

PROFESSIONAL SERVICES AGREEMENT
(Attorney)

1. PARTIES.

This Agreement is by and between

“Attorney” Charles P. Cockerill
415 W. 2nd Street
Carson City, Nevada 89703

“City” City of Sparks, a municipal corporation
431 Prater Way
Sparks, Nevada 89431

2. RECITALS.

- a. From time to time, the City needs legal representation or advice from outside counsel and, based on past representation over the years, desires to retain Attorney to provide services as required, on an hourly basis.
- b. Attorney desires to enter into an Agreement to provide legal representation services to City.

NOW THEREFORE, in consideration and exchange for the mutual covenants and agreements stated herein, the parties agree as follows.

3. DUTIES OF ATTORNEY; INDEPENDENT CONTRACTOR.

- a. **Representation.** Attorney shall provide legal representation and advice to City, as assigned by the City on labor-related issues. Representation may include representation of the City in litigation, assisting other counsel in litigation, and providing legal research and advice.
- b. **Licensing.** Attorney represents that Attorney is duly licensed as an active member of the Nevada Bar and is authorized to practice law in the State of Nevada. Any revocation, suspension or disciplinary action taken against Attorney by the Nevada Bar or the Nevada Supreme Court may be grounds for termination for cause.
- c. **Independent Contractor.** Attorney is not an employee of the City. Attorney is not an agent of the City and has no authority to bind the City in any matter or make representations on behalf of the City except as specifically authorized by the City Manager or client department of the City. Attorney shall supply, at Attorney’s own expense (subject to reimbursement of some expenses), all equipment, staff, and resources needed to perform the job and shall have absolute control over all employees and subcontractors of Attorney. Neither Attorney nor any employee or

FILED OF SPARKS
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subcontractor of Attorney shall be considered as an employee of City. Neither Attorney nor any employee or subcontractor of Attorney has any rights in the Public Employees Retirement System or any rights under any benefit program provided by the City. Attorney is solely responsible for the payment and benefits of employees, subcontractors and substitute attorneys.

- d. **Insurance.** Attorney shall provide insurance at Attorney's own expense as follows:
 - (1) Automobile insurance of not less than minimum required by Nevada law. City need not be an additional insured.
- e. **Workman's Compensation.** Attorney is responsible for providing workman's compensation or industrial insurance as required by Chapter 616B of the Nevada Revised Statutes, and shall provide proof of adequate coverage to the City Manager and City Clerk.

4. FEES.

- a. **Hourly Rate.** City agrees to pay Attorney at an hourly rate of \$125.00 per hour. There is no charge for travel time between Carson City and Sparks.
- b. **Payment and Tax Accounting.** City shall pay Attorney for his hourly services within thirty (30) days upon billing.
- c. **Claims Against City.** Attorney agrees to comply in all aspects with NRS 268.020 in submitting all claims against the City.

5. TERM OF AGREEMENT; TERMINATION; OBLIGATIONS UPON EXPIRATION OR TERMINATION.

- a. **Term.** This Agreement commences on the Effective Date and expires on the Initial Expiration Date, unless sooner terminated as provided herein.
- b. **Renewals.** This Agreement expires on the Initial Expiration Date. If renewed after the Initial Expiration Date, it becomes a year to year agreement, with each "Agreement Year" beginning on January 1, and ending on December 31. At the end of each Agreement Year thereafter, this Agreement is deemed automatically renewed unless either party gives thirty (30) calendar days written notice of nonrenewal. Either party may elect not to renew this Agreement for any reason or for no reason at all, and it is agreed that if a party elects not to renew this Agreement, the party is not obligated to continue this employment relationship or create an expectation that either party will continue to renew this Agreement.
- c. **Termination.** Notwithstanding the term stated herein, either party may terminate this Agreement for any reason, with or without cause, upon thirty (30) days notice.

- d. **Obligations Upon Expiration or Termination of Agreement.** Upon termination of this Agreement, City agrees to pay Attorney for services rendered and to reimburse Attorney for expenses incurred up to the date of termination. Attorney agrees to turn over to City all files, papers, documents pertaining to work in progress at the time of termination, and all property belonging to City and in possession of Attorney. With respect to closed files, Attorney agrees to (at Attorney's option) either turn over all closed files to the City, or to make files available on City's request for a period of ten (10) years following closing of the file. Except for breaches which may have occurred before termination, the parties shall not otherwise be obligated or liable to one another.

6. INDEMNIFICATION.

Attorney agrees, without expense to the City, to save the City harmless from and defend the City against all losses, all liabilities, expenses and other detriments of every nature and description to which the City may be subjected as a result of claim, demand, action or cause of action which may be made or had against the City as a result of any negligent act or omission on the part of Attorney.

