

MINUTES OF THE BOARD OF CHURCHILL COUNTY COMMISSIONERS

155 N. Taylor St., Fallon, NV 89406

December 1, 2022

Call to Order:

The regular meeting of the Board of County Commissioners was called to order at 8:15 AM on December 1, 2022.

PRESENT:

Commissioner H. Peter Olsen, Jr.
Commissioner Justin Heath
Commissioner Harry Scharmann
County Manager Jim R. Barbee
Comptroller Sherry Wideman
Deputy District Attorney Joseph Sanford
Sheriff Richard Hickox
Deputy Clerk to the Board Pamela D. Moore
Clerk/Treasurer Linda Rothery

ABSENT:

Pledge of Allegiance:

The Pledge of Allegiance was recited by the board and public.

Public Comment:

Chairman Olsen asked if there was any public comment but there was none.

Verification of the Posting of the Agenda:

It was verified by Pamela D. Moore, Deputy Clerk to the Board, that the Agenda for this meeting was posted on the 23rd day of November, 2022, between the hours of 1:00 and 5:00 PM at all of the locations listed on the Agenda, in accordance with NRS 241.

Consideration and possible action re: Approval of Agenda as submitted or revised:

**Commissioner Justin Heath made a motion to approve the Agenda as submitted.
Commissioner Harry Scharmann seconded the motion, which carried by unanimous vote.**

Consideration and possible action re: Approval of Minutes of the meeting held on:

A- November 3, 2022.

The Minutes of the meeting held on November 3, 2022 are presented for the board's consideration and approval.

FISCAL IMPACT: N/A

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: Accept

Commissioner Justin Heath made a motion to approve the Minutes of the meeting held on November 3, 2022 as presented. Commissioner H. Peter Olsen, Jr. seconded the motion, which carried by majority vote, with Commissioner Harry Scharmann abstaining as he was not in attendance at this meeting.

Appointments:

A- Consideration and possible action re: Approval of the Agreement with Lombard Conrad Architects for services on the new Monoclonal Antibody Infusion Health Building on Miners Road for a cost of \$194,235.00.

Lombard Conrad Architects has been identified as the architect for design services for the new 3,800 sf Monoclonal Antibody Infusion Building located on Miners Road, in the vicinity of the existing vaccination and testing pod. The scope of services includes design, construction documents, bidding, construction administration, and closeout of the project. The delivery method will be design, bid, build, and a general contractor will be selected during the bidding phase.

FISCAL IMPACT: \$194,235.00.

EXPLANATION OF IMPACT: Cost of basic architect services. Additional fees may apply for supplemental services or should the cost of the project exceed the budget.

FUNDING SOURCE: Nevada State Interim Finance Committee Grant – Notice of Allocation.

ACTION REQUESTED: Accept

Chris Spross, Public Works Director, made this presentation as outlined above.

Chairman Olsen asked if there was any public comment but there was none.

Commissioner Harry Scharmann made a motion to approve and direct the Chair to sign the Agreement with Lombard Conrad Architects in the amount of \$194,235.00.

Commissioner Justin Heath seconded the motion, which carried by unanimous vote.

B- Consideration and possible action re: Appointment of Jim Barbee, County Manager, and Shannon Ernst, Social Services Director, to the Central Nevada Health District Board for a one-year term upon approval of the District by the State Board of Health.

Per NRS 439.390, it is required that two District Board members from each community be appointed to the Central Nevada Health District. Additionally, one doctor-at-large must be appointed within 30 days of establishment or the State Board of Health should appoint one. Per the draft Bylaws from the Central Nevada Health District, each member shall serve for one year, with the ability for reappointment for up to 12 years.

Recommendations for an appointment: Jim Barbee, County Manager, and Shannon Ernst, Social Services Director. Further, it will be recommended at the proposed first Central Nevada Health District meeting on December 8, 2022, that Dr. Justin Health be appointed as the doctor-at-large as the last member.

The appointment/expiration of the appointments will be based on the date the State of Nevada

Board of Health approves the creation of the Central Nevada Health District. This could be as early as December 2, 2022.

FISCAL IMPACT: None.

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: Accept

Shannon Ernst, Social Services Director, made this presentation as outlined above.

Chairman Olsen asked if there was any public comment but there was none.

Commissioner Justin Heath made a motion to appoint as presented. Commissioner Harry Scharmann seconded the motion, which carried by unanimous vote.

C- Consideration and possible action re: Approval of a Contract between Churchill County Social Services and Arc Dome Strategies to provide Transition Management of the Central Nevada Health District from December 1, 2022, until July 30, 2023, at a cost not to exceed \$32,000 or \$4,000 per month for up to 8 months.

It is proposed that the Central Nevada Health District should be formed no later than December 8, 2022, with approval by the State Board of Health on December 2, 2022. Based on the numerous activities that are necessary to meet compliance, develop fees, hire and structure before implementation on June 30, 2023, it has been recommended by leadership and the DPBH to hire a Transition Manager to oversee the functions.

