

**Dakota County Contract No. DCA31484
JOINT POWERS AGREEMENT BETWEEN
DAKOTA COUNTY AND**

FOR CONDUCT OF THE POST-ELECTION REVIEW

This is a Joint Powers Agreement (“Agreement”) between [REDACTED] (“Municipality”) and the County of Dakota (“County”), 1590 Highway 55, Hastings, MN 55033, entered into pursuant to Minn. Stat. §471.59, for conduct of the post-election review (PER) as required by Minn. Stat. § 206.89 after every state general election. Municipality and County are referred to individually as the “Party” and are collectively referred to as the “Parties”.

Recitals

WHEREAS, Minn. Stat. § 206.89 requires a postelection review of the state general election by a manual count of the ballots used in the selected precincts and must be performed in the manner provided by Minn Stat § [204C.21](#); and

WHEREAS, at the canvass of the state primary, the Dakota County Canvassing Board must set the date, time, and place for the postelection review of the state general election; and

WHEREAS, at the canvass of the state general election, the Dakota County Canvassing Board must select the precincts to be reviewed by lot and include three percent of the total number of precincts in the County; and

WHEREAS, the postelection review must not begin before the ninth day after the state general election and must be complete no later than the 14th day after the state general election; and

WHEREAS, the Dakota County Canvassing Board appoints the postelection review official, which is generally the County Election Director; and

WHEREAS, the costs of the postelection review in the selected precincts are allocated to the governing body responsible for each precinct selected for review pursuant to Minn. Stat. § 206.89, subd. 9;

WHEREAS, the Parties desire efficient use of resources for the coordination, scheduling and performance of postelection reviews; and

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein and subject to the provisions of Minn. Stat. § 471.59, the Parties agree as follows:

**Section 1
Term And Renewal**

1. The term of this Agreement shall commence when all signatures of the Parties are obtained and shall remain in full force and effect until December 31, 2027, subject to automatic renewals. Beginning January 1, 2028, this Agreement will automatically renewal each even calendar year for a two-year term, unless terminated as provided in Section 2 of this Agreement.

Section 2 Agreement Termination

2. This Agreement may be terminated as follows:
 - 2.1. Participation in this Agreement may be terminated without cause either Party upon at least 90 days' written notice to the other Party. Notice of termination shall be sent as provided in Section 12 of this Agreement.
 - 2.2. Termination of this Agreement does not discharge any liability, responsibility, or right of the Parties that may arise from the performance of, or failure to adequately perform the provisions of this Agreement prior to the effective date of termination, such as payment of an invoice for services satisfactorily performed prior to the effective date of termination. Termination of the Agreement does not discharge any obligation of the terminating Party, which, by its nature, would survive after the date of termination.

Section 3 Post-Election Review

- 3.1 The County shall conduct the post-election review of the state general elections in the County as defined by Minn. Stat. § 206.89. The review shall be conducted in accordance with all applicable Minnesota laws as well as any additional information or guidance the State provides.
- 3.2 In order to ensure efficient scheduling and organization, the post-election review will be conducted by the post-election review official, assisted by election judges designated by the post-election review official for this purpose. The party-balance requirement under Minn. Stat § 204B.19 applies to election judges designated for the post-election review. Any election judge that is appointed pursuant to this section shall be hired, scheduled, and paid by the County.
- 3.3 At the conclusion of the general election canvass, the County will contact the municipalities that have one or more precincts selected for review (collectively, the "PER Municipalities" or, individually, the "PER Municipality") and request all ballots in possession of the municipality.
- 3.4 The PER Municipalities will arrange to have all ballots for the selected precinct(s) in the custody of the PER Municipality delivered to the County at the location chosen by the Dakota County Canvassing Board as soon as practicable in advance of the post-election review. The ballots shall be securely stored by the County until the post-election review and the ballots shall be returned to the municipality at the conclusion of the post-election review.
- 3.5 Postelection reviews are conducted in a public location. Clerks and/or their deputies are invited to attend the post-election review and witness the process as it is completed for their precinct(s).

Section 4 Applicability

4. This Agreement between the County and the Municipality is limited to the post-election review as required by Minn. Stat. § 206.89. All other voting processes are outside of the scope of this Agreement.

