

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its
Department of Public Safety
State Fire Marshal Division
107 Jacobsen Way
Carson City, NV 89701
Phone (775) 684-7509 / Fax (775) 684-7507

and

Nye County, hereinafter known as "Agency"
P.O. Box 153
Tonopah, NV 89049
Phone (775) 482-8191/ Fax (775) 482-8198

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services hereinafter set forth are both necessary and in the best interests of the State of Nevada ("State") and the Agency Nye County;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by appropriate official action of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. CONTRACT TERM. This Contract shall be effective upon approval to June 30, 2021, unless sooner terminated by either party as set forth in this Contract.
4. TERMINATION. This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 60 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated upon the effective date of a change in State and/or federal funding ability to satisfy this Contract if such funding is for any reason withdrawn, limited, or impaired. This Contract may be terminated by the State with less than 60 days notice after the Agency has been served written notice that it has failed to comply with the terms of this Contract; has failed to

comply with any provision of NRS or NAC; or has failed to meet the personnel or program requirements of NRS 477.030, paragraph 10.

5. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

6. **INCORPORATED DOCUMENTS.** The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK

7. **CONSIDERATION.** The Agency agrees to provide the services set forth in paragraph (6) at a no cost to the State based on other good and valuable services performed by each party under this contract, including but not limited to the Agency's being permitted to gain benefits, including collection of certain fees, which would otherwise be unavailable, from performing those services. Any intervening end to an annual or biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. **INSPECTION & AUDIT.**

a. **Books and Records.** Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

b. **Inspection & Audit.** Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a

period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. **BREACH; REMEDIES.** Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs.

11. **LIMITED LIABILITY.** The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, 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 the Contract after the intervening cause ceases.

13. **INDEMNIFICATION.** Neither party waives any right or defense to indemnification that may exist in law or equity.

14. **INDEPENDENT PUBLIC AGENCIES.** The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. **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.

16. **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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. **ASSIGNMENT.** Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

18. **OWNERSHIP OF PROPRIETARY INFORMATION.** Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of

preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the State of Nevada Office of the Attorney General.

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



John Koenig

Chairman, Board of County Commissioners 10/2/18
Title Date



Timothy Sutton

County Manager 10/10/18
Title Date

n/a

n/a
Title Date



Bart J. Chambers, State Fire Marshal Division

Chief 10-29-18
Title Date



Sheri Brueggemann,
Department of Public Safety, Director's Office

Administrative Services Officer 11-2-18
Title Date

Approved as to form by:



Nathan Hastings, Deputy Attorney General
for Attorney General, State of Nevada

On 11/1/18

(Date)

Attachment A
Scope of Work
Between the
Nye County,
hereinafter known as “Agency”
And the
State Fire Marshal Division, hereinafter known as “Division”

1. The Department of Public Safety, State Fire Marshal Division (“Division”) is required by Nevada Revised Statutes (NRS) Chapter 477 and Nevada Administrative Code (NAC) Chapter 477 to perform certain fire/life safety functions in counties having populations of less than 100,000. This Attachment A Scope of Work, becomes part of the Interlocal Contract upon signature of both parties and shall be reviewed annually not later than March 1st. Upon annual review of the contract, if the Agency and Division agree no changes are necessary a letter documenting that decision will be issued by Division to the Agency. If upon annual review of the contract, changes are deemed necessary, Agency and Division will agree to the changes and the Interlocal Contract will be amended.
2. The Agency has requested that the Division delegate fire and life safety functions to the Agency in accordance with NRS 477.030(10).
3. The Agency certifies, and the Division has verified, that the Agency is qualified and willing to perform these fire and life safety functions within its jurisdictional boundaries. The Agency agrees to perform the plan examination prior to construction, during construction, including, but not limited to those facilities as identified in NRS 477.030(1)(c).
4. The Agency agrees to perform inspections agreed upon by the Division and Agency, for all buildings, except private residences, used for sleeping purposes, such as hotels and motels, buildings used for public assembly and all buildings where large numbers of persons work, live or congregate for any purpose as identified in NRS 477.030(1)(c).
5. Hazardous Materials verification shall be completed where the Agency will assist the Division, and the Agency or Division shall direct the facility to the Nevada Combined Agency Hazardous Materials Permit “on-line” reporting web site or to the “help desk” for assistance in filling out the report form. The Agency will forward any completed inspection reports to the Division within thirty (30) business days of the inspection/verification.
 - a. A report from the Division to the Agency listing current occupancies for Hazardous Materials Reporting to ensure tracking of permits from the Agency to the Division will be done quarterly.