Caleb Cage, Principal Arc Dome Strategies, was identified as a contractor to fulfill the obligation. Mr. Cage has a desirable working relationship with the State of Nevada and counties to increase leadership development and engagement to meet the contract and project goals.

FISCAL IMPACT: \$4,000 / month up to 8 months (December 2022-July 2023)

Max contract \$32,000

EXPLANATION OF IMPACT: Up to \$32,000 - Funding from DPBH ARPA Crisis Workforce Grant

FUNDING SOURCE: DPBH ARPA Crisis Workforce Grant

ACTION REQUESTED: Accept

Shannon Ernst, Social Services Director, made this presentation as outlined above.

Chairman Olsen asked if there was any public comment but there was none. County Manager Barbee said Caleb Cage is the primary for this organization and, as you are aware, that name should be familiar. He has played significant roles in managing big projects both affecting Churchill County and statewide. Just a few would be the flood representing the Department of Emergency Management and his representation of dealing with COVID over the past 3 years. Just so you are aware of who that is, because it is significant.

Commissioner Scharmann said I know that this new Health District includes what, 3 counties, 4 counties? Director Ernst said in the interim, it is only going to be Pershing, Mineral, and Churchill County. Eureka is not able to come in under the District due to the statute, which there is legislation to go through. You have to be an adjacent county. We will provide services if the Central Nevada Health District and Eureka agree on December 8th during that first meeting through an Interlocal Agreement, which is the same structure that is for the Quad Counties and the City of Fallon. Commissioner Scharmann said I thought that our local Public Health Board was pretty effective in the last few years. Is there going to be anything local that is going to be working with you and Jim as far as giving ideas and direction and information so that you can carry that on to the full board? Director Ernst said, absolutely. With the Central Nevada Health District, each community has 2 representatives. It is the Board of County Commissioners who decide who those representatives are. If I look at Churchill County and how it will work with the Central Nevada Health District, we will keep our Behavioral Task Force, and we will provide our strategies and goals to our representative on the board to make sure that it is maintained. We have a lot of priorities throughout our community that we want to see. One of the reasons that we did want to move forward with the District and the way that it is set up is you are really looking at local priorities. Right now, the structure is the state who oversees our health. We have very little authority with the County Board of Health. Now, with the new District, the authority is not at the state, it is to this district board. We are able to align all of the programming and policies to really benefit each community. The state looks at it as a whole and this board will be looking at each community and not duplicating the resources that are there, but how to work with them to build the capacity of that community and provide additional resources.

County Manager Barbee said, if I could add, the example I would use is, during the pandemic, if you will remember, as soon as the emergencies were declared and they started doing testing, the representation that we had for health nurses were immediately called to Washoe County and we basically didn't see them again, so we had to deal for ourselves and we had a real positive experience in terms of the state giving us financial and hard resources to be able to manage our situation here but the issue was that we didn't have the authority to manage our situation here and the example would be Washoe County did. Their Health District basically made those requests to the state and they pulled the resources from the rurals and reallocated them to Washoe County. If this were to happen again although we don't want it to happen again in our lifetime or ever, basically, this group would be focused on that county consortium representing those groups within those boundaries managing for themselves. The other thing I would add, in terms of representation, the only reason that we proposed that Shannon and I be on it for this one-year period is, basically, we are setting up the infrastructure, the policies and procedures and tying those that have already been approved by the Commission, the HR stuff and all that, that would be managed by Churchill County for the board itself to basically get that up and started. Once there is actually a director hired and we get past the July 1 period, which it means that the legislation has been codified in Carson City, all those parts and pieces are taken care of. I doubt that it will be a year that I serve. I will be the first one that will resign and then we will be looking for representation to basically manage representing the community to that board. At that point, it would make sense and I would encourage that we have Commissioner representation on that. I think we do have to work through, which it is a public meeting, so I am

not sure it makes a difference. I think you would have to double notify, basically, if you had a health meeting, it would be basically like you were having a commission meeting if you had more than one County Commissioner on it but, we have done that in other situations before, so that kind of gives you a better idea of where we are headed and what the rational is.

Commissioner Scharmann said are we still receiving funding from the state? Director Ernst said, absolutely. We are still spending down close to \$4M that was received in response to the pandemic into the Central Nevada Health District. Additionally, we were notified yesterday that they will approve another \$220,000 per year to help with the new district. The last IFC we received was \$1.6M.

Commissioner Harry Scharmann made a motion to approve the agreement as presented Commissioner Justin Heath seconded the motion, which carried by unanimous vote.

D- Consideration and possible action re: Approval of the creation of a Bill Draft Request (BDR) to allow County Commissioners to select civil counsel.

Staff will ask the board for authorization for the creation of a Bill Draft Request (BDR) to allow County Commissioners to select civil counsel.

