

**INTERAGENCY AGREEMENT BETWEEN
THE STATE OF WYOMING, OFFICE OF THE SECRETARY OF STATE
AND
LARAMIE COUNTY**

1. **Parties.** The parties to this Interagency Agreement (Agreement) are the State of Wyoming, Office of the Secretary of State (State), whose address is: Herschler Building East, 122 W. 25th Street, Suites 100 and 101, Cheyenne, WY 82002, and Laramie County (County), whose address is: 309 West 20th Street, Cheyenne, WY 82001.
2. **Purpose of Agreement.** The purpose of this Agreement is to: a) set forth the responsibilities of the County regarding the purchase, testing, acceptance, safekeeping and ongoing maintenance of voting systems, Equipment, and Software required and funded by the State, and b) to transfer ownership and risk of loss for the voting systems, Equipment, and Software from the State to the County. The State entered into a contract dated March 4, 2020 (the "Contract") with Election Systems & Software, LLC (Contractor) whereby voting systems, equipment and software will be purchased for and delivered to the County. The Contract is incorporated into this Agreement by reference. The authority for purchase of the voting systems is provided by 2019 Wyoming Session Laws Chapter 9 and the Help America Vote Act (HAVA) of 2002.

The type and quantity of each hardware and software item to be purchased by the State for use in the County were requested and recommended for purchase by the County following discussions between the State, County, and Contractor. The voting equipment purchased by the State for the County meets HAVA requirements.

3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date) and shall remain in full force and effect until terminated in accordance with its terms.
4. **Payment.** No payment shall be made to either party by the other party under this Agreement.
5. **Responsibilities of State.** The State shall have the following responsibilities:
 - A. The State will pay for the purchase of Federal and State certified voting systems, related equipment, and services for the County, for expenses related to training on the proper use of the systems, for warranties of the system and maintenance of the equipment and software, to the extent stated in the Contract. The voting systems, equipment, and services are warranted by Contractor to have been tested and certified to the Voluntary Voting System Guidelines (VVSG) provided by the federal Elections Assistance Commission (EAC), warranted to meet the requirements of HAVA for future federal elections, and acknowledged to have been tested and certified under standards separately adopted and implemented in various states for use in future elections in those states. The State shall ensure that the Contractor will also verify to the State and County that each piece of Equipment

and Software delivered to the County will function properly according to the terms provided in the Contract.

- B.** The State shall transfer, and the County shall own and hold title to, all Equipment and voting systems purchased for the County under the Contract. The transfer of ownership is effective when the voting systems and Equipment are delivered to County's designated location and accepted, in writing, upon visual inspection within twenty-four (24) hours after delivery.

6. Responsibilities of County. The County shall have the following responsibilities:

- A.** Provide information and assistance as necessary to enable Contractor to meet its responsibilities under the Contract with the State. The County shall:
 - (i)** Prepare old equipment for pick-up which may include boxing up equipment, palletizing equipment, etc.;
 - (ii)** Visually inspect and sign-off on delivery of Equipment and Election Management System within twenty-four (24) hours of delivery;
 - (iii)** Perform acceptance testing in accordance with the acceptance testing procedures provided to the County by the State, which shall be held in strict confidence, and notify the State of any deficiencies;
 - (iv)** Participate in Equipment and Election Management System training;
 - (v)** Perform logic and accuracy testing; and
 - (vi)** Perform public accuracy testing.
- B.** Identify a single point of contact within the County, designated as the County Project Representative.
- C.** To assume ownership of the voting systems and Equipment provided to the County under this Agreement and the Contract, to the same extent that the County has responsibility for existing voting systems and equipment purchased by the County; to insure the voting systems and equipment; and to assume responsibility for the proper handling, storage, future operation, and future replacement of the voting systems and equipment.
- D.** To assume financial and other responsibility for all maintenance services, warranties, operational services, equipment and software upgrades, including the annual Contractor Software License, Maintenance and Support Services fees, following expiration of those services purchased by the State on behalf of the County under the Contract, beginning July 1, 2021.
- E.** To verify, on forms provided by the State, that the Equipment and Software shown on the Final Quantity List agreed upon by the State and the Contractor, as incorporated into the Contract, was received in good working order.
- F.** To perform pre-election testing of the Equipment and Software before each election, in sufficient time to permit the timely repair of the Equipment and Software before each election. The County shall notify the State and the Contractor of any deficient