6. The Agency is hereby delegated the responsibility to perform plan reviews for all occupancy groups covered by the currently adopted editions of the International Fire Code, International Building Code, Uniform Mechanical Code, as applicable to the plan review being performed, with the exception of all state-owned facilities. The responsibilities delegated to the Agency by the Division will be performed by the Agency within its boundaries only. Plan reviews will be performed using codes and standards adopted by the Division as specified in NAC sections 477.280, 477.281 and 477.283. For the purposes of commercial properties within its boundaries, the Agency may be more stringent in its adoption of a fire, building, mechanical code than the State and may enforce Agency adopted amendments that are more stringent for such plan reviews. State-owned facilities shall be required to comply only with codes as outline in NAC 477.280, 477.281 or 477.283 and amendments adopted by the State plus those locally adopted codes and standards specific to fire apparatus access to the facility.
7. It is expressly understood that the delegation of this authority makes the Agency the statutory designee of the Division for the purpose of administering the program described in this agreement and does not reduce or eliminate the Agency's responsibility for all damages to persons or properties of any kind resulting from any act, omission, neglect or misconduct of the Agency staff in the manner or method of performing the work for the duration of this Agreement.
8. The Agency's jurisdiction for occupancies listed above shall cover the plans examination for new construction, additions, and remodel leading to the issuance of a Certification of Occupancy in concert with the Building Department.
9. The Agency shall submit a list of employees/agent conducting plan reviews and inspections for Special Deputy Cards no later than December 10th of the calendar year to the Division for annual renewal. The District will send with the list a JPEG picture (above the shoulders) of the employee/agent to the Division for the ID card issued to the employee/agent
10. If any project exceeds 1,000,000 square feet, by the request of the Agency, the State Fire Marshal may review the project for compliance with state adopted codes. The Division may impose additional plan review fees upon the applicant for these reviews:
 - a. Any project when the Division is requested to do so by the Agency.
 - b. When the Agency requests, based upon the scope and technical complexity of a project and exceeds the Agency's capabilities of those projects that are the responsibility of the State Fire Marshal.

11. The Agency is required to maintain qualified personnel and programs under this Agreement as outlined in NRS 477.030 (10). Personnel conducting activities under this Agreement are required to maintain professional licenses, certifications, or other documentation acceptable to the Division as listed in the Nevada Fire Service Professional Qualifications and as nationally acceptable standards in order to demonstrate their proficiency, experience and qualifications to conduct the associated work. Continuing education is the responsibility of the Agency personnel to complete in accordance with the issuing authority, such as ICC. One of the following certificates or licenses must be maintained current without pending disciplinary action by Agency personnel involved in conducting plan review and inspection at all times:
- a. A Nevada licensed professional engineer practicing within their area of expertise.
 - b. A Nevada licensed architect practicing within their area of expertise.
 - c. A current International Code Council and State Of Nevada certification as outlined in the Nevada Fire Service Professional Qualifications as a Fire Plans Examiner. The acquisition of an International Code Council certification as a plans examiner will qualify an individual for a State of Nevada certification provided the fire chief of the agency formally requests in writing to the State Fire Marshal Division and as outlined in the Nevada Fire Service Professional Qualifications. A state certification may also be obtained by attending a state sponsored course for certification.
 - d. A current International Code Council and State Of Nevada certification as outlined in the Nevada Fire Service Professional Qualifications as a Fire Inspector I. The acquisition of an International Code Council certification as a Fire Inspector I will qualify an individual for a State of Nevada certification provided the fire chief of the agency formally requests in writing to the State Fire Marshal Division and as outlined in the Nevada Fire Service Professional Qualifications. A state certification may also be obtained by attending a state sponsored course for certification.
 - e. A current International Code Council and State Of Nevada certification as outlined in the Nevada Fire Service Professional Qualifications as a Fire Inspector II. The acquisition of an International Code Council certification as a Fire Inspector II will qualify an individual for a State of Nevada certification provided the fire chief of the agency formally requests in writing to the State Fire Marshal as outlined in the Nevada Fire Service Professional Qualifications. A state certification may also be obtained by attending a state sponsored course for certification.

