



cityofnovi.org

## CITY of NOVI CITY COUNCIL

### Agenda Item 4 April 18, 2011

**SUBJECT:** Approval of Interlocal Agreement for Ballot Layout and Programming Services between Oakland County and City of Novi.

**SUBMITTING DEPARTMENT:** City Clerk *m.c.*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:** Oakland County Elections Division has committed personnel and equipment to provide ballot layout and programming services for any municipality in Oakland County. The service will be provided at a cost of \$300 per election for Novi which is significantly lower than the original charge of \$300 per precinct (\$6,300) from a vendor that was previously our sole source provider. It is recommended that the City enter into this Interlocal Agreement with Oakland County for Ballot Layout and Programming Services.

The new agreement contains several changes from previous versions, most of which are for purposes of incorporating certain provisions that have been "standardized" by the County in all of its contracts with local municipalities for any number of activities. Of particular note, the County Board of Commissioners has apparently approved standard language specifically relating to "self help" that is required to be used for all County Interlocal agreements, which it is apparently not willing to agree to modify for any individual community.

Specifically, Section 5 of the agreement outlines the City's responsibility for payments to the County. The City is responsible to pay the County \$300 for each election, the same amount as previous years. Subsections 5.4, 5.5 and 5.6 are the "self help" provisions. Upon nonpayment by the City, these provisions allow the County to seize, without notice, the City's Delinquent Tax Revolving Funds and possibly other City fund sources held by the County, regardless of the City's reason for withholding payment. In other words, even if the City withholds payment due to breach of the agreement by the County or for another good reason, the County will still have the right to seize the funds without recourse for the City. If the County chooses not to exercise its right to set off or if any set off was insufficient to fully pay the County, the County also has the right to charge legal interest on any unpaid amount. The County may also institute legal proceedings to recover any unpaid amounts.

The proposed Resolution approves the agreement but preserves the City's objection to the language in Section 5 of the agreement. If the City Council adopts the enclosed Resolution, the City Council would be approving the agreement in spite of its objection to the language in Section 5 of the agreement, but would still voice its objection to the language.

**RECOMMENDED ACTION:** Approval of Interlocal Agreement for Ballot Layout and Programming Services between Oakland County and City of Novi.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION APPROVING AGREEMENT FOR BALLOT LAYOUT AND PROGRAMMING SERVICES WITH OAKLAND COUNTY

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held at the City Hall in said City on April 18, 2011, at \_\_\_\_ o'clock P.M. Prevailing Eastern Time.

PRESENT:

Councilmembers \_\_\_\_\_  
\_\_\_\_\_

ABSENT:

Councilmembers \_\_\_\_\_  
\_\_\_\_\_

The following preamble and Resolution were offered by Councilmember \_\_\_\_\_ and supported by Councilmember \_\_\_\_\_.

**WHEREAS**, the Agreement For Ballot Layout and Programming Services for a three (3) year term ("Agreement") to which this Resolution is attached, was presented to the City Clerk by the Director of Elections for Oakland County with the indication that the legislative body of the City must approve it unchanged and unmodified.

**WHEREAS**, while the City objects to language and rights given to the County and waived by the City in Section 5 of the Agreement regarding Payments, the payment obligation to which those provisions might be applied by the County is limited to \$300.00 per election.

**NOW THEREFORE, BE IT THEREFORE RESOLVED** to approve the Agreement to which this Resolution is attached and authorize the City Clerk to sign and submit it to the County Clerk on behalf of the City of Novi.

**AYES:**

**NAYS:**

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this 18<sup>th</sup> day of April, 2011, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

MARYANNE CORNELIUS, CITY CLERK

**AGREEMENT FOR BALLOT LAYOUT AND PROGRAMMING SERVICES  
BETWEEN  
OAKLAND COUNTY  
AND  
CITY OF NOVI**

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This Ballot Layout and Programming Services Agreement (the “Agreement”) is made between Oakland County, a Constitutional and Municipal Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 (“County”), and the City of Novi, 45175 W. Ten Mile Rd, Novi, MI, 48375-3024 (“Municipality”). In this Agreement the County shall be represented by the Oakland County Clerk, in her official capacity as a Michigan Constitutional Officer. The County and the Municipality may also be referred to jointly as “Parties”.

