



Storey County Board of County Commissioners

Agenda Action Report

Meeting date: June 18, 2019

Estimate of time required: 15 Minutes

Agenda: Consent [] Regular agenda [X] Public hearing required []

1. **Title: DISCUSSION/POSSIBLE ACTION:** Approve and authorize the Chairman of the Storey County Board of Commissioners to execute a contract between Storey County and PAW Professional Services, LLC, a Nevada limited liability company for professional consulting services. Scope of service would be to continue ongoing work on various projects in process including, but not limited to, relocation of the Justice Court facility, developing a franchise agreement with NV Energy as well as others. Services would be structured as an independent contractor with the managing member, Pat Whitten, responsible for all expenses, scheduling etc. Contractor shall provide services at the request of the County Manager and/or his designees, including the Board of County Commissioners. Storey County shall pay for services provided at an hourly rate of \$165.00.

2. **Recommended motion:** I [Commissioner] move to approve and authorize the Chairman of the Storey County Board of Commissioners to execute a contract between Storey County and PAW Professional Services, LLC, a Nevada limited liability company for professional consulting services.

3. **Prepared by:** Marshall McBride – Chairman, Storey County Board of Commissioners

Department: Commissioner's Office

Telephone: 847-0968

4. **Staff summary:** See Page 2

5. **Supporting materials:** Proposed Contract

6. **Fiscal impact:**

Funds Available: Yes Fund: General Admin Professional Services ___ Comptroller

7. **Legal review required:** Yes KL District Attorney

8. **Reviewed by:**

RW Department Head

Department Name:

RW County Manager

Other agency review: _____

9. **Board action:**

[] Approved
[] Denied

[] Approved with Modifications
[] Continued

4. **Staff summary:** With the transition of County Management arising from Pat Whitten's retirement effective July 1st, there are still a number of projects in process that have been ongoing for some time. I have asked Pat if he would consider working as an hourly consultant to finish these projects and provide assistance when requested. Pat has agreed and proceeded to establish his private business structure, known as PAW Professional Services, LLC, a Nevada limited liability company for professional consulting services. While the attached draft Contract for Services contains standard terms and conditions relative to most independent contractors, Pat has requested that the following statement of his understanding of the limitations of his contract work in general terms be included in the record:

Pat will work on various projects under the sole discretion of incoming County Manager Austin Osborne and/or the Board of County Commissioners. He does so with the stated understanding that he has zero authority to commit, approve or otherwise bind the County in any manner. His services are limited to consulting only and have been requested to primarily capitalize on his past knowledge and participation in various projects where a change in lead contact may be somewhat disruptive to progress for the County's best benefit. Projects will, undoubtedly drop off a project list as the subject projects are completed or abandoned based on circumstances beyond County control. Some projects may be added at the sole discretion of the County but subject to Pat's acceptance. He wishes to make it abundantly clear that there can and will be only one County Manager, that being Austin Osborne effective as of July 1st.

Pat also wishes to clarify on the record, that he does not yet have a Storey County Business License nor Liability Insurance. He intends to initiate both those steps immediately after potential approval and both will be in place prior to July 1, 2019. He will not commence work under the contract until all requirements are met.

In my opinion, Pat's service levels will be much the same as how our District Attorney utilizes Bob Morris as Outside Special Counsel as well as other professional consultants, different only in that he won't be providing legal services but rather technical and logistical services. Based on Pat's institutional and practical knowledge gained during his 14+ years on the job, I believe it to be in the best interests of the County to contract with PAW Professional Services, LLC and to utilize Pat's services as we determine we need them. Accordingly, as Chairman of the Board of County Commissioners, I recommend approval.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract between Storey County

and

PAW Professional Services, LLC,
a Nevada limited liability company

Storey County, a political subdivision of the State of Nevada (hereinafter "County"), from time to time requires the services of independent contractors; and

The services of PAW Professional Services, LLC, a Nevada limited liability company (hereafter "Contractor") specified in this agreement are both necessary and desirable and in the best interests of Storey County and Contractor; and

Contractor represents that it is duly qualified, equipped, staffed, ready, willing and able to perform and render the services described in this agreement.

