

Western Regional Water Commission

STAFF REPORT

DATE: October 10, 2019

TO: Chair and Members, Western Regional Water Commission (“WRWC”)

FROM: Jim Smitherman, WRWC Water Resources Program Manager

SUBJECT: Discussion and possible approval of a Letter of Engagement for McDonald Carano LLP to provide legal services for the WRWC and the Northern Nevada Water Planning Commission (“NNWPC”); if approved, authorize the Chair to execute the Letter; and possible direction to staff.

SUMMARY

On June 19, 2019, the WRWC received brief presentations from representatives of law firms that responded to a Request for Qualifications (“RFQ”) and Proposals (“RFP”) to provide legal services for the WRWC and the NNWPC. Immediately following the presentations the WRWC conducted a selection procedure and produced a ranked list of three firms. Staff was directed to approve the proposals from the top three ranked firms and negotiate a final agreement with the number one ranked firm, McDonald Carano LLP. If staff and McDonald Carano LLP were unable to reach agreement, staff was directed to negotiate with the number two ranked firm, and so forth.

McDonald Carano LLP and staff successfully negotiated a final proposed agreement. The attached Letter of Engagement from McDonald Carano LLP is submitted to the WRWC for consideration and possible approval.

BACKGROUND

A Notice to Attorneys concerning the RFQ/RFP, and Legal Counsel Position Scope of Work was published in the Reno Gazette Journal on April 24 and May 1, 2019, and in the Washoe County Bar Association monthly newsletter, the “Writ”, on April 30, 2019. The Notice was also posted on the Washoe County Bar Association’s website in the classifieds section. Responses were due by May 31, 2019.

Eight responses to the RFQ/RFP were received from the law firms or individuals listed below.

- Benson Law, LLC
- Brownstein Hyatt Farber Schreck, LLP
- Dickinson Wright PLLC
- Hutchinson & Steffen, LLC
- Kaempfer Crowell
- Leonard Law, PC
- McDonald Carano LLP
- Ryan J. McElhinney, Esq.

PREVIOUS ACTION

On June 19, 2019, the WRWC directed staff to negotiate a final agreement with McDonald Carano LLP to provide legal services for the WRWC and NNWPC, and if unsuccessful, negotiate with the next highest ranked firm, and so forth.

FISCAL IMPACT

The fiscal impact to the WRWC budget will be \$81,000 (\$6,750 per month) for the initial one-year term. Budget authority is located in Fund Group 766, Fund 7066, Account Number 710139, Professional Services, Cost Object WP310705.1

RECOMMENDATION

Staff recommends that the WRWC approve the Letter of Engagement from McDonald Carano LLP, authorize the Chair to execute the Letter, and provide any appropriate direction to staff.

POSSIBLE MOTION

“Move to approve the Letter of Engagement from McDonald Carano LLP and authorize the Chair to execute the Letter.”

JS:jp

Attachment

Michael A. T. Pagni, Partner
mpagni@mcwlaw.com

Reply to: Reno

August 28, 2019

Western Regional Water Commission and
Northern Nevada Water Planning Commission
Attn: Jim Smitherman, Program Manager
1001 East Ninth Street
Reno, NV 89512

Re: Engagement of McDonald Carano LLP

Dear Jim:

We are pleased that Western Regional Water Commission and Northern Nevada Water Planning Commission (collectively “Commission”) has decided to engage McDonald Carano LLP (“the Firm”) to represent it with respect to Nevada law matters described below. Experience has shown the attorney client relationship works best when there is a formal, mutual understanding about fees, payment terms and the scope of services to be provided. This letter constitutes the agreement relating to the services our firm has agreed to provide. The terms and conditions of our engagement are as follows:

I. Scope of Engagement

The scope of the Firm’s engagement (the “Engagement”) involves representing the Commission as outside general counsel and in-session State legislative lobbying on all Nevada matters as more fully described in the Scope of Services attachment to this letter (the “Included Services”). If you request our assistance with any litigation, we may also request a separate engagement letter for such work. The Included Services to be provided by the Firm in connection with the Engagement will encompass all services normally and reasonably associated with this type of Engagement that the Firm is requested and able to provide and that are consistent with its ethical obligations. Any services not included within Included Services, including litigation, shall be deemed Additional Services.

