



CITY of NOVI CITY COUNCIL

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Agenda Item D
October 8, 2007

SUBJECT: Approval of Interlocal Agreement with Oakland County for ballot layout and programming services.

SUBMITTING DEPARTMENT: City Clerk: *fn. C.*

CITY MANAGER APPROVAL: *FWA for CJP*

EXPENDITURE REQUIRED	N/A
AMOUNT BUDGETED	N/A
APPROPRIATION REQUIRED	N/A
LINE ITEM NUMBER	N/A

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 (\$5,400) from a company that was previously a sole source provider. It is my recommendation that the City of Novi enter into this Interlocal Agreement with Oakland County for ballot layout and programming services required to enable electronic voting machines to read election ballots.

RECOMMENDED ACTION: Approval of Interlocal Agreement with Oakland County for ballot layout and programming services.

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

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

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

This Ballot Layout and Programming Services Agreement (the "Agreement") is made between Oakland County, a Constitutional and Municipal Corporation, 1200 North Telegraph, 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. **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.
 - 1.3. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.4. **Local Clerk** means the local elected or appointed Clerk for Municipality or their designee.
 - 1.5. **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.
 - 1.6. **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.

- 1.7. **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.
- 2.3. The County, if requested by the Municipality, shall program the PCMCIA cards for each voting machine.
- 2.4. The County shall mail a Phonetic Verification Form to every local candidate 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 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 five (5) 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 complete and return to County the Ballot Layout Sign Off Form provided by County. This shall be done within three (3) business days of its receipt.

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. The Municipality agrees that the County may, at its sole option, recover any such amounts due and owing the County as shown on any County Invoice by offsetting such amounts from any monies or other amounts in the possession of the County and/or otherwise held by the County for any reason or for any purpose that are otherwise payable, due, or owing to the Municipality by or from the County. For purposes of illustration, but without limitation, the Municipality agrees that if there is any amount due and owing to the County under this Agreement still unpaid to the County at the time the County is scheduled to distribute funds, if any, to the Municipality from the Delinquent Tax Revolving Fund ("DTRF"), the County shall be entitled, at its sole option, to reduce, set-off, and permanently retain from any amount otherwise then payable to the Municipality from Delinquent Tax Revolving Fund ("DTRF"), any amount then still due and owing the County from the Municipality pursuant to this Agreement.

6. **ASSURANCES.**

- 6.1. Each Party shall be responsible for its own acts and the acts of its employees, and agents, the costs associated with those acts, and the defense of those acts.
- 6.2. This Agreement does not create any direct or indirect obligation or right to be indemnified (i.e., contractually, legally, equitably or by implication) nor any right to be subrogated to any rights in this Agreement.
- 6.3. 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.
- 6.4. 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.**

- 8.1. 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, 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: _____

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

RECITALS:

The Agreement For Ballot Layout and Programming Services (“Agreement”) to which this Resolution is attached, was presented to the City for approval after it had been approved by the Oakland County Board of Commissioners on September 20, 2007.

Any concerns regarding the manner in which certain provisions of the Agreement might be interpreted or applied are outweighed and mitigated by the potential benefits to and termination rights of the City under the Agreement.

IT IS THEREFORE RESOLVED to approve the Agreement to which this Resolution is attached and authorize it to be signed and submitted to the County Clerk on behalf of the City.

CERTIFICATION

I hereby certify that this Resolution was adopted by the City Council of the City of Novi at a regular meeting held on October 8, 2007.

IN WITNESS WHEREOF, I have signed this Certification on October _____, 2007.

Maryanne Cornelius, Clerk
City of Novi