**PURPOSE OF AGREEMENT.** Pursuant to the Urban Cooperation Act of 1967, 1967 PA 7, MCL 124.501, *et seq.*, the County and the Municipality enter into this Agreement for the purpose of providing the ballot layout and programming required to enable electronic voting machines to read election ballots.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.
  - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, or addendum.
  - 1.2. **AutoMARK Programming File** means a computer program that, when placed on a Flash Card, will enable to the AutoMARK Voter Assist Terminal to function and properly mark a voter’s ballot.
  - 1.3. **AutoMARK Voter Assist Terminal** means an optical scan ballot-marking device that provides voter privacy and accessibility to voters who are visually-impaired, or have physical impairments.
  - 1.4. **Claim** means include any and all losses, complaints, demands for relief, damages, lawsuits, causes of action, proceedings, judgments, deficiencies, penalties, costs and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation, litigation expenses, amounts paid in settlement, and/or any other amount for which either Party becomes legally and/or contractually obligated to pay, whether direct, indirect, or consequential, whether based upon any alleged violation of the constitution (federal or state), any statute, rule, regulation, or the common law, whether in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.

- 1.5. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
- 1.6. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.7. **Flash Card** means a device that when inserted into an AutoMARK will enable the machine to properly mark a voter's ballot.
- 1.8. **Local Clerk** means the local elected or appointed Clerk for Municipality or their designee.
- 1.9. **Local Election Definition File** means a computer program that reads the results from the tabulators in each voting machine and produces a report showing the totals for each precinct and the overall totals for each office, proposal or item voted on.
- 1.10. **Municipality or Municipal** means the City of Novi, a Municipal Corporation including, but not limited to, its Council, Board, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors.
- 1.11. **PCMCIA Cards** (Personal Computer Memory Card International Association) means a device that when inserted into a voting machine will enable the voting machine to properly read the markings made by voters on a ballot and then store these vote results.

## 2. **COUNTY RESPONSIBILITIES.**

- 2.1. The County shall provide an electronic version of the ballot for each precinct, as approved by the Local Clerk, to the ballot printing vendor selected by County for elections pertaining to statewide and/or County elections. For elections that solely pertain to Municipal offices or issues, the County will provide an electronic version to the ballot printing vendor it has selected unless the Municipality indicates in writing to County that it has selected a different vendor which appears on the list of ballot printing vendors approved by the Secretary of State for the State of Michigan.
- 2.2. The County shall provide the Municipality with a Local Election Definition File and AutoMARK programming file.
- 2.3. The County, if requested by the Municipality, shall program the PCMCIA cards and Flash Cards for each voting machine and AutoMARK.
- 2.4. The County shall mail a Phonetic Verification Form to every local candidate (excluding precinct delegates) prior to each election requesting a phonetic spelling of each candidate's name as it will be used on the ballot used with the voter assisted (a.k.a. Automark) voting machines.

3. **MUNICIPALITY RESPONSIBILITIES.**

- 3.1. No later than sixty (60) days prior to each election in which there are County, Statewide or Municipal issues to be voted upon, the Local Clerk shall complete and return to the County:
  - 3.1.1. The Pre-Election Questionnaire prepared by County.
  - 3.1.2. A listing or verification of a listing, per precinct of each office to be elected on the form provided by County.
  - 3.1.3. Notification of any boundary changes made by Municipality since the previous election.
- 3.2. Within three (3) business days of receipt from the County of an electronic version of the ballots for each Municipal precinct, advise the County of any corrections that are needed for any of the precinct ballots. This process will continue until a final version of the ballot is approved by the Local Clerk.
- 3.3. Once a final version of the ballots are approved by the Local Clerk, the Local Clerk shall immediately complete and return to County the Ballot Layout Sign Off Form provided by County.

4. **DURATION OF INTERLOCAL AGREEMENT.**

- 4.1. The Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State.
- 4.2. Unless extended by mutual, written agreement by both Parties, this Agreement shall remain in effect for three (3) years from the date the Agreement is completely executed by all Parties or until cancelled or terminated by any of the Parties pursuant to the termination or cancellation of Agreement Section herein.