7. GENERAL TERMS.

- a. **No Assignment.** Neither party shall delegate any duty or assign any right under this Agreement, such delegation or assignment is void. As to Attorney, this Agreement is a personal service agreement and is not binding on nor inures to the benefit of any heirs, successors or assigns of Attorney.
- b. **Modification.** Any modification of this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- c. **No Waiver.** The failure of either party to this Agreement to insist on the performance of any of the terms and conditions hereunder shall not constitute a waiver unless expressed in writing, and any written waiver shall not be construed as or create an implication or expectation that any future waivers will be given.
- d. **Attorney Fees.** In the event that any action is filed in relation to this Agreement, each party shall pay its own attorney's fees regardless of who prevails in any action.
- e. **Partial Invalidity.** If any provision in this Agreement is deemed invalid, unenforceable or in violation of public policy or the laws of Nevada, (1) if the offending provision can be modified to bring it within the limits of validity, enforceability or the laws of Nevada, it shall be deemed to be so modified, or (2) if it cannot be so modified, then it will be excised from this Agreement. All remaining provisions remain valid and enforceable except that if removal or modification of the offending provision frustrates the purpose of this Agreement, causes failure of a condition precedent to counterperformance, or materially affects consideration for this Agreement, the parties agree to renegotiate or terminate this Agreement.
- f. **Governing Law; Jurisdiction, Venue.** The Sparks City Charter, the ordinances and


resolutions of the City Council as well as the laws of Nevada shall govern this Agreement without regard to conflicts of laws principles. Any action or proceeding seeking to enforce any provision of or based on any right arising out of this Agreement may be brought against either party in the District Court for the State of Nevada, in which case the proper venue is the Second Judicial District in and for Washoe County, or, if federal jurisdiction is obtained, in the United States District Court for the District of Nevada, in which case the proper venue is the Northern Division.

- g. Notices. Notices under this Agreement shall be in writing and shall be deemed given at the earlier of (1) when actually received by the City for notices given to the City, (2) when actually received by the Attorney, or (3) three business days after mailed to either party by U.S. Mail, first class, postage prepaid, mailed to the addresses specified in Section 1 above, or at the address subsequently provided in writing to the mailing as a new notice address.
- h. Entire Agreement. This Agreement constitutes the entire agreement of the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

DATED this 13th day of January, 2003, to be effective on the Effective Date specified above.

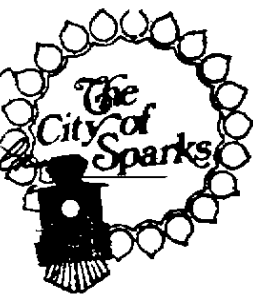
City

City of Sparks, Nevada

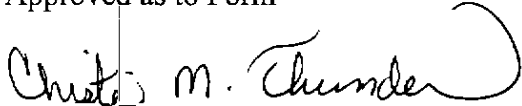
By: 
Tony Armstrong, Mayor

Attest:

By: 
City Clerk



Approved as to Form


Christine M. Thunder
City Attorney

Attorney


Charles P. Cockerill

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**City of Sparks
City Council Agenda Item**

Meeting Date: January 13, 2003

Subject: Professional Services Agreement between Charles P. Cockerill, Attorney at Law, and the City of Sparks for labor-related legal representation services.

Petitioner: Stephen W. Driscoll, Assistant City Manager

Recommendation: That the City Council approve the Professional Services Agreement with Charles P. Cockerill for labor-related issues.

Financial Impact: \$25,000 (estimated) based on utilization of services and is currently budgeted in the General Government cost center. 2

Business Impact (per NRS Chapter 237):

- A Business Impact Statement is attached.
- A Business Impact Statement is not required because
- this is not a rule;
 - this is a rule but does not impose a direct and significant economic burden on a business, or directly restrict the formation, operation or expansion of a business;
 - this is a rule but we do not have the authority under federal or state law or under a contract into which we have entered to consider less stringent measures;
 - this is a rule but emergency action is necessary to protect the public health and safety (requires unanimous vote of Council and cannot be in effect more than six months).

Background/Analysis/Alternatives

BACKGROUND/ANALYSIS:

From time to time, the City requires legal representation and advice from outside counsel on labor-related issues. Based on past representation over the years, the City desires to retain the legal services of Charles P. Cockerill to provide representation and advice on labor-related issues as assigned by the City. Representation may include representation of the City in litigation, assisting other counsel in litigation and providing legal research and advice. Mr. Cockerill will be compensated on an hourly basis at \$125/hour (excluding travel time).

ALTERNATIVES:

The City Council could choose to approve the Professional Services Agreement with Charles P. Cockerill.


The City Council could choose not to approve the Professional Services Agreement with Charles P. Cockerill.

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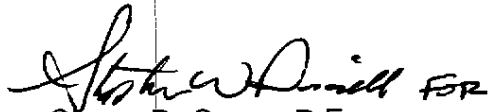
SUGGESTED MOTION:

"I move to approve the Professional Services Agreement between the City of Sparks and Charles P. Cockerill, Attorney at Law, for labor-related legal issues as required."

Respectfully Submitted,


Stephen W. Driscoll, CGFM
Assistant City Manager

Approved,

 FOR
Shaun D. Carey, P.E.
City Manager

Prepared by:


Cindi Bayer
Administrative Assistant

PROCESSED BY: [illegible]
DATE: [illegible]



Office of the
CITY CLERK

January 28, 2003

Charles P. Cockerill, Esq.
Attorney At Law
415 W. Second Street
Carson City, NV 89703

Reference: Professional Services Agreement
(Our File No. A-2926)

Dear Mr. Cockerill:

On January 13, 2003, the Sparks City Council approved the Professional Services Agreement between you and the City of Sparks. I am enclosing a copy of the fully executed Agreement for your files. If you have any questions, please feel free to contact Steve Driscoll, Assistant City Manager, at 353-1633.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborine J. Dolan".

Deborine J. Dolan, CMC
City Clerk and
Clerk of the City Council

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Enclosure

Copy:

Steve Driscoll, Assistant City Manager
File - A-2926
A.I.5.6