

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM A
FOR MEETING OF MAY 9, 2023**

SUBJECT: Roll Call / Conformance to Open Meeting Law.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

Announcement of actions taken to conform to the Open Meeting Law will be reported at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM B
FOR MEETING OF MAY 9, 2023**

SUBJECT: Comments from the public. Members of the public are invited to comment on items on the meeting agenda or on items not contained therein. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM C
FOR MEETING OF MAY 9, 2023**

SUBJECT: <i>For Possible Action:</i> Approval of minutes of the April 11, 2023, meeting.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

The minutes of the April 11, 2023, meeting is enclosed for your review.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM D
FOR MEETING OF MAY 9, 2023**

SUBJECT: <i>For Possible Action:</i> Consideration of and possible action to approve Amendment No. 2 to Contract No. SA-15-02 between Colorado River Commission of Nevada and Schneider Electric USA, Inc. for an additional four years for Substation Automation System Support Services.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: Staff recommends the Commission approve of Amendment No. 2 to Contract No. SA-15-02 with Schneider Electric USA, Inc., and authorize the Executive Director to sign the agreement on behalf of the Commission.
FISCAL IMPACT: Four-year extension, not to exceed the previously approved amount of \$350,000.

STAFF COMMENTS AND BACKGROUND:

A. Request for Amendment:

The requested Amendment No. 2 to Contract No. SA-15-02, is a request to extend the time of the contract for four years to June 30, 2027. The current remaining balance on the contract is \$164,186.87 and is expected to be sufficient for the term of the extension of the contract.

B. Background of Contract

The Colorado River Commission of Nevada (Commission) owns, operates, and maintains seventeen high voltage substations staffed by eight Commission employees in the Commission's Power Delivery Project. In addition, the Commission is responsible for the operation and maintenance of ten substations that are owned by the Southern Nevada Water Authority and three owned by the Clark County Water Reclamation District.

On June 9, 2015, the Commission entered a contract to provide systems support services for a business enterprise system that allows the Commission and its customers who receive electric service from the Commission facilities, to manage the procurement of electric energy, including scheduling and accounting, more efficiently by the rapid dissemination of real-time metering data. These support services included programming, troubleshooting, and modifying software and hardware associated with the energy meters and software as required for routine operation and maintenance.

Due to the proprietary nature of the meters and software used in the Power Delivery facilities, Staff initiated a Solicitation Waiver process in accordance with Nevada State Purchasing guidelines.

The Nevada State Purchasing Solicitation Waiver or Sole Source process omits the Request for Proposals process when, as in this instance, proprietary hardware and software are involved. As noted in the Solicitation Waiver, "Selecting another vendor would require removing and replacing

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM D
FOR MEETING OF MAY 9, 2023**

100+ meters and the operating software, which is not operationally or economically feasible, and the Commission's metering and data collection system would no longer be compatible with the local utility, NV Energy." The Solicitation Waiver #140902 was approved by the Administrator of the Nevada State Purchasing Division.

On March 12, 2019, the Commission approved Amendment No. 1 to Contract SA-15-02 which extended the contract with Schneider Electric USA, Inc. (Schneider Electric) until June 30, 2023.

This Contract with Schneider Electric is an enabling-type contract that allows the Commission's operation and maintenance Staff to receive support from Schneider Electric on an as-needed basis for certain tasks and software support. Work under the contract will be authorized by Commission Staff as needed through the development and execution of written task authorizations.

Amendment No. 2 proposes to retain the services of Schneider Electric for an additional four-year extension, not to exceed the previously approved total amount of \$350,000, upon Board of Examiners' approval, anticipated to be June 2023. The total combined value of task authorizations under this agreement shall not exceed \$350,000 over the term of the contract. The amount remaining on this contract as of today is \$164,186.87.

CETS #:	16679
Solicitation Waiver #:	140902

AMENDMENT # 2
TO CONTRACT NO. SA-15-02
FOR
SOFTWARE SUPPORT SERVICES
Between the State of Nevada
Acting By and Through Its

Agency Name:	Colorado River Commission of Nevada
Address:	555 E. Washington Ave., Ste 3100
City, State, Zip Code:	Las Vegas, Nevada 89101
Contact:	Robert D. Reese
Phone:	702-486-2670
Fax:	702-856-3617
Email:	breese@crc.nv.gov

Contractor Name:	Schneider Electric USA, Inc.
Address:	One Boston Place, Suite 2700
City, State, Zip Code:	Boston, MA 02108
Contact:	Franz Roesner
Phone:	713-516-3072
Email:	Franz.Roesner@se.com

1. **AMENDMENTS.** For and in consideration of mutual promises and other valuable consideration, all provisions of the original Contract . dated June 9, 2015 and amended by Amendment No. 1 dated April 9, 2019, attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

A. Provide a brief explanation for contract amendment.

Contract term is being extended four years.

B. Current Contract Language:

3. CONTRACT TERM. This Amendment shall be effective on the date of its execution and shall remain in effect until June 30, 2023, unless sooner terminated by either party as specified in paragraph ten (10).

C. Amended Contract Language:

3. CONTRACT TERM. This Contract shall be effective on the date of its execution and shall remain in effect until June 30, 2027, unless sooner terminated by either party as specified in paragraph ten (10).

CETS #:	16679
Solicitation Waiver #:	140902

2. **INCORPORATED DOCUMENTS.** Exhibit A (original Contract and Amendment No. 1) 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.

Franz S. Roesner
Franz S. Roesner (Apr 20, 2023 16:05 CDT)

Independent Contractor’s Signature

Date

Utility Account Executive
Independent Contractor’s Title

Colorado River Commission of Nevada

Date

Executive Director
Title

APPROVED BY BOARD OF EXAMINERS

Signature – Board of Examiners

On: _____
Date

Approved as to form by:

Michelle Briggs
Special Counsel for Attorney General

On: _____
Date

EXHIBIT A

- Amendment No. 1
- Original

**AMENDMENT NO. 1
to
CONTRACT NO. SA-15-02
FOR
SOFTWARE SUPPORT SERVICES**

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

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101-1065
Phone: (702) 486-2670
Fax: (702) 486-2695
Contact: Robert D. Reese
Email: breese@crc.nv.gov

and

Schneider Electric USA, Inc.
1415 S. Roselle Drive
Palatine, IL 60067
Phone: (615) 280-4800
Contact: John Burns
Email: john.burns@schneider-electric.com

1. **AMENDMENTS.** For and in consideration of mutual promises and/or their valuable consideration, all provisions of the Original Contract, dated June 9, 2015 which is attached hereto as Exhibit A, remain in full force and effect with the exception of the following:

The Contract Term, as set forth in Section 3 of the Original Contract, shall be extended for an additional four years.

Current Contract Language:

3. **CONTRACT TERM.** This Contract shall be effective on the date of its execution and shall remain in effect until June 30, 2019, unless sooner terminated by either party as specified in paragraph ten (10).

Amended Contract Language:

3. **CONTRACT TERM.** This Amendment shall be effective on the date of its execution and shall remain in effect until June 30, 2023, unless sooner terminated by either party as specified in paragraph ten (10).

2. **INCORPORATED DOCUMENTS.** Exhibit A (Original Contract) 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 upon approval by all parties.

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

SCHNEIDER ELECTRIC USA, INC.

Paul Golden 3/21/2019
Paul Golden Date
Manager, Sales and Tendering

**COLORADO RIVER COMMISSION
OF NEVADA**

Eric Witkoski 4-1-19
Eric Witkoski Date
Deputy Executive Director

APPROVED BY BOARD OF EXAMINERS

Murphy for Susan Brown 4/9/19

Clerk, Board of Examiners Date

Approved as to form by:

Christine Guerci-Nyhus 4/2/19
Christine Guerci-Nyhus Date
Deputy Attorney General for Attorney General

**CONTRACT NO. SA-15-02
FOR
SOFTWARE SUPPORT SERVICES**

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

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101-1065
Phone: (702) 486-2670
Fax: (702) 486-2695
Contact: Robert D. Reese
Email: breese@crc.nv.gov

and

Schneider Electric USA, Inc.
1415 S. Roselle Drive
Palatine, IL 60067
Phone: (615) 280-4800
Contact: John Burns
Email: john.burns@schneider-electric.com

WHEREAS, NRS 333.700 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" 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. "Current State Employee" means a person who is an employee of an agency of the State. "Former State Employee" means a person who was an employee of any agency of the State at any time within the preceding 24 months.

3. **CONTRACT TERM.** This Contract shall be effective upon Board of Examiners' approval (anticipated to be June 9, 2015) to June 30, 2019, unless sooner terminated by either party as specified in paragraph ten (10).

4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of termination for 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 above.

5. INCORPORATED DOCUMENTS. The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: SCOPE OF WORK;
ATTACHMENT BB: INSURANCE SCHEDULE; and
ATTACHMENT CC: SOLICITATION WAIVER APPROVED BY STATE PURCHASING AS #140902

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost not to exceed THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$350,000.00). 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 results 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. BILLING SUBMISSION: TIMELINESS. The parties agree that timeliness of billing is of the essence to the 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 calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale 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 stale claim and that this amount will be deducted from the stale 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 except where so stated in the contract 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. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

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 or consequential 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 or damages related to the work shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability for third party claims or claims related to Contractor's gross negligence or willful misconduct 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 out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

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?	_____	ER
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	ER
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	ER	_____
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	ER
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)?	ER	_____
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	ER
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	ER

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 certificates provided by the Contractor.

Prior approval of the insurance certificates by the State shall be a condition precedent to any Notice to Proceed. 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. 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 more than thirty (30) days after 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 Contractor's general liability insurance policy, 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.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor may contain deductibles or self-insured retentions. Such deductibles or self-insured retentions shall not relieve Contractor from the obligation to pay any loss or claim for which contractor is responsible under this contract. Deductibles or self-insurance is subject to disclosure pursuant to State Purchasing statutes as outlined in part under NRS 333.335.
- e. **Policy Cancellation:** Each insurance policy shall state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled or non-renewed, and shall provide that notices required by this paragraph shall be sent by certified mailed 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.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) **Additional Insured Endorsement:** An Additional Insured Endorsements (CG 2033 (4/13) and CG2037 (4/13) , 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.

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 subcontractors, 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.

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, State data, State system designs, , 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 offer 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.

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.

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. NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES. Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this contract without first notifying the Contracting Agency of the identity of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.

29. ASSIGNMENT OF ANTITRUST CLAIMS. Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. 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 laws 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.

31. 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 hereto have caused this Contract to be signed and intend to be legally bound thereby.

SCHNEIDER ELECTRIC USA, INC.

Ed Reader
By: _____ Date: 4/13/15
Title: _____
Manager, Sales and Tendering

COLORADO RIVER COMMISSION
OF NEVADA

Jayne Harkins 4/27/15
Jayne Harkins, P.E. Date
Executive Director

Approved as to form by:

Ann C. Pongraz 4/17/15
Ann C. Pongraz Date
Special Counsel to the
Colorado River Commission of Nevada

APPROVED BY BOARD OF EXAMINERS

James R. Wells 6-9-15
James R. Wells Date
Clerk, Board of Examiners

ATTACHMENT AA SCOPE OF WORK

1. SYSTEM DESCRIPTION

The Colorado River Commission of Nevada (Commission) owns, operates and maintains a high voltage transmission and distribution system consisting of two 230/69-kV substations, three 230/14.4-kV substations, four 69/13.8-kV substations, seven 69/4.16-kV substations, 32 miles of 230-kV transmission lines, 5 miles of 69-kV overhead transmission lines, eleven miles of 69-kV underground transmission lines and other related facilities in Clark County, Nevada. In addition, the Commission is responsible for the operation and maintenance of six additional substations owned by the Southern Nevada Water Authority and three additional substations owned by the Clark County Water Reclamation District.

2. WORK UNDER THIS CONTRACT

The Commission has determined that the services of a qualified Contractor are required from time to time to support the Commission as it operates and maintains the ION energy meters and ION Enterprise ® software needed to measure the receipt and delivery of electrical energy and to record other parameters associated with the transmission of this energy through the Commission's high-voltage transmission and distribution system. The Commission utilizes ION energy meters manufactured by the Contractor. Data is extracted from these meters and provided to end-users in a useable digital format utilizing ION Enterprise ® software.

The services to be performed by the Contractor consist of programming, troubleshooting and modifying software and hardware required for operation of ION energy meters and utilization of ION Enterprise ® software for the routine operation and maintenance of these items. The types of services the Contractor may be asked to perform are as follows:

- a. Performance of computer programming utilizing the ION Enterprise ® software to create additional read-only VISTA screen pages accessible to designated end-users via the World Wide Web.
- b. Installation of ION Enterprise ® software upgrades on the Commission's meter software server located at the Newport Substation.
- c. System restoration in the event the server is temporarily or permanently rendered inoperable.
- d. Other related activities associated with the ION energy meters and the ION Enterprise ® software as may be requested by the Commission.

3. COMMISSION'S REPRESENTATIVE

The Commission's Representative shall be **Mr. Robert Reese, Assistant Director of Engineering and Operations**. The Commission's representative shall be called the "Contract Administrator" for purposes of this Contract. The Contract Administrator shall be generally authorized to act on behalf of the Commission and, specifically, to have the authority to authorize work tasks in accordance with Section 5 of this Contract, transmit instructions to the Contractor and define the Commission's needs, requirements and policies with respect to the operation and maintenance of the ION energy meters and the ION Enterprise ® software, and such other matters as are pertinent to the Contractor's performance of this Contract. The Contract Administrator may designate another employee of the Commission to perform his responsibilities under this Contract.

4. CONTRACTOR'S REPRESENTATIVE

Within ten (10) days following the execution of this Contract, the Contractor shall identify the Contractor's Representative in writing provided to the Commission. The Contractor's Representative shall be authorized to act

fully on behalf of the Contractor. The Contractor may designate another individual as its Contractor's Representative by prior written notice to the Commission.

5. TASK AUTHORIZATION. Work under this Contract shall not be performed except as authorized by and in compliance with separate written Task Authorizations issued by the Contract Administrator. Each Task Authorization shall contain:

- a. A detailed description of the Work to be performed by the Contractor.
- b. A list of deliverables to be provided to the Commission.
- c. A schedule for completing the assignment.
- d. A budget for the task. The budget for the work assignment must be segregated into Contractor labor costs (including overhead and indirect costs); profit, travel expense and other direct expenses, specified both numerically and as a percentage of the total cost for the Task Authorization.

The Contractor shall not proceed with any work under this Contract unless the Task Authorization has been approved in writing by the Contract Administrator.

Each Task Authorization shall be signed by the Contract Administrator and by the Contractor's Representative. The Contractor shall not proceed with the Work until such time as the Task Authorization has been executed by both the Contract Administrator and the Contractor's Representative.

The Contract Administrator may, as necessary, order additions, deletions or revisions to the scope of a written Task Authorization. Such additions, deletions or revisions shall be authorized by a revised written Task Authorization that is executed by the Contract Administrator and the Contractor's Representative.

The Commission shall not pay the Contractor in an amount greater than the amount approved by the Contract Administrator in a written Task Authorization. The sum of all Task Authorizations shall not exceed the total not-to-exceed amount of the Contract.

There is no guarantee by the Commission regarding the amount of work that the Contractor will be requested to perform during the term of this Contract.

