

Recorder's Office Cover Sheet

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Department: PUBLIC WORKS



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KAREN ELLISON, RECORDER

Type of Document: (please select one)

- Agreement
- Contract
- Grant
- Change Order
- Easement
- Other

specify: _____

CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

FESC NORTHERN NEVADA, LLC

FILED

NO. 2020-056

5-28-20
DATE

DOUGLAS COUNTY CLERK
MINDEN, NV

BY [Signature] DEPUTY

This Contract for Services by an Independent Contractor (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada, through the Board of County Commissioners (the "County"), and ***FESC Northern Nevada, LLC***, a ***Nevada Limited-Liability Company (NV20161528334)*** registered with the Nevada Secretary of State ("Contractor"). The County and Contractor are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WHEREAS, Douglas 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 Douglas County; and

WHEREAS, Contractor represents that Contractor is duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the County and Contractor mutually agree as follows:

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective on the date it is approved and signed by representatives of both Parties ("Effective Date"). Unless earlier terminated as set forth in paragraph 7, the terms of this Contract shall remain in effect for the duration of the service period, which will expire 36 months after the Effective Date.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree Contractor will have the status of an independent contractor and that the Contract, by explicit agreement of the Parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted to the Parties, including the express understanding that Contractor is not an employee of the County and that:

There shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;

- (4) Participation or contributions by either the Contractor or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Additionally, the Contractor is not in the classified or unclassified service of the County and has none of the rights or privileges available to officers, employees or other appointees of the County.

3. INDUSTRIAL INSURANCE. Contractor further agrees that, prior to the commencement of any work and as a precondition to any obligation of the County to make any payment under the Contract, Contractor will provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees that, prior to commencing any work under the Contract, Contractor will complete and provide evidence to the County that Contractor has made the following written request to Contractor's insurer:

FESC Northern Nevada, LLC has entered into a contract with Douglas County to perform services related to servicing fire extinguishers through apx. April 2023, and requests that an authorized insurer provide to Douglas 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:

*Douglas County
Public Works Department
ATTN: Fleet & Facilities Manager
Post Office Box 218
Minden, Nevada 89423*

Contractor agrees to maintain all required workers' compensation coverage throughout the entire term of the Contract. If Contractor does not maintain the required coverage throughout the entire term of the Contract, Contractor agrees that the 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 at the sole discretion of the County. 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 the insurer for the provision of a certificate and notice of lapse in, or nonpayment of, insurance 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 the County may order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County.

4. SERVICES TO BE PERFORMED. The Parties agree that the Contractor will perform services related to annual on-site servicing of portable fire extinguishers. The Services are more particularly described and shall be completed in accordance with the requirements set forth in Exhibit A hereto. Note: this contract is for the service of Portable Fire Extinguishers only and does not cover any services related to the maintenance of integrated Fire Suppression Systems.

5. PAYMENT FOR SERVICES. Contractor agrees to provide the services set forth in Paragraph 4 for on a time and materials basis, as more particularly set forth herein, not to exceed Three Thousand Dollars (\$3,000) per year (or a total of \$9,000 over the course of the 3-year term of this Contract). The pricing to perform standard annual service per NFPA 10 is set forth in Exhibit A. If Contractor discovers that any additional maintenance or repair is required to service a fire extinguisher, then Contractor shall obtain advanced, written authorization from the County prior to performing the additional service. Contractor will not be compensated for work performed without authorization. Unless Contractor has received a written exemption from the County, Contractor shall submit monthly requests for payment for services performed under this Contract. Requests for payment shall be submitted no later than fifteen (15) days after the end of a month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Contractor agrees to provide with each request for payment a schedule of actual expenditures for the period, cumulative total expenditures for the entire contract, and a comparison of cumulative total expenditures to the maximum expected fee for the services and tasks set forth in Paragraph 4.

6. WARRANTY. Contractor agrees and hereby provides, warrants and represents each of the following with respect to any services provided under this Contract: the services, installations, or work performed under this Contract shall be performed in a commercially reasonable manner. Contractor agrees and hereby provides, warrants and represents each of the following with respect to any goods provided under this Contract: the goods provided will be fit and sufficient for the particular purpose set forth in Paragraph 4, if any; the goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by this Contract are ordinarily intended for use in government operations; the goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship; the goods shall conform to the standards and specifications set forth in Exhibit A; If vendor has supplied a sample to the County, the goods delivered shall conform in all respects to the sample; the goods shall be uniform and without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units; the vendor has exclusive title to the goods and shall pass title to the County free and clear of all liens encumbrances, and security interests.

