

DOC # 0770979
09/23/2010 10:00 AM Deputy: SG
OFFICIAL RECORD
Requested By:
DC/COMMUNICATIONS

Assessor's Parcel Number: N/A

Date: SEPTEMBER 22, 2010

Recording Requested By:

Douglas County - NV
Karen Ellison - Recorder
Page: 1 Of 11 Fee: 0.00
BK-0910 PG-4730 RPTT: 0.00



Name: TAMMY JAMES, COMMUNICATIONS

Address: _____

City/State/Zip: _____


Real Property Transfer Tax: \$ N/A

CONTRACT #2010.232

(Title of Document)

return
To:

DOUGLAS COUNTY
COMMUNICATIONS
P.O. BOX 218
MINDEN, NV 89423


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PG- 4731

FILED
2010-232
2010 SEP 22 PM 2:22

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY
(COUNTY)

AND

SIERRA ELECTRONICS,
(SIERRA)

FOR
DETAILED SYSTEM DESIGN SERVICES

TED THIRAN
CLERK

DEPUTY

WHEREAS, the County, a political subdivision of the State of Nevada, from time to time requires the services of independent contractors; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of County; and

WHEREAS, COUNTY desires to retain the services of SIERRA to provide a detailed system design for the Multi-County Ethernet Microwave System, as described in the Request for Proposal Multi-County Ethernet Microwave System (RFP). This project is funded by the 2007 Public Safety Interoperable Communications (PSIC) Grant Titled "Multi County Ethernet Microwave Interconnect".

WHEREAS, SIERRA is a qualified professional capable of providing the certain professional services which COUNTY seeks.

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, COUNTY does hereby engage SIERRA, and SIERRA agrees, to perform the services set forth herein in accordance with the following terms and conditions:

1. **EFFECTIVE DATE OF CONTRACT.** This contract shall not become effective until approved by the Douglas County Board of County.
2. **DESCRIPTION OF SERVICES.** SIERRA shall provide the services as listed in Exhibit 1.
3. **SCHEDULE AND TERM.** The schedule for performing said services as described in the attached as Exhibit 1:

SIERRA shall commence work under this contract within Seven (7) days of executed contract and shall complete all work under this contract no later than Forty-five (45) days of executed contract.

4. **COMPENSATION.** Total compensation to SIERRA for providing the services set forth in Exhibit 1, Detailed System Design shall not exceed (including reimbursed expenses) Fifty

thousand Dollars (\$50,000.00), exclusive of applicable taxes. This is the total amount as presented in SIERRA's response to the RFP.

5. **PAYMENT SCHEDULE.** Once SIERRA agrees that a corresponding milestone has been successfully completed, SIERRA's and the COUNTY's project managers will sign-off on the milestone completion form within ten (10) workdays. If a deliverable is rejected for any reason, the COUNTY will provide a written description of the deficiencies to SIERRA within ten (10) business days. If the COUNTY fails to accept or reject a deliverable within ten (10) business days, then SIERRA will be paid the full contract price for the milestone.

COUNTY shall make milestone payments within thirty (30) days of receiving a billing statement in proportion to the satisfactory completion of SIERRA's services pursuant to the following milestone schedule:

Milestone (based on total Contract Price)	%
A. Due upon Agreement signing	34%
B. Due upon delivery of the design document after design review	33%
C. Due upon COUNTY Acceptance of final documentation	33%

6. **STANDARD OF PERFORMANCE:**

a. Services shall be performed by SIERRA in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of SIERRA's profession currently practicing in Nevada. By delivery of completed work, SIERRA certifies that the work conforms to the requirements of this Agreement and all applicable Federal, State and local laws and the professional standards of care in Nevada.

b. SIERRA is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including, without limitation, site condition, existing facilities, seismic, geographic, climatic conditions, applicable Federal, State and local laws and regulations, and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations and other similar information provided by COUNTY relating to site, local or other conditions, is not warranted or guaranteed, either expressly or implied, by COUNTY.

c. SIERRA's responsibilities under this section shall not be delegated. SIERRA shall be responsible to COUNTY for acts, errors or omissions of SIERRA's subcontractors.

d. Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by COUNTY, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether SIERRA is entitled to payment for such work, and shall not be construed as a waiver of any breach or acceptance by COUNTY of any responsibility, professional or otherwise, for the work, and shall not relieve SIERRA of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liabilities for damages

caused by negligent acts, errors, omissions, noncompliance with industry standards or the willful misconduct of SIERRA.

7. **INDEPENDENT CONTRACTOR.** It is agreed that SIERRA is an independent contractor, and all persons working for or under the direction of SIERRA are SIERRA's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of COUNTY.

