



Meeting: Village Board
Meeting Date: 1/13/14
Agenda Item: 6c

Mission Statement

To provide our residents with a safe, friendly, attractive and active community by aggressively pursuing innovative ways to deliver valuable services.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Chris Haltom, Director of Administrative Services

AGENDA ITEM: Approve Intergovernmental Agreement with Brown County utilizing Election Tabulation Equipment

ACTION REQUESTED: ___Ordinance ___Resolution X Motion ___Receive/File

POLICY ISSUE

Should the Village Board approve an Intergovernmental Agreement with Brown County to allow the village to utilize the county's election tabulation equipment?

BACKGROUND INFORMATION

The village included in the 2011 budget \$20,000 for the purchase of new election tabulation equipment. The village's existing tabulating equipment was purchased in 1991 and was beginning to show the effects of aging. Before the village made a purchase in 2011, Brown County's Clerk discussed with the village the possibility of the county purchasing the tabulating equipment for all municipalities within the county.

During 2012, more discussions occurred with the county's clerk and it was determined by the county board to purchase all municipal election equipment. The county clerk then decided to delay the purchase of the equipment until late 2013. The county provided training on the equipment to me and Annette DuPrey in December 2013. The equipment has been delivered to the village for use in 2014 elections.

The county mailed the attached agreement to the village clerk on January 10, 2014. This report was prepared the same day and included in the board's packet for review at the January 13, 2014 meeting.

The village was able to save the \$20,000 budgeted in 2011 for this equipment and use the funds for other purposes.

FISCAL IMPACT:

- | | |
|------------------------------|-----|
| 1. Is There A Fiscal Impact? | No |
| 2. Is it Currently Budgeted? | No |
| 3. If Budgeted, Which Line? | N/A |

PREVIOUS ACTION

No previous action on this item.

RECOMMENDED ACTION

Village staff recommends the village board approve Intergovernmental Agreement with the county and recommend the following motion be made:

“I move to approve the Intergovernmental Agreement with Brown County for using the election tabulation equipment.”

ATTACHED INFORMATION

- I. Intergovernmental Agreement with Brown County

**INTERGOVERNMENTAL AGREEMENT BETWEEN BROWN COUNTY AND
PARTICIPATING MUNICIPALITIES THEREOF FOR UTILIZATION OF ELECTION
TABULATION EQUIPMENT**

This Intergovernmental Agreement ("Agreement") is being entered into on this sixth day of January, 2014, pursuant to Wis. Stat., §§ 66.0301 and 59.03, as amended from time to time, by and between Brown County, a body corporate organized and existing under the Laws of Wisconsin ("County"), and Village of Howard, a County municipal unit of government participating in this Agreement, organized and existing under the Laws of Wisconsin ("Municipality"/"Municipalities"). The "County" and the "Municipality"/"Municipalities" will be collectively referred to herein as the "Parties").

WHEREAS, in 2010, an official meeting of the County Clerk and the clerks of the County Municipalities occurred whereby, in an effort to increase the efficiency and uniformity of the County's election voting system, they unanimously determined that replacing the aging election equipment and software ("Election System") being used throughout the County would benefit the public; and

WHEREAS, in furtherance thereof, a recommendation was made by the County's Director of Administration that the County purchase approximately One Hundred (100) DS200 Tabulators, along with all related hardware and software (collectively, "Tabulators"), from Election System & Software ("ES&S") to replace the aging Election System throughout the County to the benefit of the Municipalities participating herein; and

WHEREAS, on or around March 16, 2011, the Brown County Board of Supervisors, pursuant to among other enabling provisions, Wis. Stat., § 67.04, adopted "Initial Resolutions Authorizing The Issuance Of Not To Exceed \$10,440,001 Corporate Purpose General Obligation Bonds or Notes of Brown County, Wisconsin In One Or More Series At One Or More Times", authorizing the payment of costs for multiple projects deemed in the public purpose, including the acquisition of said Tabulators, the quoted cost of which equaled a sum of \$600,000.00; and

WHEREAS, following said authorization, the County's actual purchase of the Tabulators was initially delayed pending the necessary certification of ES&S from the Elections Administration Commission and the Wisconsin Government Accountability Board under Wis. Stat., § 5.91, the conditional certification of which was granted in August of 2013 and which shall become final contingent upon a successful audit of the Tabulators following the Spring, 2014 elections; and

WHEREAS, in October of 2013, the County entered into a contract with ES&S to purchase its Tabulators, the total purchase price of which was covered by the County, absent contribution from the Municipalities benefitting therefrom. A copy of said contract (hereinafter "Contract") is attached hereto as Exhibit "A" and incorporated herein by reference.

