

## AGREEMENT

THIS AGREEMENT, made by and between the COUNTY OF HENNEPIN, a political subdivision of the State of Minnesota ("County"), and the CITY OF INDEPENDENCE ("City").

1. TERM OF THE AGREEMENT

This Agreement shall commence on June 6, 2016 and expire on February 28, 2023, unless cancelled or terminated earlier in accordance with the provisions of this Agreement.

2. EQUIPMENT LICENSE

During the term of this Agreement and subject to the terms herein, County hereby provides to City and grants City a limited, revocable, non-exclusive, royalty-free license to use 4 KNOWiNK Poll Pad Hardware and Software units, and 1 Verizon Jetpack Hotspot(s) (the "Election Equipment") exclusively for official election use. Unless County otherwise agrees in writing, said license is restricted to access and use of the Election Equipment by City's employees, contracted personnel and duly authorized election officials performing election duties and responsibilities on behalf of City.

The parties may agree by written addendum executed by all the parties to modify the quantity or definition of the Election Equipment included within the scope of this agreement. County hereby delegates authority to execute such an addendum to the Hennepin County Elections Manager. City hereby delegates authority to execute such an addendum to its \_\_\_\_\_.

Unless the parties otherwise agree, City shall provide and/or maintain, at City's sole cost and expense, secure wireless and other telecommunications necessary for the operation of the Election Equipment. Further and as necessary, City shall acquire or otherwise provide all subscriptions, accounts or other licenses necessary for the operation of the Election Equipment.

City shall secure, safeguard and control the Election Equipment, including but not limited to system authentication and passwords, in the same manner that City secures, safeguards and controls its own critical or confidential equipment, systems, software, data, passwords or other information. While the Election Equipment is in City's possession, custody and/or control, City shall exercise best efforts to (i) use and handle the Election Equipment in a manner that avoids damage or harm to the Election Equipment; (ii) use and handle the Election Equipment in accordance with County direction and any third-party specification; and (iii) safeguard and secure the Election Equipment from theft, loss or other damage.

City shall be responsible for implementation of the Election Equipment.

Unless the parties otherwise agree, County or its designated third-party vendor shall be perform all maintenance and repair of the Election Equipment. City shall not repair, change, modify or alter the Election Equipment unless expressly authorized by County or its designee. If any Election Equipment needs repair or maintenance, City shall follow the direction and process provided by County. City acknowledges and agrees that, as directed by County, (i) City may be required to deliver, at City's sole cost and expense, Election Equipment to County or its designee for maintenance and repair; and (ii) City may be required to provide access to the Election Equipment for inspection, maintenance or repair during City's regular business hours, including but not limited to granting the right to enter into and upon the premises where the Election Equipment is located.

Upon reasonable notice, County shall have the right to enter into and upon the premises where the Election Equipment is located for the purposes of inspecting the Election Equipment or observing its use. On an annual basis, during the term of this Agreement, City shall comply with County's request for verification of Election Equipment inventory.

Upon the express written permission of County's Election Manager, or her/his designee, City may sub-license Election Equipment to a school district within City's territorial boundaries. Said sub-license shall be made pursuant to a written agreement, between City and the school district and shall include substantially the same terms as those contained herein.

3. OWNERSHIP

County represents and warrants and City acknowledges and agrees that County is duly authorized to grant the license herein exclusively for use by City in its official elections. Pursuant thereto, use of the Election Equipment for any other purpose other than that authorized herein is strictly prohibited absent express written consent of County.

City acknowledges and agrees that the Election Equipment may contain proprietary and trade secret information that is owned by a third party and is protected under state and federal patent, copyright law or other laws, rules, regulations and decisions. City shall protect and maintain the proprietary and trade secret status of the Election Equipment.

