



## ANOKA COUNTY ELECTIONS AND VOTER REGISTRATION

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### MEMORANDUM

**TO:** Anoka County Management Committee  
**FROM:** Cindy Reichert, Anoka County Elections Manager  
**SUBJECT:** Joint Powers Agreement for Conduct of Elections  
**DATE:** November 13, 2012

A voting equipment system is comprised of many components that work together to define ballots, cast and count votes, report, transmit, and display election results, and produce election audit information. The system includes ballot counters, ballot boxes, ADA compliant ballot markers, various software and hardware programs, servers, modems, and other ancillary system components.

The system currently in use in all precincts of Anoka County is the "Accuvote Precinct Optical Scan System" purchased in 2000 from Global Election Systems. That purchase was based on a shared ownership model and required each city in Anoka County to purchase ballot counters and ballot boxes for use in the city voting precincts. The County also purchased several ballot counters to use as back-ups should any of the city-owned equipment need replacement, and has since purchased several reconditioned ballot counters to ensure successful operation of elections through calendar year 2012. The county has continually maintained responsibility for components used county-wide, like system software, servers, and modems.

The time has come to replace the system. The equipment and its software run in a DOS platform that is no longer supported, and new units and parts are no longer available in the marketplace. The most unstable component is our system server which also operates on a DOS platform. That server cannot be replaced and the software that drives the system will not run in a more modern environment. It is imperative that the entire voting equipment system be replaced at the earliest opportunity.

Anoka County has been working toward a complete system replacement scheduled for early 2013. Our staff has collaborated with Election Managers of several other MN Counties, and with the Office of the Secretary of State to determine our needs and options. We've also procured grant funds issued through the Help America Vote Act to partially offset the cost of the replacement. Changes in election law, technology and equipment certification standards have affected not only the technology we use, but the business model of system vendors. As a result, costs have risen considerably.

Our planning has required us to consider many factors and we've worked to engage our partner cities and school districts in discussion. The result is a proposal to enter into a Joint Powers Agreement which addresses not only the equipment purchase itself, but also establishes a model for delivery of election services within our county.

#### **Process for Proposal Development**

In 2010 County election staff organized the "ACE Work Group" comprised of city and school district election administrators. Together we performed a systematic examination of the processes, responsibilities and

obligations of each party to Anoka County's election system. We looked at administrative and technical processes, discussed how election services could be delivered in the most logical and cost-effective way, and implemented organizational and procedural improvements in our precincts and respective offices. Throughout the study and planning process the following basic premises were considered by our participants:

- The electoral process is the bedrock of democracy and must be administered with the utmost level of professionalism and integrity
- Government should provide necessary services in an efficient and effective manner at the lowest possible cost
- Solutions developed must ease administrative burden and control the cost of services
- The division of duties between county and local governmental units must be logical and effective
- System security and legal defensibility must be maintained
- Cost-sharing models to support the voting system must be equitable for all parties

We also developed a cost sharing proposal for the next equipment purchase that goes beyond the initial capital purchase and provides on-going support to ensure the future integrity of the system.

Following development of the ACE Work Group proposal, the "Anoka County Voting Equipment Task Force" was convened. This group, comprised of city and school administrators and board members, has met twice in 2012 to review, discuss, and adjust the plan. We are now ready to propose its adoption.

### **Proposed Multi-Jurisdiction Election Agreement**

**The ACE Workgroup and Anoka County Voting Equipment Task Force are recommending adoption of an agreement between election jurisdictions in Anoka County that establishes Anoka County as the sole owner of the voting equipment system and calls for an annual fee to be paid to the county by cities and school districts to supplement system costs.**

The model used for our last system purchase separated ownership of the system into various pieces and parts, and did not address issues related to the system as a whole such as maintenance, required software and hardware upgrades, and replacement of non-functioning units. Establishing Anoka County as sole owner allows us to more effectively manage the vendor contracts and administrative tasks that apply county-wide.

Rather than transferring ownership of individual components to our cities and schools, the county would collect a fee to supplement system costs. The proposed fee will be based on actual (and defined) capital and operating costs of the voting equipment system with cities paying 30% of the total cost and schools paying 15%, leaving the county with responsibility for 55% of the total cost. Within those percentages, the cost to each individual city and school district will be based upon their population at the time of the 2010 census.