**Section 5
Payment and Invoicing**

5. If one or more precincts in the Municipality is selected for postelection review, the Municipality shall pay for the actual costs incurred for the review based on the hourly salary of each election judge performing the review of the Municipality's precinct(s). The County will invoice the Municipality its actual cost of conducting the post-election review. Any invoice submitted to the Municipality shall be paid in the same manner as other claims made to the Municipality. The County will not invoice the Municipality for non-election judge costs, including other County expenses associated with the review. Municipalities that are not selected for precincts in the post-election review will pay no costs in relation to the services provided under this Agreement.

**Section 6
Independent Contractor**

6. It is agreed that nothing in this Agreement 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 Municipality 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 Municipality, for any purpose. 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 7
Data Practices**

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

**Section 8
No Waiver**

8. No delay or omission by the Parties to exercise any right or power occurring upon any noncompliance or default with respect to any of the terms of this Agreement shall not 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 the County or the Municipality of any of the covenants, conditions, or agreements to be observed by the Parties shall not be construed to be a waiver of any succeeding breach 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 the Parties at law, in equity, or otherwise.

**Section 9
Governing Law**

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any action commenced pursuant to this Agreement must be venued in Dakota County District Court.

**Section 10
Entire Agreement**

10. It is understood and agreed, as to the subject matter of this Agreement, 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 and hereby rescinds and replaces 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 11
No Assignment**

11. The Parties may not 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 have no force and effect.

**Section 12
Notice**

12. 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 Municipality: **City/Town** Clerk

To the County: Dakota County Elections Director
 1590 Highway 55
 Hastings MN 55033

**Section 13
Audit Provision**

13. The Parties agree that 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 respective Parties 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 this Agreement and for six (6) years after its termination or cancellation.

**Section 14
Liability, Indemnification and Insurance**

14. Each Party shall be solely liable for the acts of its elected officials, officers, employees, or agents and shall not be responsible for the acts of the other Party to this Agreement, their elected officials, officers, employees, or agents.

- a. The provisions of the Municipal Tort Claims Act, Minnesota Statutes, Chapter 466 and other applicable laws govern liability of the Parties. To the full extent permitted by law, actions by the Parties, their respective officers, employees, and agents pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity.” It is the intent of the Parties that they shall be deemed a “single governmental unit” for the purpose of liability as set forth in Minnesota Statutes, Section 471.59, subd. 1a(b). For the purpose of Minnesota Statutes, Section 471.59, subd, 1a(a), it is the intent that this Agreement does not create any liability or exposure to the Parties for the acts or omissions of the other Party or other individual governmental entities participating in a PER. -
- b. The County agrees to defend, hold harmless and indemnify the Municipality and its officials, agents, and employees, from any liability, loss, or damages the Municipality may suffer or incur as a result of demands, claims, judgments, or costs arising out of or caused by the County in the performance of its obligations under this Agreement.
- c. Municipality agrees to defend, hold harmless and indemnify the County and its officials, agents, and employees, from any liability, loss, or damages the County may suffer or incur as a result of demands, claims, judgments, or costs arising out of or caused by its performance of its respective obligations under this Agreement.
- d. Nothing in this Agreement shall be construed nor operate as a waiver of any applicable limitation of liability, defenses, immunities, or exceptions by statute or common law, nor does it impose or imply responsibility for the acts or omissions of the County or Municipality. The County and the Municipality warrant that they are able to comply with the aforementioned indemnification requirements and have sufficient insurance coverage consistent with the liability limits contained in Minnesota Statutes, Chapter 466.

Section 15 Survival of Provisions

15. It is expressly understood and agreed that Sections 8, 10, 14 and 15 hereof shall survive the completion of performance and termination or cancellation of this Agreement.

Section 16 Authority

16. The person or persons executing this Agreement on behalf of the Municipality and County represent that they are duly authorized to execute this Agreement on behalf of the Municipality and the County and represent and warrant that this Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms. Each Party agrees that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

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

COUNTY OF DAKOTA

By: _____
Director, Elections
Dated: _____

CITY OF ***

By: _____
****, Its Mayor
Dated: _____

By: _____
***, Its Clerk
Dated: _____

TOWNSHIP OF ***

By: _____
****, Its Board Chair
Dated: _____

By: _____
***, Its Clerk
Dated: _____