

Attachment A

Agreement No. A2311615

HENNEPIN COUNTY/CITY OF Maple Grove

LEASE AGREEMENT

THIS AGREEMENT, made by and between the COUNTY OF HENNEPIN and the CITY OF Maple Grove both political subdivisions of the State of Minnesota, hereinafter referred to as the “County” and the “City” respectively. For purposes of this Agreement, the address of the County is A2300 Government Center, Minneapolis, Minnesota 55487 and the address of the City is 12800 Arbor Lakes Pkwy, Maple Grove MN 55311.

PREAMBLE

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 99-6-426 authorized the purchase of ES&S election equipment for a countywide digital scan voting system, election hardware and services; and

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 20-0039 authorized the purchase of Assistive Voting Devices (hereinafter “AVT Equipment”) using the County’s Joint Powers Agreement with Minnesota Counties Computer Cooperative (MnCCC); MnCCC holds the agreement with SeaChange (including Democracy Live).

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 16-0064 authorized the purchase of Poll Book Equipment (hereinafter “Poll Book Equipment”) for election hardware and services; and

WHEREAS, the County pursuant to Minn. Stat. § 383B.145, Subd. 9 may transfer property to the City for its use; and

WHEREAS, the County and the City are parties to an agreement for the lease of various election equipment and the County and City desire to terminate that lease agreement and replace it with this agreement A2311615.

WHEREAS, the County and the City are parties to an agreement for the lease of Poll Book Equipment and the County and City desire to terminate that lease agreement and replace it with this agreement A2311615.

WHEREAS, the County desires to lease various ES&S election equipment, AVT Equipment, and Poll Book Equipment (collectively herein “Election Equipment”) to the City and City desires to lease said Election Equipment from County for use in all elections conducted in Hennepin County.

NOW THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the County and the City agree as follows:

Section 1

TERMINATION AND REPLACEMENT OF EXISTING AGREEMENTS BETWEEN COUNTY AND CITY

The agreement between the County and City for the lease of various election equipment is terminated and replaced by this Agreement A2311615.

The agreement between the County and City for the lease of poll book equipment is terminated and replaced by this Agreement A2311615.

Section 2

SCOPE OF AGREEMENT

- 2.1 The County hereby leases to the City at the cost identified below and subject to the terms and conditions of this Agreement, and the City hereby agrees to lease from the County Election Equipment for use within the City identified as:
- a. 24 DS200 Digital Scan Precinct Count Units
 - b. 24 DS200 Plastic Ballot Boxes
 - c. 0 DS950 Digital Scan Central Count Units
 - d. 19 OmniBallot Tablets (including 3-button device, headphones, navigation pad, OmniBallot Tablet key, OmniBallot Tablet case, stylus, power cord, hard and soft printer cases, printer power cable, printer USB cable, QR code scanner, USB hub key, 3-plug extension cord)
 - e. 19 OmniBallot Printers
 - f. 90 Poll Books (including stand arm, ID tray, styluses, white AC adapter, white cable, green lightning USB cable, base, printer, printer power supply, printer power cord, poll book case)
 - g. 1 Meraki Access Points.
- 2.2 Subject to the terms and conditions of this Agreement, the parties may agree to increase or decrease Election Equipment or add new equipment. Any agreed upon changes shall be documented by County when County sends an annual equipment inventory statement to City.
- 2.3 Herein, Election Systems and Software (ES&S), SeaChange, and KNOWiNK may be referred to as "vendor".

Section 3

OWNERSHIP

- 3.1 The City acknowledges that the County owns or leases the Election Equipment and that the City is authorized to use said Election Equipment for official election related purposes. Use of the Election Equipment for any other purpose is strictly prohibited absent express written consent of the County's Elections Director.
- 3.2 The City acknowledges and agrees that the Election Equipment may contain proprietary and trade secret information that is owned by a third party, including Election Systems and Software (ES&S), Democracy Live, and KNOWiNK, is protected under federal copyright law or other laws, rules, regulations, and decisions. The City shall protect and maintain the proprietary and trade secret status of the Election Equipment.