**We are also recommending that the agreement include provisions to address other election duties and responsibilities.**

Statutes require the Office of the Secretary of State to develop a cost sharing plan for jurisdictions that share the same ballot. That plan allows cities to invoice school districts according to a complex formula for services that are not well defined. Jurisdictions can choose to use either the OSS cost sharing plan or share costs according to a negotiated agreement, *as long as that agreement addresses all expenses included in the OSS plan.*

Our recommendation is to include language in our agreement that addresses each election duty spelled out in the OSS cost sharing plan. Both cities and schools would contribute their share to the county-wide system via

the annual fee outlined above. The contribution of 15% of the total cost of the election system from schools effectively reduces the amount cities would be responsible for from 45% to 30%. In turn, cities would be prohibited from invoicing the schools for the “other election costs” specified in the agreement. This formula recognizes each party’s statutory obligation to share costs, simplifies the fee structure, eliminates the flurry of potentially disparate invoices, and allows all parties to plan for a relatively stable budget expenditure each year.

### **2013 Voting Equipment Purchase**

Instability in the marketplace has led to a crisis in development and manufacturing of voting equipment in the United States. New laws were put into place with the adoption of the Help America Vote Act and a new federal agency, the Election Assistance Commission (EAC), was created to oversee voting equipment certification and distribution of federal grants for voting equipment replacement. That agency proved ineffectual and certification of equipment was at a near stand-still for several years. In the meantime, a series of corporate acquisitions left just a handful of vendors in business, seriously reducing competition.

As a result, Minnesota (which requires all voting equipment to meet federal certification standards) has not certified “next generation” voting equipment. We are currently in a certification application blackout time period that will lift on December 1, 2012. We expect to see applications to our state from at least two voting equipment manufacturers within the next few weeks. Once our choices have been established we must act quickly to make the purchase so that our new system can be fully operational in time for the fall 2013 local elections. Deployment of the system for 2013 local elections is highly desirable so that election administrators, poll workers, and voters can become familiar with the system well in advance of the State General Election of 2014.

### **Purchase and Agreement Approval Timeline**

Timing of the certification and subsequent equipment purchase affects our agreement approval timeline. Though our cities and schools have expressed agreement in concept, specific system costs will not be known until early 2013. In the meantime, detailed estimates have been prepared and forwarded to each city and school district in Anoka County to include in their 2013 budget.

Members of the Anoka County Board of Commissioners have been consulted throughout the process and are supportive of the efforts and recommendation made by the Work Group and Task Force. The County budget has also been structured to incorporate all elements of the equipment purchase and cost-sharing proposal.

The contract itself has been reviewed by Task Force members and received unanimous approval at the Management Committee of the Anoka County Board on Monday, November 13<sup>th</sup>. Full board approval is expected on November 27<sup>th</sup>. The Anoka County Elections Manager is scheduled to attend several city/school meetings and work sessions to answer questions and address concerns during the months of November and December and we hope to have approval by all parties to the agreement no later than December 31, 2012.

**Attachments:** Draft Agreement

**Anoka County Contract No. 2012- \_\_\_\_\_**  
**JOINT POWERS AGREEMENT BETWEEN**  
**ANOKA COUNTY AND THE MUNICIPALITIES, TOWNSHIPS AND SCHOOL DISTRICTS**  
**IN ANOKA COUNTY**  
**TO ALLOCATE COSTS FOR ELECTION EXPENSES**

This is a joint Powers Agreement (“JPA”) between the County of Anoka (“County”) and THE MUNICIPALITIES, TOWNSHIPS AND SCHOOL DISTRICTS IN ANOKA COUNTY (“Governmental Entities”) entered into pursuant to Minn. Stat. § 471.59, for the purchase, maintenance and use of election equipment, including conducting elections, by the County on behalf of the County and the Governmental Entities.

**Section 1**  
**Term**

1. This JPA shall be in effect for a four year term, beginning January 1, 2013 until December 31, 2016, subject to automatic renewal on January 1 of each subsequent calendar year beginning January 1, 2017.

**Section 2**  
**Contract Termination**

2. During the initial four year term, this JPA may only be terminated by written agreement of the County with the effected Governmental Entity. Beginning January 1, 2017, a Governmental Entity’s participation in this agreement may be terminated by that Governmental Entity providing written notice to the remaining parties no later than June 1 of any year, effective on January 1 of the following year.

