City of Carson City Agenda Report

Date Submitt	ed: April 24, 2012	Agenda Date Requested: May 3, 2012 Time Requested: 5 min			
To:	Mayor and Board of Supervisors				
From:	Alan Glover, Clerk-Recorder				
Subject Title: For Possible Action to authorize the mayor to sign a Interlocal Contract Between Carson City and the State of Nevada.					
Staff Summary: The Nevada Secretary of State is developing the Nevada Online Voter Access project (NOVA). Carson City and Douglas County have a contract with Election Systems and Software (ES&S). This contract must be modified in order to complete the work. The interlocal contract is between the State of Nevada and Carson City for payment by the State of Nevada to ES&S.					
(x)	n Requested: (check one Resolution () Ordermal Action/Motion () Oth	inance			
Does This Ac	tion Require A Business Impact	Statement: () Yes (X) No			
Recommended Board Action: I move to adopt Resolution No a resolution authorizing the Mayor to sign an Intrastate Interlocal Contract between State of Nevada acting by and through the Nevada Secretary of State's Office and Carson City.					
Explanation for Recommended Board Action: This allows the State of Nevada to pay for the changes to the software and for ES&S to do the work.					
Applicable Statue, Code, Policy, Rule or Regulation: NRS 277.180					
Fiscal Impact: \$ 46,087.50 Explanation of Impact: ES&S will bill Carson City & Douglas County for the work. Carson City and Douglas County will then forward the bill to the Nevada Secretary of State who will pay ES&S.					
Funding Sour Alternatives:	rce: State of Nevada				
Supporting M	laterial:				

Prepared By: Alan Glover		
Reviewed By: (Department Head) (City Manager) (District Attorney) (Finance Director)	Date: 4. Date: 4. Date: 4. Date: 4. Date: 4.	23-12 1/24/12 24/12
Board Action Taken:		
Motion:	1) 2)	Aye/Nay
(Vote Recorded By)		

RESOLUTION NO.	

RESOLUTION TO AUTHORIZE THE MAYOR TO SIGN AN INTRASTATE INTERLOCAL AGREEMENT BETWEEN THE STATE OF NEVADA, SECRETARY OF STATE'S OFFICE AND CARSON CITY TO PROVIDE FOR PAYMENT OF SOFTWARE TO DEVELOP THE FOR THE NEVADA ONLINE VOTER REGISTRATION PROJECT.

WHEREAS, any two or more public agencies may enter into cooperative agreements for the performance of any governmental function pursuant to NRS 277.080 to 277.18, inclusive; and

WHEREAS, NRS 277.110 provides that every such agreement must be by formal resolution or ordinance of the governing body of each public agency included and must be spread at large upon the minutes, or attached in full thereto as an exhibit, of each governing body; and

WHEREAS, the parties to the Interlocal Agreement between the State of Nevada, Secretary of State's Office, to provide for the funding for the Nevada Online Voter Access project (NOVA), desire to adopt and approve such agreement as required by NRS 277.110. A copy of the agreement is attached to this Resolution as Exhibit "A", and

WHEREAS, all parties to the Interlocal Agreement between the State of Nevada, Nevada Secretary of State's office are public agencies as defined by NRS 277.100; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor of Carson City is authorized to sign the Agreement.

BE IT FURTHER RESOLVED that the Interlocal Agreement between the State of Nevada, Nevada Secretary of State's Office and Carson City providing funding for the Nevada Online Voter Access project shall be spread at large upon the minutes' or attached in full thereto as an exhibit.

Upon motion by Supervisor	, seconded by
Supervisor	, the foregoing Resolution was passed and
adopted this day of May, 2012 by	, the foregoing Resolution was passed and y the following vote:
AYES:	NAYS:
A DCENIT.	A DOTA INI
ABSENT:	ABSTAIN:
Resolution No.	
	Robert L. Crowell, Mayor
	· · · · · · · · · · · · · · · · · · ·
	Carson City, Nevada
ATTEST:	
Alan Glover, Clerk-Carson City, Nevada	

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

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

Nevada Secretary of State 101 North Carson Street, Suite 3 Carson City, NV 89701 Contact: Scott Gilles sgilles@sos.nv.gov and

