

INTERGOVERNMENTAL AGREEMENT FOR PURCHASE OF NEW ELECTION EQUIPMENT

This Intergovernmental Agreement (“Agreement”) is made by and between Milwaukee County (“County”), and the City of Milwaukee (“City”), pursuant to § 66.0301, Wis. Stats.

WHEREAS, the Milwaukee County Board has endorsed and approved via the 2015 Milwaukee County budget the purchase of new voting machines and accompanying software to standardize election equipment; and

WHEREAS, the Milwaukee County Board’s endorsement and approval further contemplates the City of Milwaukee providing all Milwaukee County municipalities with cost-effective election equipment programming services; and

WHEREAS, the County has agreed to make an initial investment in the purchase of new election equipment not to exceed \$1,886,563.00; and

WHEREAS, the City has agreed that it will reimburse the County for thirty percent (30%) of the cost of election equipment allocated to the City pursuant to this Agreement; and

WHEREAS, the County and the City agree that the County shall purchase the voting equipment from a vendor selected by the County at a future date; and

WHEREAS, the City has agreed to pay the full cost of all ongoing maintenance of the election equipment allocated to the City pursuant to this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties set forth herein, the County and the City agree as follows:

1. **PURPOSE.** The parties agree that it is in the interest of the residents of Milwaukee County and of the City to implement a unified, efficient, and cost-effective vote counting and reporting system. The parties further agree that it is in both parties’ interest to share the costs of this system upgrade. This Agreement is intended to set forth the cost-sharing terms.
2. **AUTHORITY.** This Agreement is entered into by the parties pursuant to Wis. Stats. §66.0301.
3. **EFFECTIVE DATE.** This Agreement shall commence upon execution by both parties.
4. **RESPONSIBILITIES OF THE COUNTY.**
 - a. The County shall select a vendor with whom it will contract for the purchase of new voting machines and the accompanying software, modems, installation charges, and shipping and handling charges (hereinafter “associated items”). The new voting machines and modems shall be uniform and interchangeable in all respects. Of the new voting machines and associated items purchased, a total of 193 will be allocated to the City.

- b. Of the new voting machines and associated items purchased, the County shall designate a total of seven (7) “backup” machines, to be deployed to polling locations throughout Milwaukee County in the event of machine malfunctions or other emergencies. “Backup” machines shall be stored at geographically convenient sites in Milwaukee County such that they may be readily deployed when needed on election days.
- c. The County shall monitor and enforce the terms of the vendor contract, including pursuing enforcement actions as needed. The County shall, at its sole discretion, determine disbursement of any awarded damages or penalties resulting from any such enforcement actions.
- d. The County will bill the City for its share of costs as determined by the invoice(s) provided by the vendor, and will provide copies of all invoices and other relevant documentation to the City.

5. RESPONSIBILITIES OF THE CITY.

- a. The City shall reimburse the County for thirty percent (30%) of the cost of 193 new voting machines and associated items as per the repayment schedule selected in Section 6 herein.
- b. The City shall also reimburse the County for one-nineteenth (1/19) of thirty percent (30%) of the cost of seven (7) new “backup” voting machines and associated items. The nineteen (19) municipalities in Milwaukee County, including the City, are dividing their share of this expense equally given that the “backup” machines and associated items may be deployed in any municipality as needed.
- c. The City shall participate in all necessary training associated with the new machines and accompanying items.
- d. The City shall follow all of the vendor’s operating and technical requirements, as well as any additional requirements established by the County.
- e. The City shall be responsible for all ongoing maintenance of the election equipment allocated to the City pursuant to this Agreement. “Ongoing maintenance” may include, but is not limited to, routine maintenance and repair of the mechanical aspects of voting machines, as well as software updates and troubleshooting.
- f. The City will be responsible for programming all of the voting machines that it receives pursuant to this Agreement, as well as for programming the seven (7) “backup” machines. Per Government Accountability Board guidelines, programming expenses will be divided proportionately between the County and City depending on the number of municipal contests on the ballot. The County will reimburse the City for its share of programming expenses at the quoted programming rates established by the City, which are addressed in a separate agreement. To the extent the City chooses to use additional voting machines or other election equipment beyond that addressed in this Agreement, related programming costs shall be solely the City’s responsibility.
- g. The City will not take any action with respect to the ownership, operation or maintenance of the election equipment allocated to the City pursuant to this Agreement which would adversely affect the tax-exempt status of the bonds issued by the County to finance the acquisition of the equipment, such as, but not limited to, selling the equipment to a private entity or contracting with a private entity for operation of the equipment.