Upon termination of the agreement, all right title and interest in any election equipment purchased by the County under the terms of this agreement for use by the Governmental Entity shall remain with the County. Any Governmental Entity withdrawing from this agreement assumes all costs, responsibilities and liabilities related to the purchase, maintenance and use of voting equipment in the conduct of elections in that jurisdiction. Any amounts of the Governmental Entity’s share of the of the initial cost of procurement of the Voting Equipment System and their proportional share of any other costs incurred by the County on their behalf that remain unpaid as of the date of termination shall become immediately due and payable by the Governmental Entity to the County.

**Section 3**  
**Voting Equipment System Definition**

3. For purposes of this agreement, the Anoka County Voting Equipment System means a system in which the voter records votes by means of marking a ballot, so that votes may be counted by automatic tabulating equipment in the polling place where the ballot is cast or at a counting center. An electronic voting system includes automatic tabulating equipment; non-electronic ballot markers; electronic ballot markers, including electronic ballot display, audio ballot reader, and devices by which the voter will register the voter's voting intent; software used to program automatic tabulators and layout ballots; computer programs used to accumulate precinct results; ballots; secrecy folders; system documentation; and system testing as well as software used to manage the assignment, deployment, chain of custody, and associated logistical operations of said equipment in Anoka County.

## **Section 4 Applicability**

4. This agreement, and the use of the Voting Equipment System defined herein, between the County and the Governmental Entities is applicable for any election at which offices or questions for the following categories are voted on:

Category A: Federal Offices  
State Offices or Constitutional Amendments  
Judicial Offices  
County Offices or Ballot Questions  
Soil and Water District Offices or Ballot Questions

Category B: Municipal (Township) Offices or Ballot Questions

Category C: School District Offices or Ballot Questions

Category D: Hospital District Offices or Ballot Questions

## **Section 5 County Responsibilities**

5. Except as otherwise provided in this contract or required by statute or state or federal rule, the County shall be responsible for preparing the specifications for the purchase and maintenance of the Voting Equipment System as defined herein and for the purchase and maintenance of the system, including making all payments and expenditures for capital and on-going operating costs related to the voting equipment system. In addition, for all Category A, B, C and D Elections, Anoka County shall:
  - 5.1. Perform voting equipment system programming including ballots, ballot counters, ballot markers, and other components of the voting equipment system used to mark, count, record or report election returns and statistics.
  - 5.2. Perform programming and testing of the State Election Reporting System interface, subject to policies of the State.
  - 5.3. Program and develop a voting equipment testing plan for each election according to statutory requirements.
  - 5.4. Provide ballot design and layout services, and arrange for the printing of ballots to be used in the elections.

## **Section 6 Governmental Entities' Responsibilities**

6. Except as otherwise provided in this contract, each individual Governmental Entity shall be responsible for and shall perform all duties and assume all costs associated with the production of test decks, and conduct of pre-election and post-election tests and audits of precinct voting equipment for each election and shall utilize county provided software, as determined necessary by the County, to track the testing, assignment, deployment, chain of custody, and associated logistical operations of said equipment in Anoka County. as follows:

6.1. When Category A and/or B or D offices or questions appear on the ballot:

- 6.1.1. The municipality shall be responsible for and assume all costs associated with the production of test decks, and conduct of pre-election and post-election tests and audits of precinct voting equipment for all elections which include a Category A and/or B or D office or question.
- 6.1.2. The municipality shall assume all costs required to arrange for the use of polling places in the manner required by the Minnesota election law, for ensuring the physical set up of rooms and furnishings are conducive to the voting process, and for ensuring that all necessary equipment and supplies are delivered to the polling place for use on Election Day.
- 6.1.3. The municipality shall assume all costs related to picking up ballots, supplies and equipment from the Anoka County Elections and Voter Registration Office in Anoka and other storage locations that may be arranged from time to time, and transporting them to and from the polling place.
- 6.1.4. The municipality shall assume all costs related to issuing, receiving and processing absentee ballots cast by in-person absentee voters in that municipality including procurement and preparation of physical spaces, equipment, and staff needed to administer the process, and costs for delivery of voted ballots to the Anoka County Central Count Absentee Precinct.
- 6.1.5. The municipality shall assume all costs related to recruiting, hiring, and paying Election Judges for all hours served including, training, testing, election day assignments, and any other work assignments associated with the election.