8. **OWNERSHIP OF DATA AND DOCUMENTS.** SIERRA agrees that all COUNTY and other participating Counties or agencies, records, specifications, data, maps graphics, writings, recordings and other tangible materials regardless of form or format, electronically transmitted documents and files provided by the COUNTY to SIERRA shall be the property of COUNTY, or originating County or Agency. The COUNTY agrees that all SIERRA software, lists, processes, know-how, designs, formulae, algorithms, databases, methods of operation, business methods or plans provided by the SIERRA to the COUNTY shall remain the property of the SIERRA.

Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied by the COUNTY to SIERRA in the performance of its obligations under this contract shall be the exclusive property of the COUNTY and all such materials shall be remitted and delivered, at SIERRA's expense, by SIERRA to the COUNTY upon completion, termination or cancellation of this contract. Alternatively, if the COUNTY provides its written approval to SIERRA, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to SIERRA in the performance of its obligations under this contract must be retained by SIERRA 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 SIERRA shall promptly remit and deliver the materials, at SIERRA's expense, to the COUNTY. SIERRA shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of SIERRA's obligations under this contract without the prior written consent of the County.

9. **COUNTY INSPECTION.** The books, records, documents and accounting procedures and practices of SIERRA related to this contract shall 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 any authorized representative of those entities.

10. **SUBCONTRACTOR:**

a. SIERRA will perform the work personally or through SIERRA's employees. SIERRA may subcontract work only upon prior approval of COUNTY. If subcontracting of work is permitted, SIERRA shall pay subcontractor within a commercially reasonable time period. Use of the term subcontractor in any other provisions of this Agreement shall not be construed to imply authorization for SIERRA to use subcontractors for performance of any service under this Agreement.

b. COUNTY is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and COUNTY.

11. **INSURANCE.**

a. Commercial General Liability/Automobile Liability Insurance:

SIERRA shall obtain and maintain Commercial General Liability insurance and Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit. SIERRA's insurance coverage shall be written on an occurrence basis.

b. Workers' Compensation Insurance:

SIERRA shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident.

c. Electronic Errors and Omissions Insurance:

SIERRA shall obtain and maintain Electronic Errors and Omissions insurance in the amount of One Million Dollars (\$1,000,000) per claim. Electronic Errors and Omissions insurance must be maintained, and evidence of insurance shall be provided to COUNTY for at least three (3) years after completion of the contract of work. Policy shall cover the wrongful acts, negligent breach of duty, error, omission or misrepresentation of broad technological services.

d. Acceptability of Insurers: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to COUNTY.

e. Verification of Coverage: Original Certificates of Insurance with endorsements shall be received and approved by COUNTY before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to COUNTY or increase the duration of the project.

f. Other Insurance Provisions:

(1) The COUNTY, its officers, officials, employees and volunteers are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement approved by COUNTY's Risk Manager for Commercial General and Automobile Liability coverage.

(2) For any claims related to this project for which SIERRA has liability under this Agreement, SIERRA's insurance coverage shall be primary and any insurance or self-

insurance maintained by COUNTY, its officers, officials, employees and volunteers shall not contribute to it.

(3) Each certificate of insurance required shall be endorsed that insurer shall endeavor to provide a thirty (30) day notice to COUNTY in the event of cancellation non-renewal of the stipulated insurance coverage.

(4) In the event SIERRA employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of SIERRA to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) Approval of the insurance by COUNTY or acceptance of the Certificate of Insurance by COUNTY shall not relieve or decrease the extent to which SIERRA may be held responsible for payment of damages resulting from SIERRA's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of COUNTY's rights to insurance coverage hereunder.

(6) If, for any reason, SIERRA fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. COUNTY, at its sole option, may terminate this contract and obtain damages from SIERRA resulting from said breach.

12. **INDEMNIFICATION.** To the fullest extent permitted by law, SIERRA shall indemnify, defend (with competent counsel reasonably acceptable to the COUNTY Attorney) and hold harmless COUNTY and its directors, officers, employees and volunteers from and against all third party liabilities (including, without limitation, all claims, lawsuits, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) for personal injury, property damage, or intellectual property infringement related to the negligent acts or omissions, reckless or willful misconduct of SIERRA, or the acts or omissions of an employee, agent or subcontractor of SIERRA. The provisions of this paragraph survive completion of the services or the termination of this Agreement. The provisions of this section are not limited by the provisions of Section 9 relating to insurance.

13. **APPLICABLE LAWS AND ATTORNEYS' FEES.** This Agreement shall be construed and enforced pursuant to the laws of the State of Nevada. Should a dispute arise that cannot be settled through negotiation for breach of this Agreement or to enforce any provision herein, the parties agree to a mutually agreeable mediator administered through the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation or other dispute.

Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court. Reasonable attorneys' fees of the Douglas County District Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Douglas County Nevada

14. **NONDISCRIMINATION.** SIERRA shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, or physical or mental disability.

15. **AMENDMENT.** This Agreement may only be amended in writing and signed by authorized representatives of both parties.

16. **TERMINATION.** COUNTY may terminate this Agreement at any time by providing thirty (30) days advance written notice to SIERRA. Should COUNTY terminate pursuant to said notice, COUNTY shall pay SIERRA for SIERRA's services rendered to the date of cancellation based on percentage of completion of scope of basic services, including actual reimbursable expenses. In no event shall said fees exceed the maximum compensation established in this Agreement.

17. **ATTACHMENTS OR EXHIBITS.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

18. **ORDER OF PRECEDENCE.** In the event of any inconsistency between the various documents comprising this Agreement, the order of descending precedence shall be as follows: (1) this Agreement; (2) Exhibit 1 to this Agreement; (3) SIERRA's Response to the RFP, Multi-County Ethernet Microwave.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended or modified unless so done in writing signed by authorized representatives of both Parties.

20. **FORCE MAJEURE.** Neither party shall be deemed to be in default of any provision of this Agreement or be liable for any delay, failure in performance or interruption of service resulting from acts of war, acts of terrorism, acts of God, acts of civil or military authority, civil disturbance or any other cause beyond its reasonable control.

21. **PUBLIC RECORDS.** SIERRA expressly agrees that all documents ever submitted, filed, or deposited with the COUNTY by SIERRA, unless designated as confidential by a specific statute of the State of Nevada, shall be treated as public records pursuant to NRS ch. 239 and shall be available for inspection and copying by any person, as defined in NRS ch. 239, or any governmental entity. SIERRA expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the COUNTY or any of its officers or

employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

22. **NOTICES.** Any notice required to be given to SIERRA shall be deemed to be duly and properly given if mailed to SIERRA, postage prepaid, addressed to:

Jarry Walton
SIERRA Electronics
690 E Glendale Ave Suite 9B
Sparks, NV, 89431

or personally delivered to SIERRA at such address or at such other addresses as SIERRA may designate in writing to COUNTY.

Any notice required to be given COUNTY shall be deemed to be duly and properly given if mailed to COUNTY, postage prepaid, addressed to:

Douglas County Manager
Post Office Box 218
Minden, Nevada 89423

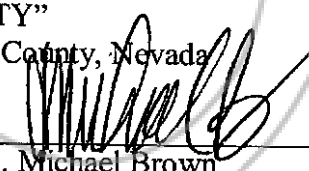
or personally delivered to COUNTY at such address or at such other addresses as COUNTY may designate in writing to SIERRA.

23. **SEVERABILITY.** The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement 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 the Agreement unenforceable.

24. **NO APPROPRIATION OF FUNDS.** All payments and services provided under this agreement are contingent upon the availability of the necessary public funding. In the event that Douglas County does not receive the funding necessary to perform in accord with the terms of this Agreement, this Agreement shall automatically terminate and all fees due and owing shall be paid.

IN WITNESS WHEREOF, this Agreement is executed by COUNTY and by SIERRA.

“COUNTY”
Douglas County, Nevada

By: 
T. Michael Brown
Douglas County Manager

9/14/10
(date)



" SIERRA":
SIERRA CORPORATION

By:

Jerry Walton
Jerry Walton

9-17-2010

(date)

880168379

Taxpayer I.D. Number

Attest:

Ted Thran

Ted Thran, Douglas County Clerk

9/17/10

(date)

COPY

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/21/2010

PRODUCER
Tahoe City Comm'l Lines Unit
Wells Fargo Ins Svcs USA, Inc.
P.O. Box 7679
Tahoe City, CA 96145

INSURED
Berry Enterprises, Inc.
DBA: Sierra Electronics and KDJ Co., LLC
690 E. Glendale
Sparks, NV 89432

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Unigard Insurance Company	25747
INSURER B:	Tower Insurance Company of New York	
INSURER C:		
INSURER D:		
INSURER E:		

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COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:1,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CM012854	11/15/09	11/15/10	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$1,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Drive Other Car	CM012854	11/15/09	11/15/10	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC AGG \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	CU013928	11/15/09	11/15/10	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	WCN000099901	12/01/09	12/01/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 As Respects work performed in Douglas, Storey, Carson and Lyon Counties, NV.

CERTIFICATE HOLDER	CANCELLATION Ten Day Notice for Non-Payment of Premium
Douglas County, NV P.O. Box 218 Minden, NV 89423	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>[Signature]</i>



IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(les) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE:

Sept 22 2010
11/20/09 Clerk of the

928 Judicial District Court
of the State of Nevada, in and for the County of Douglas.

By: *Carol M. [Signature]*

Deputy