12. A State of Nevada certification as a Fire Inspector, Level III as outlined in the Nevada Fire Service Professional Qualifications combined with an International Code Council Certification. Contract personnel or firms conducting work for or on behalf of the Agency shall meet the same qualifications as the Agency defined in the above section and shall also hold state of Nevada licenses to provide such work. If the Agency identifies a special project requiring review by a group of experts, the result, outcome or opinion resulting from such review must be analyzed and approved by a Nevada licensed Fire Protection Engineer; documentation of such approval must be provided to the Agency and Division for those projects listed under NRS 477.030.
13. Documentation of the qualifications and continuing education required in items 11 and 12 above, including re-certification as required by the certification organization, shall be supplied to the Division prior to this Agreement taking effect; annually thereafter; and upon the request of the Division. The requirement to have approved certified personnel will not prohibit the Agency from utilizing a trainee position(s) for up to one (1) year provided the trainee operates under the direct supervision of approved personnel.
14. The Agency shall require full enforcement of the most current edition of the Nevada State Fire Marshal regulations (Nevada Administrative Code, Chapter 477), the most currently adopted editions of the International Building Code, International Fire Code, Uniform Mechanical Code and the National Fire Protection Association (NFPA) Standards as adopted by any Agency's governing ordinance(s), but never less than those established by the Nevada Department of Public Safety, State Fire Marshal Division in the NAC sections 477.280 through 477.283. State-owned facilities shall be required to comply only with codes as outline in NAC 477.280, 477.281 or 477.283 and amendments adopted by the State plus those locally adopted codes and standards specific to fire apparatus access to the facility.
15. Plan review and inspection of the fire alarms must be conducted by the Agency pursuant to NFPA Standard 72, *National Fire Alarm Code*, as modified by the adopted edition of the International Fire Code and provisions contained in both NRS and the NAC.
16. The Agency is authorized to charge permit applicants such fees as the Agency may adopt for plan reviews and field inspections performed in accordance with this Agreement. The Agency will not charge the State or the Division fees nor will it bill the State or the Division for any of its costs for the services provided under this Agreement.
17. The Agency is prohibited from granting waivers, variances, or approvals of alternate methods, or materials differing from the regulations or adopted codes and standards of the Division for any project/property of which is the responsibility of the State Fire Marshal Division under NRS 477.030. All requests for variances under NRS 477.030 must be reviewed and approved by the Division through the use of the State Fire Marshal's Variance Request procedure in accordance with NAC 477.287. Variances shall be approved only if the State Fire Marshal concurs that the request provides an acceptable alternate means to achieve a comparable level of safety. The Division may, within its discretion, seek input from the Agency in the review of variance requests related, but not limited to, fire apparatus access and water supply, however, the final decision to approve, approve with conditions or

reject the variance request remains solely with the State Fire Marshal for those projects/property of which is the responsibility of the State Fire Marshal Division under NRS 477.030. The Division may impose additional fees upon the applicant for its review of a variance request.

18. The Division may develop formats for reporting forms and training guidelines for use by the Agency as they become necessary.
19. The Agency shall submit to the Division an annual report under NRS 477.030 of building plans reviewed, fire protection plans reviewed and of fire inspections conducted each calendar year under this agreement no later than February 1st of each succeeding year. The report forms are attached herewith and are labeled "Attachment A, #22, Building Plans Review", Fire Protection Plans Review, and Fire Inspections."
20. Pursuant to NRS 477.030(7) and NAC 477.905, the Agency will report to the National Fire Incident Reporting System (NFIRS) via website that it is in full compliance with NFIRS.
21. The Agency will report fire deaths as they occur in its jurisdiction to the Division via email to SFM@dps.state.nv.us.
22. State Fire Marshal Division Training Bureau will meet with the Agency to ensure the requirements for certification testing are being followed to maintain national accreditation within the state. The Agency shall ensure that individuals who perform these functions maintain a current State of Nevada certification as a written test proctor, or assistant evaluator, or lead evaluator, dependent on the test to be administered and at the level in which these individuals are operating. The Agency shall ensure that all certification proctors and evaluators used by the Agency follow the procedures as outlined in the Division's, *Guidebook for Certification Proctors, Lead and Skills Evaluators*.