II. Personnel

Michael Pagni will be principally responsible for and actively involved in the Engagement, and we anticipate Josh Hicks, Laura Jacobsen, Mat Trachok, Phil Mannelly and Kelci Binau will be principally responsible for and actively involved in the Engagement. Additional lawyers or paralegals may be involved as needed.

III. Monthly Retainer, Fees and Expenses

The Included Services described in the attachment will be provided by the Firm for a monthly retainer of \$6,750 per month, plus costs, with a detailed monthly invoice provided. The Additional Services will be provided by the Firm but are not included in the monthly retainer amount and will be billed to Commission at our standard rates, but with 20% discount applied.

Our firm has always operated on the basis that we will deliver the best possible legal services in a timely fashion and at a reasonable price; in return, we request that upon receipt of our statements, you review the statements at that time to determine if you have any questions or comments regarding them. If so, please call us.

IV. Conflict Waivers and Related Matters.

Attorneys owe duties of loyalty and of confidentiality to their clients. It is unavoidable that, from time to time, conflicts of interest develop between or among our clients, or between clients, or former clients, and prospective clients we wish to represent. In these circumstances, we are required, if we are authorized to do so, to disclose the conflicts to our clients, former clients and prospective clients and consult with them and to obtain the clients' or former clients' consents before we may proceed.

The Firm represents a broad base of clients on a variety of matters, including the Truckee Meadows Water Authority. Absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients to choose the Firm as its counsel and preclude the Firm from representing you or other clients in pending or future matters. Given that possibility, and desiring to be fair both to you and other clients, this letter will confirm our mutual agreement that the Firm may represent other present or future clients (including TMWA) on matters other than those for which it had been or is then engaged by you, including litigation, legal or other proceedings or matters (referred to as "Permitted Representation"). You agree that you will not assert the Firm's representation of you as a basis for disqualifying the Firm from representing

another party in any Permitted Representation and agree that any Permitted Representation does not constitute a breach of duty.

If Commission becomes directly adverse to a client of the Firm in a specific matter, the Firm will recuse from representing either party absent special circumstances. We recognize that from time to time, Commission may desire to engage in transactions with clients of the Firm. Because of our institutional knowledge with some clients, it may be desirable in some circumstances for our Firm to either jointly represent the parties to facilitate the transaction or it may be desirable for one party to retain separate counsel for the transaction while our Firm continues to represent the other party. In these circumstances, we will consult with you in advance on whether our firm can (or should) engage in a joint representation on the matter, or whether conflict counsel should be retained by Commission or the other party and will secure written conflict waivers if and when appropriate. We further agree in any matter in which our Firm is retained in a joint representation or where Commission retains separate conflict counsel so that we may continue to represent an existing client, if any litigation arises between Commission and such client in connection with that Commission transaction, the Firm would decline any request to represent either party in such litigation.

Based upon the disclosure of the names of persons and entities potentially involved in this matter, we have not discovered any conflict which requires further action before undertaking our representation. Please advise us, at or before the time you return the signed copy of this letter, if you know of any other individuals or entities which may be involved in this matter. In addition, please inform us at once if you learn in the future of other persons or entities who may be involved so we can make a conflict of interest search with respect to them.

V. Other Terms.

The general terms and conditions of our representation are set forth in the attached schedule of General Terms and Conditions, which are incorporated into this agreement by reference. If this letter is satisfactory, please confirm your agreement to the terms of this engagement letter and attached schedule by signing this letter and returning it to us in the enclosed envelope. A copy is for your records. If this letter does not accurately reflect your understanding of the terms of our agreement, please call me promptly so that we may discuss it further.

We recognize that you have the opportunity to obtain services from other firms, and very much appreciate that you have chosen our Firm. We will endeavor to represent you promptly and efficiently, and look forward to the opportunity of working with you.

Sincerely yours,

DRAFT

Michael A.T. Pagni, Esq.