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, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. 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 the specific intention of the parties that the Indemnitee shall, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all third party claims provided that the State: (a) gives the Contractor prompt written notice of such claim; and (b) cooperates with the Contractor, in the defense of such claim. The Contractor shall not be responsible for any settlement made by the State without the Contractor's prior written consent. The Contractor's indemnity and hold harmless obligations as to any claim or suit within the scope of this clause shall be reduced to the extent of any concurrent fault, or negligence by the State. 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.

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 blanket 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

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor."

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor."

3. 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

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

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

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability evidenced by the Certificate even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

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. Such notice shall be sent directly to **Robert D. Reese, Colorado River Commission of Nevada, 555 E. Washington Avenue, Suite 3100, Las Vegas, Nevada 89101-1065.**

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 **Robert D. Reese, Colorado River Commission of Nevada, 555 E. Washington Avenue, Suite 3100, Las Vegas, NV 89101-1065**. 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:** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. Contractor will require subcontractors to maintain all coverages required under this contract and to name Contractor and the State as additional insureds, and to provide copies of insurance certificates to Contractor and the State.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

**ATTACHMENT CC
SOLICITATION WAIVER #140902
(ATTACHED TO THIS CONTRACT AS
REQUIRED BY STATE ADMINISTRATIVE MANUAL 0108)**

State of Nevada
Department of Administration

Purchasing Division

515 E. Main Street, Suite 300
Carson City, NV 89701



William Sandoval
Governor

John Testa
Director

Craig Smith
Administrator

Purchasing Use Only:
Approval#: 140902

SOLICITATION WAIVER JUSTIFICATION AND REQUEST FORM

ALL FIELDS ARE REQUIRED - INCOMPLETE REQUESTS WILL BE RETURNED TO THE AGENCY

Agency Contact Information - Note: Approved copy will be sent to only the contact(s) listed below:			
State Agency:			
Colorado River Commission of Nevada			
Robert D. Reese		702-682-6972	breese@crcc.nv.gov
Assistant Director of Engineering and Operations			

Vendor Information:	
Identify Vendor:	Schneider Electric/Square D Company
Contact Name:	John Burns
Address:	677 S. Scout Trail, Anaheim, CA 92807
Telephone Number:	(714) 651-7846
Email Address:	john.burns@schneider-electric.com

Type of Waiver Requested - Check the appropriate type:	
Sole or Single Source:	<input checked="" type="checkbox"/>
Professional Service Exemption:	<input type="checkbox"/>

Contract Information:	
Is this a new Contract?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Amendment:	
CEFS:	# n/a

Term:	
One (1) Time Purchase:	<input type="checkbox"/>
Contract:	Start Date: October 1, 2014 End Date: October 31, 2018

Funding:	
State Appropriated:	
Federal Funds:	
Grant Funds:	
Other (Explain):	100% Power Revenues

1g Total Estimated Value of this Service Contract, Amendment or Purchase:
\$200,000.00

2 Provide a description of work/services to be performed or commodity/good to be purchased:
The Colorado River Commission (Commission) owns, operates and maintains a high-voltage transmission and distribution system in Clark County, Nevada. In order to measure the receipt and delivery of energy through the Commission's high-voltage system, the Commission utilizes ION 8500 energy meters manufactured by Schneider Electric/Square D Company (Schneider). Schneider developed the system whereby data is extracted from these meters and provided to end-users in a useable format utilizing Schneider's proprietary software ION Enterprise © software. The services to be performed by Schneider consist of programming, troubleshooting and modifying software and hardware associated with ION meters and software as required for the routing operation and maintenance of these items. Services may include:

- Programming the software to create read-only VISTA screen pages accessible to designated end-users via the internet.
- Installation of software upgrades on the meter software servers located at the Newport Substation.
- System restoration in the event of software or server failure.

3 What are the unique features/qualifications required for this service or good that are not available from any other vendor:
The ION 8500 energy meters and the ION Enterprise © software are proprietary and specifically developed and programmed for the requirements of the Commission's high-voltage system and its end-users—the Commission's power customers. To be compatible with the local utility, NV Energy, the ION platform was necessary for a seamless integration with NV Energy's system.

4 Explain why this service or good cannot be competitively bid and why this purchase is economically only available from a single source:
The ION 8500 energy meters and the ION Enterprise © software are an integral part of the Commission's high-voltage system, are proprietary to Schneider and are compatible with NV Energy's system. The Commission is obligated to remain compatible with NV Energy's system which requires the continued use of the ION 8500 energy meters and the ION Enterprise © software.

Selecting another vendor would require removing and replacing 100+ meters and the operating software, which is not operationally or economically feasible. That process would require research as to whether there are compatible meters available anywhere; initiate an RFP process using very narrow specifications specific to our power system; if a different vendor is selected, outages all over the valley would have to be taken to accommodate removal, installation and testing of the new equipment in each substation and pumping plant; and a new software platform would have to be installed, tested and learned by hundreds of system operators.

As stated above, it is not economically or operationally feasible and if a different vendor was selected, the Commission's metering and data collection system would no longer be compatible with the local utility, NV Energy.

5 Were alternative services or commodities evaluated? Check One. Yes: No:
a. If yes, what were they and why were they unacceptable? Please be specific with regard to

features, characteristics, requirements, capabilities and compatibility.

b. *If not, why were alternatives not evaluated?*

As noted in #4, replacing the proprietary meters and software is not economically or operationally feasible since the Commission is obligated to remain compatible with NV Energy's use of the ION 8500 energy meters and the ION Enterprise @ software. Even without that condition, the cost for the removal/replacement of 100+ meters and software would be borne by the Commission's funding entities—its power and water pumping customers. The customers would also be required to endure power outages during the removal/replacement process—which is unacceptable to them.

Has the agency purchased this service or commodity in the past? Check One. *Note: If your previous purchase(s) was made via solicitation waiver(s), a copy or copies of ALL previous waivers must accompany this request.*

Yes: No:

a. *If yes, starting with the most recent contract and working backward, for the entire relationship with this vendor, or any other vendor for this service or commodity, please provide the following information:*

Term Start and End Dates	Value	Short Description	Type of Procurement (RFP, RFQ, Waiver)
4/12/11 5/31/14	\$80,000.00	Amendment #3—Extend termination date by 3 years and increase the not-to-exceed contract amount.	n/a
1/29/09 5/31/11	\$125,000.00	Amendment #2—Increase the not-to-exceed contract amount and to approve the change in company ownership from Power Measurement, Inc. to Schneider Electric/Square D Company	n/a
2/21/06 5/31/11	\$150,000.00	Amendment #1—Extend the term of the contract and increase the not-to-exceed contract amount.	n/a
1/29/03 5/31/06	\$75,000.00	Original Contract for ION 8500 meters & ION Enterprise @ software to match NV Energy software platform	RFP

7. *What are the potential consequences to the State if the waiver request is denied and the service or good is competitively bid?*

The Commission's high-voltage transmission and distribution system would be unable to continue to operate and provide the current level of service to its customers. There would be no support for the system during the competitive bidding process, which, in our experience, can take up to six months to complete. The Commission's funding entities, its power and water pumping customers, would experience unscheduled outages—even the possibility of a catastrophic failure with no way of recovering the service and data; they would be unable to retrieve the revenue data they require, and would be responsible financially for the removal/replacement costs if a different vendor was selected. If a different vendor was selected, the Commission's metering and data collection system would no longer be compatible with the local utility, NV Energy.

8 What efforts were made or conducted to substantiate there is no competition for the service or good and to ensure the price for this purchase is fair and reasonable?
 As stated above, replacing the proprietary meters and software is not economically or operationally feasible since the Commission is obligated to remain compatible with NV Energy's use of the ION 8500 energy meters and the ION Enterprise © software. Therefore, no investigation was conducted with regard to competition to replace the meters and software.

9	Will this purchase obligate the State to this vendor for future purchases? Check One.	Yes:	<input checked="" type="checkbox"/>	No:	<input type="checkbox"/>
	a. If yes, please provide details regarding future obligations or needs. Expansion of the Commission's high-voltage transmission and distribution system will require installation of more meters (approximately 60 are anticipated at this time) as well as the need for the continuation of the maintenance of the current metering system. The ION Enterprise software will require updates to keep it current with the NV Energy platform.				

By signing below, I know and understand the contents of this Solicitation Waiver Request and Justification and attest that all statements are true and correct.

Agency Representative Initiating Request

Robert D. Reess, Assistant Director of Engineering and Operations

Print Name of Agency Representative Initiating Request

September 2, 2014

Date

Signature of Agency Head Authorizing Request

Jayne Harkins, Executive Director

Print Name of Agency Head Authorizing Request

9/3/14

Date

PLEASE NOTE: In an effort to avoid possible conflict with any equipment, system or process already installed or in place by the State of Nevada or to assist in our due diligence, State Purchasing may solicit a review of your request from another agency or entity. The signature below indicates another agency or entity has reviewed the information you provided. This signature does not exempt your agency from any other processes that may be required.

Name of agency or entity who provided information or review:

Representative Providing Review

Print Name of Representative Providing Review

Date

Please consider this memo as my approval of your request. This exemption is granted pursuant to NAC 333.150(2)(a)(b)(c), NRS 333.400. This exemption may be rescinded in the event reliable information becomes available upon which the Purchasing Administrator determines that the service or good sought may in fact be contracted for in a more effective manner. Pursuant to NRS 284.173(6), contracts for services do not become effective without the prior approval of the State Board of Examiners (BOE).

If you have any questions or concerns please contact the Purchasing Division at 775-684-0170.

Signed:

Administrator, Purchasing Division or Designee

9-8-14

Date

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM E
FOR MEETING OF MAY 9, 2023**

SUBJECT: <i>For Possible Action:</i> Consideration of and possible action to approve a two-year contract in the amount of \$95,000 for legal services between Colorado River Commission of Nevada, Office of the Nevada Attorney General, and March Counsel LLC.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: Staff recommends the Commission approve of the contract with March Counsel LLC and authorize the Executive Director to sign the agreement on behalf of the Commission.
FISCAL IMPACT: Two-year contract, not to exceed the previously approved amount of \$95,000.

STAFF COMMENTS AND BACKGROUND:

A. Request for New Contract:

In April of 2021, the Commission approved a contract for \$150,000 with March Counsel LLC. Only \$10,800 has been spent under the contract since being approved. Normally, the Staff would be seeking an amendment of the contract to extend the term, but the Nevada Attorney General's Office is requiring the contracts for outside legal counsel be changed to a new format. Thus, Staff is proposing a new contract for \$95,000 for two years. Staff believes the new amount will be sufficient for the services of March Counsel for the next two years.

B. Services Provided by March Counsel

The firm March Counsel is owned and operated by Craig Silverstein, and he has represented and advised the Commission Staff on Federal Energy Regulatory Commission (FERC) matters and more recently Regional Transmission Organizations (RTOs) for several years. The Staff values his advice, and he his expertise on FERC matters and the regional markets in the Western United States. Over the last year, Staff has met with Craig Silverstein on a quarterly basis to discuss the latest topics involving FERC and RTOs and found the discussions helpful.

C. Process for Approval

Normally, Staff presents a fully executed contract when presented for approval by the Commission. However, with the change in the format of the contract required by the Nevada Attorney General's Office and other related administrative processing matters, a completely executed contract is not available for approval. However, a draft of the contract that includes the term, the billing rate and the Scope of Work is included for review. Staff is requesting that the Commission approve the contract with March Counsel, provided the final contract is substantially the same in terms and conditions as presented to the Commission for approval. This approval step will allow Staff to work with the Nevada Attorney General's Office to finalize the contract and have it submitted to the Board of Examiners for approval later in May for approval prior to June 30, 2023, when the current contract with March Counsel expires.

CETS#
RFP#

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
A Contract Between the State of Nevada
Acting by and Through its

Agency Name:	Colorado River Commission of Nevada	Office of the Attorney General
Address:	555 East Washington Ave., Suite 3100	100 N. Carson Street
City, State, Zip Code:	Las Vegas, NV 89101	Carson City, Nevada 89701
Contact:	Eric Witkoski	Leslie Nino Piro
Phone:	702-486-2670	702-486-3077
Fax:		
Email:	ewitkoski@crc.nv.gov	LNinoPiro@ag.nv.gov

Contractor Name:	March Counsel, LLC
Address:	1201 Connecticut Ave. NW 5 th Floor
City, State, Zip Code:	Washington DC 20036
Contact:	Craig Silverstein
Phone:	202-640-2100
Fax:	
Email:	craig.silverstein@marchcounsel.com

WHEREAS, NRS 333.700 authorizes officers, departments, institutions, boards, commissions, and other agencies in the Executive Department of the State Government which derive their support from public money in whole or in part to engage, subject to the approval of the Board of Examiners (BOE), 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.**
 - A. "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
 - B. "Contracting Agency" – means the State agency identified above.
 - C. "Contractor" – means the person or entity identified above that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
 - D. "Fiscal Year" – means the period beginning July 1st and ending June 30th of the following year.
 - E. "Contract" – Unless the context otherwise requires, "Contract" means this document entitled Contract for Services of Independent Contractor and all Attachments or Incorporated Documents.
 - F. "Contract for Independent Contractor" – means this document entitled Contract for Services of Independent Contractor exclusive of any Attachments or Incorporated Documents.

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3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 10, Contract Termination*. Contract is subject to Board of Examiners' approval.

Effective from:	Upon approval by the Board of Examiners	To:	June 30, 2025
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4. **NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; or (iii) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or electronic mail to the address(es) such party has specified in writing.

5. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	SCOPE OF WORK and FEE SCHEDULE for LEGAL REPRESENTATION
ATTACHMENT BB:	SPECIAL COUNSEL GUIDELINES and BILLING PRACTICES and PROCEDURES
ATTACHMENT CC	INSURANCE SCHEDULE

Any provision, term or condition of an Attachment that contradicts the terms of this Contract for Independent Contractor, or that would change the obligations of the State under this Contract for Independent Contractor, shall be void and unenforceable.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 5, Incorporated Documents* at a cost as noted below:

At the hourly rate	of	\$450
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Total Contract or installments payable at:	Upon Invoice
--------------------------------------------	--------------

Total Contract Not to Exceed:	\$95,000
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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. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the 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 calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject 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 stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

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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 Section.
- 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. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 4, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided.
- 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 claims(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. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under subsection 10D. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:
 - 1) 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
 - 2) 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
 - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
 - 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

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- 5) 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
 - 6) 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. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in *Section 4, Notice*, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under subsection 10C, above, shall run concurrently, unless the notice expressly states otherwise.
- 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 Section survive termination:
- 1) 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;
 - 2) 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;
 - 3) Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - 4) Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with *Section 21, State Ownership of Proprietary Information*.
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. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
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. 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. 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 AND DEFENSE.** 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,

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damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Contractor under this contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the State shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Contractor waives any rights of subrogation against the State. Contractor's duty to defend begins when the State requests defense of any claim arising from this Contract.

15. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS.** Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.
16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor 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 CC*, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

Contractor shall not commence work before Contractor has provided the required evidence of insurance to the Contracting Agency. The State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

- A. **Insurance Coverage.** Contractor shall, at 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 CC*, 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 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. 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.

B. **General Requirements.**

- 1) **Additional Insured:** By endorsement to the general liability insurance policy, 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.
- 2) **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 Contractor.
- 3) **Cross Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) **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.

