



**NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY
("V&T Commission")
Agenda Report**

Date Submitted: 6/7/2024

Meeting Date Requested: 6/26/2024

Time Requested: 10 Minutes

To: NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY Commissioners

From: David Peterson

Subject Title: Discussion and possible action regarding proposed Amendment #2 to Agreement for Legal Services with Carson City District Attorney's Office ("Agreement"), extending the Agreement for an additional one-year term under the same terms and conditions, for an amount not to exceed \$20,000 per year. **David Peterson** (admin@vtrailway.com)

Staff Summary: *The Agreement is in effect until July 27, 2024, and provides that the Agreement may be extended for additional terms of one year upon mutual approval and execution by the parties.*

Type of Action Requested:

(____) Resolution

(____) Ordinance

(XX) Formal Action/Motion

(____) Presentation Only

Recommended Board Action: I move to approve the amendment of the Agreement as proposed.

Supporting Material/Attachments: 20240626 VT Item 13 First Amendment with JDW signature; 20240626 VT Item 13 Second Amendment with JDW signature

Prepared By: Cheryl Bailey, Executive Assistant

Agreement for Legal Services

This Agreement for Legal Services ("Agreement") is entered into by and between the Carson City District Attorney's Office ("CCDA") and the Nevada Commission for the Reconstruction of the V&T Railway ("Commission"), a body corporate and politic. CCDA and the Commission may be hereinafter individually referred to as "Party" and collectively referred to as "Parties."

RECITALS:

WHEREAS, the Commission is a body corporate and politic created pursuant to the Nevada Commission for the Reconstruction of the V&T Railway Act of 1993, chapter 566, Statutes of Nevada 1993 ("Act");

WHEREAS, pursuant to Section 8 of the Act, the Commission may enter into an agreement with the district attorney of Carson City or Storey County or both, to provide legal services to the Commission;

WHEREAS, pursuant to Section 8 of the Act, the Commission may authorize payment to the district attorney for the costs to the district attorney for providing those services;

WHEREAS, the Commission and CCDA agree that CCDA will be compensated for all services rendered as set forth below; and

WHEREAS, CCDA is willing and able to perform the services described herein.

NOW THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement and for other good and valuable consideration, the Parties do agree as follows:

TERMS:

1. **LEGAL SERVICES.** The Parties agree to the following terms regarding the provision of legal services and representation by CCDA to the Commission:
 - A. CCDA will assign an attorney to provide legal representation to the Commission, as described in this section.
 - B. CCDA will review and edit agendas and supporting materials for all public meetings of the Commission. CCDA will attend public meetings of the Commission to assist with compliance with the Nevada Open Meeting Law, Nevada law governing ethics in government and parliamentary procedures for the proper conduct of public meetings.
 - C. CCDA will review and assist with the preparation of contracts for the Commission on matters that directly relate to or arise from the conduct of official business within the scope of the Commission's authority.
 - D. CCDA will provide legal representation and counsel to the Commission as requested by the Commission, subject to the sole discretion of the District Attorney, and pertaining to matters

that directly relate to or arise from the conduct of official business within the scope of the Commission's authority.

- E. CCDA will provide legal opinions as requested by the Commission, subject to the sole discretion of the District Attorney, and pertaining to matters that directly relate to or arise from the conduct of official business within the scope of the Commission's authority.
 - F. CCDA will provide training to the members of the Commission on Nevada Open Meeting law and Ethics in Government as necessary.
 - G. CCDA will NOT initiate or defend against any litigation on behalf of the Commission, its individual members, employees or agents, including, without limitation, alternative dispute resolution or any other adversary proceeding before any tribunal, agency or court.
2. **COMPENSATION.** The Parties agree that CCDA will provide the legal services specified in Section 1 of this Agreement (LEGAL SERVICES) at an annual cost of \$20,000.00, to be billed to the Commission in one yearly installment by Carson City on behalf of CCDA.
3. **TERM.** This Agreement will be effective on the day the last required signature is affixed hereto and remain in effect for one year unless sooner terminated by either Party as specified in Section 4 of this Agreement (TERMINATION). The term of this Agreement may be extended for additional terms of one year upon mutual approval and execution by the Parties.
4. **NOTICES.** All notices or other communications required or permitted to be given under this Agreement must be in writing and will 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 required, postage prepaid on the date posted, and addressed to the other Party at the following address:

