any such deviation be approved by the OAG's General Counsel in advance. The State may periodically modify these Guidelines in its sole discretion. The State will provide Outside Counsel reasonable notice prior to the effective date of any modifications.

**These Guidelines are not intended to interfere with Outside Counsel's ethical obligations, including the obligation to exercise independent legal judgment during the course of the representation, or to conflict with applicable federal or state laws, court rules, administrative rules, etc. At all times, Outside Counsel will provide professional legal advice and services at the highest level expected of law firms providing legal services in the Nevada and Arizona region and the representation will be performed in a professional manner consistent with the professional rules governing the legal profession.**

#### **II. GENERAL CONDUCT AND COMMUNICATIONS**

The matter for which you have been retained will be supervised by the Commission's Special Counsel ("Special Counsel"). We have found it is helpful to have one attorney designated as Outside Counsel's principal contact with Special Counsel. That "lead counsel" will work with Special Counsel to

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<sup>1</sup> These Guidelines are intended to summarize and/or supplement the State's policy under SAM § 0325 regarding contracts for outside legal services to a State agency. If a provision herein conflicts with SAM § 0325 or any other relevant State or OAG policy, then the relevant SAM or OAG policy controls.



decide what tasks need to be undertaken.

**Notification of Special Counsel and/or the OAG Regarding Significant Changes or Developments:** Outside Counsel must notify and consult with Special Counsel and/or the OAG promptly regarding all significant developments related to the legal services provided under this contract or any potential new legal matters. SAM § 0325(1). Should litigation involving potential liability for the State be threatened, commence, or significantly change during the term of this contract, Outside Counsel must immediately inform the OAG in writing. *Id.* Additionally, Outside Counsel must promptly advise the Risk Management Division of the Department of Administration regarding changes in litigation status that may have a fiscal impact on the State. *Id.*

**Copies of Work Products:** Outside Counsel will promptly provide Special Counsel with electronic copies of final versions of the written work product relevant to any legal matter, including correspondence and executed counterparts of any original pleadings or other matters of importance. SAM § 0325(2).

**Work Product the Property of the State:** All work products of Outside Counsel resulting from the Contract are the exclusive property of the State. SAM § 0325(3). Upon completion, termination, or cancellation of the Contract, Outside Counsel will surrender originals of all documents, including any work product in progress or draft form, objects, or other tangible items related to the work to the OAG. Contract §§ 10(E)(4), 21.

### **III. CONFLICTS OF INTEREST**

Except as specifically supplemented and modified in this section, the "Conflicts" provisions of the Contract, reproduced below, remain in effect:

Fennemore Craig, P.C. practices in Nevada under the name Fennemore Craig Jones Vargas.<sup>2</sup> The Firm represents clients in a broad range of transactional and disputed matters. Some of these involve the State of Nevada, its subdivisions and agencies, and in many of those situations the State or its subdivisions and agencies are represented by the Office of the Nevada Attorney General. Consistent with ER 1.13, Rules of Professional Conduct and Rule 42, Rules of the Supreme Court of Arizona, Fennemore regards as its clients particular agencies, departments or subdivisions of the State of Nevada, and not the entire State of Nevada, when it has been engaged by such individual agencies, departments or subdivisions. Conversely, when a client engages Fennemore in a matter in which that client's interests are directly adverse to an agency, department, or subdivision of the State of Nevada, Fennemore regards such agency, department, or subdivision as the entity whose interests are adverse to Fennemore's client; it does not consider the State of Nevada as the entity whose interests are so adverse. Accordingly, should Fennemore be engaged by the Office of the Nevada Attorney General to represent the interests of a particular agency, department, or subdivision of the State of Nevada, Fennemore Will consider only that agency, department, or subdivision to be its client for purposes of conflicts of interest. It is possible that during the time that the Firm is representing you, some of the Firm's present or future clients will have disputes or transactions with the State of Nevada, its agencies, departments or subdivisions. You agree that the Firm may continue to represent, or may

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<sup>2</sup> Outside Counsel now practices in Nevada under the name Fennemore Craig, P.C.