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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 nor duties under this Contract without the prior written consent of the State.
21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract (“State Materials”) shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.
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, Contractor agrees to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:
 - 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 Executive Orders 12549 and 12689 and Federal Acquisition Regulation subpart 9.4, 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 subcontracts 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, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.
 - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), 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, council or board;
 - B. Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

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C. Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

- 26. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products 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.
- 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. **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES.** For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.
- 29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided under this Contract.
- 30. **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 and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.
- 31. **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. This Contract, and any amendments, may be executed in counterparts.

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

Craig Silverstein March Counsel, LLC	Date	Director and Shareholder Independent Contractor's Title
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Jessica L. Hoban Office of the Attorney General	Date	Chief Financial Officer Title
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Eric P. Witkoski Colorado River Commission of Nevada	Date	Executive Director Title
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APPROVED BY BOARD OF EXAMINERS

 Signature – Clerk of the Board of Examiners

On: _____
 Date

Approved as to form by:

 Homa Sayyar Woodrum
 Senior Deputy Attorney General for Attorney General

On: _____
 Date

March Counsel Draft Scope of work

March Counsel LLC shall, in cooperation with the Office of the Nevada Attorney General, act a legal counsel to the Commission on issues related to (i) Federal Energy Regulatory Commission (FERC) proceedings and rulemakings, (ii) compliance with mandatory electric reliability standards promulgated by the North American Electric Reliability Corporation (NERC), (iii) FERC anti-manipulation and other wholesale market compliance matters, (iv) wholesale electric and natural gas supply issues, (v) provide quarterly updates to the Executive Director, Assistant Director of Hydropower and Deputy Attorney Generals assigned to the Commission, on activities at FERC, Regional Transmission Organizations (RTOs) and other relevant topics related to the energy markets in the western United States and (vi) provide assistance on other matters as directed in writing by the Executive Director or the Assistant Director of Hydropower and approved by the General Counsel of the Attorney General's Office. In acting as legal counsel, March Counsel may be called upon on a case-by-case basis to:

1. Appear at procedural and substantive hearing before FERC and NERC,
2. Participate in and support the Commission in formal or informal settlement conferences,
3. Prepare, draft and file appropriate pleadings, including but not limited to, motions, and legal briefs,
4. Support Commission personnel and witnesses in matters before FERC and NERC,
5. Research questions of law and provide appropriate memorandum to reflects its conclusions and recommendations,
6. Prepare and conduct training sessions related to compliance,
7. Assist the Commission with questions related to participation in energy markets,
8. Assist the Commission with contract negotiations,
9. Perform such other services consistent with this Contract as specifically authorized in writing by the Executive Director and approved by the General Counsel of the Attorney General's Office.

ATTACHMENT BB
Special Counsel Guidelines and Billing Practices and Procedures

I. INTRODUCTION

The State of Nevada (the “State”), by and through the Office of the Attorney General (“OAG”), is pleased that March Counsel, LLC (“Special Counsel”) has agreed to represent and advise the State and the Colorado River Commission of Nevada (the “Commission”) under NRS 41.03435.¹ *See generally* Contract for Services of Independent Contractor (“Contract”); Attachment AA, Scope of Work and Fee Schedule for Legal Representation. The following are Special Counsel Guidelines and Billing Practices and Procedures (“Guidelines”) for providing legal services to the State and its agencies. *See* NRS 41.03435, NRS 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).² Thus, State fiscal policy requires the OAG to carefully scrutinize Special Counsel’s billing submissions pursuant to the Guidelines, and efforts by the OAG to monitor or limit costs must not be construed as an attempt to influence Special Counsel’s representation.

The OAG 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 Special Counsel. The OAG must require, however, that any such deviation be approved by the OAG in advance.

These Guidelines are not intended to interfere with Special 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, Special 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. *See* Contract § 17.

¹ Nevada law refers to private attorneys as “special counsel.” *E.g.*, NRS 41.0339, 41.03435, 41.0344, 41.660, 41.670, 228.091. The Commission and OAG have also historically referred to deputy attorneys general designated to provide legal services to the Commission as “special counsel.” NRS 538.151 designates the Attorney General as counsel for the Commission with “one or more deputy attorney generals to conduct actions, proceedings, and hearings for the Commission.” To achieve consistency with Nevada law and avoid confusion, these Guidelines use the term “special counsel” solely in reference to March Counsel, LLC. Deputy attorneys general employed by the OAG and designated to provide legal services to the Commission are thus referred to as “Commission Counsel.”

² 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.

II. ORIGINATION AND APPROVAL OF LEGAL WORK

All legal work related to the matter for which Special Counsel has been engaged originated through the Commission and approved by the OAG. Special Counsel must not seek or accept direction for any new matters except through the OAG's General Counsel ("General Counsel").

III. GENERAL CONDUCT AND COMMUNICATIONS

The matter for which you have been retained will be supervised by the deputy attorneys general designated to provide legal services to the Commission ("Commission Counsel") and the OAG's General Counsel. We have found it is helpful to have one attorney designated as Special Counsel's principal contact with Commission Counsel. That "lead counsel" will work with Commission Counsel to decide what tasks need to be undertaken and what strategy to execute, when necessary in consultation and collaboration with the OAG's General Counsel or First Assistant Attorney General.

Notification of Commission Counsel and/or the OAG Regarding Significant Changes or Developments: Special Counsel must notify and consult with Commission Counsel and/or General Counsel 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, Special Counsel must immediately inform the Commission and OAG in writing. *Id.* Additionally, Special 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: Special Counsel will promptly provide Commission 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 Special Counsel resulting from the Contract are the exclusive property of the State. SAM § 0325(3). Upon completion, termination, or cancellation of the Contract, Special 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.

IV. CONFLICTS OF INTEREST

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

Special 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 Special Counsel's advocacy, on behalf of other clients, of positions conflicting with important State interests of which Special Counsel is aware. Prior to engagement, Special 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 Special Counsel, the OAG expects to be consulted before Special Counsel 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 Special Counsel and Commission Counsel, determine whether an impermissible State conflict exists, or whether other circumstances exist that would undermine the public's confidence if Special Counsel's representation continued. Special Counsel's acceptance of an engagement on a matter without written disclosure of any conflicts constitutes Special Counsel's representation that it has conducted an appropriate conflict check and no conflict exists.

It is possible that during the time Special Counsel is providing legal services to the State and the Commission, some of Special Counsel's present or future clients will have disputes or transactions with the State, its agencies, departments, division, commission, board, or other State office. The OAG agrees that Special Counsel may continue to represent, or may undertake in the future to represent, existing or new clients in any matter, if the OAG's General Counsel specifically waives the conflict in writing. Special Counsel agrees, however, that General Counsel's consent shall not apply in any instance where, as a result of its representation of the State and the Commission, Special Counsel 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 the State and/or the Commission's material disadvantage.

In addition, the OAG agrees that Special Counsel may disclose the fact of its representation of the State and the Commission, without disclosing the nature of such representation, to current or future clients that may be adverse to the State and/or Commission for the purpose of obtaining such clients' consent to any conflict of interest that may be presented by Special Counsel's representation of the State and/or the Commission and such other client. Special Counsel will not disclose to the other client any confidential information pertaining to its representation of the State and/or the Commission.

As the representation continues, the OAG expects that Special Counsel will bring to General Counsel's immediate attention any change in the conflict review or inform the General Counsel of any activity which might be viewed as, or trigger, a conflict of interest, and at all times act in accordance with the Arizona and Nevada Rules of Professional Conduct.

V. STAFFING

The State expects that staffing levels will be appropriate for the complexity of the issues and Special Counsel's expertise. 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, any 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 Special Counsel's time charges and expense reimbursement requests. Further, she or he must ensure that any other lawyers who work on the case are informed of and follow these Guidelines.

The number of attorneys the State will approve to work on a matter will depend on the range and complexity of the issues and the attorneys' experience level. Care must be taken to ensure that the matter is not used as a training or proving ground for young attorneys.³ If it becomes necessary to substitute an attorney or add additional attorneys (other than on an occasional basis), Special Counsel should consult with General 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.⁴

Special Counsel's attendance at meetings, hearings, depositions, or other case-related events should be handled by no more than one attorney.⁵ 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 General Counsel.

The level of expertise of the attorney must be appropriate to the complexity of the task. Partners or shareholders 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 Special Counsel is personal in nature and does not extend to any law firm that Special Counsel is associated with, a partner of, or for which Special 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, scanning, organizing, collating, or sorting documents; Bates stamping; picking up or making deliveries; database set up and maintenance;

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

⁴ 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).

⁵ 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").

etc. that do not require any legal skill or acumen and are considered part of Special 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 Special 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

Special 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 Special Counsel for one professional or paraprofessional redoing the work of another.

H. Legal Research

The Commission and the OAG selected Special Counsel 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 Special 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 Commission Counsel.

VI. BILLING REQUIREMENTS

A. Alternative Fee Arrangements

The OAG encourages Special Counsel to consider fee arrangements other than hourly rates. On an ongoing basis, the OAG asks that Special 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. Maximum Hours Per Day

Timekeepers should not routinely work more than eight (8) hours per day, although this may occur in certain circumstances, such as when counsel is in trial or working around-the-clock on an acquisition. SAM § 0325(6)(e). If a timekeeper works more than eight (8) hours a day for any other reason, a separate explanation is required. *See id.*

C. Hourly Billing Increments

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).

D. Billing for Travel Time

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 normally be reimbursable unless the time is actually used performing professional services or as otherwise arranged in advance. SAM § 0325(6)(b). If a timekeeper's travel time was actually used to perform professional services, Special Counsel's billing invoices must provide a specific description of such services in addition to travel.

E. Hourly Billing Rates

Hourly billing rates for all attorneys and/or professionals must be agreed upon in writing prior to starting the engagement. *See* Contract § 5 (incorporating Attachment AA, Scope of Work and Fee Schedule for Legal Representation). The State expects 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 General Counsel in writing and in advance of any work performed under the proposed new rates. Special 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.

F. Timing of Billing, Invoice Format, Email Submission

Special 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 billing invoice is submitted.

Special Counsel's billing invoices must include a chronological listing of professional 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, the rate at which those hours are billed, and a description of the work performed (as further explained below). A copy of your internal computer printout may accompany the billing invoice if that is most convenient.

If time charges are written off, the information must be provided in the applicable billing invoice, including the amount of time written off and the personnel whose time is written off.

Any third-party expenses from experts, vendors, consultants, court reporters, etc. paid by Special Counsel and billed with the monthly invoice as expenses or costs advanced 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.

To avoid payment delay, the Commission prefers that Special Counsel's billing invoices be submitted via email to Commission Counsel and cc: Admin Services Officer, Doug Beatty (dbeatty@crc.nv.gov), and Office Development Manager, Gina Goodman (ggoodman@crc.nv.gov), as well as the OAG's General Counsel Leslie Nino Piro (LNinoPiro@ag.nv.gov), and Executive Assistant, Renee Carreau (RCarreau@ag.nv.gov).

G. Specific Description of Work Performed

For specific descriptions of work performed, 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.⁶

The OAG *will not approve blocked or combined billing for payment*. Any billing invoice containing such charges and descriptions will be returned to Special Counsel 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."

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

- “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 – 5.00 hours.”

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 described above) are not acceptable for billing purposes:

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

H. 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 Special 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 Special Counsel in writing of the deductions. If Special Counsel wishes to discuss and potentially ask the OAG to reconsider deductions, they may do so within 30 calendar days from the date on which the invoice is returned to Special Counsel by contacting Commission Counsel or General Counsel. On the 31st day after a reduced invoice is returned to Special Counsel, the OAG will consider the deductions final. Alternatively, Special Counsel may contact Commission Counsel or General Counsel to indicate acceptance of the deductions. Special Counsel will be asked to resubmit a new or corrected invoice reflecting the deductions, and OAG will process payment upon receipt.

When Special Counsel discusses deductions with Commission Counsel or General Counsel, Special Counsel will be asked, once the discussion has concluded, to resubmit a new or corrected invoice reflecting the agreed amounts. Although the OAG will discuss deductions with Special Counsel and give due consideration to Special Counsel’s views, General Counsel’s determinations with respect to deductions are final. If Special Counsel does not appeal deductions or does not timely submit a new or corrected invoice reflecting General Counsel’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 Special Counsel submits, as well as the corresponding legal file. *See Contract § 9.*

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

VII. ADMINISTRATIVE AND CLERICAL WORK⁷

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 General 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 Special 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 Special Counsel's office overhead and will not pay such charges, unless otherwise authorized in advance. *See* SAM § 0325 (7)(a), (d).

⁷ *See* SAM § 0325(7)(a), (d).

VIII. DISBURSEMENTS

A. Billing Requirements for Expense Reimbursement

Billing invoices must include a chronological listing of any costs advanced (*i.e.*, expenses for reimbursement). Each expense item must be separately itemized, showing the date the expense was incurred, the rate at which the expense is billed, the total amount billed for the expense, and a description of the expense.

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, printing 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: Special Counsel is expected to limit the making of photocopies. Photocopying will be reimbursed at Special Counsel's actual cost at a rate not to exceed ten (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: General Counsel and Commission Counsel must be consulted prior to the retention of any experts or consultants. The State will reimburse Special Counsel for all pre-approved expert or consultant expenses at the actual cost of these services but will not reimburse Special Counsel for any such expenses where General Counsel and Commission Counsel were not consulted.

Computerized Legal Research: Upon prior approval from Commission Counsel, the State will reimburse Special Counsel at actual cost for necessary computerized legal research that falls outside of Special 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 General Counsel and/or Commission 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 Special Counsel. Special Counsel's travel expenses are restricted to the "same rates and procedures allowed State employees." SAM § 0320(6).⁸ 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 incurred for local travel, such as parking and tolls, 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 Special Counsel's business address.

Out-of-Town Travel: Necessary out-of-town travel will be reimbursed at actual cost, not to exceed GSA rates.

Air Transportation: The State will reimburse Special Counsel for the actual cost of air transportation, not to exceed coach/ economy fare. Copies of flight coupons and itineraries must be submitted as appropriate documentation.

Hotels: The State requires Special 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 Special 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.

⁸ However, certain portions of the State and OAG's travel guidelines are inapplicable to Special 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).

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

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

IX. MEDIA REQUESTS AND PUBLIC RELATIONS

Any media inquiry relating to the State, including the State's relationship with Special Counsel, should be referred to the OAG's General Counsel and Commission Counsel immediately. Special 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 Special Counsel to advertise or promote the fact of your relationship with the State in your marketing efforts unless the OAG specifically agrees otherwise. Special Counsel may, however, list the State as a representative client.

X. CLOSING

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

Please review these Guidelines carefully and promptly discuss any questions or concerns with General Counsel. If Special Counsel agrees to the terms of these Guidelines, please sign below and return a copy to General Counsel. Special Counsel may retain a copy for your files and the OAG will provide another copy via email along with the fully executed contract.

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

SIGNATURE PAGE TO FOLLOW

ACCEPTED AND AGREED to by:

ACCEPTED AND AGREED to by:

.....

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

Date:
.....

.....

Date:
.....

Michelle Briggs
Commission Counsel to the
Colorado River Commission
State of Nevada
Office of the Attorney General

Date:
.....