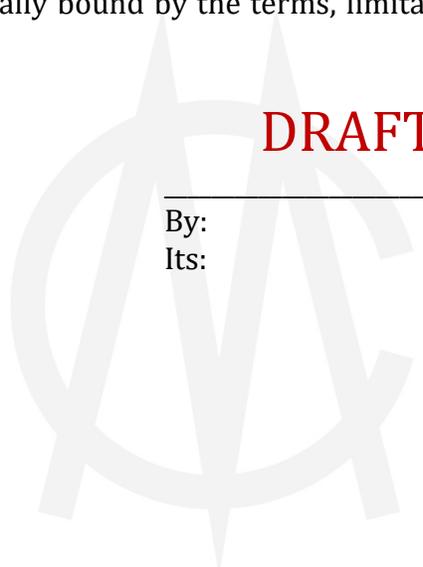
**CLIENT'S AGREEMENT TO
TERMS AND CONDITIONS OF REPRESENTATION**

I hereby acknowledge that I have had an adequate opportunity to review and understand the above engagement letter and accompanying schedule of terms and conditions, and that I am duly authorized by Western Regional Water Commission and Northern Nevada Water Planning Commission as its _____, to bind it and execute this Agreement on its behalf. I further acknowledge that I have had the opportunity to consult with counsel of my own choosing prior to executing it. Therefore, on behalf of Western Regional Water Commission and Northern Nevada Water Planning Commission, I agree to be legally bound by the terms, limitations and conditions set forth therein.

DRAFT

Date: _____, 2019.

By: _____
Its:



GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

A. Engagement: Western Regional Water Commission and Northern Nevada Water Planning Commission

B. Monthly Retainer (Included Services)

\$6,750 per month, plus costs.

C. Standard Hourly Rates For Personnel (Additional Services)

Partner, Michael A. T. Pagni	\$325.00 per hour
Partner, Josh Hicks	\$400.00 per hour
Associate, Laura Jacobsen	\$275.00 per hour
Associate, Mat Trachok	\$250.00 per hour
Associate, Philip Mannelly	\$250.00 per hour
Associate, Kelci S. Binau	\$225.00 per hour

Others:

Partners	\$300.00 to \$450.00 per hour
Associates	\$170.00 to \$275.00 per hour
Law Clerks	\$150.00 per hour
Paralegals	\$110.00 to 150.00 per hour
Government Affairs Team	\$225.00 to \$275.00 per hour

Additional Services will be billed with a 20% discount off standard hourly rates. Whenever appropriate and consistent with the proper representation of our clients, we use paralegals, investigators, junior attorneys and staff members in order to minimize the impact of the hourly rates of more senior attorneys.

D. Billing Increments: We charge for our time in minimum units of 1/10 hours for Additional Services.

E. Costs and Expenses.

In-office photocopying	\$.25 per page
Mileage	\$.58 per mile
Computerized legal research	\$5.00 per minute

Clerical staff overtime necessary for extraordinary matters will be charged at 1.5 times the base hourly rate. The base hourly rates for clerical personnel presently range between \$15.00 and \$20.00.

F. Billing Statements; Carrying Charges. Our billing statements will normally be rendered to you on a monthly basis. Fees will generally be billed within thirty (30) days following the month in which the services are rendered, and disbursements and other charges will generally be billed within thirty (30) to sixty (60) days after they are incurred by us. Payment is due upon your receipt of our statement and is not contingent upon the outcome or completion of a matter for which the firm has been engaged. The Firm does not extend credit to clients. If fees are not paid promptly (within 30 days of the date of invoice), a carrying charge of 1.5% per month (subject to adjustment from time to time as indicated in our billing statements) on the unpaid balance of the statement from the date of invoice. Payments will be accepted by cash, check, money order, bank draft, wire transfer and credit card.

G. IOLTA Participation. We will maintain and safeguard a trust account from which any interest earnings are forwarded to the IOLTA program run by the Nevada Law Foundation. Any interest earned on your trust fund balance will be forwarded to the program.

H. Rates Subject to Change. The rates on this schedule are subject to change on thirty (30) days written notice. If you decline to pay any increased rates, we reserve the right to withdraw.