undertake in the future to represent, existing or new clients in any matter, if after consultation with the Commission it is agreed and determined the new matter is not substantially related to the Firm's work pursuant to this Contract and the conflict is specifically waived in writing by the Executive Director. Specifically, you agree that the Firm may represent other clients whose interests are adverse to the State of Nevada in matters unrelated to the Firm's representation of the State of Nevada under this Contract, including in litigation. The Firm agrees, however, that the above consent shall not apply in any instance where, as a result of its representation of you, it has obtained proprietary or other confidential information of a nonpublic nature that, if known to the other client, could be used by the other client in such other matter to your material disadvantage. In engagement letters with many of its other clients, the Firm has asked for similar agreements to preserve its ability to represent you. In addition, you agree that the Firm may disclose the fact of its representation of you, without disclosing the nature of such representation, to other current or future clients that may be adverse to you for the purpose of obtaining such other clients' consent to any conflict of interest that may be presented by the Firm's representation of you and such other client. The Firm will not disclose to the other client any confidential information pertaining to its representation of you.

Fennemore sometimes represent lawyers and law firms, and it is sometimes represented by other lawyers and law firms in matters unrelated to its representation of you. Because the Firm does not believe these representations will materially limit its responsibilities to you or will otherwise adversely affect its representation of you, the Firm does not believe these representations present conflicts of interest. If the Firm enters into representation of a new client that it believes may create *[sic]* a potential conflict with the interests of the Commission, Fennemore will consult with the Commission and request a written waiver of any potential conflict. Fennemore will consult with the Attorney General's Office regarding potential conflicts of interest, and at all times act in accordance with the Nevada Rules of Professional Conduct.

Contract at 13, Attachment "AA".

Conflicts of interest must be disclosed to the OAG and waived in writing prior to beginning a matter. SAM § 0325(4). Prior to engagement, the OAG expects Outside Counsel to investigate and resolve any potential conflicts of interest, including any "issue" conflicts of a more philosophic or policy-driven basis of which Outside Counsel is aware, that may compromise the position taken by the State. The OAG expects Outside Counsel to promptly discuss these issues with the OAG's General Counsel and the OAG will provide you with any additional information, if needed.

Outside Counsel must be sensitive both to direct conflicts of interest that representation of the State and other clients poses, and to the less direct, but nevertheless serious, conflicts that may arise from the Outside Counsel's advocacy, on behalf of other clients, of positions conflicting with important State interests of which Outside Counsel is aware. Prior to engagement, Outside Counsel should carefully review whether any conflicts of either type exist and, if so, bring those conflicts to General Counsel's attention. Although issue conflicts may not necessarily result in a disqualification of Outside Counsel, the OAG expects to be consulted before your firm accepts an engagement that will require the firm to advocate a position that may be adverse to a State legal interest or otherwise prejudicial to the State's interests. The OAG in its sole discretion will, after consultation with Outside Counsel, determine whether an impermissible State conflict exists, or whether other circumstances exist that would undermine the

public's confidence if your representation continued. Outside Counsel's acceptance of an engagement on a matter without written disclosure of any conflicts constitutes Outside Counsel's representation that it has conducted an appropriate conflict check and no conflict exists.

As the representation continues, the OAG expects that Outside Counsel will bring to Special Counsel's and General Counsel's immediate attention any change in the conflict review or inform the Special Counsel and General Counsel of any activity which might be viewed as, or trigger, a conflict of interest.

#### **IV. STAFFING**

The State expects that staffing levels will be appropriate for the complexity of the issues and the expertise of Outside Counsel. Law firm management must provide controls so that the State is not billed for unnecessary work or for necessary work at an inappropriate rate.

##### **A. Attorneys**

The State requires that one experienced lawyer have ultimate responsibility for staffing and other decisions for the matter. The lead counsel at the firm must identify, in advance, the other lawyers who will be working on the case and explain the role of each. She or he should always be aware of who is working on the matter, personally approving all assignments, and should also be aware at all times of what work is being done and how much time is being spent. She or he should ensure that all work is useful and done efficiently. She or he is expected to review and be able to explain all of Outside Counsel's time charges and expense reimbursement requests. Further, she or he must ensure that the other lawyers and paralegals who work on the case are informed of and follow these Guidelines.