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

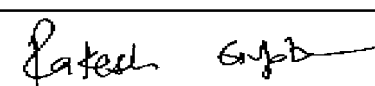
PRODUCER BIBERK P.O. Box 113247 Stamford, CT 06911	CONTACT NAME: PHONE (A/C, No, Ext): 844-472-0967 FAX (A/C, No): 203-654-3613 E-MAIL ADDRESS: customerservice@biBERK.com	
	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A : National Liability & Fire Insurance Company 20052 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	
INSURED March Counsel LLC 1201 Connecticut Avenue NW 6th Floor Washington, DC 20036		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$ 0	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 0	
							MED EXP (Any one person)	\$ 0	
							PERSONAL & ADV INJURY	\$ 0	
							GENERAL AGGREGATE	\$ 0	
							PRODUCTS - COMP/OP AGG	\$ 0	
								\$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$	
							BODILY INJURY (Per person)	\$	
							BODILY INJURY (Per accident)	\$	
							PROPERTY DAMAGE (Per accident)	\$	
								\$	
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE	\$	
							AGGREGATE	\$	
								\$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	N9WC495678	06/01/2022	06/01/2023	X PER STATUTE OTH-ER	E.L. EACH ACCIDENT	\$100,000
								E.L. DISEASE - EA EMPLOYEE	\$100,000
								E.L. DISEASE - POLICY LIMIT	\$500,000
	Professional Liability (Errors & Omissions): Claims-Made							Per Occurrence/Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER Office of the Attorney General of the State of Nevada Colorado River Commission of Nevada 555 E. Washington Ave. Ste 3100 Las Vegas, NV 89101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM F
FOR MEETING OF MAY 9, 2023**

SUBJECT: <i>For Possible Action:</i> Consideration of and possible action to approve a two-year contract in the amount of \$95,000 for legal services between Colorado River Commission of Nevada and Fennemore Craig P.C.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: Staff recommends the Commission approve of the contract with Fennemore Craig P.C. and authorize the Executive Director to sign the agreement on behalf of the Commission.
FISCAL IMPACT: Two-year contract, not to exceed the previously approved amount of \$95,000.

STAFF COMMENTS AND BACKGROUND:

A. Request for New Contract:

In June of 2022, the Commission approved Amendment No. 7 to the Fennemore Craig P.C. (Fennemore) contract that extended the term of the contract until June 30, 2024. At that time, there was \$65,606 remaining on the contract and the Commission approved the contract extension. The amount of the contract has now nearly expired due to the work on the matter at the 9th Circuit and later at the United States Supreme Court on the briefing and preparation related to the Petition for Certiorari, the opening brief, reply brief and the many hours of discussion and in assistance provided in preparing the lead attorney in Arizona for the oral argument before the Supreme Court.

The staff is proposing a new contract, rather than Amendment No. 8. The contract is a three-party contract, with the Commission, the Nevada Attorney General's Office and Fennemore. The amount under the contract being proposed is for \$95,000 and should be sufficient for a period of time if there is further work following the decision in the Navajo case.

B. Process for Approval

Normally, Staff presents a fully executed contract when presented for approval by the Commission. However, with administrative changes required by the Nevada Attorney General's Office, a completely executed contract is not available for approval. However, a draft of the contract that includes the term, the billing rate and the Scope of Work is included for review. Staff are requesting that the Commission approve the contract with Fennemore, provided the final contract is substantially the same in terms and conditions as presented to the Commission for approval. This approval step will allow Staff to work with the Nevada Attorney General's Office and Fennemore to finalize the contract and have it submitted to the Board of Examiners for approval later in May for approval prior to June 30, 2023, when the current contract with Fennemore expires.

CETS#
RFP#

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting by and Through its

Agency Name:	Colorado River Commission of Nevada	Office of the Attorney General
Address:	555 East Washington Ave., Suite 3100	100 N. Carson Street
City, State, Zip Code:	Las Vegas, NV 89101	Carson City, Nevada 89701
Contact:	Eric Witkoski	Leslie Nino Piro
Phone:	702-486-2670	702-486-3077
Fax:		
Email:	ewitkoski@crc.nv.gov	LNinoPiro@ag.nv.gov

Contractor Name:	Fennemore Craig, P.C.
Address:	2394 East Camelback Road, Suite 600
City, State, Zip Code:	Phoenix, Arizona 85016-3429
Contact:	Lauren J. Caster
Phone:	(602) 916-5367
Fax:	
Email:	lcaster@fclaw.com

WHEREAS, NRS 333.700 authorizes officers, departments, institutions, boards, commissions, and other agencies in the Executive Department of the State Government which derive their support from public money in whole or in part to engage, subject to the approval of the Board of Examiners (BOE), 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.**
 - A. "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
 - B. "Contracting Agency" – means the State agency identified above.
 - C. "Contractor" – means the person or entity identified above that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
 - D. "Fiscal Year" – means the period beginning July 1st and ending June 30th of the following year.
 - E. "Contract" – Unless the context otherwise requires, "Contract" means this document entitled Contract for Services of Independent Contractor and all Attachments or Incorporated Documents.
 - F. "Contract for Independent Contractor" – means this document entitled Contract for Services of Independent Contractor exclusive of any Attachments or Incorporated Documents.

CETS#
RFP#

3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 10, Contract Termination*. Contract is subject to Board of Examiners' approval.

Effective from:	Upon approval by the Board of Examiners	To:	June 30, 2025
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4. **NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; or (iii) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or electronic mail to the address(es) such party has specified in writing.

5. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	SCOPE OF WORK and FEE SCHEDULE for LEGAL REPRESENTATION
ATTACHMENT BB:	SPECIAL COUNSEL GUIDELINES and BILLING PRACTICES and PROCEDURES
ATTACHMENT CC	INSURANCE SCHEDULE

Any provision, term or condition of an Attachment that contradicts the terms of this Contract for Independent Contractor, or that would change the obligations of the State under this Contract for Independent Contractor, shall be void and unenforceable.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 5, Incorporated Documents* at a cost as noted below:

At the rates described	per	Attachment AA
Total Contract or installments payable at:	Upon Invoice	
Total Contract Not to Exceed:	\$95,000	

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. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the 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 calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject 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 stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

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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 Section.
- 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. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 4, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided.
- 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 claims(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. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under subsection 10D. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:
 - 1) 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
 - 2) 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
 - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
 - 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

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- 5) 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
 - 6) 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. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in *Section 4, Notice*, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under subsection 10C, above, shall run concurrently, unless the notice expressly states otherwise.
- 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 Section survive termination:
- 1) 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;
 - 2) 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;
 - 3) Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - 4) Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with *Section 21, State Ownership of Proprietary Information*.
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. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
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. 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. 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 AND DEFENSE.** 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,

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damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Contractor under this contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the State shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Contractor waives any rights of subrogation against the State. Contractor's duty to defend begins when the State requests defense of any claim arising from this Contract.

15. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS.** Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.
16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor 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 CC*, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

Contractor shall not commence work before Contractor has provided the required evidence of insurance to the Contracting Agency. The State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

- A. **Insurance Coverage.** Contractor shall, at 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 CC*, 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 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. 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.

- B. **General Requirements.**
 - 1) **Additional Insured:** By endorsement to the general liability insurance policy, 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.
 - 2) **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 Contractor.
 - 3) **Cross Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
 - 4) **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.

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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 nor duties under this Contract without the prior written consent of the State.
21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract (“State Materials”) shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.
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, Contractor agrees to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:
 - 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 Executive Orders 12549 and 12689 and Federal Acquisition Regulation subpart 9.4, 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 subcontracts 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, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.
 - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), 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, council or board;
 - B. Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

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C. Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

26. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products 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.
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. **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES.** For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.
29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided under this Contract.
30. **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 and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.
31. **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. This Contract, and any amendments, may be executed in counterparts.

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

Lauren J. Caster's Signature Fennemore Craig, P.C.	Date	Director and Shareholder Independent Contractor's Title
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Jessica L. Hoban Office of the Attorney General	Date	Chief Financial Officer Title
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Eric P. Witkoski Colorado River Commission of Nevada	Date	Executive Director Title
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APPROVED BY BOARD OF EXAMINERS

 Signature – Clerk of the Board of Examiners

On: _____
 Date

Approved as to form by:

 Homa Sayyar Woodrum
 Senior Deputy Attorney General for Attorney General

On: _____
 Date

ATTACHMENT AA
Scope of Work and Fee Schedule for Legal Representation

Fennemore Craig, P.C. (“Special Counsel”) has been retained as “Special Counsel” under NRS 41.03435 by the State of Nevada (the “State”), by and through the Office of the Attorney General (“OAG”), to provide legal services to the State and the Colorado River Commission of Nevada (the “Commission”) (collectively, the “Parties”).

I. GOVERNING AUTHORITY AND RECITALS

Pursuant to NRS 228.110(1)(a), the OAG is the legal adviser “on all state matters arising in the Executive Department of State Government.” Under NRS 228.180 and NRS 228.190, the Attorney General is authorized to intervene or to appear in any action in the name of the State when doing so is necessary for the purpose of establishing and determining the State’s rights in and to the water of all interstate streams located partly in Nevada where such waters or part thereof are claimed by any other state. NRS 538.151 designates the Attorney General as the attorney for the CRC with “one or more deputy attorney generals to conduct actions, proceedings, and hearings for the Commission.” The designee(s) employed by the OAG (*i.e.*, “Commission Counsel”) must maintain an office in Clark County, Nevada, and “[a]dvice the Commission on all matters relating to the Commission.”

NRS 41.03435 provides that the “Attorney General may employ special counsel whose compensation must be fixed by the Attorney General, subject to the approval of the State Board of Examiners,” if the Attorney General determines “it is impracticable, uneconomical or could constitute a conflict of interest” for Commission Counsel to provide legal services. The OAG has determined that legal services and representation solely by the Attorney General, the deputies of the Attorney General, or Commission counsel would be uneconomical and impracticable since litigation is taking place out of state. *See* NRS 228.110(1)(b). Thus, Special Counsel’s employment is advantageous for the Parties.

The Commission initially engaged Special Counsel in March 2013 to represent the State, the Commission, and the Southern Nevada Water Authority (“SNWA”) in *The Navajo Nation v. United States Department of the Interior*, United States District Court, District of Arizona, Case No. CV-03-00507, and related matters. The contract was amended seven times to add the Attorney General as a party, extend the contract terms, and increase the total amount authorized. The Parties now renew and reaffirm their relationship with a new contract. Pursuant to NRS 41.03435, the OAG has thus retained Special Counsel, subject to the approval of the State Board of Examiners, and fixed compensation in the Contract for Services of Independent Contractor (“Contract”); this Attachment AA, Scope of Work and Fee Schedule for Legal Representation; and Attachment BB, Special Counsel Litigation Guidelines and Billing Practices and Procedures (“Guidelines”).

II. SCOPE OF WORK

The scope of work encompassed by the Contract includes the following:

Providing legal representation to the State and the Commission, in cooperation and coordination with the OAG and Commission Counsel, in the litigation styled as *The Navajo Nation v. United States Department of the Interior*, United States District Court, District

of Arizona, Case No. CV-03-00507.¹ Special Counsel's engagement runs through trial, post-trial motions, final judgment, and includes any appellate work.

This is a non-exclusive agreement to provide legal services to the State and the Commission. The OAG may augment these services with another law firm (or law firms) or select to terminate Special Counsel's services in a manner consistent with the Contract. *See* Contract § 10.

III. FEE SCHEDULE FOR LEGAL REPRESENTATION

Special Counsel will be compensated for time spent on the engagement according to the following hourly billing rates:

Lauren J. Caster, Lead Counsel:	\$612/hour
Bradley Pew:	\$360/hour
Byrin Romney:	\$324/hour

Special Counsel may only bill for expenses as specifically authorized in the Guidelines or preapproved by General Counsel. *See* Guidelines § VII–IX. All billing invoices, including claims for expense reimbursement, must follow the OAG's Guidelines.

Special Counsel must notify the OAG whenever total billing will exceed 80% of the stated Total Contract Not to Exceed amount (*i.e.*, \$95,000) to facilitate timely obligation of additional funding or notification to Special Counsel that additional funding will not be forthcoming. However, the OAG should be notified as soon as reasonably possible whenever Special Counsel identifies a need to increase the Total Contract Not to Exceed amount to complete the scope of work stated herein.

¹ The SNWA is a political subdivision of the State formed in 1991 by a cooperative agreement among seven independent public agencies. *See* NRS 538.041(5). To the extent the SNWA chooses Special Counsel to represent its interests in litigation involving the State and/or the Commission, the SNWA will enter into a separate contract for legal services.

ATTACHMENT BB
Special Counsel Guidelines and Billing Practices and Procedures

I. INTRODUCTION

The State of Nevada (the “State”), by and through the Office of the Attorney General (“OAG”), is pleased that Fennemore Craig, P.C. (“Special Counsel”) has agreed to represent and advise the State and the Colorado River Commission of Nevada (the “Commission”) under NRS 41.03435.¹ *See generally* Contract for Services of Independent Contractor (“Contract”); Attachment AA, Scope of Work and Fee Schedule for Legal Representation. The following are Special Counsel Guidelines and Billing Practices and Procedures (“Guidelines”) for providing legal services to the State and its agencies. *See* NRS 41.03435, NRS 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).² Thus, State fiscal policy requires the OAG to carefully scrutinize Special Counsel’s billing submissions pursuant to the Guidelines, and efforts by the OAG to monitor or limit costs must not be construed as an attempt to influence Special Counsel’s representation.

The OAG 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 Special Counsel. The OAG must require, however, that any such deviation be approved by the OAG in advance.

These Guidelines are not intended to interfere with Special 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, Special 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. *See* Contract § 17.

¹ Nevada law refers to private attorneys as “special counsel.” *E.g.*, NRS 41.0339, 41.03435, 41.0344, 41.660, 41.670, 228.091. The Commission and OAG have also historically referred to deputy attorneys general designated to provide legal services to the Commission as “special counsel.” NRS 538.151 designates the Attorney General as counsel for the Commission with “one or more deputy attorney generals to conduct actions, proceedings, and hearings for the Commission.” To achieve consistency with Nevada law and avoid confusion, these Guidelines use the term “special counsel” solely in reference to Fennemore Craig. Deputy attorneys general employed by the OAG and designated to provide legal services to the Commission are thus referred to as “Commission Counsel.”

² 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.

II. ORIGINATION AND APPROVAL OF LEGAL WORK

All legal work related to the matter for which Special Counsel has been engaged originated through the Commission and approved by the OAG. Special Counsel must not seek or accept direction for any new matters except through the OAG's General Counsel ("General Counsel").

III. GENERAL CONDUCT AND COMMUNICATIONS

The matter for which you have been retained will be supervised by the deputy attorneys general designated to provide legal services to the Commission ("Commission Counsel") and the OAG's General Counsel. We have found it is helpful to have one attorney designated as Special Counsel's principal contact with Commission Counsel. That "lead counsel" will work with Commission Counsel to decide what tasks need to be undertaken and what strategy to execute, when necessary in consultation and collaboration with the OAG's General Counsel or First Assistant Attorney General.

Notification of Commission Counsel and/or the OAG Regarding Significant Changes or Developments: Special Counsel must notify and consult with Commission Counsel and/or General Counsel 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, Special Counsel must immediately inform the Commission and OAG in writing. *Id.* Additionally, Special 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: Special Counsel will promptly provide Commission 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 Special Counsel resulting from the Contract are the exclusive property of the State. SAM § 0325(3). Upon completion, termination, or cancellation of the Contract, Special 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.