Equipment and shall set a mutually agreed-upon schedule between County and Contractor for replacement or repair.

- G. To coordinate and cooperate with the State and Contractor for the ordering and timely delivery of the items supplied by the Contractor or its subcontractors or agents.
- H. To coordinate and cooperate with the State and the Contractor in scheduling of training, and ensure that County personnel attend all training provided by Contractor.
- I. To ensure that the uniformity being established statewide by the Contract is maintained, and to ensure that all appropriate upgrades are implemented.
- J. To comply with policy and procedures and State rules as they pertain to the future purchase of additional or new voting equipment, specifically Secretary of State Rules, Election Procedures, Chapter 12 Certification of Voting Equipment.
- K. To be responsible for the repair or replacement of any components that are consumed in the normal course of operating the Equipment, including, but not limited to, computer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads, or red stripe pens.
- L. To be responsible for promptly notifying Contractor and State of: i) the failure or performance or defect or other noncompliance with Contractor's obligations under the Contract; and ii) any Equipment damaged as a result of accident, theft, vandalism, neglect, abuse, or use which is not in accordance with instructions or specifications furnished by Contractor or by causes beyond the reasonable control of the County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions.
- M. To only repair, change, modify, or alter any equipment as authorized or approved by Contractor or the State as appropriate.

7. **Special Provisions.** The County acknowledges that it has received a copy of the Contract between the State and the Contractor and that the State is required to include certain provisions from the Contract in this Agreement. County expressly agrees that it will comply with the following provisions:

- A. **Grant of Licenses.** Subject to the terms and conditions of the Contract, Contractor has granted to County nonexclusive, nontransferable licenses for its bona fide full time, part time or temporary employees to use the Contractor Software and related Documentation in the jurisdiction while State and County are using the Contractor Equipment and timely pay the applicable annual Contractor Software license, maintenance and support fees set forth herein. The foregoing grant of license shall be included in all separately executed contracts between the Contractor and the County. The licenses allow such bona fide employees to use and copy the Contractor Software (in object code only) and the Documentation, in the course of

operating the Contractor Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the jurisdiction. It is expressly understood and agreed that the State shall pay the annual Contractor Software License, Maintenance and Support Services fees through June 30, 2021, and thereafter shall only pay the annual Contractor Software License, Maintenance and Support Services fees for any Equipment owned by the State and not the Counties; it is further understood and agreed that the County shall pay the annual Contractor Software License, Maintenance and Support Services fees beginning July 1, 2021 for all Equipment owned by the County.

B. Prohibited Uses. County shall not take any of the following actions with respect to the Contractor Software or the Documentation:

- (i) Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Contractor Software;
- (ii) Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Contractor Software or Documentation, in whole or in part, to or by any third party without Contractor's prior written consent; or
- (iii) Cause or permit any change to be made to the Contractor Software without Contractor's prior written consent; or
- (iv) Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Contractor Software (except finished ballots by ballot printers selected by County) in which Contractor owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

C. Term of Licenses. The licenses granted in subsection 7.A., above, shall commence upon the delivery of the Contractor Software and shall continue through June 30, 2021 (the "Initial License Term"). Upon expiration of the Initial License Term, the County shall renew the licenses as required to maintain statewide uniformity of voting systems provided under this Agreement. The licenses may be renewed for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by County of the annual software license and software maintenance and support fee under a separate contract with the Contractor. Contractor may terminate the license if County fails to pay the consideration due for, or breaches Sections 7.A. or 7.B. with respect to, such license. Upon the termination of the license granted in Section 7.A. for Contractor Software or upon the State's and County's discontinuance of the use of any Contractor Software, County shall immediately return such Contractor Software and the related Documentation (including any and all copies thereof) to Contractor, or (if requested

by Contractor) destroy such Contractor Software and Documentation and certify in writing to Contractor that such destruction has occurred.