5. **PAYMENTS.** The Municipality hereby agrees to pay to the County the following amounts:

- 5.1. For all such County services associated with an election the Municipality shall pay to the County an amount equal to THREE HUNDRED (\$300.00) DOLLARS for each election.
- 5.2. The County, through its Department of Management and Budget and upon such frequency as deemed appropriate by the County, shall prepare and forward to the Municipality an itemized invoice for such Ballot Layout and Programming Services provided to the Municipality pursuant to this Agreement. The Municipality agrees to pay the full amount shown on any such invoice within thirty (30) calendar days after the date shown on any such invoice.

- 5.3. The Parties agree that the Municipality's obligation to pay the County any and all amounts due and owing under this Agreement shall be absolute and unconditional and shall not be affected, in any way, by the occurrence of either Party's default or any term or condition of this Agreement nor shall any other occurrence or event relieve, limit, or impair the obligation of the Municipality to pay the County as provided for herein.
- 5.4. If the Municipality fails, for any reason, to pay the County any monies when and as due under this Agreement, the Municipality agrees that unless expressly prohibited by law, the County or the County Treasurer, at their sole option, shall be entitled to setoff from any other Municipality funds that are in the County's possession for any reason. Funds include but are not limited to the Delinquent Tax Revolving Fund ("DTRF"). Any setoff or retention of funds by the County shall be deemed a voluntary assignment of the amount by the Municipality to the County. The Municipality waives any Claims against the County or its Officials for any acts related specifically to the County's offsetting or retaining such amounts. This paragraph shall not limit the Municipality's legal right to dispute whether the underlying amount retained by the County was actually due and owing under this Agreement.
- 5.5. If the County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay the County any amounts due and owing the County under this Agreement, the County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to the County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid.
- 5.6. Nothing in this Section shall operate to limit the County's right to pursue or exercise any other legal rights or remedies under this Agreement against the Municipality to secure reimbursement of amounts due the County under this Agreement. The remedies in this Section shall be available to the County on an ongoing and successive basis if the Municipality at any time becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if the County pursues any legal action in any court to secure its payment under this Agreement, the Municipality agrees to pay all costs and expenses, including attorney's fees and court costs, incurred by the County in the collection of any amount owed by the Municipality.

6. **ASSURANCES.**

- 6.1. Each Party shall be responsible for any Claims made against that Party and for the acts of its officers or employees.
- 6.2. In any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation including any attorney fees.



- 6.3. Except as otherwise provided in this Agreement, neither Party shall have any right under any legal principle to be indemnified by the other Party or any of its officers or employees in connection with any Claim.
- 6.4. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.
- 6.5. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 6.6. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.
7. **LIMITATION OF LIABILITY.** In no event shall either Party be liable to the other Party or any other person, for any consequential, incidental, direct, indirect, special, and punitive or other damages arising out of this Agreement.
8. **TERMINATION OR CANCELLATION OF AGREEMENT.** Either Party may terminate or cancel this Agreement upon ninety (90) days written notice, if: (i) the other Party defaults in any obligation contained in this Agreement and within the ninety (90) day notice period the Party failed to cure such default or failed to take a course of action to cure such default or (ii) for any reason, including convenience. Any notification concerning default must be in writing and clearly state the specific default(s). The effective date of termination and/or cancellation shall be clearly stated in the written notice. Either the County Clerk or the Board of Commissioners is authorized to terminate this Agreement for the County.
9. **RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.
10. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under the Agreement without the prior written consent of the other Party.
11. **FORCE MAJEURE.** Notwithstanding any other term or provision of this Contract, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, any law, order, regulation, direction, action, or request of the United States government or of any other government, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor difficulties. Reasonable notice shall be given to the affected Party of any such event.

12. **NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
  - 12.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Clerk, 1200 North Telegraph Road, Pontiac, Michigan, 48341 and Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.
  - 12.2. If Notice is sent to the Municipality, it shall be addressed to: Maryanne Cornelius, Clerk, City of Novi, 45175 W. Ten Mile Rd, Novi, MI, 48375-3024.
  - 12.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.
13. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
14. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, \_\_\_\_\_ hereby acknowledges that he/she has been authorized by a resolution of the City of Novi, a certified copy of which is attached, to execute this Agreement on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_

IN WITNESS WHEREOF, Bill Bullard, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_

Bill Bullard, Jr., Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_

IN WITNESS WHEREOF, Ruth Johnson, in her official capacity as the Oakland County Clerk, a Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_

Ruth Johnson, Clerk/Register of Deeds  
County of Oakland

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_