IV. CONFLICTS OF INTEREST

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

Special 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 Special Counsel's advocacy, on behalf of other clients, of positions conflicting with important State interests of which Special Counsel is aware. Prior to engagement, Special 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 Special Counsel, the OAG expects to be consulted before Special Counsel 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 Special Counsel and Commission Counsel, determine whether an impermissible State conflict exists, or whether other circumstances exist that would undermine the public's confidence if Special Counsel's representation continued. Special Counsel's acceptance of an engagement on a matter without written disclosure of any conflicts constitutes Special Counsel's representation that it has conducted an appropriate conflict check and no conflict exists.

It is possible that during the time Special Counsel is providing legal services to the State and the Commission, some of Special Counsel's present or future clients will have disputes or transactions with the State, its agencies, departments, division, commission, board, or other State office. The OAG agrees that Special Counsel may continue to represent, or may undertake in the future to represent, existing or new clients in any matter, if the OAG's General Counsel specifically waives the conflict in writing. Special Counsel agrees, however, that General Counsel's consent shall not apply in any instance where, as a result of its representation of the State and the Commission, Special Counsel 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 the State and/or the Commission's material disadvantage.

In addition, the OAG agrees that Special Counsel may disclose the fact of its representation of the State and the Commission, without disclosing the nature of such representation, to current or future clients that may be adverse to the State and/or Commission for the purpose of obtaining such clients' consent to any conflict of interest that may be presented by Special Counsel's representation of the State and/or the Commission and such other client. Special Counsel will not disclose to the other client any confidential information pertaining to its representation of the State and/or the Commission.

As the representation continues, the OAG expects that Special Counsel will bring to General Counsel's immediate attention any change in the conflict review or inform the General Counsel of any activity which might be viewed as, or trigger, a conflict of interest, and at all times act in accordance with the Arizona and Nevada Rules of Professional Conduct.

V. STAFFING

The State expects that staffing levels will be appropriate for the complexity of the issues and Special Counsel's expertise. 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, any 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 Special Counsel's time charges and expense reimbursement requests. Further, she or he must ensure that any other lawyers who work on the case are informed of and follow these Guidelines.

The number of attorneys the State will approve to work on a matter will depend on the range and complexity of the issues and the attorneys' experience level. Care must be taken to ensure that the matter is not used as a training or proving ground for young attorneys.³ If it becomes necessary to substitute an attorney or add additional attorneys (other than on an occasional basis), Special Counsel should consult with General 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.⁴

Special Counsel's attendance at meetings, hearings, depositions, or other case-related events should be handled by no more than one attorney.⁵ 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 General Counsel.

The level of expertise of the attorney must be appropriate to the complexity of the task. Partners or shareholders 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 Special Counsel is personal in nature and does not extend to any law firm that Special Counsel is associated with, a partner of, or for which Special 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, scanning, organizing, collating, or sorting documents; Bates stamping; picking up or making deliveries; database set up and maintenance;

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

⁴ 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).

⁵ 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").

etc. that do not require any legal skill or acumen and are considered part of Special 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 Special 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

Special 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 Special Counsel for one professional or paraprofessional redoing the work of another.

H. Legal Research

The Commission and the OAG selected Special Counsel 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 Special 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 Commission Counsel.

VI. BILLING REQUIREMENTS

A. Alternative Fee Arrangements

The OAG encourages Special Counsel to consider fee arrangements other than hourly rates. On an ongoing basis, the OAG asks that Special 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. Maximum Hours Per Day

Timekeepers should not routinely work more than eight (8) hours per day, although this may occur in certain circumstances, such as when counsel is in trial or working around-the-clock on an acquisition. SAM § 0325(6)(e). If a timekeeper works more than eight (8) hours a day for any other reason, a separate explanation is required. *See id.*

C. Hourly Billing Increments

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).

D. Billing for Travel Time

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 normally be reimbursable unless the time is actually used performing professional services or as otherwise arranged in advance. SAM § 0325(6)(b). If a timekeeper's travel time was actually used to perform professional services, Special Counsel's billing invoices must provide a specific description of such services in addition to travel.

E. Hourly Billing Rates

Hourly billing rates for all attorneys and/or professionals must be agreed upon in writing prior to starting the engagement. *See* Contract § 5 (incorporating Attachment AA, Scope of Work and Fee Schedule for Legal Representation). The State expects 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 General Counsel in writing and in advance of any work performed under the proposed new rates. Special 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.

F. Timing of Billing, Invoice Format, Email Submission

Special 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 billing invoice is submitted.

Special Counsel's billing invoices must include a chronological listing of professional 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, the rate at which those hours are billed, and a description of the work performed (as further explained below). A copy of your internal computer printout may accompany the billing invoice if that is most convenient.

If time charges are written off, the information must be provided in the applicable billing invoice, including the amount of time written off and the personnel whose time is written off.

Any third-party expenses from experts, vendors, consultants, court reporters, etc. paid by Special Counsel and billed with the monthly invoice as expenses or costs advanced 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.

To avoid payment delay, the Commission prefers that Special Counsel's billing invoices be submitted via email to Commission Counsel and cc: Admin Services Officer, Doug Beatty (dbeatty@crc.nv.gov), and Office Development Manager, Gina Goodman (ggoodman@crc.nv.gov), as well as the OAG's General Counsel Leslie Nino Piro (LNinoPiro@ag.nv.gov), and Executive Assistant, Renee Carreau (RCarreau@ag.nv.gov).

G. Specific Description of Work Performed

For specific descriptions of work performed, 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.⁶

The OAG *will not approve blocked or combined billing for payment*. Any billing invoice containing such charges and descriptions will be returned to Special Counsel 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."

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

- “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 – 5.00 hours.”

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 described above) are not acceptable for billing purposes:

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

H. 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 Special 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 Special Counsel in writing of the deductions. If Special Counsel wishes to discuss and potentially ask the OAG to reconsider deductions, they may do so within 30 calendar days from the date on which the invoice is returned to Special Counsel by contacting Commission Counsel or General Counsel. On the 31st day after a reduced invoice is returned to Special Counsel, the OAG will consider the deductions final. Alternatively, Special Counsel may contact Commission Counsel or General Counsel to indicate acceptance of the deductions. Special Counsel will be asked to resubmit a new or corrected invoice reflecting the deductions, and OAG will process payment upon receipt.

When Special Counsel discusses deductions with Commission Counsel or General Counsel, Special Counsel will be asked, once the discussion has concluded, to resubmit a new or corrected invoice reflecting the agreed amounts. Although the OAG will discuss deductions with Special Counsel and give due consideration to Special Counsel’s views, General Counsel’s determinations with respect to deductions are final. If Special Counsel does not appeal deductions or does not timely submit a new or corrected invoice reflecting General Counsel’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 Special Counsel submits, as well as the corresponding legal file. *See Contract § 9.*

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

VII. ADMINISTRATIVE AND CLERICAL WORK⁷

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 General 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 Special 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 Special Counsel's office overhead and will not pay such charges, unless otherwise authorized in advance. *See* SAM § 0325 (7)(a), (d).

⁷ *See* SAM § 0325(7)(a), (d).

VIII. DISBURSEMENTS

A. Billing Requirements for Expense Reimbursement

Billing invoices must include a chronological listing of any costs advanced (*i.e.*, expenses for reimbursement). Each expense item must be separately itemized, showing the date the expense was incurred, the rate at which the expense is billed, the total amount billed for the expense, and a description of the expense.

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, printing 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: Special Counsel is expected to limit the making of photocopies. Photocopying will be reimbursed at Special Counsel's actual cost at a rate not to exceed ten (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: General Counsel and Commission Counsel must be consulted prior to the retention of any experts or consultants. The State will reimburse Special Counsel for all pre-approved expert or consultant expenses at the actual cost of these services but will not reimburse Special Counsel for any such expenses where General Counsel and Commission Counsel were not consulted.

Computerized Legal Research: Upon prior approval from Commission Counsel, the State will reimburse Special Counsel at actual cost for necessary computerized legal research that falls outside of Special 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 General Counsel and/or Commission 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 Special Counsel. Special Counsel's travel expenses are restricted to the "same rates and procedures allowed State employees." SAM § 0320(6).⁸ 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 incurred for local travel, such as parking and tolls, 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 Special Counsel's business address.

Out-of-Town Travel: Necessary out-of-town travel will be reimbursed at actual cost, not to exceed GSA rates.

Air Transportation: The State will reimburse Special Counsel for the actual cost of air transportation, not to exceed coach/ economy fare. Copies of flight coupons and itineraries must be submitted as appropriate documentation.

Hotels: The State requires Special 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 Special 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.

⁸ However, certain portions of the State and OAG's travel guidelines are inapplicable to Special 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).

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

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

IX. MEDIA REQUESTS AND PUBLIC RELATIONS

Any media inquiry relating to the State, including the State's relationship with Special Counsel, should be referred to the OAG's General Counsel and Commission Counsel immediately. Special 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 Special Counsel to advertise or promote the fact of your relationship with the State in your marketing efforts unless the OAG specifically agrees otherwise. Special Counsel may, however, list the State as a representative client.

X. CLOSING

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

Please review these Guidelines carefully and promptly discuss any questions or concerns with General Counsel. If Special Counsel agrees to the terms of these Guidelines, please sign below and return a copy to General Counsel. Special Counsel may retain a copy for your files and the OAG will provide another copy via email along with the fully executed contract.

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

SIGNATURE PAGE TO FOLLOW

ACCEPTED AND AGREED to by:

ACCEPTED AND AGREED to by:

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

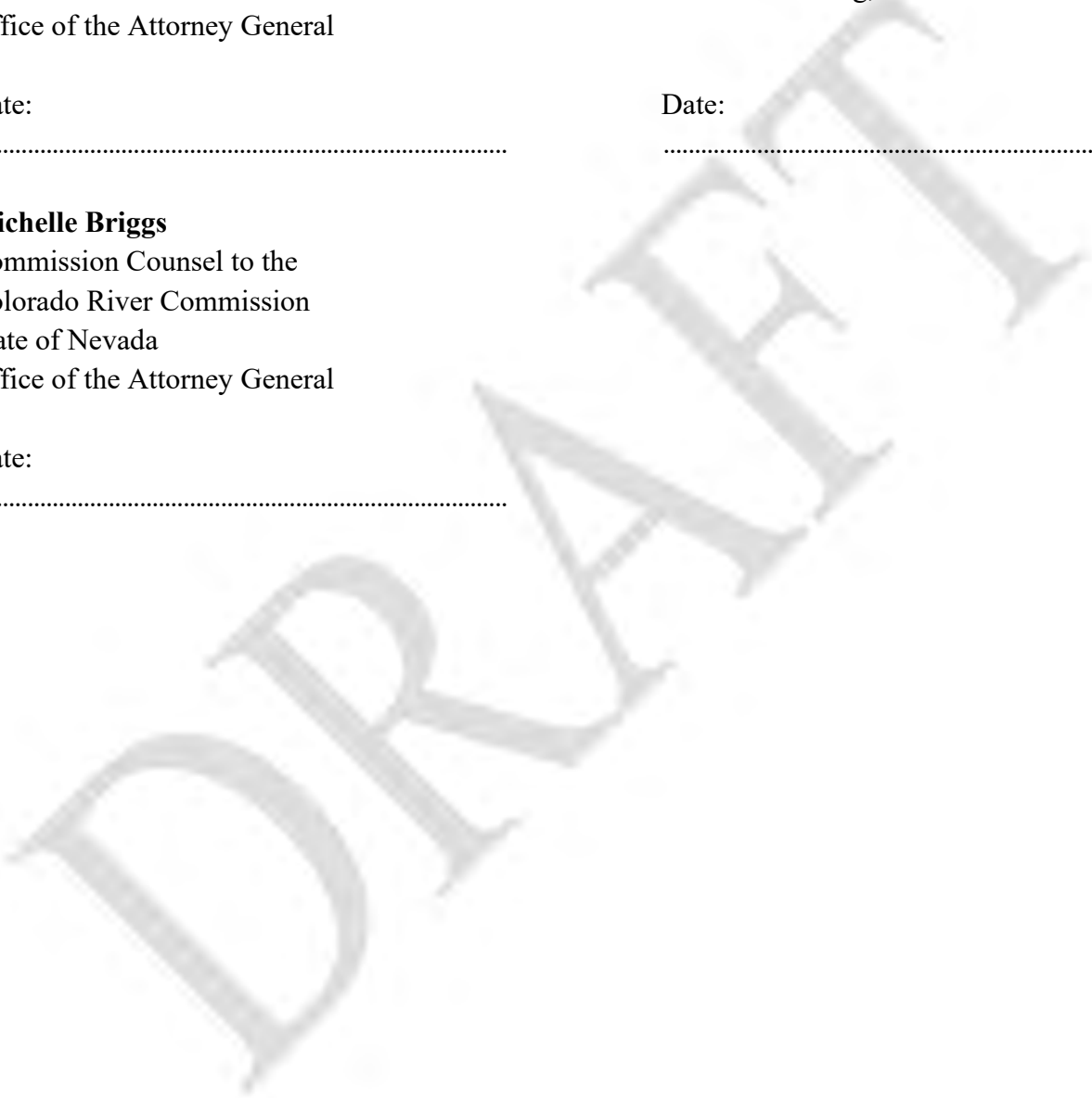
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Lauren J. Caster
Director and Shareholder
Fennemore Craig, P.C.

Date:
.....

Date:
.....

Michelle Briggs
Commission Counsel to the
Colorado River Commission
State of Nevada
Office of the Attorney General

Date:
.....



CETS#
RFP#

ATTACHMENT CC INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, hold harmless and, not excluding the State of Nevada’s right to participate, defend the State of Nevada (“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, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. 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 the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. 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.

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. **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

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

2. **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.

CETS#
RFP#

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
 2. The Contractor’s insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 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:

**Eric Witkowski, Executive Director
Colorado River Commission of Nevada
555 E. Washington Ave., Suite 3100
Las Vegas, NV 89101**

**Leslie Nino Piro, General Counsel
Attorney General’s Office
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101**

Should contractor fail to provide State timely notice, contractor will be considered in breach and subject to cure provisions set forth within this contract.

- 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:

**Eric Witkowski, Executive Director
Colorado River Commission of Nevada
555 E. Washington Ave., Suite 3100
Las Vegas, NV 89101**

**Leslie Nino Piro, General Counsel
Attorney General’s Office
555 E. Washington Ave., Suite 3900
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 insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 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.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM G
FOR MEETING OF MAY 9, 2023**

SUBJECT:

For Possible Action: Consideration of and possible action to approve a one-year contract between the Colorado River Commission of Nevada (Commission) and a suitable title company to be selected for an amount not to exceed \$5,000 for title search and policies, if necessary, and related research of the Commission's ownership interest of the property along Boulder Highway in Henderson, Nevada.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

Staff recommends the Commission approve entering a contract with a suitable title company for an amount not exceeding \$5,000 and authorize the Executive Director to sign the agreement on behalf of the Commission.

FISCAL IMPACT:

One-year contract, not to exceed \$5,000.

STAFF COMMENTS AND BACKGROUND:

Request for Contract:

This matter is related to the request of the City of Henderson for the Commission to convey their possible property rights to remanent parcels that the Commission may own along Boulder Highway that were reserved in a 1952 Deed. The contract will allow the Staff to hire a title company to research the property records and determine whether and what the Commission may still own along Boulder Highway.