NOW THEREFORE, in consideration of the above premises and mutual covenants of the Parties hereto, the receipt and sufficiency of which is acknowledged by each of the Parties, the County and Municipalities agree as follows:

1. Purpose: The Parties hereto agree that it is in the interest of the public to operate one unified vote counting and reporting system throughout the County and, in being consistent therewith, the County purchased, through Contract with ES&S, Tabulators for all Municipalities to use at their polling precincts. The Parties also agree that it furthers the aforementioned public interest by entering into this Agreement to uniformly set forth the terms and conditions that will govern the Parties' responsibilities regarding their receipt, use and maintenance of the Tabulators. The term of this Agreement shall be for one (1) year, commencing upon execution by both Parties hereto, and shall automatically renew for one (1) year consecutive terms unless terminated by either Party upon forty-five (45) days advanced written notice to the other prior to expiration of the then existing term.

2. Responsibilities of the County: The County shall, at all times, be the sole owner of the Tabulators and its related hardware/software as more fully set forth in the Contract attached hereto, and, as said owner, shall be responsible for the following:

- a. Adhering to the applicable terms and conditions of the Contract, including but not limited to, submitting timely payments in accordance therewith, pursuing enforcement actions if needed, and determining disbursement, if necessary, of any awarded damages or penalties recovered in the event of an enforcement action. The County's timely payment hereunder does not constitute a waiver of its right to take action, including legal, to collect any monies owed it from the Municipalities pursuant to this Agreement, said right being expressly preserved by the County herein;
- b. Supplying the Municipalities, participating herein, with an adequate number of Tabulators, modems and ballot bins to be placed at each of their respective polling precincts, as well as providing each Municipality with two (2) USB thumb drives, a tabulator paper roll, an Automark replacement tray, and one (1) ink cartridge for Automark;
- c. Tracking the specific Tabulator(s) supplied to each Municipality by corresponding the Tabulator's assigned serial number(s) with the Municipality receiving it on the document attached hereto as Exhibit "B" and incorporated herein by reference; and

EXHIBIT B

MUNICIPALITY	DS-200 SERIAL NUMBERS
VILLAGE OF HOWARD	DS0113390296
VILLAGE OF HOWARD	DS0113390092
VILLAGE OF HOWARD	DS0113390079
VILLAGE OF HOWARD	DS0113390356

- d. Commencing January 1, 2016, invoicing the Municipalities for their share of the annual Tabulator maintenance fees set forth in the Contract, the total fees of which the County shall advance to ES&S in accordance therewith, irrespective of when or whether it collects from the Municipalities hereunder, but without waiving its right to take, among other steps afforded it under this Agreement, action to collect upon any outstanding invoices related hereto. All monies received hereunder shall be deposited into the County's election intergovernmental revenue account.

3. Responsibilities of the Municipalities: The Municipalities understand and agree that their entry into this Agreement is voluntary, but a prerequisite to receiving, at no initial cost to them, the requisite amount of County-owned Tabulator(s) and related equipment described in Section 2(b), above. The Municipalities further understand and agree that by entering into this Agreement, they are responsible for the following:

- a. Properly storing and securing their assigned Tabulator(s) in a manner consistent with Article II, Section 1 of the Contract, as well as any other applicable provision within Schedule A1 of the Contract and/or the User Manuals referenced therein, copies of which the County shall supply to the Municipalities upon its receipt thereof;
- b. Participating in all necessary training associated with the use, operation, and maintenance of the Tabulators, whether required under the Contract or by directive of the County, including reviewing all User Manuals and documentation supplied, whether through printout or electronic means, to the Municipalities by the County and/or ES&S;
- c. Upon receipt, adhering to all of the Contract's operating, maintenance and technical obligations that apply to the Tabulators to the same extent as is required of the County, including but not limited to: (i) not permitting any

- individual, other than an ES&S representative, to provide the maintenance and support services set forth in Articles II and III of the Contract; (ii) cooperating with the County in its decision to install any modifications, upgrades and/or updates to the Tabulators, the decision and cost of which rests solely with the County; and (iii) refraining from making any updates, upgrades, modifications, alterations and/or changes of any kind to the Tabulators without first obtaining written permission from the County;
- d. Adhering to any additional requirements established by the County regarding the Municipalities' use, maintenance and/or operation of the Tabulators assigned to them hereunder;
 - e. Replacing and/or repairing, at the Municipality's sole cost and expense, any Tabulator(s) assigned to said Municipality that become(s) lost, stolen and/or damaged due to weather conditions or as a result of the negligence and/or carelessness of the Municipality, its employees, agents, assigns and/or representatives, the replacement and/or repair of which shall be fulfilled in accordance with Articles II and III of the Contract, as well as any other applicable provisions set forth therein;
 - f. Procuring, in an amount deemed adequate by the County, insurance coverage for each of the Municipality's assigned Tabulator(s), with evidence of coverage documented by a Certificate of Insurance. The Certificate(s) of Insurance along with an endorsement shall be issued by a company or companies authorized to do business in the State of Wisconsin and shall be satisfactory to the County. Such insurance should be primary. The Certificate(s) shall reference the Agreement and have an endorsement attached naming the County as Loss Payee and provide for thirty (30) days advance notice of any change, cancellation or non-renewal during the term of this Agreement.
 - g. To the same extent as required of the County, in, among other capacities, as grantee of the nonexclusive, nontransferable license referenced therein, adhering to the Contract's provisions governing the ES&S Software, ES&S Firmware and/or ES&S Documentation, the terms of which are more fully defined therein, which shall include, but not be limited to, Sections 2-4 & 8 of the Contract's General Terms; and
 - h. Beginning January 1, 2016, the date in which the Contract's warranties expire, and from that point forward, reimbursing the County for their share of the annual maintenance fees, as established by the Contract, that the County has to advance, in accordance therewith, to ES&S for all Tabulators subject to this Agreement, the reimbursement of which shall be due within thirty (30) days of the Municipality's receipt of the invoice relating thereto.

