



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: December 7, 2017

Staff Contact: Sue Merriwether, Clerk-Recorder, smerriwether@carson.org

Agenda Title: For Possible Action: To approve the Interlocal Agreement with the Nevada Secretary of State's office transferring ownership of the voting equipment purchased from Sequoia Voting Systems, Inc. for the sole purpose of disposing the equipment by allowing Dominion Voting Systems to pick up the equipment from the Carson City Clerk-Recorder's office. (smerriwether@carson.org)

Staff Summary: On October 19, 2017 this board approved the Clerk-Recorder's request to purchase new voting equipment from Elections Systems & Software (ES&S). The Sales Order Agreement with ES&S was fully executed on October 23, 2017. Delivery has been scheduled for the new voting equipment for mid-December, 2017. Prior to taking receipt of delivery of the new voting equipment, it is necessary to dispose of the old voting equipment. Without the complete transfer of ownership of the old equipment taking place, the Secretary of State is requesting each county to sign the Interlocal Agreement allowing ownership to transfer to the individual counties and thereby allowing the counties to dispose of the old equipment without the Secretary of State's involvement.

Agenda Action: Formal Action/Motion

Time Requested: Consent

Proposed Motion

I move to approve the Interlocal Agreement with the Nevada Secretary of State's office transferring ownership of the voting equipment purchased from Sequoia Voting Systems, Inc. for the sole purpose of disposing the equipment by allowing Dominion Voting Systems to pick up the equipment from the Carson City Clerk-Recorder's office.

Board's Strategic Goal

N/A

Previous Action

This board approved the purchase of new voting equipment on October 19, 2017.

Background/Issues & Analysis

The Secretary of State entered into a purchase agreement for voting equipment with Sequoia Voting Systems on or about March 19, 2004. Transfer of ownership of this voting equipment was never effectuated and therefore the title to the election equipment never transferred to the individual counties. The Secretary of State requests that this Interlocal Contract be signed by each county to effectuate the transfer of ownership of the voting equipment to the individual counties prior to the disposal of the equipment.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 244.270

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number:

Is it currently budgeted? Yes No

Explanation of Fiscal Impact:

Alternatives

Approve, Modify or Deny

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

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

Secretary of State
101 N. Carson Street, Suite 3
Carson City, NV 89701

and

County of Carson City
885 East Musser Street Suite 1025
Carson City, NV 89701

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 Office of the Secretary of State (the "Secretary"), pursuant to a contract with Sequoia Voting Systems, Inc., dated March 19, 2004, purchased voting machines and maintenance equipment (collectively the "Equipment") for use in conducting Nevada elections;

WHEREAS, the Secretary purchased the Equipment with the proceeds of a federal grant and supplied the Equipment to the County of Carson City (the "County") for the use and benefit of the County in conducting elections;

WHEREAS, the Equipment is obsolete and will be replaced by the County prior to the 2018 primary election;

WHEREAS, the Secretary and the County wish to dispose of the Equipment by returning it to Dominion Voting Systems, the successor in interest to Sequoia Voting Systems, Inc., and/or to Dominion Voting Systems' successors, assigns, agents and independent contractors (collectively "Dominion") in exchange for a possible credit to be applied by Elections Systems & Software to the County's purchase of replacement voting machines and equipment from Election Systems & Software;

WHEREAS, it is deemed that the services of the County hereinafter set forth are both necessary to the Secretary 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. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by appropriate official action by 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 12, 2018, 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 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. CONSIDERATION. The County agrees to dispose of the Equipment by delivering the Equipment to Dominion in the manner best suited, as determined by Dominion and the County, to preserving the Equipment in a condition that Dominion deems satisfactory for recycling, refurbishing, reconditioning and/or resale by Dominion. In consideration of the County's agreement to so dispose of the Equipment, and in order to effectuate its disposition in the manner provided by this paragraph, the State hereby assigns to the County all of its right, title and interest in the Equipment, as identified in Attachment A. Any credit made by Elections Systems & Software to the County upon the delivery of the Equipment shall be applied by the County toward the County's purchase of replacement voting machines and equipment.

7. 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.

d. Inventory Controls. The County agrees to manage equipment acquired with federal funds, including successive equipment, in accordance with the provisions of OMB Circular 102 as it applies to the Help America Vote Act. Such inventory control shall include a system for state and local election officials to locate equipment in storage or use, and provide basic information for all equipment such as details regarding acquisition, condition, disposition, and use. The source for these requirements can be found at 41 CFR Section 105 – 71.132(d)(2).

8. 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. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys.

9. 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.

10. 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.

11. INDEMNIFICATION.

a. To the fullest extent of limited liability as set forth in paragraph (11) 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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).

20. 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.

21. 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.

OFFICE OF THE SECRETARY OF STATE

By _____ Date: _____
Title:

COUNTY OF CARSON CITY

By _____ Date: _____
Title:

Approved as to Form:

Deputy Attorney General Date: _____

Manufacturer	Type Equipment	Model	Serial Number	Type	Acquisition Date
Dell	Desktop Computer	OptiPlex 990	????	Voter Registration	2/1/2012?
Dell	Desktop Computer	OptiPlex 990	????	Voter Registration	2/1/2012?
Dell	Desktop Computer	OptiPlex 990	CZWQGQ1	Voter Registration	5/13/2011
Dell	Desktop Computer	OptiPlex 990	CZWPGQ1	Voter Registration	5/13/2011
Dell	Desktop Computer	OptiPlex 990	CZWRGQ1	Voter Registration	5/13/2011
Dell	Desktop Computer	OptiPlex 990	CZVWGQ1	Voter Registration	5/13/2011
Canon	Desktop Scanner	M11037	303509	Voter Registration	7/1/2005
Dell	Monitor	E2210	FSJ151806792	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806791	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806796	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806801	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806793	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806799	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806799	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806802	Voter Registration	5/13/2011
Dell	Monitor	E2210	FSJ151806797	Voter Registration	5/13/2011
Dell	Printer	M5200N W/duplexer	8WBZ261	Voter Registration	7/1/2005