D. Updates. During the Initial License Term Contractor may provide new releases, upgrades or maintenance patches to the Contractor Software, together with appropriate Documentation ("Updates"), on a schedule defined by Contractor and agreed to by State. State and County are responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the Contractor Equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be Contractor Software for purposes of this Agreement upon delivery. State and County may install the Updates in accordance with Contractor's recommended instructions or may request that Contractor install the Updates. For the Initial License term, Contractor may charge the State and for all subsequent terms, Contractor may charge the County, at its then-current rates to:

- (i) Install the Updates unless such Updates are being provided to the Contractor Firmware only (but not Contractor election management software which shall be subject to Contractor's installation fees) during a mutually agreed-upon preventative maintenance event;
- (ii) Train State and County on Updates, if such training is requested by State or County; or
- (iii) Provide maintenance and support on the Contractor Software that is required as a result of State's or County's failure to timely or properly install an Update.

Contractor shall not be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by State's or County's failure to install and use the most recent Update provided to it by Contractor. If County proposes changes in the Contractor Software to Contractor, such proposals will become Contractor's property. Contractor may, in its sole discretion, elect to make or not to make such changes without reference or compensation to County or any third party. Contractor has represented to State and County that the Updates will comply with all applicable state law requirements at the time of delivery. State and County shall be responsible to ensure that they have installed and are using only certified versions of Contractor Software in accordance with applicable law.

E. Risk of Loss. Risk of loss for the Contractor Equipment and Contractor Software shall pass to County when such items are delivered to County's designated location and delivery has been accepted, in writing, upon visual inspection by County's representative within twenty-four (24) hours. Upon transfer of risk of loss, the County shall be responsible for obtaining and maintaining sufficient casualty insurance on the Contractor Equipment and Contractor Software owned by the County.

F. Warranty.

(i) Contractor Equipment/Contractor Software. Contractor has warranted that for the period commencing upon acceptance testing through June 30, 2021 (the "Warranty Period"), it will repair or replace any component of the Contractor Equipment or Contractor Software which, while under normal use and service: (a) fails to perform in accordance with its Documentation in all material respects, or (b) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any Contractor Equipment components that are consumed in the normal course of operating the Contractor Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, or marking devices. Any repaired or replaced item of Contractor Equipment or Contractor Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Contractor Equipment or Contractor Software will become the property of Contractor. This warranty is effective provided that:

- (A) State or County notifies Contractor within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder;
- (B) The Contractor Equipment or Contractor Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor;
- (C) The Contractor Equipment or Contractor Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by Contractor or causes beyond the reasonable control of Contractor, or State or County, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions; and
- (D) State or County has installed and is using the most recent update provided to it by Contractor.

This warranty is void for any units of Equipment which:

- (a) Have not been stored or operated in a temperature range according their specifications;
- (b) Have been severely handled so as to cause mechanical damage to the unit; or

- (c) Have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.
- (ii) Contractor warrants that the Contractor Equipment and Contractor Software will operate in conjunction with Third Party Items provided by Contractor during the Warranty Period, provided that:
 - (A) The or County has installed and is using the most recent Update, provided to it by Contractor; and
 - (B) The Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship.

In the event of a breach of this warranty, Contractor will repair or replace the item of Contractor Equipment or Contractor Software that is causing such breach to occur. The County acknowledges that Contractor has purchased the Third Party Items for resale to the State, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than Contractor ("Third Parties"). The County further acknowledges that, except for the payment to Contractor for the Third Party Items, all of the State's and County's rights and obligations with respect to the Third Party Items, including any warranties, flow to and from the Third Parties.