I. No Guarantees. We must emphasize that it is impossible to provide any promise or guarantee about the outcome of your representation. Nothing in this Agreement or any statements by our staff or attorneys constitute a promise or guarantee. Any comments about the outcome of your matter are expressions of opinion only.

J. Communication. During the course of our representation, we will endeavor to keep you fully advised as to the status and progress of this matter and our recommendations as to an appropriate course of action in view of the facts, circumstances and issues involved. We will send copies of all material documents generated in connection with our representation, and I ask that you call me, at any time, should you wish to discuss the matter, our invoices or bills, or any other aspect of this representation. If, for some reason, I am not available, another attorney in this office will generally be available and familiar with the matter sufficiently to consult with you as desired. You agree that all means of

communication are, to some degree, susceptible to misdirection, delay or interception, and E-mail, facsimile transmissions and cellular telephone communications present special risks of inadvertent disclosure. However, in order to maximize speed, efficiency, and convenience of these methods of communication in this matter, you consent to our use of E-mail, cellular phones, and facsimile transmissions communications in representing you in this matter.

K. Fees Disputes. Under Nevada law, you have the right, if you desire, to request arbitration of any fee dispute before a committee selected by the State Bar known as a “fee dispute” committee (“Bar Arbitration”). By signing this engagement letter, you and we agree to submit any fee dispute in this matter to that Bar Arbitration, and if such Bar Arbitration is conducted, they shall determine only the issue of the amount of fees and charges properly chargeable to you, if any, and such Bar Arbitration thereafter shall have no effect on the provisions set forth above which require arbitration before a retired judge or justice of any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud or violation of any statute. Any such claims shall be solely determined in an arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration.

L. Records and File Retention. All records and filed will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy not to retain records for more than seven (7) years from the date the matter is opened. Upon prior written request, we will return records to you prior to destruction. As it is not administratively feasible to advise you of record disposal, we recommend you maintain your own files for reference. If you have any questions concerning record retention, please contact us.

M. Your Responsibilities. You agree to cooperate with us, to keep us informed of all developments material to the Engagement (especially communication to or from other legal counsel, material undertakings, and agreements), to communicate and disclose fully all relevant matters relevant to our Engagement, to abide by this agreement, and to advise the firm concerning any disputed fee or cost charged in this matter. Our firm will rely upon materials and matters provided and communicated to us by you, your agents, and other representatives, as well as your representations to us that arise during the course of our representation of you in this matter. The firm undertakes no obligation or duty of independent inquiry to confirm or verify such representations and matters. It is extremely important that you provide us with complete and accurate information on a timely basis since our representation, analysis and advice to you will be based upon such information, and could change if factual circumstances are different.

N. Termination. A client has a right at any time to terminate our services and representation upon written notice to the Firm, and we may also terminate our services upon written notice. You remain liable for all unpaid charges for services provided and expenses advanced or incurred prior to the date of termination or withdrawal. If you do not meet your obligation of timely payments or deposits under this engagement letter, we reserve the right to withdraw from your representation on that basis alone, subject to any required judicial, administrative, or other approvals. In the event of termination, you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal. In addition, our representation will end at the earliest of (a) your termination of our representation; (b) our withdrawal or termination; or (c) unless we are engaged to represent you in other matters, upon substantial completion of our work on the Engagement whether or not we send you a letter to confirm the termination of our representation.

O. MERITAS. Our firm is a member of MERITAS (“Meritas”) which is a network of over 185 independent commercial law firms located in major cities throughout the world. Meritas members are not engaged in the joint practice of law and do not share fees among themselves. Membership in Meritas gives us, and our clients, access to legal resources in other jurisdictions so that our clients’ need for legal services can be handled virtually anywhere our clients conduct business. We will only utilize the services of another Meritas firm in this matter with your express knowledge and consent. Further information about Meritas can be obtained at the organization's website at www.meritas.org.

P. Governmental Affairs. In addition to the services already set forth in this engagement letter, the Firm may need to utilize the expertise of our Governmental Affairs Team to advance the objectives of your engagement with the Firm. Be advised that prior to requesting assistance from the Governmental Affairs Team you will be counseled as to why this is necessary and/or advisable and be given an opportunity to elect their services. The fee for the members of our Governmental Affairs Team is included above.