7. TERMINATION OF CONTRACT. Either Party may terminate the Contract with or without cause so long as the terminating party has provided the other with written notice of its intent to terminate at least 30 days prior to the effective date of termination. Provided, however, that except as otherwise set forth in this Contract, early termination will not relieve a Party of any obligation that became due prior to the effective date of termination.

8. NONAPPROPRIATION. All payments required pursuant to the Contract are contingent upon the availability of County funds. In accordance with NRS 354.626 and any other applicable provision of law, the financial obligations between the Parties will not exceed those monies appropriated and approved by the County for the Contract for the then current fiscal year under the Local Government Budget Act. The Contract will terminate and the

County's obligations will be extinguished if the County fails to appropriate the necessary funding.

Nothing in the Contract will be construed to provide Contractor with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Contractor will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor will have no claim of any sort to the unexpended funds.

9. CONSTRUCTION OF CONTRACT. The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. The Contract Documents consist of this document, and Exhibits A. The Parties agree to be bound by the terms, conditions and specifications set forth in all Contract Documents, except as specifically modified or amended. The terms of the Contract Documents shall, to the extent reasonably practical, be read as complimentary to one another. In the event of an irreconcilable conflict between the terms of the Contract Documents, the terms of this document shall prevail, thereafter the terms of Exhibit A.

10. DISPUTE RESOLUTION. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court.

11. COMPLIANCE WITH APPLICABLE LAWS. Contractor promises and agrees to 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 the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws.

12. ASSIGNMENT. Contractor will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the County.

13. COUNTY INSPECTION. The books, records, documents and accounting procedures and practices of Contractor related to the 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 any authorized representative of those entities.

14. 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 the Contract (the "Materials") will be the exclusive property of the County and all such materials will be remitted and delivered, at Contractor's expense, to the County by Contractor upon the completion, termination or cancellation of the contract. Alternatively, if the County provides its written approval to Contractor, the Materials must be retained by Contractor for a minimum of six years after Contractor's receipt of the final payment from County 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 will promptly remit and deliver the materials, at Contractor's expense, to the County. Unless the County has requested the remittance and delivery by Contractor of the Materials, Contractor will not use, willingly allow or cause to have such Materials used for any purpose other than the performance of Contractor's obligations under the terms of the Contract without the prior written consent of the County.

15. PUBLIC RECORDS LAW. Contractor expressly understands and 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, will be treated as public records pursuant to NRS chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way 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.

16. INDEMNIFICATION. Contractor agrees to indemnify, defend, and save and hold the County, its agents and employees harmless from any and all claims, causes of action or liability arising from or related to Contractor's negligent performance pursuant to the terms of the Contract by Contractor or Contractor's agents or employees.

17. MODIFICATION OF CONTRACT. The Contract and the attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

18. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this agreement. Each signatory individually warrants that he or she is authorized to sign on behalf of the party for whom he or she is signing.

19. STANDARD OF CARE. Contractor will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Contractor's profession currently practicing in the same locality under similar conditions.

20. WAIVER OF LIEN. Contractor understands and agrees that the services it will render to the County are not intended for the improvement of real property or to otherwise grant any rights to Contractor pursuant to NRS chapter 108.

21. THIRD PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against either Contractor or County.

22. FORCE MAJEURE. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to protests, strikes, legal impossibility, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, emergencies or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

23. WAIVER. The County's failure to insist upon Contractor's performance of any obligation hereunder shall not constitute a waiver of the County's right to enforce that obligation and the County may require compliance with that obligation or any other obligation at any time.

24. NOTICES. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County:

Douglas County
Attn: Public Works, Fleet and Facilities Manager
Post Office Box 218
Minden, Nevada 89423

To Contractor:

FESC Northern Nevada, LLC
260 Freeport Blvd., Suite 3
Sparks, NV 89431

25. CONFLICT OF INTEREST. By signing the Contract, Contractor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may immediately withdraw, without penalty or any payment, from the Contract. Contractor must notify Douglas County of any other contracts or projects Contractor is working on that may impact Douglas County.