Section 4

HANDLING OF EQUIPMENT AND INDEMNIFICATION

- 4.1 The City shall be responsible for the Election Equipment it leases from the County under this Agreement, including Election Equipment the City subleases to a school district under Section 8.6 below. The City, either through insurance or a self-insurance program, shall be responsible for all costs, fees, damages, and expenses including but not limited to personal injury, storage, damage, repair, and/or replacement of the Election Equipment consistent with the City's defense and indemnity obligations contained in Section 8.7 herein.
- 4.2 The City shall be responsible for the transporting of the Election Equipment from and to the County. Upon termination of this Agreement, the City shall forthwith deliver the Election Equipment to the County or its designee, complete and in good order and working condition. The City shall be responsible for all costs, including but not limited to shipping, related to the repair or replacement of lost, stolen, destroyed, or damaged Election Equipment.

Section 5

TERM, TERMINATION

- 5.1 The City and the County agree that this Agreement is in effect during the period commencing upon signature by the County and terminating February 28, 2031. The City and County agree that this Agreement may terminate sooner if and when the City and County mutually agree that the Election Equipment will no longer be used for the City's elections. The City agrees that should the County's contract for the Election Equipment with ES&S and/or KNOWiNK and/or SeaChange/MnCCC, respectively, terminate or expire, the Election Equipment and/or services subject to that agreement may no longer be available to the City and City shall immediately return the equipment to the County upon County's request. A particular piece of Election Equipment may be retired from use by the City upon mutual agreement between the City and County and without this Agreement terminating. City represents and warrants that it will use the Election Equipment for its intended purpose and in a manner consistent with prior practice under the previous agreements referenced in Section 1 above until the Agreement terminates.

Section 6

MAINTENANCE AND PRICING

- 6.1 Maintenance (ES&S Election Equipment). The County has entered into an agreement with ES&S for the purchase, warranty, and maintenance of the ES&S Election Equipment. ES&S shall provide the same warranty and maintenance services to the City as it provides to the County. The annual maintenance fee paid by the City to the County for said ES&S Election Equipment shall be Two Hundred and Six dollars (\$206.00) per digital scan precinct count unit and Five Thousand Six Hundred and Twenty-Five dollars (\$5,625.00) per digital scan central count unit. If and when ES&S increases the fee to the County, the County may increase the fee to the City.
- 6.2 Maintenance (AVT Equipment). The County has entered into an agreement with SeaChange/MnCCC for the purchase, warranty, and maintenance of the AVT Equipment. SeaChange shall provide the same warranty and maintenance services to the City as it provides to the County. The annual maintenance fee paid by the City to the County for said AVT Maintenance shall be an amount not to exceed Two Hundred and Twenty Five dollars (\$225) per

unit. If and when SeaChange increases the fee to the County, the County may increase the fee to the City.

- 6.3 Maintenance Agreement (Poll Book Equipment). The County has entered into an agreement with KNOWiNK for the purchase/lease, warranty, and maintenance of the Poll Book Equipment. KNOWiNK shall provide the same warranty and maintenance services to the City as it provides to the County. There shall be no annual maintenance fee paid by the City to the County for said Poll Book Equipment maintenance.
- 6.4 The City agrees not to make any repairs, changes, modifications, or alterations to the Election Equipment that are not authorized by Hennepin County and said vendors.
- 6.5 After reasonable notice, the County shall have the right to enter the premises where the Election Equipment is located for the purposes of inspecting the same or observing its use. On an annual basis, during the term of this Agreement, the City shall comply with the County's request for verification of Election Equipment inventory.
- 6.6 The City agrees to provide notice to Election Systems & Software of any defects or malfunctions with the Election Equipment, to provide notice to SeaChange of any defects or malfunctions with the AVT Equipment, and to provide notice to KNOWiNK of any defects or malfunctions with the Poll Book Equipment within twenty-four (24) hours. The City also agrees to provide the County with notice of such malfunctions or defects and Election Systems & Software's, SeaChange's, or KNOWiNK's response within a reasonable time. The County agrees to track via a log all such equipment malfunctions.