FISCAL IMPACT: N/A

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: Accept

County Manager Jim Barbee said this is based on a bill that was provided as backup. This bill would, basically, give the option to County Commissions across the state to choose to create their own offices of civil counsel, so it identified as a “may” not as a “shall”, so that would give those counties the opportunity to do that if they so choose or felt that they had a need to do so. I think part of that is driven, and why this request is here, is to enable the Commission to be engaged at a more significant level in the selection of civil counsel. I think there are multiple reasons why that has become an issue, part of which has been dealing with Indigent Defense over the past two or three years relative to advising how we set up the Public Defender’s Office and all those components because that was seen as a conflict from the state Board of Indigent Defense. Then, ultimately, for Commissioners to have access to the selection process, although I think we can say we have greatly appreciated the District Attorney’s history and the counsel that they have provided, but this would just, basically, give a little more authority and a little more ability for Commissioners to be at the table.

Chairman Olsen asked if there was any public comment. Arthur Mallory, Churchill County District Attorney, said I will advise the Commission that I am here against doctor’s orders. I had a titanium shunt put in my main aorta on Monday. I am supposed to be on bed rest until next Monday, but I enjoy you guys so much, I just decided I wanted to be able to be here to be able to contribute. I am afraid we are faced with a situation similar to the camel getting his nose under the edge of the tent. Let me elaborate a little bit. People, the voters of Churchill County, are very concerned about the size and over-reach exercised by government. The last thing we want in Churchill County is an increased size of government and lack of accountability of

government. Having a non-elected civil attorney appointed by, possibly, in the way I read the original plan, appointed by the County Manager, who is also non-elected but appointed by the Board of Commissioners, so you would have two levels of non-accountability there for the people. The people like accountability. You are accountable but, when you remove two steps, that kind of softens the blow for you and you might feel less responsible for the decisions that are made.

We presently have a system of checks and balances where separate elected officials, who are elected by the people, are accountable to the people. One of the advocates of this bill said although there can be an ethical conflict between the District Attorney's Office and the County Commission, that is an impossibility. Let me tell you why. The District Attorney's Office is responsible for giving you legal advice and telling you what the law is and isn't. The District Attorney's Office is not responsible and should not undertake to dictate policy or programs or anything that you might wish to adopt. That is not the District Attorney's decision; it is just how to do things legally. That is the only question we are supposed to answer. Not whether we agree or disagree with what you want to do. If an attorney is asked for an opinion and the person asking for the opinion, such as the County Commission, is also the one who controls whether that person had a job or not, you can see how that might influence the opinion of the attorney into giving an opinion that he thinks his bosses might like so that he can keep his plush job, unelected, by the way, unaccountable to the people.

The District Attorney is elected, although my deputies are hired by me, I am sorry but, I have to beg to differ with Mr. Barbee. Hiring attorneys is a very difficult and tedious process requiring much attention to detail and other factors. I happen to be on the Northern Nevada Disciplinary Panel for the State Bar and, unfortunately, I see things I wish I didn't see as far as attorney misconduct is concerned. We have to be extremely careful about that. For laymen to think that they would have the level of expertise that would satisfy the requirement of hiring a really good District Attorney for our county, is kind of scary.

For what it is worth, Utah passed a Civil Attorney Act where the civil attorney is actually elected to be the civil attorney, which would take care of many of our arguments, to tell you the truth, because they would be responsible to the people. I have said before, there is no ethical conflict for the District Attorney's Office, who is responsible to the people. I am going into my 7th term and we have dealt with some significant unfortunate events in county government and I think we have dealt with them well. It is always a learning process. You never get the perfect attorney in there to start with. They have to learn how to be good attorneys and fit into the job. That is my job and we are working on that. We are trying to bring our attorneys up to a level that you would appreciate. Commissioners, you do not have a right to your own private attorney provided by the taxpayers. You have a right to be responsible to the taxpayers for your conduct and you have another separately elected officials' office to tell you whether it is legal or not. Not whether they agree with you or not, as that is irrelevant, but whether it is legal or not. If you put yourself in a position to have a person who is under your thumb giving you legal advice, then you take a chance of jeopardizing the validity of that advice. That is very worrisome, in addition to the fact that I think the public would like more accountability rather than less. I think the public would like smaller government rather than bigger government.

We did not increase the size of our office for 11 years until the state required us to start having additional hearings and doing additional things with criminals, which forced us to ask for more manpower. Otherwise, we would not have been asking for more people to this day. We have not grown in 11 years on purpose. Our people have grown to do the job. Possibly, we may need to grow more to be able to give you adequate civil representation. We have located the Civil Division over here next to the County Manager and we are working on being more fluid in our conversations and our communication and, we want to be. However, it would be totally improper for the County Commission to be choosing someone to perform a function in what we would perceive as a branch of government. You are the legislative branch for the county. You pass the laws. You are not the Attorney General for the county. You are not the Justice Department for the county. You are not the Supreme Court for the county. Those are all separate functions on purpose, so that we have a balance of power and checks and balances, and you would be eliminating one of those checks and balances that are very basic to our Constitutional form of government. That would cause me grave concern.

