

INTERGOVERNMENTAL AGREEMENT FOR PURCHASE OF NEW ELECTION EQUIPMENT

This Intergovernmental Agreement (“Agreement”) is made by and between Milwaukee County (“County”), and the Town/City/Village of WEST ALLIS (“Municipality”), 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 Municipality has agreed that it will reimburse the County for thirty percent (30%) of the cost of election equipment allocated to the Municipality pursuant to this Agreement; and

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

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

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

- 1. PURPOSE.** The parties agree that it is in the interest of the residents of Milwaukee County and of the Municipality 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 twenty-two (22) will be allocated to the Municipality.

- 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. The County and the Municipality shall cooperate to ensure that the Municipality is made whole in the event that it sustains damages from its use of the election equipment.
- d. The County will bill the Municipality 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 Municipality.

5. RESPONSIBILITIES OF THE MUNICIPALITY.

- a. The Municipality shall reimburse the County for thirty percent (30%) of the cost of twenty-two (22) new voting machines and associated items as per the repayment schedule selected in Section 6 herein.
- b. The Municipality 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) communities in Milwaukee County, including the Municipality, 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 Municipality shall participate in all necessary training associated with the new machines and accompanying items. As has been past practice, the County will, at its own expense, provide training for the Municipality’s clerks. The Municipality’s clerks, will at the Municipality’s expense, be responsible for training poll workers.
- d. The Municipality shall follow all of the vendor’s operating and technical requirements and agrees to use the election equipment appropriately and as intended such that all applicable warranties remain valid.
- e. The Municipality shall be responsible for all ongoing maintenance of the election equipment allocated to the Municipality 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 Municipality acknowledges that the County will contract with the City of Milwaukee, which will provide programming for all 25 of the Municipality’s voting machines, as well as for the seven (7) “backup” machines. Per Government Accountability Board guidelines, programming expenses will be divided proportionately between the County and Municipality depending on the number of municipal contests on the ballot. The County will reimburse the Municipality for the Municipality’s share of programming expenses at the quoted programming rates established by the City of Milwaukee, which are addressed in a separate agreement. To the extent the Municipality chooses to use additional voting machines or other election equipment beyond that addressed in this Agreement,

related programming costs shall be solely the Municipality's responsibility. Further, if the Municipality opts to have an entity other than the City of Milwaukee program its voting machines, the County will only reimburse the Municipality for said programming at the quoted programming rates established by the City of Milwaukee. Any additional programming expense shall be solely the Municipality's responsibility.

- g. The Municipality will not take any action with respect to the ownership, operation or maintenance of the election equipment allocated to the Municipality 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 Municipality 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 N. 9th St., RM 105
Milwaukee, WI 53233

To Municipality:
City of West Allis
Office of the City Clerk
Attn: Monica Schultz
7525 W Greenfield Avenue
West Allis, WI 53214

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

- 13. 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.
- 14. 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.
- 15. 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.
- 16. 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.
- 17. 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.

TOWN/CITY/VILLAGE OF WEST ALLIS

Name: *David Devine*
Title: MAYOR

Name: *Monica Schultz*
Title: CITY CLERK

[Signature]
West Allis City Comptroller

As to form for City of West Allis:
[Signature]
Scott E. Post, West Allis City Attorney

MILWAUKEE COUNTY

[Signature]
Joseph J. Czarnecki
Milwaukee County Clerk

Reviewed by:

Approved for execution:

By: *[Signature]* Date: 3/30/15
Amy Pechacek, Director
Risk Management

By: *[Signature]* Date: 3/30/15
Corporation Counsel

Approved:

Approved:

By: *[Signature]* Date: 3/30/2015
Scott Manske
Comptroller

By: *[Signature]* Date: 4/3/15
Chris Abele
County Executive

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

By: *[Signature]* Date: 4/8/15
Corporation Counsel