The number of additional lawyers will depend on the range and complexity of the issues. Care must be taken to ensure that the matter is not used as a training or proving ground for young lawyers.<sup>3</sup> If it becomes necessary to substitute an attorney or add additional attorneys (other than on an occasional basis), Outside Counsel should consult with Special Counsel before doing so. The same personnel should be assigned to the case throughout its course to eliminate the time necessary to acquaint new people with the facts and issues involved in the case and thereby avoid billing deductions.<sup>4</sup>

Outside Counsel's attendance at meetings, hearings, depositions, or other case-related events should be handled by no more than one attorney.<sup>5</sup> Deviations from this general rule should be kept to a minimum. The State will not pay for the attendance of more than one attorney at such appearances without prior approval. Staffing for trials and attendance at major hearings or depositions must be discussed in advance and approved by Special Counsel.

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<sup>3</sup> SAM § 0325(6)(d) (explaining that "the State will not pay ... [f]ees for time spent educating junior professionals or associates").

<sup>4</sup> SAM § 0325(6)(c) (excluding "[f]ees for the training of personnel incurred as a result of staffing changes or increases during the term of the contract").

<sup>5</sup> SAM § 0325(6)(a) ("Unless otherwise agreed in advance, it is expected that only one professional from contractor's organization will attend meetings, depositions and arguments and other necessary events, although a second person may be needed for trials and major hearings or meetings").

The level of expertise of the attorney must be appropriate to the complexity of the task. Partners should not bill for tasks that can be performed competently by associates at a lower cost; similarly, associates should not bill for tasks that can be performed competently and more economically by paralegals. We expect that you will minimize legal expenses by assigning less senior attorneys or paralegals to less demanding tasks.

Both parties recognize that the appointment of Outside Counsel is personal in nature and does not extend to any law firm that Outside Counsel is associated with, a partner of, or for which Outside Counsel serves as "of counsel."

**B. Paralegals**

The appropriate use of paralegals is encouraged; however, payment for paralegal time is limited to those activities requiring their special expertise and does not extend to administrative, clerical, or technical tasks including but not limited to: photocopying, compiling, organizing, collating, or sorting documents; Bates stamping; picking up or making deliveries; database set up and maintenance; etc. that do not require any legal skill or acumen and are considered part of Outside Counsel's non-billable overhead.

**C. Other Personnel**

The State will not pay for the services of librarians, file clerks, data entry clerks, photocopy operators, secretaries, word processors, docket clerks, computer personnel, computer support personnel, messengers, and like staff. Time submitted by unapproved personnel on a matter will not be compensated.

**D. Contract or Temporary Labor**

We request that you notify us in advance before using any non-law firm personnel and let us participate in the arrangements with the vendor, including ensuring that there is no markup for services beyond the best rate that the State is able to negotiate.

**E. Getting Up-to-Speed**

We will not pay for substituted personnel or restart-up costs due to law firm attrition or some other cause other than at State's behest. SAM § 0325(6)(c). Accordingly, activities including but not limited to file/material reviews or conferencing resulting from change of staff are considered part of Outside Counsel's non-billable overhead.

**F. Conferences and Intra-Firm Memoranda**

The State will pay only for necessary consultations and/or team strategy meetings relating to significant legal events concerning the State client. Although some degree of in-firm consultation is often necessary in large or complex matters, the average case does not require routine intra-office conferences and meetings. The State will not pay for such conferences and meetings in the ordinary course and requests that discretion be exercised in the degree to which such consultations take place.

Where time reflects a written intra-office communication (*i.e.*, preparation and/or review of intra-



firm memoranda) that appears to be for giving or receiving assignments, for bringing a timekeeper up to speed, or for the transmission of administrative, supervisory, or instructional content, the time is considered non-billable overhead.

#### **G. Duplication of Effort**

Outside Counsel should not duplicate research, drafting, or other written work product previously performed and should take maximum advantage of model documents and appropriate documents from other similar matters. The State will not compensate Outside Counsel for one professional or paraprofessional redoing the work of another.

#### **H. Legal Research**

Outside Counsel was selected for its expertise in particular areas of law and practice and expects counsel to be well versed and current with the laws and procedures in the relevant specialty. Accordingly, the State does not expect to be charged for research relating to discovery and procedural motions or for research on issues that are typical or routine to the specialty. Similarly, we expect Outside Counsel to maintain and use central research depositories. The State will pay for research to update prior work that will benefit the case or for issues that are novel or unique to the case. All attorney or paralegal research time in excess of five (5) hours per month must be preapproved by Special Counsel.