Mr. Mallory said I have been in Churchill County for over 30 years working in the legal area and I am very proud to be here. We have some wonderful people, including all of you, and you are appreciated very much, by the way, for the work that you do. I really think this would be a big mistake. It would be the first step, although you say this is just giving us the ability to do it, it is not saying they have to do it or that we shall do it; it is just saying they can if they want to. Well, that is how all of these what we might call, I am sorry to use the word, where liberal programs start. They say we can enact this so we can do it if we want to and then 2-3 months down the line, they will say, without much fanfare, "Okay, now we are going to do it". Then, all of the sudden, you have another branch of government that is not accountable to the people but is directly responsible to the people who write their paycheck and might feel some compulsion, even if it is subconscious, to give them opinions they like, which unfortunately, as we know, could lead to some significant legal problems as we are seeing on a national level and we definitely don't want that. If we need to do something to continue to bring our civil division to be more helpful to you as Commissioners, we will do that. We can have an attorney sit with you at every single meeting you have about anything. If you want to have a meeting about how many pool parties to have at the fairgrounds, we will have a civil attorney sit with you on that. It is not that they are there to make a decision of what to do, but to help you to be sure everything you do is legal. That is it. For you to have your own attorney under your thumb and to think that you are expanding the County Commission's role into the legal area could lead to tremendous problems and, unfortunately, would be perceived by the public to be something that is totally unnecessary for our particular county. I will be glad to answer any questions and Mr. Barbee told me he might have some responses to some of this so, I will be glad to answer questions or respond to that if you would like. We definitely want you to feel comfortable with the civil counsel that you have and we will make every effort to be sure that that is accomplished as it has been for the last 23 years that I have been in this office. We will continue to do that. Increasing the size of government, gentlemen, is not the answer. Reducing accountability is not the answer. Working together as a team to accomplish what we need to do for the good of the county, is the answer and that is what I am asking you to do today.

County Manager Barbee said I just want to clarify to the District Attorney that I don't approve the Agenda. This is not my topic. Most of Mr. Mallory's presentation and his letter is presented directly to me as the County Manager and I believe we had meetings that included the Chair of the County Commission, prior to this. On a day-to-day stance, the Chair is who I report to and the Commission has their appointee. I submit that for clarity. District Attorney Mallory said I appreciate that and, unfortunately, that makes the point of the lack of clear accountability because you signed the Agenda item, as did we that it was in proper legal form, but that can give a false impression and I apologize if that was the interpretation. County Manager Barbee said, by statute, the Agenda is approved by the Chair of the County Commission, not by the County Manager or staff.

Commissioner Heath said what would be the advantage of doing this? I really do not see that there is one. Chairman Olsen said the advantage is that we would be able to have counsel of our own choosing. Currently, we get counsel thrust upon us and they might be great but they might not be so great. We do not have any visibility in the selection process. We don't have a seat in the selection process, so that is a lot of what is driving this is that our inability to even have a voice at all about whom we are given. I can even remember, at one point, you know, we had counsel removed from the building, for a time. It was a pretty special situation. In the case of this Indigent Defense thing, we were forced to operate without counsel because the District Attorney's Office couldn't advise us in regards to that because of the conflict of interest. That was pointed out to us by the Indigent Defense Counsel. There are several things along the way there that give rise to things that would be to our advantage versus leaving it as it is.

District Attorney Mallory said when was civil counsel removed from the building? I didn't know that happened. Chairman Olsen said I am going to guess on a date, which was around 2012 or 2013. District Attorney Mallory said what occurred? Chairman Olsen said we had an issue in the County Manager's Office. District Attorney Mallory said I am the District Attorney and I was not aware of that. I think I would be. This is the first time I have heard anything about it. Chairman Olsen said I would be happy to talk about it off the record. District Attorney Mallory said it is a personnel matter so we can talk about it separately. The other thing is, as far as the Indigent Defense is concerned, legally, in our opinion they were incorrect. We can advise you on the status of a contract. We simply would not advise you on what you would require or who you would choose or what you would pay them. We would simply say is this a solid contract or not. I think the Indigent Defense people were assuming negative thoughts about DAs as opposed to thinking we would do our job ethically and honestly. That is why they might have given you that opinion. We think they were incorrect. At the same time, we don't have any disagreement with what you did. Chairman Olsen said an attorney will tell you on the one hand and then on the other hand but two attorneys are unlikely to agree and we are left in between. District Attorney Mallory said I can understand that. Chairman Olsen said we definitely didn't have counsel in that situation. District Attorney Mallory said I am a little blindsided with the fact that civil counsel was removed because I have never heard of that before, so I will let you fill me in on that.

Chairman Olsen said those are the reasons that we bring this up now and I am curious about what would you support in regards to giving us (A) either a seat at the table for the decision

about whom we are going to be given; or (B) a vote on it. I mean, where is the line for you? Right now, we have nothing. District Attorney Mallory said I think you could be included on the selection committee. A member of the Commission or the County Manager could be included on the selection committee if you chose to do that. We did interview a candidate that was recommended by the Commission. Secondly, an even better alternative might be the Salt Lake alternative where you can have your civil counsel, just have them elected by the people. That way, they won't be directly accountable to you and feel like they have to give you opinions that make you happy but, rather, can give ethical and honest opinions about what would be in the best interests legally in compliance with the law to be sure that Churchill County does not get into legal trouble. The smaller the group that has control over the employment of the attorney, the more likely there is for subconscious undue influence. I don't feel any pressure from you guys because I am elected by the people of Churchill County and you all understand that. You don't need to feel any pressure from me because you are elected also. That is the way it is supposed to be. It is not supposed to be that we can put pressure on each other or influence, even subconsciously. That is what my great fear is, in addition to over-reach and lack of accountability to the people. I think that is really a path we don't want to go down. That is what the federal government has done and we have seen what has happened on a national level with people who are not accountable who are appointed at the whim of several layers of bureaucrats until you get up to an elected official. I don't think the people in the county want that.

