



State of Minnesota

Joint Powers Agreement

SWIFT Contract Number: 253368

This Agreement is between the State of Minnesota, acting through its Secretary of State, Steve Simon, of the Office of the Secretary of State ("State") and the County Auditor of each of the Counties or the Municipal Clerk of each of the cities or towns listed in Appendix A.¹ ("Governmental Unit").

Recitals

Under Minnesota Statutes § 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of election recount services for the automatic recount of votes pursuant to Minnesota Statutes, section 204C.35, subd. 1 and Minnesota Rules, part 8235.0200, for the 2024 general election, as necessary for state offices. The Governmental Unit represents that it is duly qualified and agrees to perform all services described in this agreement to the satisfaction of the State.

Agreement

1. Term of Agreement

- 1.1 Effective Date: September 30, 2024, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
- 1.2 Expiration Date: December 31, 2024, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Agreement between the Parties

Pursuant to Minnesota Rules, part 8235.0200, the State shall designate all Governmental Units who enter into this agreement, as listed in Appendix A (which may be updated from time to time) as Recount Officials for the purpose of conducting any recount required under Minnesota Statutes section 204C.35 related to the November 2024 state general election. The Governmental Unit shall perform the recount of any votes cast in the county or city or town in which the Governmental Unit is the County Auditor or Municipal Clerk respectively and in any additional jurisdiction mutually agreed upon by Governmental Unit and the State. The Governmental Unit shall conduct the recount in accordance with all applicable Minnesota laws and rules and the Minnesota Recount Guide, which are attached to this agreement as Appendices B, C and D, respectively, as well as any additional information or guidance the State provides.

The Governmental Unit shall begin the recount as soon as permitted under Minnesota law and shall continue it until (1) all ballots in the jurisdictions being counted by the Governmental Unit are counted or designated as challenged or (2) an election contest is filed in any of these elections and the court takes jurisdiction of the matter, whichever comes first. Should an election contest be filed, the State may cancel this agreement immediately and without any further payment to the Governmental Unit beyond what has already been incurred.

The Governmental Unit shall complete the recount pursuant to any deadlines required under law and, if no deadlines, exist, as soon as practicable. At the conclusion of the recount process in the county or city, the

¹ Appendix A is on file with the State and can be provided upon request.

Governmental Unit shall, at the expense of the State, deliver results of the recount, along with all explanatory notes and any ballots challenged by candidates in the election to the State by personal delivery or express courier, to the State at the following address:

Office of the Minnesota Secretary of State
Elections Division
First National Bank Building
332 Minnesota Street, Suite N201
Saint Paul, MN 55101

3. **Payment**

- a) **Compensation.** Governmental Unit will be paid four cents for each ballot sorted and counted under Minnesota Rules, part 8235.0800 in the course of any recount covered by this agreement, with a minimum payment of \$100. The State will provide the Governmental Unit with a reimbursement form for the Governmental Unit to submit detailing the number of ballots handled. This total will be verified by the State prior to issuing payment.
- b) **Travel.** No travel expenses will be paid.

The total obligation of the State under this Agreement will not exceed \$130,000 for all Governmental Units.

4. **Authorized Representatives**

The State's Authorized Representative is David Maeda, Director of Elections, Veterans Services Building, 20 W 12th Street, Suite 210, St. Paul, MN 55155, 651-556-0612, or his/her successor.

The Governmental Unit's Authorized Representative is the County Auditor or Municipal Clerk listed in Appendix A who has signed the agreement, or his/her successor.

5. **Assignment, Amendments, Waiver, and Contract Complete.**

- 5.1 Assignment. The Governmental Unit may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors, except that the Governmental Unit may designate one more deputy recount officials under Minnesota Rules, part 8235.0700.
- 5.2 Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 5.3 Waiver. If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 Contract Complete. This Agreement contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6. Indemnification.

6.1 In the performance of this Agreement, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The Indemnifying Party is defined to include the Governmental Unit, the Governmental Unit's reseller, any third party that has a business relationship with the Governmental Unit, or Governmental Unit's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Agreement.

6.2 Nothing within this Agreement, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

7. State Audits.

Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Agreement.

8. Government Data Practices.

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Governmental Unit or the State.

If the Governmental Unit receives a request to release the data referred to in this clause, the Governmental Unit must immediately notify and consult with the State's Authorized Representative as to how the Governmental Unit should respond to the request. The Governmental Unit's response to the request shall comply with applicable law.

9. Venue

Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

10. Termination

10.1 Termination. The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10.2 Termination for Insufficient Funding. The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

11. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).

For services valued in excess of \$50,000, the Governmental Unit certifies that as of the date of services performed on behalf of the State, Governmental Unit and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. The Governmental Unit is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1. State Encumbrance Verification

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print Name: Jennifer Kurz

Signature: 

Title: Fiscal Services Supv/Buyer Date: 7/24/2024

SWIFT Contract No. 253368

SWIFT PO No. G5301-3000004909

2. Governmental Unit

Print Name: _____

Signature: _____

Title: _____ Date: _____

3. State Agency

With delegated authority

Print Name: _____

Signature: _____

Title: _____ Date: _____

4. Commissioner of Administration

As delegated to The Office of State Procurement

Print Name: _____

Signature: _____

Title: _____ Date: _____

Admin ID: _____