



# WASHOE COUNTY

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## STAFF REPORT BOARD MEETING DATE: April 11, 2017

**DATE:** Wednesday, March 29, 2017

**TO:** Board of County Commissioners

**FROM:** Kerri Heward, Director, Forensic Science Division  
(775) 328-2803, [kheward@washoecounty.us](mailto:kheward@washoecounty.us)

**THROUGH:** Sheriff Chuck Allen

*by: T. 11/6/17*

**SUBJECT:** Recommendation to approve the Interlocal Contract between Public Agencies: the Washoe County Sheriff's Office Forensic Science Division and the State of Nevada, Department of Public Safety, Office of the Director for Forensic Services - Breath Alcohol Program for the term of July 1, 2017 through June 30, 2021 with an income of [\$355,486; \$373,260; \$391,923; and \$411,519] for FY 2018; 2019; 2020; and FY 2021, respectively.(All Commission Districts)

### SUMMARY

The Washoe County Sheriff's Office Crime Laboratory contracts with several agencies that require Forensic Services. This Interlocal Contract with the State of Nevada provides for breath alcohol testing for intoxication in the northern part of Nevada.

**Washoe County Strategic Objective supported by this item:** Safe, Secure and Healthy Communities.

### PREVIOUS ACTION

The Washoe County Sheriff's Office has contracted to provide forensic services for the northern part of the State of Nevada since 1993. The current contract with the State for the Breath Alcohol Program expires June 30, 2017.

### BACKGROUND

The Washoe County Sheriff's Office provides Forensic Services to Federal, State and Local Agencies throughout Nevada. These services are provided by contract. The Nevada Department of Public Safety, Office of the Director wishes to renew their agreement with Washoe County Sheriff's Office to continue to perform the duties involved in the Breath Alcohol Program for the northern portion of the State of Nevada. The State of Nevada presented Washoe County with the Interlocal Contract effective July 1, 2017 through June 30, 2021. The Washoe County Sheriff's Office will provide service and training for the Breath Alcohol Program as set forth in Attachment A – Scope of Work. The fees provided with this contract cover the cost of services.

AGENDA ITEM #

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**FISCAL IMPACT**

The revenues from this contract will be deposited into General Ledger Accounts:

Annual Income of \$355,486 for FY 2018; \$373,260 for FY 2019; \$391,923 for FY 2020 and \$411,519 for FY 2021: 150660-460162 Lab DUI Contract Services to Outside Agencies.

**RECOMMENDATION**

It is recommended that the Board of County Commissioners approve the Interlocal Contract between Public Agencies: the Washoe County Sheriff's Office Forensic Science Division and the State of Nevada, Department of Public Safety, Office of the Director for Forensic Services - Breath Alcohol Program for the term of July 1, 2017 through June 30, 2021 with an income of [\$355,486; \$373,260; \$391,923; and \$411,519] for FY 2018; 2019; 2020; and FY 2021, respectively.

**POSSIBLE MOTION**

Should the board agree with staff's recommendation, a possible motion would be: Move to approve the Interlocal Contract between Public Agencies: the Washoe County Sheriff's Office Forensic Science Division and the State of Nevada, Department of Public Safety, Office of the Director for Forensic Services - Breath Alcohol Program for the term of July 1, 2017 through June 30, 2021 with an income of [\$355,486; \$373,260; \$391,923; and \$411,519] for FY 2018; 2019; 2020; and FY 2021, respectively.

**INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES**

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

**Department of Public Safety  
555 Wright Way  
Carson City, NV 89711  
775-684-4698**

And

**Washoe County Sheriff's Office – Forensic Science Division  
911 Parr Blvd.  
Reno, NV 89512  
775-328-2810**

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 of **WASHOE COUNTY SHERIFF'S OFFICE – FORENSIC SCIENCE DIVISION** hereinafter set forth are both necessary to **DEPARTMENT OF PUBLIC SAFETY** 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 of the governing body of 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 July 1, 2017 to June 30, 2021, 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 shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK

7. **CONSIDERATION. WASHOE COUNTY SHERIFF'S OFFICE – FORENSIC SCIENCE DIVISION** agrees to provide the services set forth in paragraph (6) at a cost not to exceed three hundred fifty-five thousand four hundred eighty-six dollars and no cents (\$355,486) for state fiscal year 2018; and three hundred seventy-three thousand two hundred sixty dollars and no cents (\$373,260) for state fiscal year 2019; and three hundred ninety-one thousand nine hundred twenty-three dollars and no cents (\$391,923) for state fiscal year 2020; and four hundred eleven thousand five hundred nineteen dollars and no cents (\$411,519) for state fiscal year 2021 for a total maximum amount of one million five hundred thirty-two thousand one hundred eighty-eight dollars and no cents (\$1,532,188) with the total Contract or installments payable: upon receipt of monthly invoice. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. **ASSENT.** 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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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).

22. **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.

23. **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.



## **ATTACHMENT A: SCOPE OF WORK**

The parties agree that the services to be performed are as follows: The Washoe County Sheriff's Office Forensic Science Division will provide the services set forth herein to implement the breath alcohol testing regulations prescribed by the Committee on Testing for Intoxication in the Counties of Washoe, Humboldt, Elko, Pershing, Lander, Eureka, Churchill, White Pine, Storey, Lyon, Carson City, Douglas, and Mineral. Services are to be provided within full compliance of the provisions set forth in NRS 484C 600-640 and NAC 484C 020-180.

- a. Provide qualified Forensic Analysts of Alcohol personnel who are certified by the Nevada Department of Public Safety to administer the breath alcohol testing regulations prescribed by the Committee on Testing for Intoxication.
- b. Provide cross-training to qualified individuals to become certified as Forensic Analysts of Alcohol as needed to maintain required availability.
- c. Provide approved training courses to all law enforcement personnel seeking to become certified as preliminary breath test instructors and certified and recertified as evidential breath test operators as required throughout the law enforcement community to meet ongoing need.
- d. Certified Forensic Analysts of Alcohol will maintain required calibration of evidential breath testing devices used by law enforcement personnel according to the regulations prescribed by the Committee on Testing for Intoxication. Calibrations will be performed at least once every 90 days as prescribed by law.
- e. Provide certified aqueous alcohol solution standards\* or gas standards\* as required to ensure the evidential testing devices and the preliminary breath testing devices are operating within specified requirements to produce valid, accurate, and acceptable results. \*Note – for the purposes of this Contract, "standard" is defined as the material used (liquid or gas) with a known value of alcohol to ensure the instrument is operating within acceptable specifications.
- f. Provide repair and maintenance services for evidential breath testing devices as necessary to maintain accurate and reliable devices for use by law enforcement agencies.
- g. Maintain ongoing records on the accuracy, reliability, repair, and calibration of each individual evidential breath testing device for which the laboratory is responsible. These records are to be available for inspection by the Department of Public Safety upon request.
- h. Provide expert testimony in judicial and administrative proceedings regarding the operation, calibration, accuracy, and use of evidential breath testing devices.
- i. Upon receipt of a request from the Director of the Department of Public Safety or his designee, provide scientific evaluation regarding the accuracy and reliability of breath testing devices (evidential, preliminary, and interlock) not presently approved for use in the State of Nevada, and issue to the Director, a comprehensive report and evaluation of such instruments.



- j. On or about April 15, July 15, October 15 and January 15 of each year provide the Director of the Department of Public Safety a quarterly statistical report on the number of evidential and preliminary breath testing devices calibrated, maintained and repaired to include: Date of calibration, serial number, the agency services were provided to and location of the device.
- k. On or about April 15, July 15, October 15 and January 15 of each year provide the Director of the Department of Public Safety a quarterly statistical report to include: Number of Officers trained for certification as evidential breath test operators and preliminary breath test instructors and identify from which law enforcement agencies the officers were trained, number of court cases, and miles traveled in the course of duties.
- l. Invoice the Department of Public Safety on a monthly basis for one-twelfth of the agreed upon contract amount.
- m. All reports and communications are to be directed to:

Fiscal Manager  
Department of Public Safety  
555 Wright Way  
Carson City, NV 89711  
775-684-4519