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IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

FESC Northern Nevada, LLC

By: Sam Kuhlman, Manager 5/15/20
Name: Sam Kuhlman, Manager (Date)

Douglas County

By: Philip Ritger 05-26-2020
Philip Ritger, Director (Date)
Douglas County Department of Public Works



A FULL SERVICE FIRE PROTECTION COMPANY

Reno/Sparks 775-324-0117	Fallon 775-423-7117	Winnemucca 775-623-1176	Carson City 775-883-1366
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Main Office: 260 Freeport Blvd. Suite 3, Sparks NV 89431

PROPOSAL/SERVICE AGREEMENT

Date: 10FEB20	FESC Contact: Charlie Fielder C: 775-225-7503	Contact: Glen Phone: (775) 690-7592 Email: gradtke@douglas.nv.us
Invoice to:		Job Location: Multiple Locations

Fire Extinguisher Service Center. ("FESC") proposes to provide the following services for a period of 36 months subject to the conditions outlined below; additionally contract can be made void if client notifies FESC in no less than 30 days of next service date:

FIRE SUPPRESSION SYSTEM

Semi-Annual Service: \$ 175.00
 450 Degree Fusible Links: \$ 15.00
 Nozzle Caps: \$ 5.00

Prices are for regular semi-annual "inspection and maintenance" per NFPA 17, NFPA 17A, and/or NFPA 2001. 12 year D.O.T. hydrostatic testing, chemical, and/or manufacturers' required replacement parts not listed above are not included.

PORTABLE FIRE EXTINGUISHERS

Annual Service per NFPA 10: \$ 15.00 each

Annual Service price *includes* collars, service tags, o-rings. Annual Service price *excludes* other repair parts and chemical.

PAYMENT TERMS: Net 30



A FULL SERVICE FIRE PROTECTION COMPANY

Reno/Sparks Fallon Winnemucca Carson City
775-324-0117 775-423-7117 775-623-1176 775-883-1366

Main Office: 260 Freeport Blvd. Suite 3, Sparks NV 89431

PROPOSAL/SERVICE AGREEMENT

IMPORTANT NOTICE TO CUSTOMER:

ALL WORK AND MATERIALS CONFORM TO NFPA CODES, IFC 2006, STATE FIRE MARSHAL REGULATIONS, AND THE MANUFACTURER'S REQUIREMENTS. STANDBY TIME AND LABOR FOR EMERGENCY CALLS WILL BE CHARGED AT \$120/HR AND DRIVE TIME AT \$90/HR. CUSTOMER AGREES THAT FIRE EXTINGUISHER SERVICE CENTER'S LIABILITY FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AGREEMENT PRICE SET OUT ABOVE (AS INCREASED BY THE PRICE FOR ANY ADDITIONAL WORK). CUSTOMER FURTHER AGREES THAT FESC SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS DAMAGES OF ANY KIND AND THAT THE CUSTOMER SHALL HOLD FESC HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS RELATING TO THE CUSTOMER'S FAILURE TO MAINTAIN THE SYSTEMS OR TO KEEP THEM IN OPERATIVE CONDITION OR RELATING TO FESC'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT. FESC IS A LICENSED CONTRACTOR WITH SPRINKLER AND ALARM SUBCONTRACTORS THAT WILL BE USED, AS NEEDED, TO PROVIDE COMPLETE FIRE SERVICES TO CUSTOMER.

ACCEPTANCE OF PROPOSAL:

The above prices, specifications, and conditions are satisfactory and are hereby accepted. Unless noted otherwise above, the term of this contract is 36 months. Terms of this proposal are only extended for a period of 30 days from the date indicated at the top of this document. Prices do not include any relevant processing fees. I authorize Fire Extinguisher Service Center to commence the work as specified. I have read and agree to the terms and conditions of this contract and hereby sign below.

Customer:

SEE ATTACHED CONTRACT

Signature Print Name Title Date

Fire Extinguisher Service Center:

Signature Print Name Title Date

Please sign and fax back to 775-324-0153

Douglas County State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

28th day of May 20 20
By: *[Signature]* Deputy