



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** November 7, 2019

Staff Contact: Aubrey Rowlett

Agenda Title: For Possible Action: Discussion and possible action regarding an Interlocal Agreement between the State of Nevada, through the Nevada Secretary of State's office, and Carson City to reimburse Carson City \$28,000, with a 20% contingency for an amount not to exceed \$33,600, for costs related to the statutorily required modifications to Carson City's voter registration software for the implementation of Automatic Voter Registration. (Aubrey Rowlett, arowlett@carson.org)

Staff Summary: This Agreement, if approved, will allow for Carson City to be reimbursed in full by the State of Nevada in the amount of \$28,000 with a 20% contingency for an amount not to exceed \$33,600 to perform statutorily mandated modifications to Carson City's voter registration software pursuant to the passage of Ballot Question No. 5 (also known as Initiative Petition 1) in 2018 and Assembly Bill (AB) 345 during the 2019 legislative session.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the Interlocal Agreement as presented.

Board's Strategic Goal

Efficient Government

Previous Action

This Agreement was brought before the Carson City Internal Finance Committee at the August 28, 2019 meeting and the committee supported this Interlocal Agreement.

Background/Issues & Analysis

The State of Nevada passed Ballot Question No. 5 (Automatic Voter Registration Initiative) in the 2018 General Election. Additionally, AB 345 was passed during the 2019 legislative session enacting regulations to implement Automatic Voter Registration. Pursuant to the statutory mandates, it is necessary to modify Carson City's voter registration software. Elections Systems & Software (ES&S) is the vendor for Carson City and Douglas County's voter registration software, PowerProfile. The cost to provide the mandated modifications is \$56,000 between the two counties with a 20% contingency. This cost is to be split and billed to both Douglas County and Carson City in equal amounts of \$28,000 (\$13,475 Patch Release 14.4.x and \$14,525 Release 14.5). The first release is expected in December of 2019 (Patch Release 14.4.x) and the second release is expected January 31, 2020 (14.5). Invoices will be sent to the county once each release is available for installation. Through the Interlocal Agreement, the State of Nevada will reimburse Carson City for the mandated modifications upon proof of payment by Carson City.

Applicable Statute, Code, Policy, Rule or Regulation

Ballot Question No. 5 (Automatic Voter Registration Initiative, 2018 General Election); AB 345 (2019 Legislative Session)

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: 1010216-500305 (Election Costs) & 1011081-466063 (State Reimbursement)

Is it currently budgeted? No

Explanation of Fiscal Impact: Through this Interlocal Agreement, the State of Nevada will reimburse Carson City \$28,000, plus any portion of the 20% contingency fee that may have been added up to an amount not to exceed \$33,600, for statutorily mandated modifications to Carson City’s voter registration software upon proper proof of payment (copy of invoice and proof of payment of invoice) by Carson City to ES&S. The budgeted revenue and expense amounts will need to be augmented for this Agreement.

Alternatives

Do not approve the Agreement and provide an alternative solution.

Attachments:

[Interlocal AVR with Exhibit A_FINAL.pdf](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

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

Carson City
885 Musser Street
Carson City, NV 89701
Contact: Aubrey Rowlatt, Carson City Clerk-Recorder
arowlatt@carson.org

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 Carson City, 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 from August 28th, 2019 to May 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 local, 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:

ATTACHMENT A: NV-008 Counties: ESSVR PowerProfile Voter Registration System Change Order – AVR 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 at a projected total of \$28,000.00, not to exceed \$33,600.00 (includes 20% contingency), 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:

Invoice 1= January Release \$14,525.00

Invoice 2 = Patch Release \$13,475.00

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 non-enforceability 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.

CARSON CITY
Public Agency #1

Public Agency #1 Signature

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)



**State of Nevada
PowerProfile Voter Registration System
Change Order**

Change Request/Approval Form

CG ID*	Change Title	Date Raised	Raised By	Contact	Contact Tel #	Priority (H/M/L)
NV-008 Carson City	NV State Changes	Aug 2019	NV SOS/ Douglas and Carson City	Aubrey Rowlett	(775) 887-2260	H

Description of Requested Change

A change has been requested by the State of NV to the PowerProfile system. This document outlines the cost analysis for coding the requirements within the PowerProfile system for our two accounts- Douglas and Carson City. In order for ESSVR to perform the work outlined, we will need this signed change order from both accounts.