### **V. BILLING REQUIREMENTS**

#### **A. Alternative Fee Arrangements**

The OAG encourages Outside Counsel to consider fee arrangements other than hourly rates. On an ongoing basis, the OAG asks that Outside Counsel propose arrangements, in appropriate circumstances, such as flat fees, fixed fees for phases of matters, result-oriented formulas or additional approaches other than a pure hourly rate method.

#### **B. Hourly Billing Rates**

Hourly billing rates for all personnel must be agreed upon in writing prior to the inception of the engagement. *See* Contract § 5 (incorporating Attachment AA, Scope of Work/Fee Agreement for Legal Representation/Engagement Terms). We expect to pay the lowest rate offered to any other similarly situated non-pro bono client.

Any changes in billing rates for attorneys and other personnel must be approved by Special Counsel in writing and in advance of any work performed under the proposed new rates. Outside Counsel should carefully consider the size of any proposed increase in billing rates.

Hourly billing rates should include all items of overhead. Overhead includes all administrative or general costs incidental to the operation of the firm. Overhead expenses will not be separately reimbursable, absent prior approval.

### **C. Minimum Billing Increment/Maximum Hours Per Day/Travel Time**

All time records must represent the actual time required to perform the task or activity and must be kept in time increments of 1/10th of an hour or 6 minutes. SAM § 0325(6).

Timekeepers should not routinely work more than ten hours per day, although this may occur if counsel is in trial or working around-the-clock on an acquisition. SAM § 0325(6)(e). If a timekeeper works more than 10 hours a day for any other reason, a separate explanation is required. *See id.*

Most forms of transportation, with the exception of automobile travel, allow the performance of various forms of legal work. Charges for professional time during travel will not be reimbursable unless the time is actually used performing professional services or as otherwise arranged in advance. SAM § 0325(6)(b).

### **D. Billing Format**

Outside Counsel is generally expected to submit monthly invoices within 30 days of the conclusion of the billing period, absent the OAG's prior consent to a longer delay. *See* Contract § 8. All charges must reflect the work performed within the billing period or a reasonable time before the billing period. Absent good cause, as defined by the OAG, the State will not pay for services or expenses incurred more than 90 days prior to the date the invoice is submitted.

Outside Counsel's billing invoices must include a chronological listing of services, the name of each timekeeper whose work is being billed, the date of service, the number of hours expended by each timekeeper on each item, a description of the item of work and the rate at which those hours are billed. A copy of your internal computer printout may accompany the bill if that is most convenient.

Each task or activity must be separately itemized showing the date performed, the timekeeper performing the task, a descriptive explanation of the task or activity performed, the time spent on the specific task, and the dollar amount billed for each individual task or activity.<sup>6</sup>

**Blocked or combined billing will not be approved for payment.** The invoice containing such charges and descriptions will be returned to you for correction. Blocked or combined billing is defined as a billing entry that assigns one amount of time to more than one task or activity. Examples of blocked billing entries are:

- "Prepare for and attend deposition of Dr. Jones – 1.50 hours."
- "Receipt and review of co-defendants' reply to Allied World's motion to compel production of documents of 06/22/08; Conference with C. Thomas to prepare for her deposition on 11/09/08; Draft answers to plaintiffs' interrogatories of 01/02/08 – 3.00 hours."

In the case of time charges that are written off, please include this information in the applicable invoice, including the amount of time written off and the personnel whose time is written off.

Task descriptions must identify each task in sufficient detail to permit the State to ascertain the benefit derived from such service. Generic descriptions such as the following (without additional detail as

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<sup>6</sup> *See* SAM § 0325(6) ("In every case all billings shall describe all work performed with particularity and by whom it was performed.") (emphasis added).

described above) are not acceptable for billing purposes:

- attention to matter
- review case and issues
- conference
- review correspondence
- arrangements
- telephone call
- discovery
- meeting
- update strategy
- motion work
- work on project or case
- pleadings
- work on file
- prepare for meeting
- work on discovery
- receive/review documents
- research
- analysis

All third-party expenses from experts, vendors, consultants, court reporters, etc. paid by Outside Counsel and billed with the monthly invoice as an itemized expense must comply with these guidelines, absent specific prior approval to the contrary, including the requirements of an itemized statement of work performed and substantiation of all expenses over \$500.