FOR Commission:

Nevada Commission for the Reconstruction of the V&T Railway
David Peterson, Chairman
P.O. Box 1711
Carson City, NV 89702
Telephone: 775-686-9037
dpeterson@visitcarsoncity.com

FOR CCDA:

Jason Woodbury, District Attorney
885 E. Musser Street, Suite 2030
Carson City, NV 89701
Telephone: 775-887-2070
Facsimile: 775-887-2129
jwoodbury@carson.org

5. **TERMINATION.**

- A. **Termination for Nonappropriation.** All services provided under this Agreement are contingent upon the availability of the necessary public funding, which may include various internal and external sources. In the event that the Commission does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Agreement, the Agreement shall automatically terminate upon the Commission's notice to CCDA of such nonappropriation, and no claim or cause of action may be based upon any such nonappropriation.
- B. **Termination Without Cause.** Either Party may terminate this Agreement without cause upon 30 days' written notice to the other Party. Each Party agrees to perform their respective duties herein until the date of termination. All contractual obligations for scheduled events shall survive any termination.
6. **LIMITED LIABILITY.** CCDA and the Commission do not waive and intend to assert any and all available NRS Chapter 41 liability limitations and immunities in all cases. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Agreement. The contract liability of the Parties under this Agreement does not include punitive damages.
7. **FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Agreement 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 this Agreement after the intervening cause ceases.
8. **INDEMNIFICATION.** To the fullest extent permitted by law, including but not limited to the provisions of NRS Chapter 41, each Party shall indemnify, hold harmless and defend, not excluding the others right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the Party, its officers, employees or agents. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Party or person described herein. This indemnification obligation is conditioned upon receipt of written notice by the indemnifying Party within thirty (30) days of the indemnified Party's notice of an actual or pending claim or cause of action. The indemnifying Party shall not be liable to hold harmless any attorney's fees or costs incurred by the indemnified Party if the indemnified Party elects to participate in any litigation or arbitration with legal counsel of its own choice.
9. **INSURANCE.** All Parties must carry their own policies of insurance and pay all applicable taxes and fees.
10. **BREACH.** Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights, remedies provided by law or equity, including but not limited to actual damages incurred, and reasonable attorney's fees and costs incurred by the prevailing Party. The Parties agree that, in the event a lawsuit is filed and a

Party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour.

11. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of this Agreement 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. No waiver of any right or remedy shall be effective unless in writing.
12. **SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
13. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement of the Parties and is 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 Agreement, no modification or amendment to this Agreement is binding upon the Parties unless the same is in writing and signed by the Parties and approved by each Parties' respective counsel.
14. **GOVERNING LAW AND JURISDICTION.** The laws of the State of Nevada apply in interpreting and construing this Agreement. The Parties consent to the jurisdiction of, and agree that disputes will be resolved by, the courts of the First Judicial District Court of the State of Nevada in Carson City.
15. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third-party or to otherwise allow a third-party to assert a cause of action against either CCDA or the Commission arising from, or related to, this Agreement.
16. **OWNERSHIP OF PROPERTY.** This Agreement does not contemplate a transfer of any real or personal property or ownership interest between the Parties. Any and all real and personal property presently owned by either Party will remain owned by that Party upon completion or termination of this Agreement.
17. **RECORDS.** Each Party agrees to keep and maintain, under generally accepted accounting principles, full, true and complete records and documents pertaining to this Agreement and will present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained.
18. **SUCCESSORS; ASSIGNMENT.** This Agreement shall bind the heirs, executors, administrators, successors, and assigns of the respective Parties. No Party may assign, transfer or delegate any rights, obligations, or duties under this Agreement without the prior written consent of the other Party.