Chairman Olsen said every lawyer I have had, until now, Art, I have chosen. The city chooses their counsel. Am I wrong that Washoe and Clark choose theirs? District Attorney Mallory said no, they are elected. Chairman Olsen said I am not sure what choosing our own counsel does to us in regards to providing this conflict and then in regards to accountability. We are all accountable to the people directly. We get elected. If we make bad choices and get ourselves into hot water, every four years the community has the opportunity to throw us out on our ear. District Attorney Mallory said me too. Chairman Olsen said your accountability argument doesn't hold water to me, so I am not sure.

District Attorney Mallory said let me give you the history on this original bill that failed last time. One of the entities in Clark County was getting advice from the District Attorney's Office but didn't like the advice they were given and, therefore, they asked to propose this bill so they could have an attorney that was their own pet attorney who they would be more comfortable with in giving them advice about what they could do and not do. One thing you have to realize is that, when you get advice from an attorney, that, effectively, is a shield to you from a certain amount of personal liability and responsibility. You can say this is the legal advice I got, so that is quite the shield that you are building up and you don't want a shield that might be defective. The people in Washoe County finally got things straightened out. They made some arguments that were totally ridiculous because they didn't even know the meaning of words, such as ethics and conflict of interest, which there was none and, yet that is why they proposed this. Why do we want to add to the size of the government when we can properly deal with our situations if we work together, as we have in the past? We can certainly do our best to include you and I will put it in writing, to include you in the selection process totally from the beginning and take any input any of you want to give and have one of you be on the committee with a vote. That would

be fine. We can certainly do that if that would raise your comfort level. We don't have any problem with that because you are elected too. That is perfectly appropriate and that is what I would recommend. I would also recommend that, if you want to have a civil attorney, have them elected by the people, not by three Commissioners. That way you will have someone that can truly give you honest opinions.

County Manager Barbee said just one quick note for clarity. What you are looking at is not supporting a bill or AB 147 or whatever this was at the last Legislative Session. You are looking at supporting the request for a bill draft that would, basically, address this issue. At the end of the day, when a BDR is entered, it is going to be amended or modified and goes through the legal forming process at the Legislature. I just want to be clear that what was provided as backup is, basically, a starting point. Whatever happens in Carson will happen through that law-making process that happens there, but you, obviously, wouldn't have the authority to create this within statute. I totally agree with what County Manager Barbee said and, at the same time, I will point out that the way you stop a problem is, you stop it early. You don't stop it after it has bloomed out into a significant problem where there is a great controversy. You stop it at the very beginning when you know it is a bad idea and that is why I am here today because I want to stop it at the beginning and work out a compromise that will satisfy everyone. County Manager Barbee said which is great. We are just looking for your clarity to give us guidance on this. District Attorney Mallory said that certainly is your decision.

Commissioner Scharmann said I have a couple of questions. First of all, this is going to other counties. Jim, is that right? County Manager Barbee said, if a bill draft is requested, which, I mean, this bill draft could happen outside of your decision. It was originally brought forward by another entity two sessions ago or a session ago or whatever that was. There are other counties currently that have voiced support for this action. It may be or probably will be a BDR regardless of what we do today. District Attorney Mallory said the District Attorney's Association has already decided it will take a stand against this for many of the reasons I have stated, plus the reasons I stated in my letter. We took a stand against it last time and we are going to take a strong stand against it this time too. We are not the Commission like other communities where the Commissioners got in a fistfight in a meeting. That is not the kind of Commission we have. We have a Commission, we think, that works together and will work with us. That is why we are not worried about it. Maybe some other counties have different situations. I am not going to speak to them because I am not elected by their people. I think, as far as Churchill County is concerned, I don't want to put us in a position of being the one that put the camel's nose under the edge of the tent.

Commissioner Scharmann said, okay, let me continue with my questions. You stated early on that this person was accountable to the County Manager. The civil attorney is accountable to the County Commissioners, isn't it? District Attorney Mallory said eventually, yes, but the County Manager would be managing this person according to what I read. I might be mistaken. Commissioner Scharmann said is that true, Jim? County Manager Barbee said, again, this is based on the previous bill that would be open to and I think that refers back to the question the Chair asked about what would you support? This currently resembles the same way we would select the Public Defenders. I don't know if that is why they based it on that but that is how that

reads - basically, there was an interview process. The County Manager does not appoint. The Commission appoints the actual counsel, in this brief language that was provided.