#### **E. Review of Monthly Invoices and Deductions of Fees and Charges**

The OAG will promptly review each invoice upon submission. A reviewer will apply deductions for billing entries that are inconsistent with or violate (1) a specific provision of the contract between the State and Outside Counsel, (2) SAM § 0325, and/or (3) these Guidelines. A reviewer may also apply additional deductions for charges that are otherwise inappropriate. The OAG will notify Outside Counsel in writing of the deductions. If Outside Counsel wishes to discuss and potentially ask the OAG's General Counsel or Special Counsel to reconsider deductions, they may do so within 30 calendar days from the date on which the invoice is returned to Outside Counsel by contacting Special Counsel. On the 31<sup>st</sup> day after a reduced invoice is returned to Outside Counsel, the OAG will consider the deductions final. Alternatively, Outside Counsel may contact the Special Counsel to indicate acceptance of the deductions. Outside Counsel will be asked to resubmit a new or corrected invoice reflecting the deductions, and OAG will process payment upon receipt.

When the OAG representative and Outside Counsel discuss deductions, Outside Counsel will be asked, once the discussion has concluded, to resubmit a new or corrected invoice reflecting the agreed amounts. Although an OAG representative will discuss deductions with Outside Counsel and give due consideration to Outside Counsel's views, the OAG's determinations with respect to deductions are final. If Outside Counsel does not appeal deductions or does not timely submit a new or corrected invoice reflecting the OAG's final determinations and the reduced amount, the OAG reserves the right to remit payment at the reduced amount.

The State reserves the right to audit all fee and disbursement details that Outside Counsel submits, as well as the corresponding legal file. *See Contract § 9.*

The State will promptly terminate the services of any Outside Counsel whose billing practices raise questions about Outside Counsel's integrity, honesty, or compliance with the applicable rules of professional conduct or these Guidelines.

## **VI. ADMINISTRATIVE AND CLERICAL WORK<sup>7</sup>**

Unless specifically authorized in advance, the State will not pay for administrative tasks, including but not limited to:

1. Preparing or reviewing billing statements.
2. Scheduling firm personnel.
3. Preparing budgets of time, staffing, or total costs of projected legal work.
4. Complying with these practices and procedures.
5. Maintaining a calendar or tickler system.
6. Researching general client or industry trends.
7. Researching issues of a generic nature.
8. Investigating conflicts of interest.
9. Opening and closing of files.

Additionally, the State will not pay for secretarial, summer associate, or law clerk time or overtime; or charges for "file management," or word processing, without prior approval. Further, the State does not pay for administrative work performed by lawyers, such as managing attorneys, without prior approval.

Unless specifically authorized in advance by Special Counsel, clerical charges are not acceptable, including but not limited to:

1. Routine copying, filing, or retrieving from the files; organization; and/or indexing of pleadings, updating case captions, preparing bills, invoices, correspondence, or other documents prepared by or received by Outside Counsel.
2. Scheduling appointments, depositions, and meetings, making travel arrangements, and contacting court reporters.
3. Surcharged rates by paralegals or other support personnel (*e.g.*, an individual working on State matters in the evening and charging overtime, even though he or she could have performed this work during the day without a surcharge added to the rates.)
4. Cost of subscriptions or education expenses.
5. Professional association or other membership fees.
6. Storage charges.

As further explained below, the State considers administrative and clerical work to be part of Outside Counsel's office overhead and will not pay such charges, unless otherwise authorized in advance. *See* SAM § 0325 (7)(a), (d).

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<sup>7</sup> *See* SAM § 0325(7)(a), (d).



## **VII. DISBURSEMENTS**

### **A. Billing Requirements for Expense Reimbursement**

Each expense item must be separately itemized, showing the date the expense was incurred, an explanation of the charge, the amount of the charge, and the timekeeper who incurred the charge.

Reimbursable expenses will be compensated at actual cost. Actual cost is defined as the amount paid, net of any discounts, to a third-party provider of goods or services.

