

PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS IN AND FOR THE COUNTY OF LINCOLN,  
STATE OF NEVADA

June 29, 2009

#1-CALL TO ORDER/ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

The Board met in special session with Chairman Paul Mathews calling the meeting to order at 9:04. Clerk Lisa Lloyd called the roll with Commissioners Tommy Rowe, Ronda Hornbeck, Paul Mathews, Ed Higbee and Bill Lloyd being present. There is a quorum present and the agenda was posted on 6-18-09 to comply with the open meeting law. Tommy led the Pledge of Allegiance. County Manager John Lovelady is present as is District Attorney Greg Barlow.

#2-INFORMATION TECHNOLOGY (IT) CONTRACT

Tracy Lee is present for this item. Tracy advised that he hasn't heard back from the DA's office concerning his contract. Deputy DA Daniel Hooge reviewed the changes to the contract that they had, including provisions for duties. Daniel is concerned as this is a pay-for-performance contract and questioned why the county should have duties. Daniel discussed the warranty of the contract. Tracy asked how he would be able to warranty unforeseen circumstances. Tracy asked the county if they have a similar agreement with the telephone company and Rebel Communications. No; the county doesn't have a contract with the telephone company. All warranties are automatically implied, Daniel said; this is the reason Tracy includes the "as is" statement. As is means that the county gets what they get; if it doesn't work, Tracy isn't held responsible. The portion of the system that Tracy doesn't supply can't be guaranteed by Tracy. There are physical hardware items that can fail at any time that will stop the system from functioning properly. Tracy is concerned about the indemnification; he isn't going to put his neck out on the line for a 911 call for the county. Statute caps the county's liability at \$50,000 but Tracy doesn't have that. The warranty would go towards Tracy's services, Daniel said. Ronda asked if the warranty could imply that Tracy will exercise reasonable efforts to make it right. Greg suggested that language could be drafted to remove responsibility for other party hardware/items. Tracy advised that oftentimes he uses software that's been created by other persons. Tracy has to accept the software under certain conditions. Usually the warranty is that the software is provided as is. Tracy questioned why he would say he'll be responsible for the piece of software. Tracy advised that his "as is" clause covers the fact that he is willing to do everything he can to repair if things go awry. The expectation of the county is that Tracy will make the system work. Tracy said that the county has to expect that the services have been provided and he will recommend whatever changes are necessary to make things happen. If Tracy says that he will provide a 911 database and the system gets turned off, then he would be in breach of contract. If something happens, Tracy will be given a reasonable opportunity to make repairs and get it working again; this is what he considers to be a warranty. Tracy said that the understanding exists that it is his job to cover things if they go down. Daniel advised that a contract is supposed to memorialize the verbal agreement. Warranty doesn't have to do with third party agreement or negligence; it only says that Tracy will come back and make it work. Tommy suggested that the Board approve the contract subject to the warranty language being worked out between DA and Tracy. Tracy responded that the 911 contract expires tomorrow and if he can't provide a signed contract to his insurance then the system will not be up. What will Tracy show his underwriter if the contract isn't signed today? If signed as is, the Board is agreeing that anything Tracy provides will be without warranty. Bill asked what Tracy's other contract said in regards to the warranty. It said the exact same thing, "as is". Tracy immediately takes action any time there is a malfunction; that's what he believes he was hired for. Tracy's due diligence is implied in the contract. Greg cited the county's positive history with Tracy. Tracy responds timely and takes care of issues. Greg stated that he doesn't like the "as is" paragraph but his opinion, base upon Tracy's performance, the Board can move forward with this. Greg will endeavor to develop better language for future purposes. Tracy advised that this contract can be terminated every year. **Tommy made a motion to approve the contract with Tracy Lee, including the "as is" language for the warranty; seconded by Bill.** The Board takes a break so that Tracy can work with the DA and provide a hard copy to the Board members. Tracy reviewed the changes to the contract. Tracy will discuss the separation of liability and warranty work. Tracy questioned how he will warranty the install. The county has already paid for Tracy's work, if he has to continue working on a hypothetical install until it works that's what he'll do. Tracy will work with his attorney to come up with acceptable language. Once this language is concocted, Tracy said that he would be willing to terminate the contract and propose a new one that contains the new language in the next year. **All voted in favor.**

**#3-PUBLIC COMMENT**

Bureau of Land Management (BLM) just announced that Secretary of the Interior Ken Salazar and Senator Harry Reid will declare a series of initiatives to expedite the development of solar energy on public lands in the West. The initiatives involve 24 study areas, which are being added to the Solar Programmatic Environmental Impact Statement (Solar PEIS). Seven of the new study areas are located in Southern NV. BLM, through the Solar PEIS, will do much of the necessary environmental clearances in the solar energy study areas in advance of processing new solar energy applications. This means that future projects should be permitted more quickly and at a lower cost. The BLM believes that this will be a benefit to industry and that many companies will be interested in placing projects in solar energy study areas. Delamar Valley is 17,932 acres, Dry Lake is 16,516 acres, Dry lake Valley North is 49,775 acres and East Mormon Mountains is 7,418 acres. Paul has received a new draft agreement from Norcal that will be addressed on July 6<sup>th</sup> at the regular Commission meeting. Paul reminded the Board of the concerns pertaining to section 4.9, which Paul Yamamoto has agreed to rewrite to allow the Commission to set the rate. Greg will work on resolving some issues with a draft of his own prior to the 7-6 meeting. Norcal has an approved landfill site by Winnemucca and they're hauling into Lockwood Springs. Greg advised that there is jury trial on July 7, 8, and 9. Tommy stated that assignments need to be discussed and made at the next Commission meeting to cover some of the duties that John's been covering. Paul will work with John concerning this issue. Paul told John that he really appreciates all of the work that John's done. Ed agreed. Ronda thanked John for the time he's put in and for the help he's given to the county.

**#4-ADJOURN**

There being no further business for the Board to attend to, **Ronda made a motion to adjourn the meeting at 10:30; seconded by Bill. All voted in favor.**

Attest: \_\_\_\_\_

Approve: \_\_\_\_\_

DRAFT