CETS #:	
Solicitation #:	

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
FOR LESS THAN \$50,000**

A Contract Between the State of Nevada
Acting by and Through its

Agency Name:	Colorado River Commission of Nevada
Address:	555 E. Washington Avenue, Suite 3100
City, State, Zip Code:	Las Vegas, Nevada 89101
Contact:	Eric Witkoski
Phone:	702-486-2484
Fax:	
Email:	ewitkoski@crc.nv.gov

Contractor Name:	TBD
Address:	
City, State, Zip Code:	
Contact:	
Phone:	
Fax:	
Email:	

WHEREAS, NRS 333.700 authorizes officers, departments, institutions, boards, commissions, and other agencies in the Executive Branch of the State Government which derive their support from public money in whole or in part to engage services of persons as independent contractors;

WHEREAS, the Agency is acting pursuant to NRS 338.13862 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:

- CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 7, Contract Termination*. Contracts requiring approval of the Nevada Board of Examiners or the Clerk of the Board are not effective until such approval has occurred, however, after such approval, the effective date will be the date noted below.

Effective from:	Date signed by Board of Examiners	To:	
-----------------	------------------------------------------	-----	--

- NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (a) by delivery in person; (b) by a nationally recognized next day courier service, return receipt requested; or (c) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or email to the address(es) such party has specified in writing.

CETS #:	
Solicitation #:	

3. **SCOPE OF WORK.** The Scope of Work is described below, which is incorporated herein by reference:

DESCRIPTION OF SCOPE OF WORK:
To prepare and issue one or more title reports to determine ownership of property located in Henderson, NV along Boulder Highway.

An Attachment must be limited to the Scope of Work to be performed by Contractor. Any provision, term or condition of an Attachment that contradicts the terms of this Contract, or that would change the obligations of the State under this Contract, shall be void and unenforceable.

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 3, Scope of Work* at a cost as noted below:

Total Contract or installments payable at:	
Total Contract Not to Exceed:	\$5,000

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the Scope of Work or incorporated Attachments (if any). 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.

5. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the 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 calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject 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 stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

6. **INSPECTION & AUDIT.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) and as required by State and federal law, complete and accurate records as are necessary to fully disclose to the State or United States Government, sufficient information to determine compliance with all State and federal regulations and statutes, and compliance with the terms of this contract, and agrees that such documents will be made available for inspection upon reasonable notice from authorized representatives of the State or Federal Government.

7. **CONTRACT TERMINATION.**

A. Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 2, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided.

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 claims(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. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under *Subsection 7D*. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:

CETS #:	
Solicitation #:	

- 1) 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
- 2) 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
- 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
- 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- 5) 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
- 6) 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. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in **Section 2, Notice**, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under **Subsection 7C**, above, shall run concurrently, unless the notice expressly states otherwise.

8. **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. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
9. **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. 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. Contractor's tort liability shall not be limited.
10. **INDEMNIFICATION AND DEFENSE**. 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 out of any breach of the obligations of Contractor under this Contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the State shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Contractor waives any rights of subrogation against the State. Contractor's duty to defend begins when the State requests defense of any claim arising from this Contract.
11. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS**. Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this

CETS #:	
Solicitation #:	

contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.

12. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the Contracting Agency, Contractor must procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum requirements specified below. 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 Contractor. By endorsement to Contractor’s automobile and general liability policies, the State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Contractor. Contractor shall not commence work before Contractor has provided evidence of the required insurance in the form of a certificate of insurance and endorsement to the Contracting Agency of the State.

A. Workers’ Compensation and Employer’s Liability Insurance.

- 1) Contractor shall provide proof of worker’s compensation insurance as required per Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) If Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310 and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed “Affidavit of Rejection of Coverage” form under NRS 616B.627 and NRS 617.210.

B. Commercial General Liability – Occurrence Form. The Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- | | |
|----------------------------------------------|-------------|
| 1) General Aggregate | \$2,000,000 |
| 2) Products – Completed Operations Aggregate | \$1,000,000 |
| 3) Personal and Advertising Injury | \$1,000,000 |
| 4) Each Occurrence | \$1,000,000 |

Mail all required insurance documents to the Contracting Agency identified on page one of the Contract.

13. **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.
14. **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.
15. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract (“State Materials”) shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.
16. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State may have the duty to disclose unless a particular record is made confidential by law or a common law balance of interests.
17. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products 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.
18. **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES.** For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within

CETS #:	
Solicitation #:	

the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.

19. **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 and venue in the state District Courts in Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.

CETS #:	
Solicitation #:	

20. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its Scope of Work 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 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, as required. This form of Contract, including any amendments to the Contract, is not authorized for use if the “not to exceed” value **Section 4, Consideration** equals or exceeds \$50,000. This Contract, and any amendments, may be executed in counterparts.

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

Independent Contractor’s Signature	Date	Independent Contractor’s Title
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State of Nevada Authorized Signature	Date	Title
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State of Nevada Authorized Signature	Date	Title
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State of Nevada Authorized Signature	Date	Title
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APPROVED BY BOARD OF EXAMINERS

Signature – Clerk of the Board of Examiners

On: _____
Date

Approved as to form by:

Deputy Attorney General for Attorney General

On: _____
Date

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM H
FOR MEETING OF MAY 9, 2023**

SUBJECT: <i>For Possible Action:</i> Consideration and possible action by the Colorado River Commission of Nevada to approve or disapprove the notice of intent by the City of Henderson and Basic Water Company to grant specific Municipal Utility Easements.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

Background:

On April 28, 2023, the Commission received notice from Counsel for the City of Henderson and the Debtors of their intent to dedicate two Municipal Utility Easements. The Commission has 20 days, or until May 18, 2023, to approve or disapprove of the easement grants.

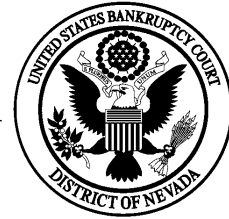
Staff are evaluating what easements and property the Commission may still own in the area and evaluating the location of the proposed easements, and whether the Commission has any facilities in the area.

Staff will provide more information at the meeting.

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Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 03, 2023

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
saschwartz@nvfirm.com
Gabrielle A. Hamm, Esq.
Nevada Bar No. 11588
ghamm@nvfirm.com
SCHWARTZ LAW, PLLC
601 East Bridger Avenue
Las Vegas, NV 89101
Telephone: 702.385.5544
Facsimile: 702.442.9887

Attorneys for the Debtors

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

BASIC WATER COMPANY,

Debtor.

Case No.: 22-13252-MKN

Chapter 11

Jointly administered with:

In re Basic Water Company SPE 1, LLC,
Case No. 22-13253-MKN

- Affects All Debtors
- Affects Basic Water Company
- Affects Basic Water Company
SPE 1, LLC

Hearing Date: December 21, 2022
Hearing Time: 10:30 a.m.

**ORDER AUTHORIZING THE DEBTORS TO GRANT ENCROACHMENT
PERMIT AND EASEMENT TO KB HOME LAS VEGAS, INC. AND GRANT
UTILITIES EASEMENTS PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b)**

Basic Water Company and Basic Water Company SPE 1, LLC, the debtors and debtors-
in-possession (each, a “Debtor,” and together, the “Debtors”), filed their *Motion for Entry of*

1 *Order Authorizing the Debtors to Grant Encroachment Permit and Easement to KB Home Las*
2 *Vegas, Inc. and Grant Utilities Easements Pursuant to 11 U.S.C. §§ 105(a) and 363(b)* [ECF No.
3 134] (the “**Motion**”),¹ requesting authority to grant an encroachment permit to KB Home Las
4 Vegas Inc. (“**KB Home**”) and related easements to KB Home, the City of Henderson, and
5 Southwest Gas Corporation, in order to facilitate the construction of certain improvements to a
6 portion of SPE’s real property identified as Assessor Parcel Number 160-33-801-001, commonly
7 known as 1720 East Lake Mead Parkway, Henderson, Nevada 89015-3134. The Motion came on
8 for hearing in the above-captioned court on December 21, 2022, at 10:30 a.m. All appearances
9 were duly noted on the record at the hearing on the Motion.

10 The Court, having reviewed the Motion, the Declaration of Lee Farris filed in support of
11 the Motion [ECF No. 135], and the other pleadings and papers in the Court’s file; and it appearing
12 that this Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. § 1334
13 and this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that
14 venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and
15 adequate notice of the Motion has been given under the particular circumstances and that no other
16 or further notice is necessary; and the Court having stated its findings of fact and conclusions of
17 law on the record at the hearing on the Motion, which findings of fact and conclusions of law are
18 incorporated herein by this reference in accordance with Fed. R. Civ. P. 52, as made applicable by
19 Bankruptcy Rule 9014; and after due deliberation thereon, and good and sufficient cause
20 appearing therefore,

21 **IT IS HEREBY ORDERED** that:

- 22 1. The Motion is GRANTED.
- 23 2. The Debtors are authorized, but not directed, to permit the encroachment and grant
24 the Public Drainage Easement and any necessary utility easements, including the Municipal
25 Utility Easement and Non-Exclusive Utility Easement described in the Motion.
- 26 3. The fourteen-day stay applicable to any order approving the use of estate property

27 _____
28 ¹ Initially capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

1 imposed by Bankruptcy Rule 6004(h) is waived.

2 4. It is further ordered that, to the extent of any changes, revisions, or alterations to
3 the easements, rights of way, permits, and/or encroachments identified in the Motion and
4 supporting declaration [ECF No. 135] (together, the “**Moving Papers**”) (the “**Proposed Revised**
5 **Encroachments**”), the Debtors shall immediately notify the Colorado River Commission of
6 Nevada (“**CRC**”) in a writing to CRC counsel of record advising and identifying with specificity
7 the exact nature and location(s) of the Proposed Revised Encroachments (the “**Notice of Revised**
8 **Encroachments**”).

9 5. It is further ordered that, to the extent of any additional, further, or supplemental
10 easements, grants of rights of way, permits, and/or other encroachments proposed beyond those
11 identified in the Moving Papers (collectively, “**Proposed New Encroachments**”), the Debtors
12 shall immediately notify the CRC in a writing to CRC counsel of record advising and identifying
13 with specificity of the exact nature and location(s) of any Proposed New Encroachments (the
14 “**Notice of New Encroachments**”).

15 6. It is further ordered that the noticing obligations imposed upon the Debtor
16 herewith (Notice of Revised Encroachments and Notice of New Encroachments together, “**Notice**
17 **Requirements**”) shall be continuing and shall apply to each and every Proposed Revised
18 Encroachments and any and every Proposed New Encroachments not identified in the Moving
19 Papers.

20 7. It is further ordered that the CRC shall have twenty (20) days from the date of
21 receiving any Notice of Revised Encroachments or any Notice of New Encroachments,² to review
22 any Proposed Revised Encroachments and any Proposed New Encroachments (collectively,
23 “**Proposed Encroachments**”) and to advise Debtors’ counsel, in writing, of any objection(s)
24 thereto (the “**Review Period**”).

25 8. It is further ordered that, in the event the CRC lodges objection(s) to any Proposed
26 Encroachments during a Review Period, the Debtors and the CRC (collectively, the “**Parties**”)

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² Counting days in accord with FED. R. BANKR. P. 9006.

1 shall have fourteen (14) days from the date said objection is lodged to negotiate resolution, and if,
2 at the expiration of the fourteen-day period no resolution is reached, the Parties shall have ten
3 (10) days to file blind briefs with the Court and seek a hearing on shortened time with the Court
4 to resolve the dispute.³

5 9. It is further ordered that any of the Notice Requirements set forth herein arise upon
6 the Debtors becoming aware of the need for any Proposed Revised Encroachments and likewise
7 arise upon the Debtors becoming aware of any Proposed New Encroachments.

8 10. This Court shall retain jurisdiction to hear and determine all matters arising from
9 the implementation of this Order.

10 **IT IS SO ORDERED.**

11 Prepared and submitted by:

12 SCHWARTZ LAW, PLLC

13 By: /s/ Gabrielle A. Hamm

14 Samuel A. Schwartz, Esq.

15 Gabrielle A. Hamm, Esq.

16 601 East Bridger Avenue

17 Las Vegas, NV 89101

18 *Attorneys for the Debtors*

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28 ³ Counting days in accord with FED. R. BANKR. P. 9006.

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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that:

- The court has waived the requirement set forth in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel and any unrepresented parties who appeared at the hearing, except those as to whom review was waived on the record at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Candace Carlyon, Esq. Counsel for the City of Henderson	Approved
Maura P. McIntyre, Esq. Louis M. Bubala III, Esq. Counsel for the Indenture Trustee	Approved
Mary Langsner Counsel for the Colorado River Commission of Nevada	Approved

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

###

APN: 179-19-503-003, 179-20-101-002

WHEN RECORDED MAIL TO:

City of Henderson
Public Works – Survey/Right-of-Way
240 Water Street
P.O. Box 95050, MSC 131
Henderson, NV 89009-5050
PWPM 2023012568

ROW: _____

For Recorder Use Only

MUNICIPAL UTILITIES EASEMENT

We, **BASIC WATER COMPANY SPE 1, LLC, a Nevada limited liability company**, do hereby grant to the CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada, and its successors, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, a perpetual easement for municipal utility purposes, including the right to enter at any time upon the property hereinafter described, to survey, construct, operate, maintain, remove, repair, replace, abandon in place and control municipal utility facilities over, under, through and across the property hereinafter described.

***(SEE EXHIBIT "A" THROUGH EXHIBIT "D" ATTACHED
HERETO AND BY REFERENCE MADE A PART HEREOF)***

[Signature page follows]

APN: 179-19-503-003, 179-20-101-002
Municipal Utilities Easement
Page 2

Witness _____ hand(s) this _____ day of _____, 2023.

BASIC WATER COMPANY SPE 1, LLC, BY:

Print Name:
Title:

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on _____ by
_____ as _____ of
BASIC WATER COMPANY SPE 1, LLC.

Notary Public in and for said County and State.
My commission expires: _____

GRANTOR: BASIC WATER COMPANY SPE 1, LLC
APN: 179-19-503-003

EXHIBIT "A"

DESCRIPTION

A PORTION OF PARCEL 1 AS SHOWN IN FILE 85, PAGE 14 OF PARCEL MAPS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITHIN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 19, TOWNSHIP 22 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA,

A STRIP OF LAND 20.00 FEET IN WIDTH, LYING 10.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF VAN WAGENEN STREET AND OCEAN AVENUE AS SHOWN ON SAID PARCEL MAP, THENCE ALONG THE CENTERLINE OF SAID VAN WAGENEN STREET, SOUTH 64°39'24" EAST, 125.89 FEET; THENCE DEPARTING SAID CENTERLINE, NORTH 25°20'36" EAST, 40.00 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID VAN WAGENEN STREET, ALSO BEING THE **POINT OF BEGINNING**; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 37°09'13" EAST, 26.40 FEET; THENCE NORTH 06°49'51" EAST, 625.85 FEET TO THE NORTHERLY LINE OF SAID PARCEL 1, ALSO BEING THE **POINT OF ENDING**.

CONTAINS 13,045 SQUARE FEET, MORE OR LESS.

THE SIDE LINES OF THE HEREIN DESCRIBED STRIP OF LAND ARE TO BE LENGTHENED OR SHORTENED TO BEGIN ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID VAN WAGENEN STREET, TO INTERSECT AT ALL ANGLE POINTS AND TO END ON THE NORTHERLY LINE OF SAID PARCEL 1.