### **B. Internal Expenses**

Office Overhead: Items of expense considered overhead are part of the professional's hourly rate and are *not reimbursable*, unless otherwise agreed in advance. The term overhead includes, but is not limited to, office rent, conference rooms, furniture, equipment rental, computer software, office supplies, utilities (including heating and air conditioning on weekends), local transportation, mobile devices and data charges, billing activities, file opening and closing activities, data entry and storage, scanning, budget creation, commuting expenses, completion of conflicts checks, telephone and fax, books, bates numbering, docket systems (such as PACER), subscription services (*e.g.*, Westlaw, Lexis-Nexis, or other legal database charge), bar dues, professional associations, educational expenses, routine postage, entertainment, and local/overtime meals. *See* SAM § 0325(7)(a), (d), (e).

Photocopies: Outside Counsel is expected to limit the making of photocopies. Photocopying will be reimbursed at Outside Counsel's actual cost at a rate not to exceed 10 cents per page. SAM § 0325(7)(b), (c). For jobs greater than 400 pages, the work may be performed by an outside vendor or inside at actual cost at a rate that cannot, in any event, exceed seven (7) cents per page.

### **C. Outside Vendor and Other Expenses**

Retention of Experts and Consultants: Special Counsel must be consulted prior to the retention of all experts or consultants. The State will reimburse Outside Counsel for all pre-approved expert or consultant expenses at the actual cost of these services but will not reimburse Outside Counsel for any such expenses where Special Counsel was not consulted.

Computerized Legal Research: Upon prior approval from Special Counsel, the State will reimburse Outside Counsel at actual cost for necessary computerized legal research that goes beyond Outside Counsel's ordinary subscription services (*e.g.*, Westlaw, Lexis-Nexis, or other legal database charge). An itemized bill must be submitted with appropriate documentation. SAM § 0325(7)(e).

Overnight Delivery and Messenger Services: Actual cost will be reimbursed for expenditures where the necessity can be demonstrated.

Extraordinary Expenses: Approval must be obtained from Special Counsel prior to incurring extraordinary expenses such as computerized litigation support services, videotaping of depositions, and extraordinary travel.

#### **D. Travel Expenses**

NRS 281.160 outlines the State's policies regarding travel and subsistence for State officers, board and commission members, employees, and contractors, which includes Outside Counsel. Outside Counsel's travel expenses are restricted to the "same rates and procedures allowed State employees." SAM § 0320(6).<sup>8</sup> The SAM provides guidance on travel expenses and instructs State agencies to adopt detailed policies based on agency-specific needs. See SAM §§ 0200 (addressing travel generally), 0206 (agency policies regarding travel). Accordingly, the OAG adopted a Travel Policy as part of the Nevada Attorney General Policy Manual. See § 7.0, Travel Policy, revised July 2016. The travel provisions set forth herein are intended to summarize and/or supplement the State and OAG's travel policies. If a provision herein conflicts with the SAM or OAG's Travel Policy, then the relevant SAM or OAG travel provision controls.

**Local Travel:** Expenses, such as parking and tolls, incurred will be reimbursed at actual cost. However, the State will not pay for local travel, commuting, and/or transportation, which is defined as any form of transit to/from/between places of official business, such as travel to a court appearance or offsite meeting location, within 50 miles of Outside Counsel's business address.

**Out-of-Town Travel:** Necessary out-of-town travel will be reimbursed at actual cost.

**Air Transportation:** The State will reimburse Outside Counsel for the actual cost of air transportation, not to exceed coach fare on domestic flights or business class on international flights. Copies of flight coupons and itineraries must be submitted as appropriate documentation.

**Hotels:** The State requires Outside Counsel to exercise discretion and prudence in connection with hotel expenditures. Itemized hotel bills must be submitted as appropriate documentation.

**Meals:** The State will reimburse Outside Counsel for the reasonable costs of meals, supported by appropriate documentation. It is not appropriate to charge for lavish meals, and alcohol will not be reimbursed in conjunction with any travel. Group business meal charges at restaurants should include the number of individuals in attendance, their names, the name of their firm, and the purpose of the meeting. Itemized bills must be submitted as appropriate documentation.

**Rental Car, Taxis and Airport Parking:** The State will reimburse Outside Counsel for necessary rental cars and/or taxis at actual cost, not to exceed a standard or mid-size car rental rate. Airport parking costs for business purposes are also reimbursable at cost. Itemized bills must be submitted as appropriate documentation.