6.2. When only Category C offices or questions appear on the ballot:

- 6.2.1. The School District shall be responsible shall assume all costs associated with the production of test decks, and conduct of pre-election and post-election tests and audits of precinct voting equipment for all elections which include only Category C offices or questions.
- 6.2.2. The school district shall assume all costs required to arrange for the use of polling places in the manner required by law, for ensuring the physical set up of rooms and furnishings are conducive to the voting process, and for ensuring that all necessary equipment and supplies are delivered to the polling place for use on Election Day.
- 6.2.3. The school district shall assume all costs related to picking up ballots, supplies and equipment from the Anoka County Elections and Voter Registration Office in Anoka and other storage locations that may be arranged from time to time, and transporting them to and from the polling place.
- 6.2.4. The school district shall assume all costs related to issuing, receiving and processing absentee ballots cast by in-person absentee voters in the school district including procurement and preparation of physical spaces, equipment, and staff needed to administer the process, and costs for delivery of voted ballots to the Anoka County Central Count Absentee Precinct.

- 6.2.5. The school district shall assume all costs related to recruiting, hiring, and paying Election Judges for all hours served including, training, testing, election day assignments, and any other work assignments associated with the election

## **Section 7 Allocation of Election Expenses**

7. Except as already specifically provided for herein, the Voting Equipment System procurement, maintenance and support cost shall be divided between the county, its municipalities, and school districts as follows:
- 7.1. The County shall incur 55% of the actual cost of procurement, operation and maintenance of the system over the duration of this contract.
- 7.2. Municipalities located wholly or in part in Anoka County shall, collectively, incur 30% of the actual cost of procurement, operation and maintenance of the system over the duration of this contract.
- 7.3. School Districts located wholly or in part in Anoka County shall incur 15% of the actual cost of procurement, operation and maintenance of the system over the duration of this contract.
- 7.4. Anoka County shall make all payments and expenditures for capital and on-going operating and maintenance costs related to the system throughout the duration of this contract.
- 7.5. The annual fee for each jurisdiction shall be established as follows:
- 7.5.1. Each individual municipality shall pay a fee equal to that percentage of the total Anoka County population residing in that municipality at the time of the 2010 census multiplied by the municipal share (30%) of the actual cost of procurement (prorated over ten annual installments), plus the actual cost of operation and maintenance of the system, as solely determined by the County, calculated annually throughout the duration of the contract
- 7.5.2. Each individual school district shall pay a fee equal to that percentage of the total Anoka County population residing in that school district at the time of the 2010 census multiplied by the school district share (15%) of the actual cost of procurement (prorated over ten annual installments), plus the actual cost of operation and maintenance of the system, as solely determined by the County, calculated annually throughout the duration of the contract.
- 7.5.3. Each Governmental Entity shall be invoiced annually on June 1 for each calendar year of the agreement for the above referenced fees. Said fees shall be due and payable within thirty (30) calendar days of invoicing.
- 7.5.4. The Governmental Entities hereby agree that they will not reallocate any of the costs incurred herein.
- 7.6. For each governmental entity, determine that proportion of the ballot devoted to offices and questions for that entity as a percentage of the total number of column inches on the ballot, and

provide an invoice to the governmental entity for that share of the cost of ballot printing, paper and normal delivery charges.

- 7.7. Pay the cost of postage for all domestic mailed absentee ballots cast in the county and absentee ballots cast under the Uniformed Overseas Citizens Absentee Voting Act (UOCAVA) except those absentee postage costs incurred by Municipalities designated to administer absentee voting laws under M.S. 203B.05.

### **Section 8 Documentation of Election Expenses**

8. Documentation of actual expenditures as required by the County is required for the allocation of election expenses pursuant to this agreement. Invoices or billing statements are acceptable documentation for goods or services purchased for vendors.

### **Section 9 Ownership**

9. The Governmental Entities acknowledge that the County owns the Voting Equipment System and that the Governmental Entities are authorized to use said Voting Equipment System for official election related purposes. Use of the Voting Equipment System by the Governmental Entities for any other purpose is strictly prohibited absent express written consent of the County. The Governmental Entities hereby acknowledge and agree that the Voting Equipment System may contain proprietary and trade secret information that is owned by a third party and is protected under federal copyright law or other laws, rules, regulations and decisions. The Governmental Entities shall protect and maintain the proprietary and trade secret status of the Voting Equipment System in their possession.

### **Section 10 Handling Of Equipment and Insurance**

10. Each municipality shall be responsible for storage of elections equipment assigned by the county to that municipality. Municipalities shall make all necessary elections equipment in its possession available to other entities as directed by the county.