4. DISCLAIMER, LIABILITY AND LIMITATION OF LIABILITY

COUNTY, BY AND THROUGH ITS DULY AUTHORIZED VENDOR, IS PROVIDING THE ELECTION EQUIPMENT ON AN AS-IS BASIS WITH NO SUPPORT WHATSOEVER. THERE IS NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR PARTICULAR USE, NO WARRANTY OF NON-INFRINGEMENT, NO WARRANTY REGARDING THE USE OF

THE INFORMATION OR THE RESULTS THEREOF AND NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

CITY ACKNOWLEDGES AND AGREES THAT COUNTY DOES NOT OWN OR CONTROL THE DATA SOURCE/SYSTEM NECESSARY FOR OPERATION OF THE ELECTION EQUIPMENT. WITHOUT LIMITING THE FOREGOING, COUNTY DOES NOT WARRANT THE PERFORMANCE OF THE ELECTION EQUIPMENT OR RELATED COMMUNICATIONS OR CONNECTIONS TO ANY DATA SOURCE/SYSTEM, THAT THE DATA SOURCE/SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE, THAT THE DATA IS ACCURATE, COMPLETE AND CURRENT OR THAT DATA DEFECTS WILL BE CORRECTED, OR THAT THE DATA SOURCE/SYSTEM IS FREE OF HARMFUL CODE.

IN NO EVENT SHALL COUNTY BE LIABLE FOR ACTUAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT, LOSS OF BUSINESS OR ANY OTHER FINANCIAL LOSS OR ANY OTHER DAMAGES EVEN IF COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. COUNTY'S SOLE LIABILITY AND CITY'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGES RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LIABILITY FOR ELECTION EQUIPMENT NONPERFORMANCE, ERRORS OR OMISSIONS, SHALL BE LIMITED TO RESTORING OR CORRECTING THE ELECTION EQUIPMENT TO THE EXTENT AND DEGREE COUNTY IS CAPABLE OF PERFORMING THE SAME AND AS IS REASONABLY POSSIBLE UNDER THE PERTINENT CIRCUMSTANCES.

Subject to the foregoing limitation of liability and to the provisions (below) regarding responsibility for the costs related to lost, stolen, destroyed or damaged Election Equipment, each party shall be responsible for their own acts and omissions and the results thereof to the extent authorized by law. The parties are not agreeing, in any manner whatsoever, to be responsible for the acts or omissions of the other party. As applicable, County's liability is governed by the provisions of Minnesota Statutes, Chapter 466 and City's liability is governed by the provisions of \_\_\_\_\_ . The statutory limits of liability for the parties may not be added together or stacked to increase the maximum amount of liability for either or both parties.

5. ROYALTY FREE LICENSE - OTHER COSTS

Except as expressly set forth below, City shall not pay County any amount for the license granted herein.

City shall be responsible for the cost and expense of Election Equipment delivery from and to a location as directed by County.

Except for routine wear and tear resulting from use in conformance with the terms herein, City shall be responsible for and shall pay all costs, including but not limited to

shipping costs, necessary for the repair or replacement of lost, stolen, destroyed or damaged Election Equipment.

Upon expiration or termination of this Agreement for any reason, City shall, at City's sole cost and expense, deliver, or have delivered, the Election Equipment to County or its designee, complete and in good order and working condition, except with respect to Election Equipment with defects attributable to County's vendor or supplier.

6. TERMINATION

This Agreement may be terminated by either party upon seven (7) day written notice to the other. Termination of this Agreement by either party and for any reason shall not relieve City of any duties or obligations hereunder including but not limited to the obligation to safely and securely return and deliver the Election Equipment as set forth above.

7. DATA PRACTICES

The parties, their officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

8. ADDITIONAL PROVISIONS

The parties shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted including but not limited to the MGDPA, Minnesota Statutes section 16C.05, subd 5 and Minnesota Statutes section 471.425, subd. 4a and, as applicable, COUNTY's Affirmative Action Policy.

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

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

It is understood and agreed 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 hereof. Except as expressly provided herein, 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.

City shall not assign, sublicense or transfer this Agreement or the rights, duties and obligations herein, either in whole or in part, without the prior written consent of County, and any attempt to do so shall be void and of no force and effect.

It is expressly understood and agreed that the obligations and warranties of City and County hereof shall survive the completion of performance and termination or cancellation of this Agreement.

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**APPROVAL**

Reviewed by the County  
Attorney's Office

\_\_\_\_\_

Date: \_\_\_\_\_

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By: \_\_\_\_\_  
County Administrator

Date: \_\_\_\_\_

**CONTRACTOR**

CONTRACTOR warrants that the person who executed this Agreement is authorized to do so on behalf of CONTRACTOR as required by applicable articles, bylaws, resolutions or ordinances\*.

**CITY OF INDEPENDENCE**

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

Date: \_\_\_\_\_