Commissioner Scharmann said one other question. You mentioned early on that you are an elected official and we are elected officials. If a civil attorney is answerable to the County Commission rather than the District Attorney, he is still answerable to an elected official. If he is not, he is answering to you, which is another elected official, so I am not quite getting the expansion of government that you are talking about. It is just, basically, that he is accountable to one or the other. District Attorney Mallory said that is correct. We have a basic tenant in our country, the separation of powers. In judicial functions, legal advice, those kinds of things, come from the United States Attorney General, for instance, to the President. They have eroded that, improperly I think, but the Attorney General is different because he is in the Executive Branch. In our situation, we are slightly different than that but, at the same time, you need to remember that just because they are accountable to the Commission does not mean that they will have the same foresight that they would by another person who is an attorney who understands how attorneys are supposed to function and what the attorney guidelines are and what the ethical considerations are and what they are allowed to do and not do. Unfortunately, I would love for all you guys to be attorneys, although a doctor and attorney at the same time would be kind of tough, but it is a totally different perspective. That is what would worry me - you don't have the same depth of oversight.

Commissioner Scharmann said thank you. I appreciate that clarification. I also wanted to clarify that this is not a mandate against Joe because Joe is sitting here and I am sure it is uncomfortable for him right now since we are talking about his position, but we are talking about future issues that might come up. I like the idea of us at the table. I like the idea of us being on a selection committee or something like that. District Attorney Mallory said I think, in retrospect, that might have been a good idea before, we just didn't follow up.

County Manager Barbee said just one question I have is for clarity on the separation of powers part. As a former cabinet member, the Governor has their own counsel that represents them, yet you have an Attorney General. The Attorney General is, obviously, representing legal actions upon the state, which, basically, wouldn't this be a similar model to what exists on the state side of things? District Attorney Mallory said, in my opinion, the Attorney General should take legal action as requested by the Executive Branch. Maybe they have gotten away from that because the Attorney General has become too political and, therefore, different Governors felt like they wanted their own counsel to tell them what to do and not have to consult with the Attorney General. The safest course for democracy and for the people is to have two elected officials involved and not have an elected official as their appointee. I totally oppose the Governor having his own counsel. Chairman Olsen said I am going to interrupt you. That is really the problem. There aren't two elected officials involved. We are told who we are going to get. That is really the crux of this. We have no say and we don't like it. Everything is about choices in this and we are given none. District Attorney Mallory said and we are opening that up for you.

Commissioner Heath said if we hire our own civil attorney and he decides to leave, who will cover that spot then afterwards? Would that be the District Attorney's Office until we hired

another one? We could end up with no attorney at all. So, who would step in for us? District Attorney Mallory said a better example would be say you hired one and then they resigned and you didn't have one, who would step in in the interim? Right now, the way the NRS is written, the District Attorney is your legal counsel. Legally, we should have been legal counsel for the School Board when they lost their counsel but the state bar told us we could not because the county gives money to that board. That would be a conflict of interest. Thank goodness, we had to instruct them to get their own counsel. That is a different situation here because we are all one governmental entity. You would be without counsel unless the District Attorney's Office stepped in, which right now, we are required to do. County Manager Barbee said, for clarity, I believe this states that it "may" so, in other words, the Commission could choose, at that point, it would be the choice of the Commission who would represent them. If it went through under this situation, which I am not proposing that it would be what this looks like at the end of the legislative process, but if it went in under this situation, it is "may". You are not required, as it is not "shall" so, basically, the Commission would choose whether they would utilize the District Attorney's Office for civil counsel or make their own decision. Commissioner Heath said but they could end up changing that to "shall" at the Legislature. County Manager Barbee said anything could happen. I am not sure that it would make any sense in the larger scale. District Attorney Mallory said you are making sausage at the Legislature.

Commissioner Scharmann said did the School Board lose Charlotte? District Attorney Mallory said no, this was previous to Charlotte. They lost their counsel and were going through some very interesting times. We came in and helped them briefly and then the state bar said that it was a conflict because the county gives money to them.

Chairman Olsen said I want to make sure that my fellow Commissioners have gotten all their questions asked for this. We have batted this around for a while here. Do you guys have your questions asked and answered for the moment? I want to propose that we table this to meeting on December 21st. Commissioner Heath and Commissioner Scharmann said they would agree to that.

Commissioner Harry Scharmann made a motion to table this matter to December 21st. Commissioner Justin Heath seconded the motion, which carried by unanimous vote.

Commissioner Scharmann said, Art, can we discuss this with your office between now and the 21st? District Attorney Mallory said we can but I can only discuss it with one Commissioner at a time. We could even include Jim if we had to. Commissioner Scharmann said, I understand.

Letters Received:

A- Nevada Division of Environmental Protection's Request for Release/Spill information from Welsco Drilling for a release/spill of contaminants at the intersection of US 50 and Downs Lane, Fallon, Nevada.

The Nevada Division of Environmental Protection (NDEP) received notification on October 26, 2022 of a Release/Spill (Release) of contaminants at the above-described property. As a result of a vehicular accident, approximately 200 gallons of diesel fuel and 200 gallons of hydraulic oil were released onto the pavement and shoulder of the surrounding roadway. Because this

Release appears to have resulted in contamination and exceeds limits or quantities established by Nevada Administrative Code (NAC) 445A.347 or 445A.3473, you are required to provide an evaluation of the release.