4. 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, as well as in accordance with any governing federal and/or state laws, including but not limited to, Wisconsin's Open Records Law.

5. Authority/Compliance: Each Municipality hereto certifies that it is eligible to receive the benefits of and has obtained authority to enter into this Agreement. It further certifies that the individual executing this Agreement on behalf of the Municipality is authorized to do so. In addition, each Municipality understands that it maintains full responsibility to adhere to all applicable election laws, including the Help America Vote Act of 2002 ("HAVA"), as well as any other provisions regarding, among other mandates, the accessibility of polling places, privacy and independence. And, further understands that, during the term of this Agreement, shall not discriminate against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, membership in the National Guard, state defense force or any reserve component of the military forces of the United States or this state, and will adhere to the Wis. Stat., § 111.335 when addressing conviction and arrest records.

6. Default by Municipality: In the event that a Municipality defaults in its payment obligations under this Agreement, the County shall have the right to order the Municipality's assigned Tabulator(s) to be returned, at the Municipality's sole cost and expense, to a location chosen by the County until said Municipality remits payment to the County of the outstanding amount in full. In the event that the Municipality fails to remit payment within thirty (30) days of said return, the County shall have the right, in its sole discretion, to do what it deems most reasonable with the Tabulator(s) and to take whatever action necessary to collect upon the outstanding debt.

7. Waiver: Any waiver by the County under this Agreement shall not imply a subsequent waiver of that or any other provision thereof.

8. Severability: The various provisions of this Agreement are declared to be severable and 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 in writing by the Parties hereto.

9. Supplies: But for those items specifically referenced within Section 2 of this Agreement, all additional supplies associated with the appropriate use, operation and maintenance of the Tabulators shall be solely the expense and responsibility of the Municipalities.

10. Liability/Indemnification: The Parties agree to fully indemnify and hold one another harmless from and against all claims, actions, judgments, costs, and expenses arising out of damages or injuries to third persons or their property caused by the fault

or negligence of the said Party, its agents or employees in the performance of this Agreement. The Parties shall give to each other prompt and reasonable notice of any such claims or actions and the other Party shall have the right to investigate, compromise, and defend the same.

11. Governing Law: This Agreement shall be governed under the laws of the State of Wisconsin and is drafted/entered into in Brown County, Wisconsin, thereby causing Brown County to be the venue for any legal action to enforce the terms of this Agreement.

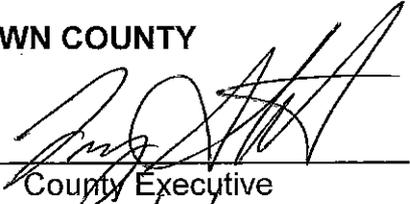
12. Entire Agreement/Amendments: The entire Agreement of the Parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the Parties relating to the subject matter hereof. The Parties expressly agree that this Agreement shall not be amended except in writing, executed by the Parties.

13. No Third Party Rights/Independent Contractor Status: This is an Agreement between the Parties hereto and nothing herein creates any rights in any third persons. Further, this Agreement does not in any way create the relationship of joint venture, partnership, principal, or employer/employee between the Parties, their agents, employees, subcontractors, officers and/or representatives. The Municipalities, their employees, agents, subcontractors, and/or representatives shall not act or attempt to act, or represent themselves, directly or by implication, as an agent for the County or in any manner assume any obligation on behalf of or in the name of the County.

14. Appropriation of Funds: This Agreement is contingent upon annual authorization of funding by the County governing body as well as the Tabulators' final and continued certification under applicable law, as may be amended from time to time. In the event funding is not approved, funding is terminated or said certification is denied, the County may terminate this Agreement upon forty-five (45) days written notice to the Municipalities.

15. Notices: Any and all notices shall be in writing and deemed served upon depositing the same with the United States Postal Service as "Certified Mail, Return Receipt Requested", addressed to the County Clerk, for notice to the County, and the Municipal Clerk, for notice to the Municipality unless otherwise designated in writing to the other.

BROWN COUNTY

By: 
County Executive

Dated: 1/8/14

MUNICIPALITY - VILLAGE OF HOWARD

By: _____

Dated: _____