Each Governmental Entity acknowledges that it shall be responsible for the Voting Equipment System while it is in the Governmental Entity's custody. Each Governmental Entity, 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 Voting Equipment System while it's in the Governmental Entity's custody and this contract is in effect. The Governmental Entities shall be responsible for, provide coverage for and shall provide proof of general liability and worker's compensating insurance (Hold Harmless Agreement) for all individuals providing services required by this contract. In addition to the foregoing, the Governmental Entities shall, during the term of this contract, maintain, through commercially available insurance or on a self-insured basis, property insurance coverage on all of the voting systems used or intended for use in this agreement to cover all repairs or replacement of the voting equipment if damaged or stolen. The Governmental Entities are responsible for any deductible under their policy.

### **Section 11 Independent Contractor**

11. It is agreed that nothing in this contract is intended or should be construed as creating the relationship of agents, partners, joint ventures, or associates between the parties hereto or as constituting the County or the Governmental Entities as the employee of the other entity for any purpose or in any manner whatsoever. The County is an independent contractor and neither it, its employees, agents, nor its representatives are employees of the Governmental Entities. From any amounts due the County, there shall be no deductions for federal income tax or FICA payments, nor for any state income tax, nor for any other purposes which are associated with an employer-employee relationship unless required by law.

**Section 12**  
**Data Practices**

12. All data created, collected, received, maintained, or disseminated for any purpose in the course of this contract is governed by the Minnesota Government Data Practices Act, any other applicable statute, or any rules adopted to implement the Act or statute, as well as federal statutes and regulations on data privacy.

**Section 13**  
**No Waiver**

13. 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.

**Section 14**  
**Governing Law**

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

**Section 15**  
**Entire Agreement**

15. 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 and hereby rescinds and replace all prior Agreements with the respective Governmental Entities 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.

**Section 16**  
**No Assignment**

16. 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.

**Section 17**  
**No Warranty**

17. The Governmental Entities agree that the County is furnishing the Voting Equipment System on an "as is" basis, without representation or any express or implied warranties, other than those provided by any maintenance agreement entered into by the County for the maintenance of the Voting Equipment System, including but not limited to, fitness for particular purpose, merchantability or the accuracy and completeness of the Voting Equipment System.

The Governmental Entity's exclusive remedy and the County's sole liability for any substantial defect which impairs the use of the Voting Equipment System for the purposes stated herein shall be the right to terminate this agreement.

The County does not warrant that the Election Voting Equipment System will be error free.

The County disclaims any other warranties, express or implied, respecting this agreement or the Voting Equipment System.

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. Except as otherwise specifically provided for in this agreement, County and the Governmental Entities agree each will be responsible for their own acts and omissions under this Agreement and the results thereof and shall to the extent authorized by law defend, indemnify and hold harmless the other party for such acts. Each party shall not be responsible for the acts, errors or omissions of any 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. 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 Governmental Entities or County of any statutory or common law defenses, immunities, or limits on liability.

**Section 18**  
**Notice**

18. 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 Governmental Entity: To the person and address designated by each Governmental Entity in writing.

To the County:           Anoka County Administrator  
**ADDRESS**

Copy to:                 Anoka County Elections Manager  
**ADDRESS**

**Section 19  
Audit Provision**

19. 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.

**Section 20  
Survival of Provisions**

20. It is expressly understood and agreed that the obligations and warranties of the Governmental Entity and County hereof shall survive the completion of performance and termination or cancellation of this Agreement.

**Section 21  
Whereas Clauses**

21. 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.

**Section 22  
Authority**

22. The person or persons executing this Lease Agreement on behalf of the Governmental Entity and County represent that they are duly authorized to execute this Lease Agreement on behalf of the Governmental Entity 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.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands.

**COUNTY OF ANOKA**

By: \_\_\_\_\_  
Rhonda Sivarajah, Chair,  
Anoka County Board of Commissioners

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Jerry Soma,  
Anoka County Administrator

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas Haluska  
Assistant Anoka County Attorney

Dated: \_\_\_\_\_

**CITY OF \*\*\***

By: \_\_\_\_\_  
\*\*\*\*, Its Mayor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
\*\*\*, Its City Clerk

Dated: \_\_\_\_\_

**\*\*\* SCHOOL DISTRICT \*\*\***

By: \_\_\_\_\_  
\*\*\*\*, Its Superintendent

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
\*\*\*, Its \*\*\*

Dated: \_\_\_\_\_