6. PAYMENT PLAN.

The City agrees to the following repayment schedule (check one):

___ Reimbursement in full by June 30, 2015.

___ Reimbursement in three (3) equal, annual installments due on March 1 of 2016, 2017, and 2018. If the required payment is not received within fourteen (14) calendar days of each due date, interest on the required payment will begin to accrue at a 10% annual rate.

7. DUTY TO COOPERATE. Each party hereto shall commence, carry on and complete its obligations under this Agreement with all deliberate speed and in a sound, economical and efficient manner, in accordance with this Agreement and all applicable laws.

8. CONTACT PERSON. Each party shall assign one (1) contact person who will serve as its primary contact person for all purposes under this Agreement.

9. NO WAIVER. In no event shall the making of any payment or the acceptance of any service required by this Agreement constitute or be construed as a waiver by either party of any breach of the covenants of this Agreement or a waiver of any default of the other party. The making of any such payment or the acceptance of any such service by the conforming party while any such default or breach on the part of the other party exists shall in no way impair or prejudice the right of the conforming party to seek damages or other remedy as a result of such breach or default.

10. SEVERABILITY. The various provisions of this Agreement are declared to be severable. The findings of any court that any particular clause or clauses is or are unlawful or unenforceable shall not operate to invalidate the remainder of this Agreement and the same shall continue in effect unless modified by the parties.

11. NO THIRD PARTY RIGHTS. This is an Agreement between the parties, and nothing herein creates any rights in any third person.

12. NOTICE. All notices and correspondence, including billing statements and payments, shall be sent to:

To County:
Milwaukee County Courthouse
Office of the County Clerk
Attn.: Joseph J. Czarnecki
901 North 9th Street, Room 105
Milwaukee, WI 53233

To City of Milwaukee:

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

NONDISCRIMINATION. In the performance of work or execution of this contract, the parties shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap, which shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships.

13. **INDEMNIFICATION.** The parties agree to the fullest extent permitted by law, to indemnify, defend and hold harmless the other party and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the indemnifying party, or its agents and/or subcontractors which may arise out of or are connected with the activities covered by this Contract. It is not the intent of the parties to impose liability beyond that imposed by state statutes. The obligations of the parties under this paragraph shall survive the expiration or termination of this agreement.
14. **NO JOINT VENTURE.** This is an agreement between the parties for sharing costs and services. This Agreement does not create a joint venture or partnership between the parties, nor does it constitute any party as an agent of the other.
15. **COMPLIANCE.** Each party warrants for itself that it has complied with all applicable statutes, rules, orders, ordinances, requirements and regulations to execute this Agreement and that the person executing this Agreement on its behalf is authorized to do so.
16. **ENTIRE AGREEMENT and AMENDMENTS.** The entire Agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended by any fashion except in writing, executed by the parties.

Signature Page Follows:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and effective on the day, month and year first above written.

CITY OF MILWAUKEE

Name: _____
Title: _____

MILWAUKEE COUNTY:

Joseph J. Czarnecki
Milwaukee County Clerk

Reviewed by:

Approved for execution:

By: _____
Amy Pechacek, Director
Risk Management

By: _____
Corporation Counsel

Date: _____

Date: _____

Approved:

Approved:

By: _____
Scott Manske
Comptroller

By: _____
Chris Abele
County Executive

Date: _____

Date: _____

Approved as compliant under sec. 59.42(2) (b) 5, Stats.

By: _____
Corporation Counsel
Date: _____

