

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

Nevada Secretary of State
101 N Carson Street, Suite 3
Carson City, NV 89701
Contact: Wayne Thorley, Deputy Secretary for Elections
wthorley@sos.nv.gov

and

Washoe County
1001 E 9th Street
Reno, NV 89512
Contact: Deanna Spikula, Washoe County Registrar of Voters
dspikula@washoecounty.us

RECITALS

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;

WHEREAS, the Secretary of State desires to make certain modifications to voter registration software in order to implement the amendments to Nevada's voter registration statutes as enacted by the 2019 Nevada Legislature;

WHEREAS, the County has agreed to assist with modifications to the voter registration software that is currently in the County's custody and/or under the County's control;

WHEREAS the proposed modifications to the voter registration software are both necessary to the Secretary of State and in the best interests of the County and the State of Nevada;

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

TERMS

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.**
 - (a) "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
 - (b) "Sponsor" means the Nevada Secretary of State's Office, Carson City, Nevada
 - (c) "County" means the Washoe County, Washoe County, Nevada

(d) “Principal Contractor” means Election Systems, Software & Voter Registration, LLC (“ESSVR”), or other entities that perform a service and/or provides goods for the County under the terms and conditions set forth in this Intrastate Interlocal Contract Between Public Agencies (hereinafter, the “Contract”).

3. **CONTRACT TERM.** This Contract shall be effective July 1, 2019 to April 1, 2020, 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 thirty (30) 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 immediately if for any reason federal and/or State Legislature funding ability to satisfy this Contract is withdrawn, limited, or impaired.

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 by the Principal Contractor are as described in the following attachment(s):

**ATTACHMENT A: NV-Washoe 001: ESSVR DIMSnet Voter Registration System Change
Order – AVR Changes**

**ATTACHMENT B: NV-Washoe 002: ESSVR DIMSnet Voter Registration System Change
Order – NOVA Changes**

7. **REIMBURSEMENT AMOUNT.** The parties agree that the County will engage the Principal Contractor, at the County’s expense, to provide to the County the complete project services specified in Attachment A and Attachment B at a projected total cost of \$45,675, not to exceed \$49,785.75 payable to Principal Contractor from the County upon completion of the project. The Sponsor shall reimburse the County, from State funds, for the total cost to the County of the project services, with reimbursement payments to be issued by the Sponsor according to the schedule and in the manner specified in paragraph (8) of this Contract. The parties agree that the total cost of the project services will be allocated between the various project components as follows:

Attachment	Cost
A - AVR	\$27,300
B – NOVA	\$18,375
Total	\$45,675
Contingency 9%	\$4,110.75
Not to exceed	\$49,785.75

8. **INVOICING.** The Principal Contractor will invoice the County at the addresses listed above upon completion of each phase of the project with net 30 payment terms as to the amount listed in Section 7 above.

Within the (30) days of its receipt of the invoice, the County will issue payment for services to Principal Contractor. Within thirty (30) business days of its payment of the invoice, the County will submit a copy of the Principal Contractor's invoice and proof of invoice payment to the Secretary of State's office at the address listed above for payment. The State will submit payment to the County within 30 days of receipt of the invoice.

9. ASSENT. The parties agree that the terms and conditions listed on incorporated attachment 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.

10. 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 State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal 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 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 a minimum 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.

11. 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.

12. 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. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

13. 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.

14. INDEMNIFICATION.

a. To the fullest extent of limited liability as set forth in paragraph (12) of this Contract, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and

against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

b. The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

15. 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.

16. 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.

17. 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.

18. 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.

19. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law 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.

20. 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.

21. 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.

22. 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).

23. 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.

24. REPORTS. Technical reports will be provided by the Principal Contractor to County and Sponsor as required by the Scope of Work with the final report to be provided upon completion of the project. A financial report will be provided by the County to Sponsor upon completion of the project. Such reports will be forwarded to the Secretary of State's office as provided herein.

25. 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 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.

WASHOE COUNTY

Public Agency #1

Board of County Commissioners - Chair

Date

Title

SECRETARY OF STATE

Public Agency #2

Public Agency #2 Signature

Date

Title

APPROVED BY BOARD OF EXAMINERS

Signature – Nevada State Board of Examiners

On

(Date)

Approved as to form by:

Deputy Attorney General for Attorney General, State of Nevada

On

(Date)