BASIS OF BEARINGS

SOUTH 64°39'24" EAST, BEING THE BEARING OF THE CENTERLINE OF VAN WAGENEN STREET, AS SHOWN IN FILE 85, PAGE 14 OF PARCEL MAPS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE.

END OF DESCRIPTION

(SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF)

RUSTY A. WONDERS, PLS
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 19751

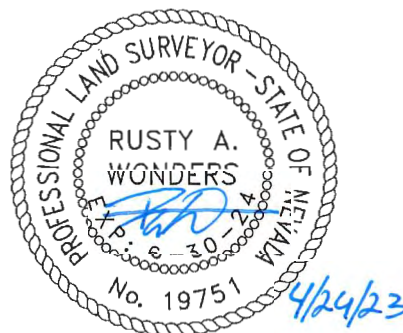
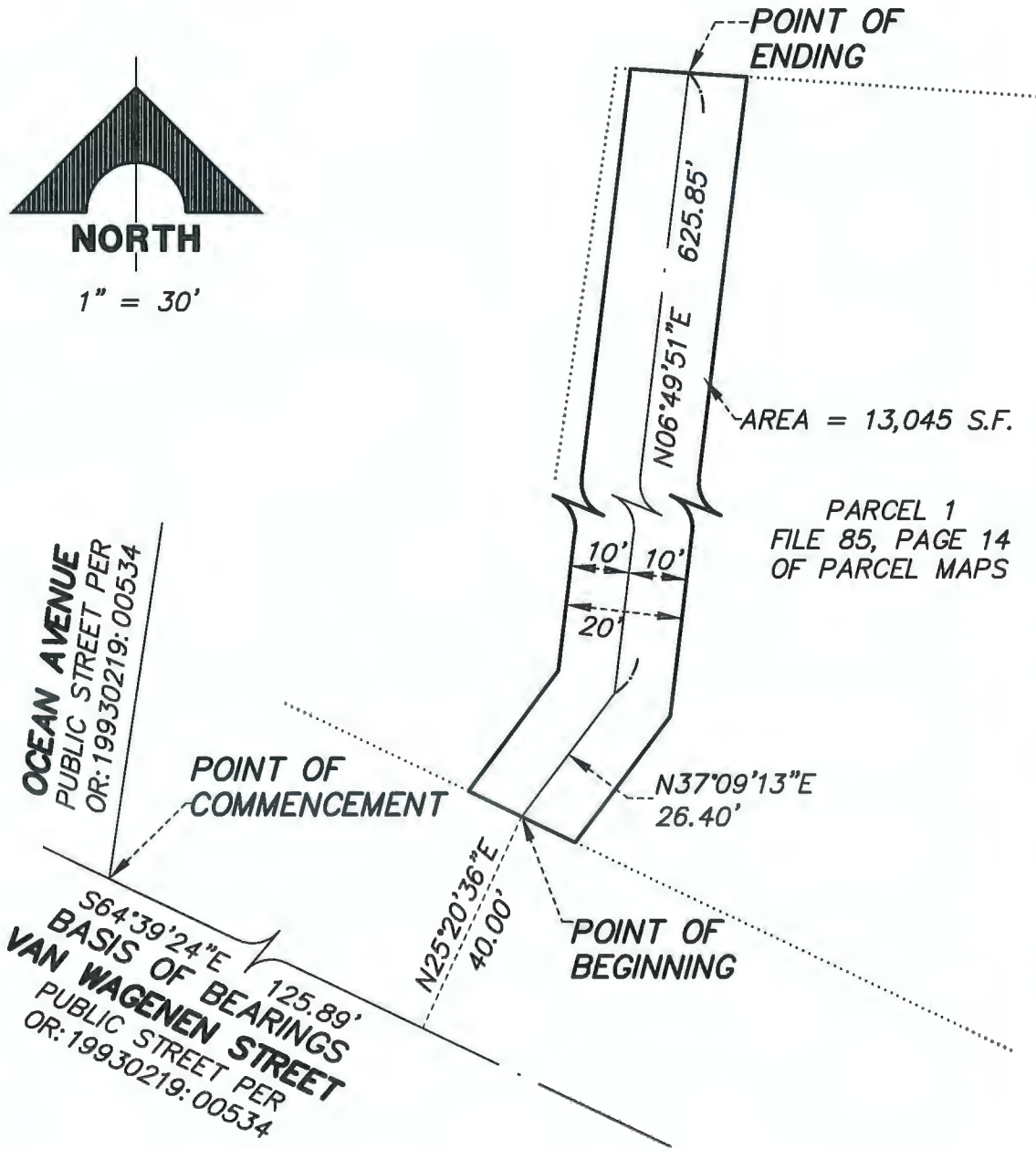
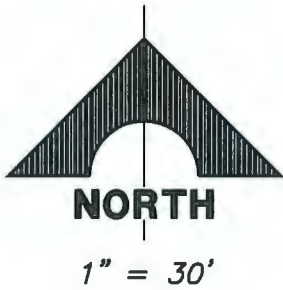


EXHIBIT "B" TO ACCOMPANY DESCRIPTION

GRANTOR: BASIC WATER COMPANY SPE 1, LLC
APN: 179-19-503-003



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GRANTOR: BASIC WATER COMPANY SPE 1, LLC
APN: 179-20-101-002

EXHIBIT "C"

DESCRIPTION

A PORTION OF PARCEL 1 AS SHOWN IN FILE 85, PAGE 14 OF PARCEL MAPS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITHIN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 20, TOWNSHIP 22 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF VAN WAGENEN STREET AND MAJOR AVENUE AS SHOWN ON SAID PARCEL MAP; THENCE ALONG THE CENTERLINE OF SAID MAJOR AVENUE, NORTH 25°35'46" EAST, 404.62 FEET; THENCE DEPARTING SAID CENTERLINE, NORTH 64°24'14" WEST, 50.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF MAJOR AVENUE, ALSO BEING THE **POINT OF BEGINNING**; THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE, NORTH 84°46'56" WEST, 176.81 FEET, THENCE NORTH 08°01'54" EAST, 21.03 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN 20 FOOT WIDE MUNICIPAL UTILITY EASEMENT AS SHOWN IN FILE 74, PAGE 97 OF PARCEL MAPS ON FILE AT SAID RECORDER'S OFFICE; THENCE ALONG THE SOUTHERLY LINE THEREOF, SOUTH 81°58'06" EAST, 20.53 FEET TO THE NORTHERLY LINE OF SAID PARCEL 1; THENCE DEPARTING SAID SOUTHERLY EASEMENT LINE AND ALONG SAID NORTHERLY LINE, SOUTH 84°46'56" EAST, 162.71 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID MAJOR AVENUE; THENCE DEPARTING SAID NORTHERLY LINE AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 25°35'46" WEST, 21.34 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 3,611 SQUARE FEET, MORE OR LESS.

BASIS OF BEARINGS

NORTH 64°39'24" WEST, BEING THE BEARING OF THE CENTERLINE OF VAN WAGENEN STREET, AS SHOWN IN FILE 85, PAGE 14 OF PARCEL MAPS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE.

END OF DESCRIPTION

(SEE EXHIBIT "D" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF)

RUSTY A. WONDERS, PLS
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 19751

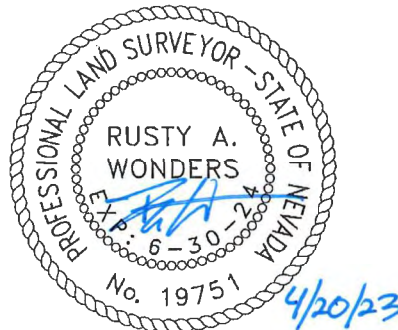
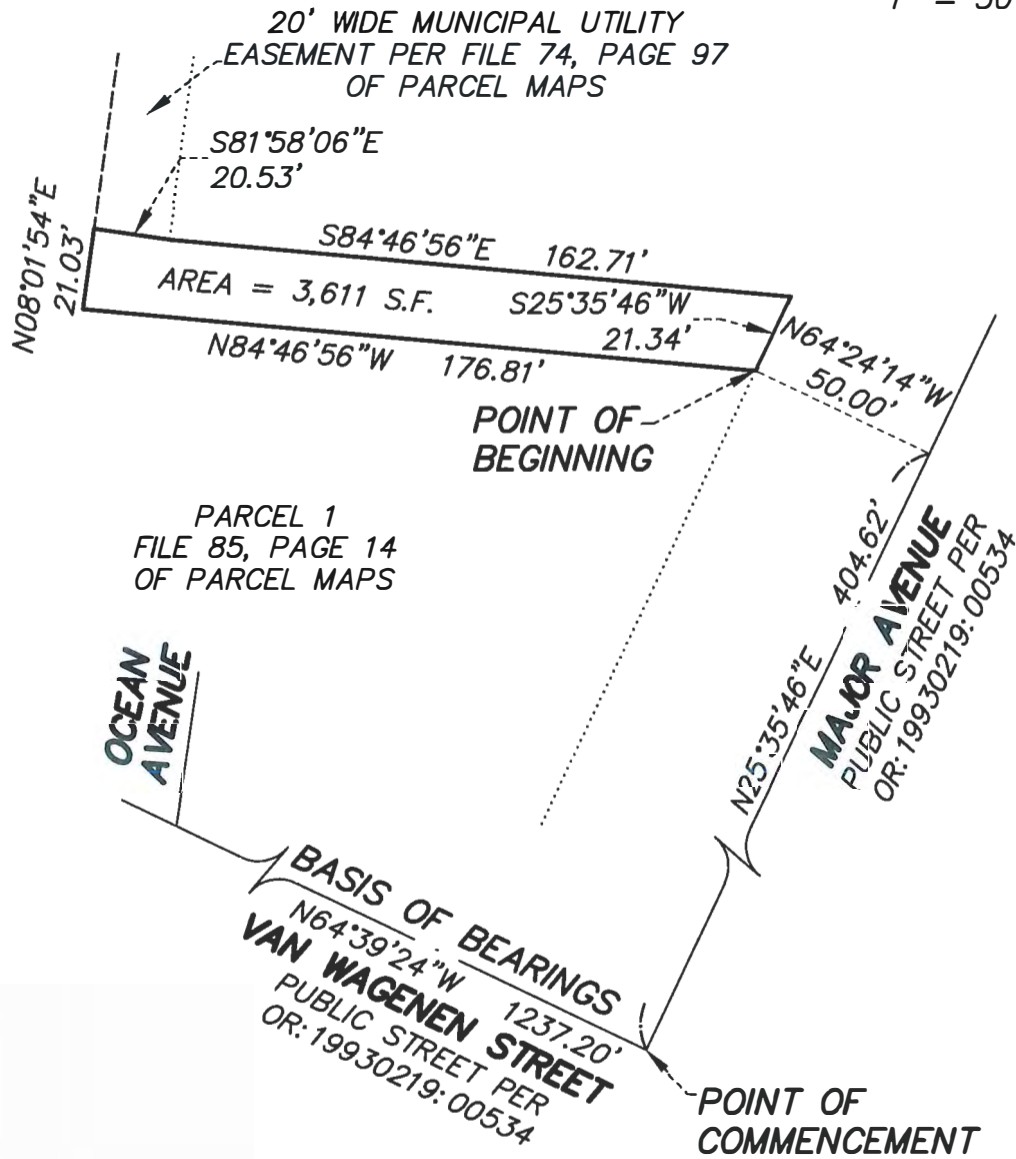
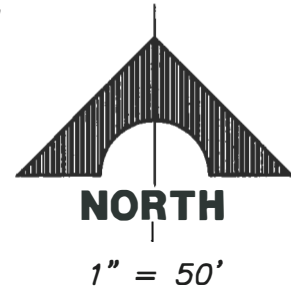


EXHIBIT "D" TO ACCOMPANY DESCRIPTION
 GRANTOR: BASIC WATER COMPANY SPE 1, LLC
 APN: 179-20-101-002



F:\Projects\500\504-454J\Division\Srvy\Srvy\Exhibits\504-454J_R47-EX01.dwg

APN: 160-33-801-001

WHEN RECORDED MAIL TO:

City of Henderson
Public Works – Survey/Right-of-Way
240 Water Street
P.O. Box 95050, MSC 131
Henderson, NV 89009-5050
PWPM 2023012568

ROW: _____

For Recorder Use Only

MUNICIPAL UTILITIES AND DRAINAGE EASEMENT

We, **BASIC WATER COMPANY SPE 1, LLC, a Nevada limited liability company**, do hereby grant to the CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada, and its successors, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, a perpetual easement for municipal utility purposes and public drainage purposes, including the right to enter at any time upon the property hereinafter described, to survey, construct, operate, maintain, remove, repair, replace, abandon in place and control municipal utility and drainage facilities over, under, through and across the property hereinafter described.

***(SEE EXHIBIT "A" AND EXHIBIT "B" ATTACHED
HERETO AND BY REFERENCE MADE A PART HEREOF)***

[Signature page follows]

APN: 160-33-801-001
Municipal Utilities and Drainage Easement
Page 2

Witness _____ hand(s) this _____ day of _____, 2023.

BASIC WATER COMPANY SPE 1, LLC, BY:

Print Name:
Title:

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on _____ by
_____ as _____ of
BASIC WATER COMPANY SPE 1, LLC.

Notary Public in and for said County and State.
My commission expires: _____

OWNER: BASIC WATER COMPANY SPE 1, LLC
APN: 160-33-801-001

EXHIBIT "A"
DESCRIPTION

A PORTION OF LAND DESCRIBED IN THAT CERTAIN "QUIT CLAIM DEED" RECORDED FEBRUARY 14, 2017 IN BOOK 20170214, AS INSTRUMENT NO. 02069 ON FILE AT THE CLARK COUNTY NEVADA RECORDER'S OFFICE, LYING WITHIN THE SOUTH HALF (S 1/2) OF SECTION 33, TOWNSHIP 21 SOUTH, RANGE 63 EAST, M.D.M., CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 33; THENCE ALONG THE EAST LINE THEREOF NORTH 03°46'42" WEST, 601.92 FEET TO THE **POINT OF BEGINNING**; THENCE DEPARTING SAID EAST LINE SOUTH 86°13'18" WEST, 100.01 FEET; THENCE NORTH 03°46'42" WEST, 150.00 FEET; THENCE NORTH 86°13'18" EAST, 76.65 FEET; THENCE NORTH 48°46'29" WEST, 94.46 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 495.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 41°13'03", AN ARC LENGTH OF 356.09 FEET; THENCE NORTH 89°59'32" WEST, 372.50 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 525.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°59'32", AN ARC LENGTH OF 137.37 FEET; THENCE NORTH 75°00'00" WEST, 582.16 FEET; THENCE NORTH 00°00'00" EAST, 35.08 FEET TO THE SOUTHERLY LINE OF AN EXISTING SOUTHERN NEVADA WATER AUTHORITY EASEMENT RECORDED SEPTEMBER 30, 2020 IN BOOK 20200930, AS INSTRUMENT NO. 02270 ON FILE AT SAID RECORDER'S OFFICE; THENCE ALONG SAID SOUTHERLY LINE NORTH 86°48'06" EAST, 30.05 FEET; THENCE DEPARTING SAID SOUTHERLY LINE SOUTH 00°00'00" EAST, 13.74 FEET; THENCE SOUTH 75°00'00" EAST, 559.14 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 495.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°59'32", AN ARC LENGTH OF 129.52 FEET; THENCE SOUTH 89°59'32" EAST, 372.50 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 525.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 41°13'03", AN ARC LENGTH OF 377.67 FEET; THENCE SOUTH 48°46'29" EAST, 97.50 FEET TO SAID EAST LINE; THENCE ALONG SAID EAST LINE SOUTH 03°46'42" EAST, 169.06 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 62,140 SQUARE FEET, MORE OR LESS.