In consideration of the mutual agreements made in this agreement, the parties agree as follows:

1. TERM OF CONTRACT. This contract will not become effective until and unless approved by the Storey County Board of County Commissioners, but, if approved, the effective date of this contract shall be effective as of July 1, 2019 and shall be effective until July 1, 2021 unless sooner terminated as provided by Paragraph 6 of this agreement.

2. INDEPENDENT CONTRACTOR STATUS. The parties agree that Contractor will have the status of an independent contractor. Contractor is not a County employee; and

There will be no:

- a. Withholding of income taxes by the County;
- b. Industrial insurance coverage provided by the County;
- c. Participation in group insurance plans which may be available to employees of the County;
- d. Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- e. Accumulation of vacation leave or sick leave;
- f. Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

3. RIGHTS. Contractor and County agree to the following rights consistent with an independent contractor relationship:

- a. Contractor has the right to perform services for others during the term of this Agreement;

- b. Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed;
- c. Contractor shall not be assigned a work location on County premises but may schedule the use of a meeting room for meetings with the consent of the County Manager's office;
- d. Contractor, at Contractor's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement;
- e. Contractor, at Contractor's sole expense, has the right to hire assistants as subcontractors, or to use Contractor's employees to provide the services required by this Agreement;
- f. Contractor or Contractor's employees or contract personnel shall perform the services required by this Agreement, and Contractor agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein;
- g. County shall not hire, supervise or pay any assistants to help Contractor;
- h. Neither Contractor nor contractor's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement; and
- i. County shall not require Contractor or Contractor's employees or contract personnel to devote full time to performing the services required by this Agreement.

Contractor further certifies the following:

- a. Contractor is licensed by the State of Nevada and Storey County to provide similar services to other clients/customers; and
- b. Contractor understands that it is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Contractor understands that an IRS Form 1099 will be filed by County for all payments County makes to Contractor.

County further certifies the following:

- a. The County will not interfere with Contractor's principal's ability to participate in any group insurance and/or other PERS retirement benefits as a former Storey County employee.

4. SERVICES TO BE PERFORMED. The parties agree that the intended scope of services to be performed is as set forth in the attached Schedule A, but may not be fully inclusive of all services provided by Contractor to County. The scope of the services to be provided will be as directed by the County Manager and/or the Board of County Commissioners of Storey County either of which may add to or subtract from the services set forth in Exhibit A.

5. PAYMENT FOR SERVICES. Storey County shall pay Contractor at an hourly rate of \$165.00 per hour for all services provided as authorized by this Agreement.

6. TERMINATION OF CONTRACT. This contract may be terminated without cause by either party. Termination is effective upon receipt of a written notice of termination. Notice of Termination delivered to Contractor may be served upon the registered agent of Contractor as identified on the Nevada Secretary of State's website for business entities by certified mail, return receipt requested delivered to the address of the registered agent or by personal service upon Pat Whitten, managing member of Contractor. Notice of Termination delivered to County may be provided by certified mail return receipt requested to Storey County, c/o Storey County Manager, P.O. Box 176 Virginia City, NV 89440. Upon receipt of a notice of termination, Contractor shall immediately cease all work on behalf of County.

7. CONSTRUCTION OF CONTRACT. This contract will be construed and interpreted according to the laws of the State of Nevada.

8. COMPLIANCE WITH APPLICABLE LAWS. Contractor must fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements and all immigration and naturalization laws.

9. ASSIGNMENT. Contractor may not assign, transfer or delegate any rights, obligations or duties under this contract without the prior written consent of the County, except as specifically provided in Paragraph 3 hereinabove.

10. COUNTY INSPECTION. The books, records, documents and accounting procedures and practices of Contractor related to this contract will be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States or the United States Department of Agriculture, Office of Rural Development, or any authorized representative of those entities.

11. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under this contract will be the exclusive property of the County and all materials must be remitted and delivered, at Contractor's expense, by Contractor to the County upon completion, termination or cancellation of this contract. Alternatively, if the County provides its written approval to Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under this contract must be retained by Contractor for a minimum of six years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the County, in writing, requests any or all of the materials, then Contractor must promptly remit and deliver the materials, at Contractor's expense, to the County. Contractor will not use, willingly allow or cause to have the materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the County.

12. PUBLIC RECORDS LAW. Contractor expressly agrees that all documents submitted, filed, or deposited with the County by Contractor, unless designated as confidential by a specific statute of the State of Nevada, or because of a balancing of interests, will be treated as public records pursuant to NRS Chapter 239 and must be available for inspection and copying by any Person, as defined in NRS 0.039, or any governmental entity. To the extent that Contractor utilizes a personal cell-phone to perform services pursuant to this agreement, Contractor agrees to maintain and provide records of those activities to County upon request.

13. INDEMNIFICATION. Contractor agrees to defend, indemnify and hold harmless the County, its employees, officers and agents from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorney fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or its employees or agents in the performance of this contract. County agrees to defend, indemnify and hold harmless the Contractor, its employees, officers and agents from any liabilities, damages, losses, claims, actions or proceedings, including without limitation, reasonable attorney fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the County or its employees or agents.

14. INSURANCE Contractor will carry and maintain in effect during the performance of services under this contract, general liability insurance, and such other insurance coverage normally carried by Contractor insuring against the injury, loss, or damage to persons and property caused by Contractor's activities. Contractor must maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers and forms of policy satisfactory to the County, acceptance of which will not be unreasonably withheld.

Contractor will provide the County with certificates of insurance for coverage listed below and endorsements affecting coverage required by the contract within 20 calendar days after the notice to proceed is issued by the County. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer and who is licensed by the State of Nevada.

(1) Each insurance company's rating as shown in the latest Best's Key rating guide must be fully disclosed and entered on the required certificate of insurance. The adequacy of the rating and financial health of each insurance company providing coverage, is subject to the approval of the County.

(2) Contractor's insurance will be primary as respects the County and its officers and employees.

(3) The parties agree that Contractor or its insurance carrier must provide the County with 30 days advance notice of cancellation of the policies.

(4) All deductibles and self-insured retentions must be fully disclosed in the certificates of insurance.

(5) If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, the Contractor must maintain umbrella liability insurance of at least \$1,000,000.

All aggregates must be fully disclosed on the required certificate of insurance.

(6) Contractor must obtain and maintain, for the duration of this contract, general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this contract by Contractor or its agents, representatives, or employees.

(7) General liability coverage will be on a "per occurrence" basis only and not "claims made." The coverage must be provided either on a Commercial General Liability Form A or a Broad Form Comprehensive General Liability form. Policies must include, but need not be limited to, coverage for bodily injury, personal injury, broad form property damage, premises operations, severability of interest, products and completed operations, contractual and independent contractors. General liability insurance policies must be endorsed to include the County as an additional insured. Subject to paragraph 6 of this section, Contractor must maintain limits of no less than \$1,000,000 combined single limit per occurrence for bodily injury (including death), personal injury, and property damages.

(8) If contractor fails to maintain any of the required insurance coverage, then the County will have the option to declare Contractor in breach and terminate the contract, or the County may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverage is maintained. Contractor is responsible for any payments made by the County to obtain or maintain such insurance, and the County may collect the same from Contractor or deduct the amount paid from any sums due Contractor under this contract.

(9) The specified insurance requirements do not relieve Contractor of its responsibility or limit the amount of its liability to the County or other persons, and Contractor is encouraged to purchase such additional insurance as it deems necessary.

(10) Contractor is responsible for and required to remedy all damage or loss to any property, including property of the County, caused in whole or in part by Contractor or anyone employed, directed, or supervised by Contractor.