The changes impact two release levels with the PowerProfile suite of products as follows:

- 1) January Release 14.5- PPS-1987 and PPS-1997
SA=18, Dev=68, QA=86, for a total of 166 hours
- 2) Patch Release 14.4.x
PPS-2009 and PPS-2010- 154 hours

Nevada currently has online voter registration records coming into PowerProfile via a web service (NOVA). They are now adding the transmission of electronic voter registration records from the DMV.

The DMV records will be sent via the existing web service used for the NOVA transmissions, with the following changes **for DMV records only**. The NOVA transmission will not be changed.

1. Data validation will be removed based on the use of a new SubmitVoterRegistrationNoVal method. All records will be accepted into the queue for a county user to process even if they violate validation rules in place for NOVA transmissions.
2. The ValidateResidentialAddress method will not be called for DMV transactions. The address submitted will be stored in the review queue as sent.
3. Social Security number will not be required.
4. Drivers license numbers with alpha characters must be accepted.
5. Names will be accepted with the following special characters – apostrophe, hyphen, period, or space.

When these records are applied in PowerProfile, they will be stored with a registration source and module that reflect that they came from the DMV rather than NOVA. Activity records will reflect DMV instead of NOVA for the module.

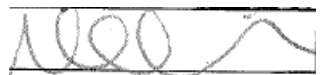
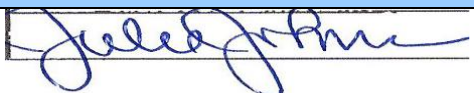
IMPORTANT: A test site will need to be set up for validating these changes with Carson City and Douglas County. Additionally, a state testing representative will need to be available to the ESSVR QA department for testing these changes as well as access to the state sandbox (if available). ESSVR will notify the state 3 business days prior to when joint testing needs to occur. Any delay will impact the proposed timeline.



**State of Nevada
PowerProfile Voter Registration System
Change Order**

Configuration Items Potentially Affected	Current Version Numbers
None	None

(Add additional rows as required)

Impact Analysis Conducted by		Date Analysis Complete	Impact Analysis Approved By	Date Analysis Approved
Name	Signature			
Melissa Winchester		8/16/19		8/16/19

Impact of Making the Change

Effort Impact	Schedule Impact	Performance Impact
Low	Low	N/A
Documentation Impact	Capacity Impact	Support Impact
N/A	Low	Low
Financial Impact	Hardware/Software Impact	Other Impact
<p>January Release 14.5 = \$29,050.00</p> <p>Patch Release 14.4.x = \$26,950.00</p> <p>The cost will be split evenly for the two accounts. Additionally, each account will receive 2 separate invoices</p> <p><u>Carson City</u> Invoice 1= January Release \$14,525.00 Invoice 2 = Patch Release \$13,475.00</p> <p><u>Douglas County</u> Invoice 1 = January Release \$14,525.00 Invoice 2= Patch Release = \$13,475.00</p> <p>The invoices outlined above for Carson City will be invoiced directly to the county once the release is available for install</p>	PowerProfile	None




**State of Nevada
PowerProfile Voter Registration System
Change Order**

Required Modifications	Modifications to Be Performed By
The changes impact two release levels with the PowerProfile suite of products as follows: <ol style="list-style-type: none"> 1) January Release 14.5- PPS-1987 and PPS-1997- Release Date scheduled for January 31, 2020 2) Patch Release 14.4.x- Release Date scheduled for December 2019 	ESSVR Development Team

Accept/Reject

I hereby certify that I accept this document and authorize ESSVR, LLC to proceed as described within.

		Name	Title	Signature	Date
<input checked="" type="radio"/> Accept <input type="radio"/> Reject	ESSVR	Tammy Foster	Finance and Contracts Administrator		8/19/19
<input type="radio"/> Accept <input type="radio"/> Reject	Carson City				