Section 7

PROGRAMMING AND ACCUMULATION

- 7.1 Programming (Election Equipment). The County will be responsible for programming the Election Equipment at no charge to jurisdictions for all races in all elections. In the case of an election that crosses county lines, the County will determine programming responsibilities with the other involved counties.
- 7.2 For Cities with a primary and/or general election, as described in Minn. Stat. § 205.065 and 205.07, in the even-numbered years, the County will provide results transmission and accumulation of results of City races in the primary and general election at no cost to the City.

Section 8

OTHER TERMS AND CONDITIONS

- 8.1 No Waiver. 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 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.

- 8.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- 8.3 Entire Agreement. 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. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. 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.
- 8.4 No Assignment. Neither party shall assign, sublet, or transfer this Agreement, either in whole, or in part, without prior written consent of the other party, and any attempt to do so shall be void and of no force and effect.
- 8.5 No Warranty. The City agrees that the County is furnishing the Election Equipment on an “as is” basis, without representation or any express or implied warranties, other than those provided by ES&S, SeaChange, or KNOWiNK, including but not limited to, fitness for particular purpose, merchantability or the accuracy and completeness of the Election Equipment.

The County does not warrant that the Election Equipment will be error free.

The County disclaims any other warranties, express or implied, respecting this Agreement or the Election Equipment.

- 8.6 City may sublease Election Equipment to school districts within the County. Under any such sublease, the City is fully responsible and liable for the school district complying with the terms and conditions of this Agreement, and County shall have no liability whatsoever to the school district.
- 8.7 In no event shall the County be liable for actual, direct, indirect, special, incidental, consequential damages (even if the County has been advised of the possibility of such damage) or loss of profit, loss of business or any other financial loss or any other damage arising out of performance or failure of performance of this Agreement by the County. The County and the City agree each will be responsible for their own acts and omissions under this Agreement and the results thereof and shall to the extent authorized by law defend, indemnify, and hold harmless the other party for such acts. Each party shall not be responsible for the acts, errors, or omissions of the other party under the Agreement and the results thereof. The parties’ respective liabilities shall be governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. This paragraph shall not be construed to bar legal remedies one party may have for the other party’s failure to fulfill its obligation under this Agreement. Nothing in this Agreement constitutes a waiver by the City or County of any statutory or common law defenses, immunities, or limits on liability. The City’s exclusive remedy and the County’s sole liability for any substantial defect which impairs the use

of the Election Equipment for the purposes stated herein shall be the remedy provided by the vendor.

8.8 Notice. Any notice or demand shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

To the City: City of Maple Grove
12800 Arbor Lakes Pkwy
Maple Grove MN 55311

To the County: Hennepin County Administrator
Government Center MC 233
Minneapolis MN 55487

Copy to: Hennepin County Elections
Government Center MC 012
Minneapolis MN 55487

8.9 Audit Provision. Both parties agree that either party, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other party and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the contract and for six (6) years after its termination or cancellation.

8.10 Whereas Clauses. The matters set forth in the "Whereas" clauses on page one of this Agreement are incorporated into and made a part hereof by this reference.

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

8.12 Authority. The person or persons executing this Lease Agreement on behalf of the City and County represent that they are duly authorized to execute this Lease Agreement on behalf of the City and the County and represent and warrant that this Lease Agreement is a legal, valid, and binding obligation and is enforceable in accordance with its terms.

8.13 The parties shall comply with applicable law including but not limited to the provision of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA).

THE REMAINDER OF THIS PAGE IS BLANK.

COUNTY AND CITY APPROVAL

Reviewed for COUNTY by the
County Attorney's Office:

By: _____

Name: Jeffrey Wojciechowski

Date: _____

COUNTY OF HENNEPIN

STATE OF MINNESOTA

By: _____

Name: David Hough

Title: County Administrator

Date: _____

CITY OF Maple Grove

CITY warrants that the person who executed this
Agreement is authorized to do so on behalf of CITY.

By: _____

Name: Amy Dietl

Title: City Clerk

Date: _____