Q. Written Advices Regarding Federal Tax Issues. Whenever we provide you with written advice concerning the federal tax treatment of an item of income, gain, loss, deduction or credit, the existence or absence of a taxable transfer property, or the value of property for federal tax purposes, we are subject to stringent requirements imposed by the United States Treasury Department on all tax practitioners, including attorneys. These rules cover much more than formal legal opinions and may apply to any writing relating to any Internal Revenue code matter, including communications via e-mail and fax. If we fail

to comply with these rules, we may (under certain circumstances) be suspended or disbarred from practice before the Internal Revenue Service, be publicly censured or fined (to the extent that the Secretary of Treasury promulgates regulations requiring any such fines or penalties). Therefore, if during the course of this engagement, we provide written advice regarding any arrangement the principal purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, such writing must comply with the rigorous standards of review and disclosure (including enhanced factual and legal due diligence) which are now required by the Treasury Department. If tax avoidance is not the principal purpose of an arrangement but is a significant purpose, our written advice must also adhere to the same rules, unless we include a prominent disclosure stating that the writing was not intended or written by us to be used, and it cannot be used by you or anyone else for the purpose of avoiding taxpayer penalties. It is for this reason that certain written communications to you, including emails and faxes, will contain the following disclosure statement: "Any Federal tax advice contained herein is not intended or written to be used, and cannot be used by you or any other person, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Code. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Internal Revenue Service. Any written statement contained herein relating to any Federal tax transaction or matter may not be used by any person without our express prior written permission to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed herein. No advice contained herein may be relied upon or utilized by any person for any purpose except as expressly and affirmatively stated herein without the prior written consent in each instance of a partner of this firm."

R. Miscellaneous. This Agreement is governed by Nevada law and sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing. Each party signing below is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party signing it whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be severable. We are not advising you with respect to this Agreement because we would have a conflict of interest in doing so. If you wish advice, you should consult independent counsel of your choice.

SCOPE OF SERVICES

Scope of Included Services to be provided to the Western Regional Water Commission ("WRWC") and its advisory body, the Northern Nevada Water Planning Commission ("NNWPC") consist of the following:

1. Work with staff to ensure that all meeting agendas, staff reports and minutes comply with Nevada Open Meeting Law and other legal requirements.
2. Provide legal representation at all public meetings of the WRWC, and its subcommittees, and the NNWPC.
3. Attend all WRWC Staff Working Group meetings to ensure Open Meeting Law compliance, provide advice on the propriety of proposed actions and future WRWC agenda items, and legal documentation required for implementation.
4. Evaluate the legal propriety of proposed expenditures from the Regional Water Management Fund.
5. Draft legal documents such as interlocal agreements and contracts with planning consultants, other service providers, and independent contractors; confirming that consultants, other service providers, and independent contractors are adequately insured, and in compliance with state and local licensing and workers compensation requirements.
6. Address specific Open Meeting Law and other statutory compliance issues.
7. Coordinate and collaborate with legal counsel and staff for local and regional agencies, such as Reno, Sparks, Washoe County, Truckee Meadows Water Authority ("TMWA") and the Truckee Meadows Regional Planning Agency ("TMRPA") on legal issues involving both water resources planning and land use planning, and continuing required five-year updates of the Regional Water Management Plan.
8. Assess potential liability from a risk management perspective, and provide advice on and recommendations for risk reduction measures.
9. Provide an annual written report to the WRWC's financial auditors regarding pending or threatened litigation, claims or assessments.
10. Advise/represent the WRWC and the NNWPC on federal, state, and local legislative issues.

11. Provide services as a registered lobbyist at the Nevada Legislature, track relevant pending bill draft requests and pending legislation during legislative sessions, and provide continuing updates on those matters to the WRWC and NNWPC.
12. Provide continuing statutory review to assure that both the WRWC and the NNWPC comply, at all times, with all mandates and provisions of the Western Regional Water Commission Act, Chapter 531, Statutes of Nevada 2007, and all other state and local laws and requirements.
13. Develop, prepare, and present legal issues that may require appearances before local governing bodies, and state administrative agencies.