- G. **Proprietary Rights.** County acknowledges and agrees as follows: Contractor owns the Contractor Software, all Documentation and training materials provided by Contractor (with the exception of training materials developed jointly for use in Wyoming), the design and configuration of the Contractor Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the Contractor Equipment. County has the right to use the aforementioned items to the extent specified in this Contract, and shall have the right to use all Wyoming-specific training materials developed jointly by the parties. Contractor also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of Contractor that are protected by law and are of substantial value to Contractor. County shall keep the Contractor Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the Contractor Equipment, the Contractor Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.
- H. **Equipment Buy-Back.** Contractor has agreed to include a buy-back provision in the event the Equipment, which was purchased for the County by the State under the Contract, is no longer needed due to the County's move from polling place voting to voting centers. It shall be the County's responsibility to ensure that a buy-back

provision is included in any agreement with the Contractor for Post-Implementation Support & Warranty.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed by all parties to this Agreement.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Entirety of Agreement.** This Agreement, consisting of ten (10) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- D. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- E. Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- F. Notices.** All notices arising out of, or from the provisions of this Agreement shall be in writing and given to the parties at the addresses provided under this Agreement, either by regular mail or delivery in person.
- G. Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information’s Procurement Office and approved by the Governor of the State of Wyoming or his designee if required by Wyo. Stat. § 9-2-1016(b)(iv).

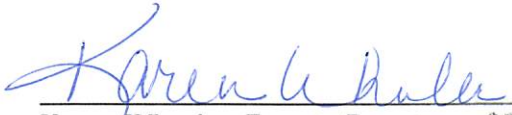
- H. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- I. Sovereign Immunity.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the Office of the Secretary of State expressly reserve their sovereign immunity, and the County expressly reserves its governmental immunity, by entering into this Agreement and each of them specifically retain immunity and all defenses available to them. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- J. Termination of Agreement.** This Agreement may be terminated, without cause, by the State upon thirty (30) days written notice. This Agreement may be terminated by the State immediately for cause if the County fails to perform in accordance with the terms of this Agreement.
- K. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- L. Time is of the Essence.** Time is of the essence in all provisions of the Agreement.
- M. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.
- N. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- O. Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement.

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9. **Signatures.** By signing this Agreement, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Agreement, and that they have the authority to sign it.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

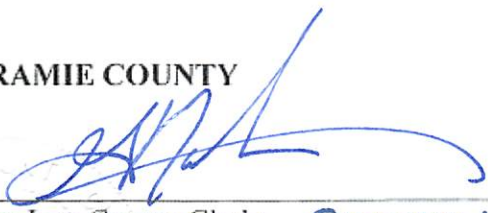
STATE OF WYOMING, OFFICE OF THE SECRETARY OF STATE



Karen Wheeler, Deputy Secretary of State

3/24/20
Date

LARAMIE COUNTY




Debra Lee, County Clerk Gunnar Malm, Chairman

3/23/20
Date

ATTEST 

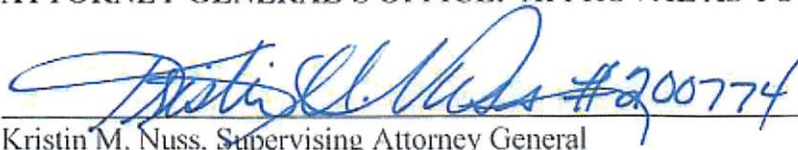
COUNTY ATTORNEY'S OFFICE: APPROVAL AS TO FORM

 FOR

Mark Voss, County Attorney

3/20/20
Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

 #200774

Kristin M. Nuss, Supervising Attorney General
Representing the Office of the Secretary of State

03-16-20
Date