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<sup>8</sup> However, certain portions of the State and OAG's travel guidelines are inapplicable to Outside Counsel as an independent contractor. *E.g.*, SAM §§ 0216 (Use of Rental Cars), 0222 (Travel Advances from the Agency Budget Account), 0224 (State Sponsored Credit Cards for Official Travel Only), 0226 (Claims and Payments When Credit Cards Have Been Used); OAG Policy Manual §§ 7.2.1 (addressing use of a State vehicle), 7.4 (State charge cards).

Amenities: Charges of a personal nature (such as entertainment, pay TV, minibar charges, and dry cleaning) will not be reimbursed.

#### **VIII. MEDIA REQUESTS AND PUBLIC RELATIONS**

Any media inquiry relating to the State of Nevada, including the State's relationship with Outside Counsel, should be referred to the Special Counsel immediately. Outside Counsel should not make statements to the media without securing advance approval.

We are aware that many law firms engage in comprehensive marketing. The State does not permit you to advertise or promote the fact of your relationship with the State in your marketing efforts unless the OAG specifically agrees otherwise. Outside Counsel may, however, list the State as a representative client.

#### **IX. CLOSING**

The OAG continually reviews and updates these Guidelines and welcomes any suggestions Outside Counsel may have to limit and control costs while providing exceptional legal representation. Please acknowledge below the receipt and circulation of the Guidelines.

Once again, we appreciate your agreement to represent the Commission and we look forward to the successful conclusion of this matter.

.....  
**Leslie Nino Piro**  
General Counsel  
State of Nevada  
Office of the Attorney General

Date:  
.....

  
.....  
**Lauren J. Caster**  
Fennemore Craig, P.C.

Date:   
.....

.....  
**David W. Newton**  
Senior Deputy Attorney General  
Colorado River Commission  
State of Nevada  
Office of the Attorney General

Date:  
.....

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.....  
**Leslie Nino Piro**  
General Counsel  
State of Nevada  
Office of the Attorney General

Date: June 3, 2022  
.....

.....  
**Lauren J. Caster**  
Fennemore Craig, P.C.

Date: 6/7/22  
.....

  
.....  
**David W. Newton**  
Senior Deputy Attorney General  
Colorado River Commission  
State of Nevada  
Office of the Attorney General

Date:  
.....



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RECEIVED

## FENNEMORE CRAIG, P.C.

2394 East Camelback Road, Suite 600  
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(602) 916-5000

Lauren J. Caster  
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December 27, 2021

Ms. Christine Guerci-Nyhus  
Colorado River Commission of Nevada  
% State of Nevada  
555 East Washington Avenue, Suite 3100  
Las Vegas, Nevada 89101

Re: 2022 billing rates

Dear Ms. Guerci-Nyhus:

Below is a list of the Fennemore Craig personnel most likely to perform services for the Commission, and their 2022 billing rates. These rates represent 90% of standard rates, which is what applies to the *Navajo Nation v. U.S. Department of Interior* matter. They pertain to services rendered from January 1 through December 31, 2022. Obviously we recognize that we are operating within the approved budget.

Lauren Caster -- \$562.50  
Bradley Pew -- \$315.00  
Byrin Romney -- \$288.00

If others are needed to perform services, their services will be billed at 90% of standard rates.

We appreciate the opportunity to serve the Colorado River Commission of Nevada, State of Nevada and the Southern Nevada Water Authority. If you have any questions, please let me know.

Very truly yours,

FENNEMORE CRAIG, P.C.



Lauren J. Caster



January 7, 2022

Fennemore Craig, P.C.  
2394 East Camelback Road  
Suite 600  
Phoenix, AZ 85016-3429

To Whom It May Concern:

### **CONFIRMATION OF INSURANCE**

We hereby confirm that Fennemore Craig, P.C. has Professional Liability Coverage under Policy LPL-1271-2022 with an annual limit of \$40,000,000 per claim and \$80,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The self-insured retention under such Policy is \$750,000 each claim up to an aggregate of \$1,500,000 and \$100,000 each claim thereafter.

The Policy effective date is from January 1, 2022 to January 1, 2023.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY LTD.,  
A RISK RETENTION GROUP**

By:   
Nancy J. Montroy  
Vice President – Director of Underwriting

Date: 1/7/2022

311 S. Wacker Drive, Suite 5700  
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ALAS