15. INDUSTRIAL INSURANCE. Contractor further agrees, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract, to provide the County with a work certificate or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees, prior to commencing any work under the contract, to complete and to provide the following written request to a qualified insurer:

PAW Professional Services LLC has entered into a contract with Storey County to perform work from the date of approval of this contract by the Board of Storey County Commissioners and requests that the insurer provide to Storey County: 1) a certificate of coverage issued pursuant to NRS 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that the contractor is required to maintain. The certificate and notice should be mailed to:

Storey County Human Resources Director
Post Office Box 176
Virginia City, Nevada 89440

Contractor agrees to maintain required workers compensation coverage throughout the entire term of the contract. If Contractor does not maintain coverage throughout the entire term of the contract under such conditions, Contractor agrees that County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to a qualified insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that County may order Contractor to stop work, suspend the contract, or terminate the contract.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that he is a sole proprietor and that:

1. In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
2. Is otherwise in compliance with those terms, conditions and provisions.

16. MODIFICATION OF CONTRACT. This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by the parties and approved by the Board of County Commissioners.

17. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract 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.

18. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

19. COUNTERPARTS AND FACSIMILE SIGNATURES. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to the other party, it being understood that all parties need not sign the same counterpart. This Agreement may be executed by facsimile signatures.

20. NO INTERPRETATION AGAINST DRAFTER. Each party recognizes that this Agreement is a legally binding contract and acknowledges that such party has had the opportunity to consult with legal counsel of choice. In any construction of the terms of this

Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such terms.

The Parties have executed this agreement as of the dates written below and intend to be legally bound by it.

**BOARD OF COUNTY COMMISSIONERS
OF STOREY COUNTY**

**PAWS PROFESSIONAL SERVICES LLC,
A NEVADA LIMITED LIABILITY COMPANY**

By _____
Marshall McBride, Chairman (Date)

By _____
Pat Whitten, Manager (Date)

Attest:

Vanessa Stephens,
County Clerk

Approved as to form by:

Deputy District Attorney

SCHEDULE A

1. Services to be Performed:

- Serve as the County's point-of-contact between all parties associated with project(s) either directly or indirectly, which are assigned to the Contractor by the County.
- Review and provide comment on project plans, specifications and related documents. Provide input when required.
- Attend bid openings and provides input in reviewing results.
- Secure Easements and Right-of-Way as may be required. Contractor to provide all contacts with affected property owners, public utilities, and Agencies.
- Understand and coordinate provisions of the contract(s) between the County and by the US Department of Agriculture, Rural Development (Agency).
- Make periodic visits to the construction site(s) daily, if warranted, to observe and evaluate progress, performance, and quality of work. Coordinate and attend meetings as necessary. Construction sites will be visited at a minimum of at least three times per week.
- Discuss and approve required field modifications to project plans where conflict exist(s).
- Attend all monthly construction progress meetings, with the County, Agency, Farr West Engineering (Engineer), and Construction Contractor.
- Coordinate and attend other required meetings as may be determined or requested by the Agency or other Agencies associated with this project, e.g., NDEP, NDOT, SHPO, etc.
- Conduct interviews with Construction Contractor and its employees to assure compliance with federal and state labor and reporting requirements.
- Review the Construction Contractor's Application for Payment prior to forwarding to the Agency for final approval. Payment cannot be made to the Construction Contractor without Owner and Agency approval.
- Discuss and accept Change Orders prior to forwarding to the Agency for final approval.
- Provide updates as necessary to County Manager and Board of County Commissioners.
- Coordinate activities with the Construction Contractor, residents, property owners, and affected agencies and service providers (e.g., NDOT, utility provider, etc.) regarding disruptions of services and/or claims.
- Review all Requests for Information (RFI), Work Change Directives and Change Orders prior to approval. Presents findings and recommends to County.
- Attend the pre-final and final inspections of the project.
- Accept the Certificate of Substantial Completion, as executed by the Engineer.
- Obtain prior approvals from the Agency for the use of any unused funds for new extensions, change of scope, equipment, etc.