Accordingly, Welsco Drilling is required to provide one of the reports outlined in the letter within 45 days from the date of the letter and no later than December 23, 2022. This information will be used to ensure that sound decisions are collectively made regarding the release. The release of contaminants can be harmful to human health and the environment and he may be required per NAC to perform cleanup activities related to the release. Every effort should be made to contain and remove the source of the release and repair or replace equipment. Community health and safety concerns require that Welsco Drilling conduct rapid recovery and remediation efforts as outlined in the letter.

FISCAL IMPACT: N/A

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: None; Informational Only

B- Nevada Division of Environmental Protection's notification of Administrative Fine for Alleged Air Quality violation and Order No. 3010-Amended issued to Dixie Meadows Geothermal Power Plant.

The Nevada Division of Environmental Protection (NDEP) alleges that Dixie Meadows Geothermal Power Plant (Dixie Meadows) had violated one or more conditions of Air Quality Operating Permit (AQOP) AP4911-4346. As stated in the AQOP, under the authority of Nevada Administrative Code (NAC) 445B.315(3)(h) and NAC 445B.346(2), emissions data must be submitted by March 1 on an annual basis. the submission deadline was extended this year, until April 1, 2022, due to the rollout of the State and Local Emissions Inventory System (SLEIS). A reminder to submit the data was also sent out to the responsible official on record on February 1, 2022 and March 9, 2022 via email.

On August 22, 2022, NDEP sent a Courtesy Notice of Intent to Pursue Enforcement Action to Dixie Meadows to inform them of the potential for an issuance of a Notice of Alleged Violation (NOAV) if the Annual Emissions Report (AER) was not submitted by September 22, 2022. The letter stated that failure to submit the AER by the stated date will result in the issuance of a NOAV against Dixie Meadows and a penalty of up to \$10,000 per violation per day.

On November 9, 2022, NOAV 3010 was issued as an administrative fine. On November 10, 2022, Dixie Meadows turned in their AER and called to resolve the situation. Due to the fact that this was a new permit and the facility does not have a history of noncompliance, NDEP decided, as of November 14, 2022, to downgrade NOAV 3010 from an administrative fine to a warning. In summary, NDEP has determined that issuance of NOAV 3010 is warranted as a warning. The reporting violation is a minor violation pursuant to NAC 445B.281.

An appeal may be requested as outlined in the notice.

FISCAL IMPACT: N/A

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: None; Informational Only

New Business:

A- Consideration and possible action re: Approval of an Actuarial Study of OPEB Liabilities under Governmental Accounting Standards Board (GASB) 75 by MacLeod Watts for Fiscal Years Ending June 30, 2023 and June 30, 2024, totaling \$12,410.

Churchill County is required to follow the Governmental Accounting Standard Board's (GASB) pronouncements. GASB 75 addresses the financial statement disclosure of post-employment benefits liabilities. The disclosure must be calculated by an actuary. This Contract is for a two-year period. The first year requires a full valuation, at a cost of \$8,650 for Fiscal Year 22-23. The second year requires a roll forward, at a cost of \$3,760 in Fiscal Year 23-24.

FISCAL IMPACT: Fiscal Year 22-23 \$8,650 and \$3,760 for Fiscal Year 23-24.

EXPLANATION OF IMPACT: This is required by the Governmental Accounting Standard Board's (GASB) pronouncements GASB 75.

FUNDING SOURCE: General Fund.

ACTION REQUESTED: Accept

Comptroller Wideman made this presentation as outlined above.

Chairman Olsen asked if there was any public comment but there was none.

Commissioner Justin Heath made a motion to approve the engagement letter from MacLeod Watts to perform an actuarial study of Other Post-Employment Benefits (OPEB) liabilities for Fiscal Years 2023 and 2024. Commissioner Harry Scharmann seconded the motion, which carried by unanimous vote.

Consent Items:

A- Consideration and possible action re: Report of the condition of each fund in the treasury and the statements of receipts and expenditures pursuant to NRS 251.030 and NRS 354.290.

A Fund Balance Report is attached indicating the beginning balance, receipts, disbursements, and the ending balance of each fund for Churchill County as required by NRS 251.030 and NRS 354.290.

FISCAL IMPACT: N/A

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: Accept

B- Consideration and possible action re: Transfer of funds to the Churchill County Road Department, in the amount of \$300,000, for FY 2023 road and bridge projects for the 1st quarter.

The Churchill County Road Department is requesting a transfer of funds in the amount of \$300,000 for payment of FY 2023 road and bridge projects for the 1st quarter. The transfer is to be split 50/50 between Regional Transportation Fund 280 and Public Transit Fund 395. The reimbursement is for the Wildes Road double chip seal (23-10), in the amount of \$35,925.66, the Harmon Road South double chip seal (23-11), in the amount of \$89,542.22, and the blade maintenance of county roads, for the period of July 1st through October 31, 2022, in the amount of \$177,024.47.