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS PROJECT IS GRID NORTH AS DEFINED BY THE NORTH AMERICAN DATUM OF 1983 (NAD 83) NEVADA STATE PLANE EAST ZONE (2701).

END OF DESCRIPTION

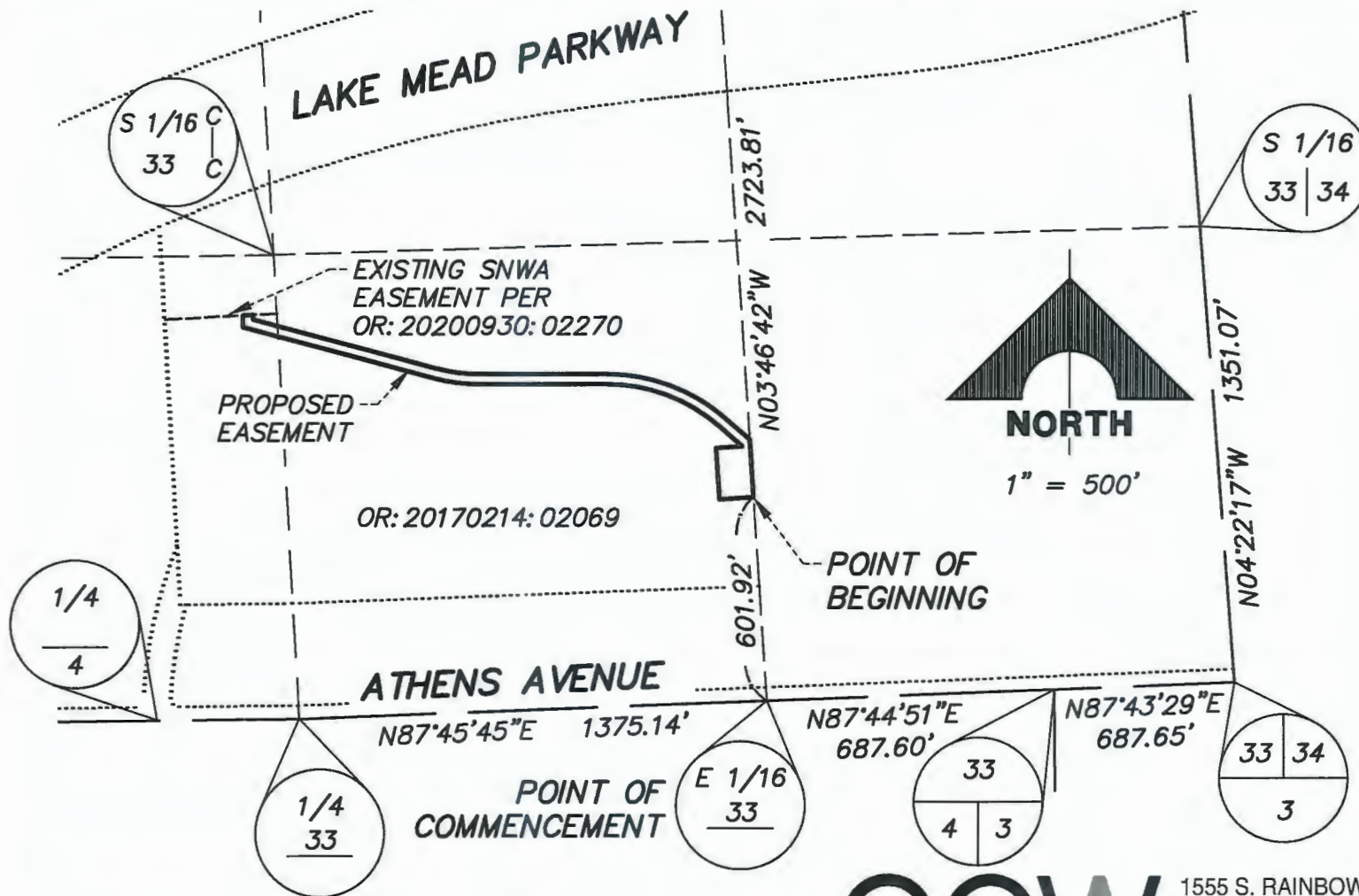
OWNER: BASIC WATER COMPANY SPE 1, LLC
APN: 160-33-801-001

(SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF)

PAUL BURN, PLS
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 11174



EXHIBIT "B" TO ACCOMPANY DESCRIPTION



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OWNER: BASIC WATER COMPANY SPE 1, LLC
 APN: 160-33-801-001

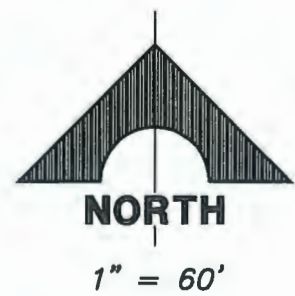
GCW
 ENGINEERS & SURVEYORS

1555 S. RAINBOW BLVD.
 LAS VEGAS, NV 89146
 T: 702.804.2000
 F: 702.804.2299
 gcwengineering.com

EXHIBIT "B" TO ACCOMPANY DESCRIPTION

OWNER: BASIC WATER COMPANY SPE 1, LLC
 APN: 160-33-801-001

MATCH LINE -
 SEE PAGE 3



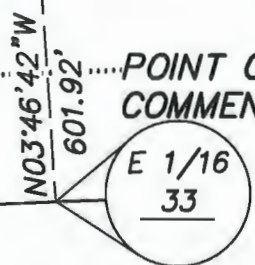
OR: 20170214: 02069

AREA =
 62,140 S.F. ±

POINT OF BEGINNING

ATHENS AVENUE
 PUBLIC RIGHT-OF-WAY
 PER OR: 20000216: 00466

POINT OF COMMENCEMENT



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GCV
 ENGINEERS \ SURVEYORS

1555 S. RAINBOW BLVD.
 LAS VEGAS, NV 89146
 T: 702.804.2000
 F: 702.804.2299
 gcwengineering.com

EXHIBIT "B" TO ACCOMPANY DESCRIPTION

OWNER: BASIC WATER COMPANY SPE 1, LLC
APN: 160-33-801-001



NORTH

1" = 60'

AREA = 62,140 S.F. ±

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MATCH LINE -
SEE PAGE 4

S89°59'32"E 372.50'

N89°59'32"W 372.50'

30'

$\Delta=41^{\circ}13'03''$ R=525.00'
L=377.67' T=197.43'

$\Delta=41^{\circ}13'03''$ R=495.00'
L=356.09' T=186.14'

MATCH LINE -
SEE PAGE 2

OR: 20170214: 02069

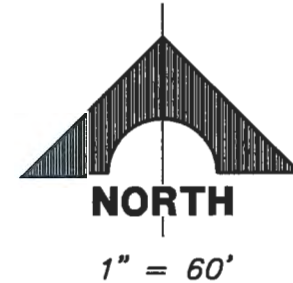
GCV

ENGINEERS SURVEYORS

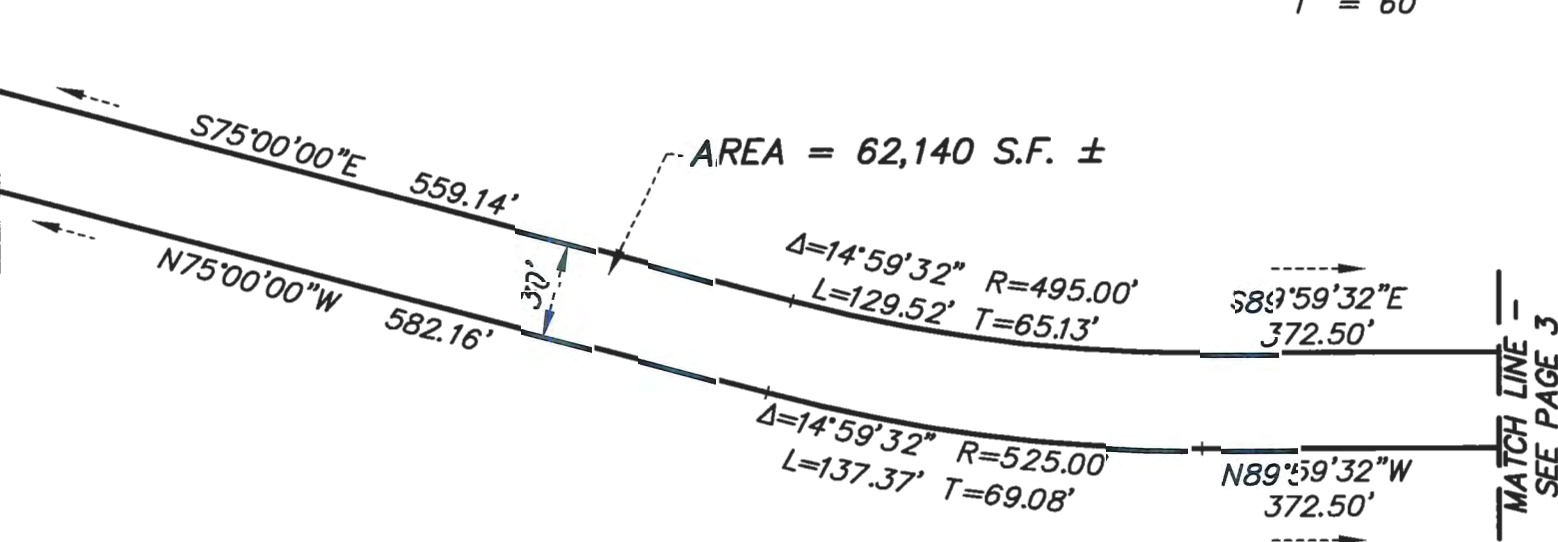
1555 S. RAINBOW BLVD.
LAS VEGAS, NV 89146
T: 702.804.2000
F: 702.804.2299
gcwengineering.com

EXHIBIT "B" TO ACCOMPANY DESCRIPTION

OWNER: BASIC WATER COMPANY SPE 1, LLC
APN: 160-33-801-001



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MATCH LINE -
SEE PAGE 5



OR:20170214: 02069

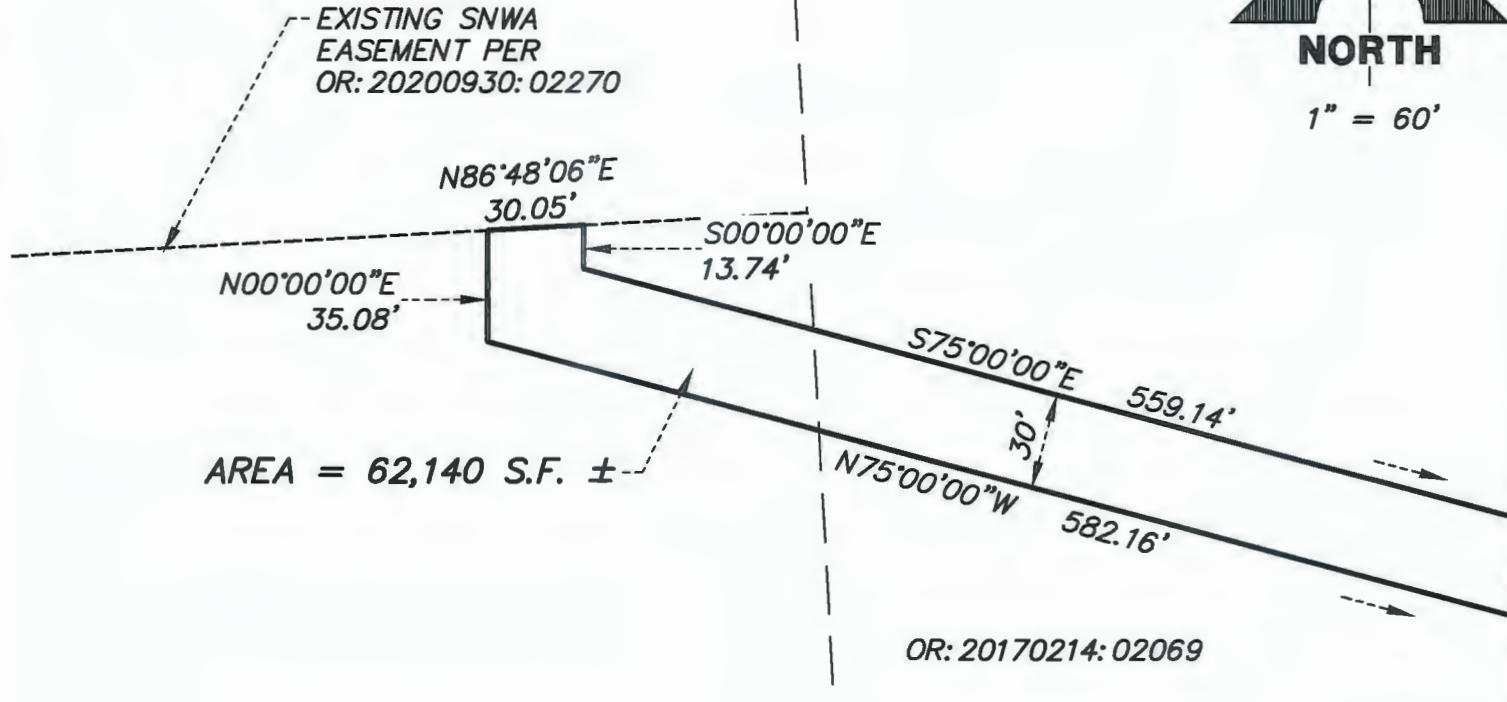
EXHIBIT "B" TO ACCOMPANY DESCRIPTION

OWNER: BASIC WATER COMPANY SPE 1, LLC
APN: 160-33-801-001



NORTH

1" = 60'



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GCV
ENGINEERS \ SURVEYORS

1555 S. RAINBOW BLVD.
LAS VEGAS, NV 89146
T: 702.804.2000
F: 702.804.2299
gcwengineering.com

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM I
FOR MEETING OF May 9, 2023**

SUBJECT: <i>For Information Only:</i> Status update on 2023 Legislative Session and related budget matters submitted for approval for Fiscal Years 2024 and 2025.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM J
FOR MEETING OF May 9, 2023**

SUBJECT: <i>For Information Only:</i> Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

Staff will provide an update at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM K
FOR MEETING OF May 9, 2023**

SUBJECT: <i>For Information Only:</i> Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada’s consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

Staff will provide an update at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM L
FOR MEETING OF May 9, 2023**

SUBJECT:

For Information Only: Recognition and acknowledgement of the Colorado River Commission of Nevada's Power Delivery Group, led by Robert Reese, that received from the American Public Power Association a Safety Award of Excellence for attaining a low incidence rate during the year of 2022.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM M
FOR MEETING OF May 9, 2023**

SUBJECT: Comments from the public. Members of the public are invited to comment on items on the meeting agenda or on items not contained therein. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM N
FOR MEETING OF May 9, 2023**

SUBJECT: Comments and questions from the Commission members.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM O
FOR MEETING OF May 9, 2023**

SUBJECT: Selection of the next possible meeting date.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, June 13, 2023, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM P
FOR MEETING OF May 9, 2023**

SUBJECT: Adjournment.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND: