

**HENNEPIN COUNTY/CITY OF Minneapolis
LEASE AGREEMENT**

THIS AGREEMENT, made by and between the COUNTY OF HENNEPIN and the CITY OF Minneapolis, both political subdivisions of the State of Minnesota, hereinafter referred to as the "County" and the "City" respectively. For purposes of this Agreement, the address of the County is A2300 Government Center, Minneapolis, Minnesota 55487 and the address of the City is 350 South 5th St, Room 1B, Minneapolis, MN 55415.

WITNESSETH

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 13-0134 authorized the purchase of election equipment for a countywide digital scan voting system, election hardware and services; and

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 05-564 authorized the purchase of Assisted Voting Technology equipment for a countywide optical scan voting system, election hardware and services through the State of Minnesota Cooperative Purchasing Agreement; and

WHEREAS, the County and the City of Minneapolis are parties to a prior agreement numbered A-052260 relating to the lease of election equipment and the County and City desire to terminate that lease agreement and replace it with this agreement.

WHEREAS, the County desires to lease Election Equipment and AVT Equipment (as defined herein) to the City of Minneapolis for use in all city elections.

NOW THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the County and the City agree as follows:

Section 1

SCOPE OF AGREEMENT

- 1.1 The County hereby leases to the City at the cost identified below and subject to the terms and conditions of this Agreement, and the City hereby agrees to lease from the County election equipment identified as: one hundred forty-four (144) DS200 Digital Scan Precinct Count Units (including two hundred eighty-eight (288) 4 GB Jump Drives), and one hundred forty-four (144) DS200 Plastic Ballot Boxes (the "Election Equipment") for polling places contained within the City.

- 1.2 The County hereby leases to the City subject to the terms and conditions of this Agreement, and the City hereby agrees to lease from the County AVT Equipment identified as: one hundred forty-four (144) AutoMARK Voter Assist Terminals, two hundred eighty-eight (288) flashcards and one hundred forty-four (144) ES&S AutoMARK Tables with adjustable legs for polling places (“AVT Equipment”) contained within the City.
- 1.3 Subject to the terms and conditions of this Agreement, the parties may agree by written addendum executed by all the parties to increase or decrease the County Election Equipment and AVT Equipment included within the scope of this agreement. Hennepin County hereby delegates authority to execute such an addendum to the County Auditor. The City hereby delegates authority to execute such an addendum to the authorized City officer, or the City Council, as appropriate.
- 1.4 Upon the express written permission of County’s Election Manager, or her/his designee, the City may lease Election Equipment and/or AVT Equipment to a school district. Said lease shall be made pursuant to a written agreement, between the City and the school district, which includes substantially the same terms as those contained herein.

Section 2

OWNERSHIP

- 2.1 The City acknowledges that the County owns the Election Equipment and AVT Equipment and that the City is authorized to use said Election Equipment and AVT Equipment for official election related purposes. Use of the Election Equipment and AVT Equipment for any other purpose is strictly prohibited absent express written consent of the County.
- 2.2 The City acknowledges and agrees that the Election Equipment and AVT Equipment may contain proprietary and trade secret information that is owned by a third party and is protected under state and federal copyright law or other laws, rules, regulations and decisions. The City shall protect and maintain the proprietary and trade secret status of the Election Equipment and AVT Equipment.

Section 3

HANDLING OF EQUIPMENT AND INDEMNIFICATION

- 3.1 The City shall be responsible for the Election Equipment and AVT Equipment while it is in the City’s custody, possession or control. The City, either through insurance or a self-insurance program, shall be responsible for all costs, fees, damages and expenses including but not limited to personal injury, storage,

damage, repair and/or replacement of the Election Equipment and AVT Equipment while it's in the City's custody and this Agreement is in effect, consistent with the City's defense and indemnity obligations contained in Section 7.6 herein.

- 3.2 The City shall be responsible for the transporting of the Election Equipment and AVT Equipment from and to the County. The City shall be responsible for all costs, including but not limited to shipping, related to the repair or replacement of lost, stolen, destroyed or damaged Election Equipment and AVT Equipment as well as the maintenance and repair costs described in Sections 5.1 and 5.2.

Section 4

TERM, TERMINATION

- 4.1 This Agreement commences September 1, 2013 and expires August 31, 2014. Thereafter, this Agreement shall automatically renew for additional one year periods unless either party notifies the other party, on or before June 1st of that year, of its intention not to renew. Termination of this Agreement by the City shall not relieve the City of any duties or obligations hereunder including but not limited to the obligation to pay amounts due and payable. Upon expiration or any termination of this Agreement, the City shall return the Election Equipment and/or AVT Equipment within a reasonable time and in good operating condition except for routine wear and tear.

Section 5

MAINTENANCE

- 5.1 **Maintenance Agreement (DS200)** The County has entered into an agreement with a third-party ("Maintenance Vendor") for maintenance and repair of the Election Equipment as more fully described in Addendum A ("Maintenance Services). The City will obtain Maintenance Services for the Election Equipment directly from the Maintenance Vendor including but not limited to scheduling and supervising the Maintenance Vendor. City shall pay County the per unit amount that County pays to the Maintenance Vendor plus any additional costs incurred by County as the same are directly related to maintenance and repair of the Election Equipment leased by the City which may include the cost of replacement parts.
- 5.2 **Maintenance Agreement (AVT Equipment).** The County has entered into an agreement with a third-party ("AVT Maintenance Vendor") for maintenance and repair of the AVT Election Equipment ("AVT Maintenance Services). The City will obtain AVT Maintenance Services for the AVT Election Equipment directly from the AVT Maintenance Vendor including but not limited to scheduling and supervising the AVT Maintenance Vendor. City shall pay County the per unit

amount that County pays to the AVT Maintenance Vendor plus any additional costs incurred by County as the same are directly related to maintenance and repair of the AVT Election Equipment leased by the City which may include the cost of replacement parts.

- 5.3 The City agrees not to make any repairs, changes, modifications or alterations to the Election Equipment or AVT Equipment that are not authorized by Hennepin County and said vendors.
- 5.4 After reasonable notice, the County shall have the right to enter into and upon the premises where the Election Equipment and AVT Equipment is located for the purposes of inspecting the same or observing its use. On an annual basis, during the term of this Agreement, the City shall comply with the County's request for verification of Election Equipment and AVT Equipment inventory.
- 5.5 The City agrees to provide notice to Maintenance Vendor and/or AVT Maintenance Vendor of any defects or malfunctions with the Election Equipment and/or AVT Equipment within twenty-four (24) hours. The City also agrees to provide the County with notice of such malfunctions or defects and the Maintenance Vendor and/or AVT Maintenance Vendor response within a reasonable time.

Section 6

PROGRAMMING AND ACCUMULATION

- 6.1 **Programming.** The County will be responsible for programming the DS200 Digital Scan Election Equipment at no charge to jurisdictions for all races in all elections.
- 6.2 **Programming Costs.** The City is responsible for paying to the County the programming costs of the AVT Equipment described in paragraph 1.2 at an amount prorated upon the number of columns devoted to the City's races on the ballot.
- 6.3 **Results Transmission and Accumulation.** The County has invested a significant amount of resources in equipment that allows the DS200 Digital Scan tabulators to electronically transmit election results via wireless technology from each polling place to a central location and for those results to be accumulated and posted on the County's website. There is also a significant operational cost associated with each use of this transmission and accumulation process.
- 6.4 For Cities with a primary and/or a general election, as described in Minn. Stat. §§ 205.065 and 205.07, in the even-numbered years, the County will provide results transmission and accumulation of results of City races in the primary and general election at no cost to the City.

- 6.5 For Cities with a primary and/or a general election, as described in Minn. Stat. §§ 205.065 and 205.07, in the odd-numbered years, upon written request by the city, the County will perform the electronic transmission and accumulation of results of City races in the primary and general election, at a cost of \$100 per polling place for the primary, and \$100 per polling place for the general election. The County will not perform the electronic transmission and accumulation of votes cast in any other City elections, unless by mutual agreement with the City. The County may, in its sole discretion, elect to waive this fee.

Section 7

OTHER TERMS AND CONDITIONS

- 7.1 **No Waiver.** No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof unless the same is consented to in writing. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be observed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.
- 7.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- 7.3 **Entire Agreement.** It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Pursuant to the foregoing, the parties acknowledge and agree that Agreement A-052260 between the parties is hereby terminated and replaced with this Agreement.