&

Carson City Clerk 885 Musser Street Carson City, NV 89701 Contact: Alan Glover aglover@carson.org Douglas County Clerk-Treasurer P.O. Box 218 Minden, NV 89701 Contact: Ted Thran tthran@co.douglas.nv.us

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;

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

- 1. <u>REQUIRED APPROVAL</u>. 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. "Counties" means the Douglas County Clerk's Office, Douglas County, Nevada <u>and</u> the Carson City Clerk's Office, Carson City, Nevada.
- d. "Principal Contractor" means Election Systems and Software ("ES&S"), an entity that performs services and/or provides goods for the Counties under the terms and conditions set forth in this Intrastate Interlocal Contract Between Public Agencies (hereinafter, the "Contract").
- 3. <u>CONTRACT TERM</u>. This Contract shall be effective upon approval to September 30, 2012, unless sooner terminated by either party as set forth in this Contract.
- 4. <u>TERMINATION</u>. 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 <u>30</u> 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 State and/or federal 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. <u>INCORPORATED DOCUMENTS</u>. The parties agree that the services to be performed by the Principal Contractor shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT 1: ES&S COST ESTIMATES AND SCOPE OF WORK
ATTACHMENT 2: DOUGLAS AND CARSON CITY POWERPROFILE EE VOTER
REGISTRATION SYSTEM CHANGE ORDER; CHANGE REQUEST/
APPROVAL FORM

- 7. <u>REIMBURSEMENT AMOUNT</u>. The parties agree that Principal Contractor will provide the services specified in Attachments 1 and 2 at a total cost of \$92,175.00 for complete project services, with the total payable: upon completion of the project, not to exceed \$92,175.00. The State does not agree to reimburse Counties for expenses unless otherwise specified in the incorporated Attachments 1 and 2.
- 8. <u>INVOICING</u>. The Principal Contractor will invoice the Counties at the address listed above upon completion of the project with net 30 payment terms as to the amount listed in Section 7 above. Within three (3) business days of its receipt of the invoice, the Counties will submit the invoice to the Secretary of State's office at the address listed above for payment directly to the Principal Contractor. The State will submit payment to the Principal Contractor within 25 days of invoice receipt.
- 9. <u>ASSENT</u>. 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.

10. INSPECTION & AUDIT.

- a. <u>Books and Records</u>. 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. <u>Inspection & Audit</u>. 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. <u>Period of Retention</u>. 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.
- 11. <u>BREACH; REMEDIES</u>. 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. <u>LIMITED LIABILITY</u>. 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.
- 13. <u>FORCE MAJEURE</u>. 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. <u>INDEMNIFICATION</u>. Neither party waives any right or defense to indemnification that may exist in law or equity.
- 15. <u>INDEPENDENT PUBLIC AGENCIES</u>. 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. <u>WAIVER OF BREACH</u>. 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. <u>SEVERABILITY</u>. 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. <u>ASSIGNMENT</u>. 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 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 the Counties and the Sponsor.
- 20. <u>PUBLIC RECORDS</u>. 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. <u>CONFIDENTIALITY</u>. 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. <u>PROPER AUTHORITY</u>. 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. <u>GOVERNING LAW; JURISDICTION</u>. 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. <u>REPORTS</u>. Technical reports will be provided by the Principal Contractor to Counties 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 Counties to Sponsor upon completion of the project. Such reports will be forwarded to the Secretary of State's office as provided herein.

25. <u>ENTIRE AGREEMENT AND MODIFICATION</u>. 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.

DOUGLAS COUNTY			
Public Agency #1	-		
Public Agency #1 Signature	Date	Title	
CARSON CITY			
Public Agency #2			
Public Agency #2 Signature	Date	Title	
SECRETARY OF STATE			
Public Agency #3			
Public Agency #3 Signature	Date	Title	
Signature – Nevada State Board of Examiners		BY BOARD OF EXAMINERS	
Approved as to form by:	On	(Date)	
Daniel Aller Constitution of the Constitution	On		
Deputy Attorney General for Attorney General, State of Nevada		(Date)	