19. **AUTHORITY TO SIGN.** The Parties represent and warrant that the person executing this Agreement on behalf of each respective Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth herein.
20. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.

(The remainder of this page left intentionally blank; the signature blocks follow on the next page.)

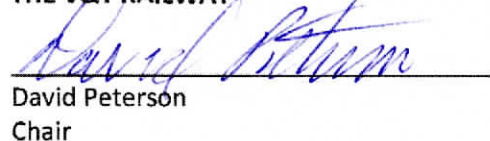
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written below.

CARSON CITY DISTRICT ATTORNEY'S OFFICE

NEVADA COMMISSION FOR THE RECONSTRUCTION OF
THE V&T RAILWAY



District Attorney or Designee



David Peterson
Chair

July 12, 2022

7/28/22

AMENDMENT #1 TO AGREEMENT FOR LEGAL SERVICES

The Carson City District Attorney's Office ("CCDA") and the Nevada Commission for the Reconstruction of the V&T Railway (the "Commission") hereby amend the AGREEMENT FOR LEGAL SERVICES dated July 28, 2022 ("Agreement"), as follows:

RECITALS and TERMS:

WHEREAS, the Agreement is in effect until July 27, 2023, and provides that the term of the Agreement may be extended for additional terms of one year upon mutual approval and execution by the CCDA and the Commission; and

WHEREAS, CCDA and the Commission have determined that an extension of one year to the Agreement is mutually desirable;

NOW THEREFORE, in consideration of the aforesaid premises, mutual promises, covenants and undertakings hereinafter set forth, CCDA and the Commission agree to extend the Agreement for a one-year term, effective on the day the last required signature is affixed hereto.

It is also agreed that all unaffected terms, conditions, requirements and restrictions of the Agreement remain unaffected and continue in full force and effect for the duration of the one-year extension established by this Amendment #1.

This Amendment may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Amendment #1. In witness whereof, CCDA and the Commission have executed this Amendment #1 on the day and year written below.


CARSON CITY DISTRICT ATTORNEY'S OFFICE

**NEVADA COMMISSION FOR THE RECONSTRUCTION OF
THE V&T RAILWAY**



District Attorney or Designee

David Peterson
Chair



Date

Date

AMENDMENT #2 TO AGREEMENT FOR LEGAL SERVICES

The Carson City District Attorney's Office ("CCDA") and the Nevada Commission for the Reconstruction of the V&T Railway (the "Commission") hereby amend the AGREEMENT FOR LEGAL SERVICES dated July 28, 2022 ("Agreement"), as follows:

RECITALS and TERMS:

WHEREAS, the Agreement provides that the term of the Agreement may be extended for additional terms of one year upon mutual approval and execution by the CCDA and the Commission; and

WHEREAS, the Agreement was extended for one year through Amendment #1 and is in effect until July 27, 2024; and

WHEREAS, CCDA and the Commission have determined that an extension of one year to the Agreement is mutually desirable;

NOW THEREFORE, in consideration of the aforesaid premises, mutual promises, covenants and undertakings hereinafter set forth, CCDA and the Commission agree to extend the Agreement for a one-year term, effective on the day the last required signature is affixed hereto.

It is also agreed that all unaffected terms, conditions, requirements and restrictions of the Agreement remain unaffected and continue in full force and effect for the duration of the one-year extension established by this Amendment #2.

This Amendment may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Amendment #2. In witness whereof, CCDA and the Commission have executed this Amendment #1 on the day and year written below.

CARSON CITY DISTRICT ATTORNEY'S OFFICE

NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY



District Attorney or Designee

David Peterson
Chair

June 7, 2024

Date

Date