Although the projects total \$302,492.35, the department is only requesting to transfer the encumbered amount of \$300,000, which was approved by the Regional Transportation Commission at the July 20, 2022 meeting.

FISCAL IMPACT: \$150,000 from Regional Transportation Fund 280-630-85300 and \$150,000 from Public Transit Fund 395-881-85300.

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: \$150,000 from Regional Transportation Fund 280-630-85300 and \$150,000 from Public Transit Fund 395-881-85300.

ACTION REQUESTED: Accept

C- Consideration and possible action re: Sheriff's Civil Report for October 2022 showing a total of \$8,539.00 in revenue for the month.

Sheriff Richard Hickox provides his Civil Report for the month of October 2022 showing a total of \$8,539.00 collected as revenue for the month. This report is provided for the board's consideration and acceptance.

FISCAL IMPACT: \$37,880.

EXPLANATION OF IMPACT: Fees collected help to off-set the costs for providing the services.

FUNDING SOURCE: General Fund.

ACTION REQUESTED: Accept

D- Consideration and possible action re: Treasurer's Report for October 2022 showing a balance of \$54,483,502.67 in the account.

Clerk/Treasurer Linda Rothery provides the Treasurer's Monthly Report for October 2022 showing a balance of \$54,483,502.67 in the account. This report is provided for the board's consideration and acceptance.

FISCAL IMPACT: N/A

EXPLANATION OF IMPACT: N/A

FUNDING SOURCE: N/A

ACTION REQUESTED: Accept

Chairman Olsen asked if there was any public comment but there was none.

Commissioner Justin Heath made a motion to approve the Consent Agenda as submitted. Commissioner Harry Scharmann seconded the motion, which carried by unanimous vote.

Consider Future Agenda Items:

There were no future Agenda items suggested.

Commissioner and Management Staff Reports:

Chairman Olsen reported on the following topics:

- I had a CWSD meeting.
- I had a weekly conference call with the Navy, which Jim will update you on. Things are starting to ramp up.
- We have a jail tour but I will skip it as I conducted a jail tour with the Sheriff on Monday. He complimented the Sheriff on the maintenance of the jail after 5 years. It still looks great.

Commissioner Scharmann reported on the following topics:

- I have been meeting with staff to go over things. I am getting indoctrinated, although that is not the right word.

Commissioner Heath reported on the following topics:

- I want to welcome Bus to the board.

County Manager Barbee reported on the following topics:

- I will let Chris know when demolition on that building takes place so he can swing the first mallet.
- All of our talks about the checkerboard resolution with roadways created in exchange for expansion of the different withdrawal areas continues to be a part of the final language for that. Our contractor in D.C. is keeping me advised on progress, as it is expected to be done the first part of December. We will be meeting with the community to let the public know about the final outcome. People may be surprised at the loss of public lands.

Comptroller Wideman reported on the following topics:

- I sent the sales tax out yesterday which shows we are 1% higher than last year in September and we are 3% lower than last Fiscal Year.

Sheriff Hickox reported on the following topics:

- I want to welcome Bus back to the board.
- POOL/PACT has established a corrections and detentions advisory group and we were asked to sit on that committee.

- We attended the Nevada Chiefs and Sheriffs Nevada Chapter for the FBI National Academy meeting. There was some good training. I will serve as Treasurer for that board in the upcoming year.
- The State of Nevada said there is still COVID money available for law enforcement. We had talked about an x-ray scanner and they may have funds for that if we get the grant application in, which we did last night. This will help us find hidden drugs or weapons.
- We met with Sprint, who is bringing in more cell towers. We are going to test some of their phones to see if they work or not. We need the best communication available and have been having issues with Verizon.
- We had a dispatcher quit, so we have an opening.
- We are working to get things out of the dry storage building.

Civil Deputy DA Sanford reported on the following topics/had nothing to report:

- I want to thank Bus for his comment earlier.
- We have been very busy working on the Health District and getting that set up correctly.
- I expect to see some ordinances coming up to help clean up our code and address some issues that have not been addressed for a while.

Clerk/Treasurer Rothery was not present.

Claims and Payroll Transmittals:

The Claims and Payroll Transmittals were submitted for the board's consideration and approval.

Public Comment:

Chairman Olsen asked if there was any public comment but there was none.

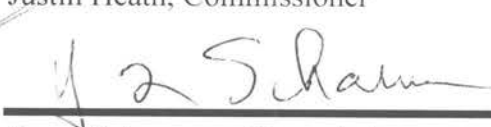
Adjournment:

The meeting was adjourned at 9:17 AM.

Quarterly Jail Inspection:

The quarterly jail inspection was conducted following the close of the meeting and a separate report of the inspection was made.

Approved: 
Justin Heath, Commissioner

Approved: 
Harry Scharmann, Commissioner

ATTEST:

Linda Rothery, Clerk/Treasurer

A handwritten signature in cursive script, reading "Renae Paholke", written in dark ink. The signature is positioned above a solid black horizontal line.

Renae Paholke, Deputy Clerk