All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

- 7.4 **No Assignment.** Neither party shall assign, sublet or transfer this Agreement, either in whole or in part, without the prior written consent of the other party, and any attempt to do so shall be void and of no force and effect.
- 7.5 **Limited Warranty.** County warrants that it owns title to the Election Equipment and AVT Equipment, or to the extent it does not own title, that it has all rights necessary to grant the licenses herein.

- 7.6 **No Warranty.** COUNTY IS PROVIDING THE ELECTION EQUIPMENT AND AVT EQUIPMENT ON AN AS-IS BASIS WITH NO SUPPORT WHATSOEVER. THERE IS NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR PARTICULAR USE, NO WARRANTY OF NON-INFRINGEMENT, NO WARRANTY REGARDING THE USE OF THE INFORMATION OR THE RESULTS THEREOF AND NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

Pursuant to the foregoing, the City agrees that the County is furnishing the Election and AVT Equipment on an "as is" basis, without representation or any express or implied warranties, other than those provided by the Maintenance Vendor and/or AVT Maintenance Vendor, including but not limited to, fitness for particular purpose, merchantability or the accuracy and completeness of the Election Equipment or AVT Equipment. The County does not warrant that the Election Equipment and/or AVT Equipment will be error free. The County disclaims any other warranties, express or implied, respecting this agreement or the Election or AVT Equipment.

The City's exclusive remedy and the County's sole liability for any substantial defect which impairs the use of the Election Equipment and/or AVT Equipment for the purposes stated herein shall be the right to terminate this Agreement.

- 7.7 IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ACTUAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES (EVEN IF THE COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE) OR LOSS OF PROFIT, LOSS OF BUSINESS OR ANY OTHER FINANCIAL LOSS OR ANY OTHER DAMAGE ARISING OUT OF PERFORMANCE OR FAILURE OF PERFORMANCE OF THIS AGREEMENT BY THE COUNTY.

The County and the City agree each will be responsible for their own acts and omissions under this Agreement and the results thereof including but not limited to the acts or omissions of the party's subcontractors, employees and other personnel and shall to the extent authorized by law defend, indemnify and hold harmless the other party from any liability, claims, causes of action, costs or expenses resulting directly or indirectly from such acts and/or omissions. Each party shall not be responsible for the acts, errors or omissions of the other party under the Agreement and the results thereof. The parties' respective liabilities shall be governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. The statutory limits of liability for some or all of the parties may not be added together or stacked to increase the maximum amount of liability for any party. This paragraph shall not be construed to bar legal remedies one party may have for the other party's failure to fulfill its obligations under this Agreement. Nothing in this Agreement constitutes a waiver by the City or County of any statutory or common law defenses, immunities, or limits on liability.

7.8 **Notice.** Any notice or demand shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

To the City: City of Minneapolis
350 South 5th St, Room 1B, Minneapolis, MN 55415

To the County: Hennepin County Administrator
A-2300 Government Center (233)
Minneapolis, MN 55487-0233

Copy to: Mark Chapin
Director, Taxpayer Services Department
A-600 Government Center (060)
Minneapolis, MN 55487-0060

7.9 **Audit Provision.** Both parties agree that either party, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other party and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the contract and for six (6) years after its termination or cancellation.

7.10 **Whereas Clauses.** The matters set forth in the "Whereas" clauses on page one of this Agreement are incorporated into and made a part hereof by this reference.

7.11 **Survival of Provisions.** It is expressly understood and agreed that the obligations and warranties of the City and County hereof shall survive the completion of performance and termination or cancellation of this Agreement.

7.12 **Authority.** The person or persons executing this Lease Agreement on behalf of the City and County represent that they are duly authorized to execute this Lease Agreement on behalf of the City and the County and represent and warrant that this Lease Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

7.13 The parties shall comply with applicable law including but not limited to the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA).

THE REMAINDER OF THIS PAGE IS BLANK.

AUTHORIZATION

Reviewed by the County
Attorney's Office

Date: _____

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: _____
Assistant/Deputy/County Administrator
Department Director of _____

Date: _____

FOR THE CITY MINNEAPOLIS

Approved as to Form

By: _____
Assistant City Attorney

Approved: _____
Department Head responsible for
Contract Monitoring for this contract

Countersigned: _____
Finance Officer Designee

City organized under:

Statutory _____ Option A _____ Option B _____ Charter **X**