



# Board of County Commissioners Agenda Request

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Agenda Item #

**Requested Meeting Date:** August 7, 2018

**Title of Item:** Primary and General Election Recounts

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	<b>Action Requested:</b> <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
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<b>Submitted by:</b> Kirk Peysar, County Auditor	<b>Department:</b> County Auditor
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<b>Presenter (Name and Title):</b> Kirk Peysar, County Auditor	<b>Estimated Time Needed:</b> n/a
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**Summary of Issue:**  
 Authorize payment of primary/general election recount expenses to Aitkin County in the event of a recount at the Federal, State, or Judicial level(s).

**Alternatives, Options, Effects on Others/Comments:**

**Recommended Action/Motion:**  
 Authorize signatures to agreements with the MN Secretary of State for recounts.

**Financial Impact:**  
 Is there a cost associated with this request?     Yes     No  
 What is the total cost, with tax and shipping? \$ as attached  
 Is this budgeted?     Yes     No    *Please Explain:*

**Kirk Peysar**  
**Aitkin County Auditor**  
209 Second Street Northwest Room 202  
Aitkin, Minnesota 56431  
218.927.7354

August 7, 2018

To: County Board

From: Kirk Peysar, County Auditor



Re: Secretary of State-Joint Powers Agreements-2018 Primary and General Election  
Recounts

The Minnesota Secretary of State has asked that a joint powers agreement be executed to authorize the payment of primary/general election recount expenses to Aitkin County in the event of a recount at the Federal, State, or Judicial level(s). The term of the agreements will be from July 1, 2018 to December 31, 2018.

The request is to authorize board chair and my signature to the agreements.

**STATE OF MINNESOTA  
JOINT POWERS AGREEMENT**

This agreement is between the State of Minnesota, acting through its Office of the Secretary of State ("State") and the County Auditor of each of the Counties or the City Clerk of each of the cities listed in Appendix A. ("Governmental Unit").

**Recitals**

Under Minn. Stat. § 471.59, subd. 10, and Minnesota Rules, subpart 8235.0200 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 for the 2018 primary 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:* July 1, 2018, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 *Expiration date:* September 30, 2018, or until all obligations have been satisfactorily fulfilled, whichever occurs later.

**2 Agreement between the Parties**

The Governmental Unit will act as a Deputy Recount Official designated by the Secretary of State pursuant to Minnesota Rules, part 8235.0200 and will conduct a recount as necessary of the votes cast in the county in which the Governmental Unit is the County Auditor and in any additional jurisdiction mutually agreed upon by Governmental Unit and State, pursuant to the provisions of Minnesota Statutes and Minnesota Rules relating to recounts, the Minnesota 2018 Recount Guide, all of which are attached to this agreement as Appendices B, C and D, respectively, as well as the information provided during the Web streaming video transmission to counties to be provided on a date to be determined by State, and any other guidance provided to the Deputy Recount Official by State. Appendix A is the list of participating jurisdictions and it will be updated prior to the commencement of the recount to reflect all participating jurisdictions. The primary election recount will begin on August 22, 2018 at 9:00 A.M, and recounts will continue until all ballots in the jurisdictions being counted by the Deputy Recount Official are counted or designated as challenged. In the event that an election contest is filed in any of these elections and the court takes jurisdiction, the State may cancel the relevant portion of this agreement immediately and without any further cause. State and Governmental Unit agree that this process will be completed on August 24, 2018 for any primary election recount, unless civil litigation delays completion. The results of the recount, along with all explanatory notes and any ballots challenged by candidates in the election shall be securely forwarded and provided to the State by personal delivery or express courier for delivery to the State, at the expense of the State at the conclusion of the recount process in the county or city.

**3. Payment**

- a) *Compensation.* Governmental Unit will be paid four cents for each ballot handled in the course of any recount covered by this agreement, with a minimum payment of \$100 if a recount occurs in the Governmental Unit's jurisdiction. The Governmental Unit will submit a log of all ballots handled to State to verify the total.
- b) *Travel.* No travel expenses will be paid.

The total obligation of the State under this agreement will not exceed an aggregate of \$50,000 for all Governmental Units for the primary election.

**4. Authorized Representatives**

The State's Authorized Representative is Gary Poser, Director of Elections, 180 State Office Building, Saint Paul MN 55155, 651-556-0612, or his/her successor, and has the responsibility to monitor the Governmental Unit's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Governmental Unit's Authorized Representative is the County Auditor or municipal clerk who has signed the agreement.

## 5 Assignment, Amendments, Waiver, and Agreement 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 same parties who executed and approved this agreement, or their successors in office.
- 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 same parties who executed and approved the original agreement, or their successors in office.
- 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 **Agreement Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

## 6. Liability

The Governmental Unit will indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by the Governmental Unit or the Governmental Unit's agents or employees. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligations under this agreement.

## 7. Termination

Either party may terminate this agreement upon thirty days' written notice to the other party. State may terminate this agreement immediately if no recounts are requested pursuant to law during the statutory request period.

## 8. E-Verify certification (In accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, 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. 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 Governmental Unit and made available to the State upon request.

## 9. State audits

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

## 10. Government data practices and intellectual property

**10.1 Government data practices.** The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) 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 Agreement. 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.

### 10.2 Intellectual property rights.

(a) Intellectual property rights. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Agreement. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Governmental Unit, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Agreement. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Governmental Unit, its employees, agents, or subcontractors, in the performance of this Agreement. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Governmental Unit upon completion or cancellation of this Agreement. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Governmental Unit assigns all right, title, and interest it may have in the works and the documents to the State. The Governmental Unit must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.

(b) Obligations

(1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Governmental Unit, including its employees and subcontractors, in the performance of this Agreement, the Governmental Unit will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

(2) Representation. The Governmental Unit must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Governmental Unit nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Governmental Unit represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 6, the Governmental Unit will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Governmental Unit's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Governmental Unit will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Governmental Unit's or the State's opinion is likely to arise, the Governmental Unit must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Governing law, jurisdiction, and venue

Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. 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.

Signatures for this agreement are being obtained by the signing of counterparts. Each Contractor will sign signature block #2 and return the entire agreement document to [elections.dept@state.mn.us](mailto:elections.dept@state.mn.us), or to Elections Division, Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul MN 55155-1299.

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

Signed: Jennit Key  
Date: 7/2/2018

3. STATE AGENCY

By: \_\_\_\_\_  
(with delegated authority)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SWIFT Contract No. 144224 SWIFT PO 2612

**2. GOVERNMENTAL UNIT**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

**4. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

By: \_\_\_\_\_

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

**APPENDICES ATTACHED:**

**APPENDIX A – List of Participating Jurisdictions**

**APPENDIX B – Minnesota Statutes Relating to Recounts**

**APPENDIX C – Minnesota Rules Relating to Recounts**

**APPENDIX D – Minnesota 2018 Recount Guide**

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**Recitals**

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**Agreement**

**1 Term of Agreement**

- 1.1 *Effective date:* November 1, 2018, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 *Expiration date:* December 31, 2018, or until all obligations have been satisfactorily fulfilled, whichever occurs later.

**2 Agreement between the Parties**

The Governmental Unit will act as a Deputy Recount Official designated by the Secretary of State pursuant to Minnesota Rules, part 8235.0200 and will conduct a recount as necessary of the votes cast in the county in which the Governmental Unit is the County Auditor and in any additional jurisdiction mutually agreed upon by Governmental Unit and State, pursuant to the provisions of Minnesota Statutes and Minnesota Rules relating to recounts, the Minnesota 2018 Recount Guide, all of which are attached to this agreement as Appendices B, C and D, respectively, as well as the information provided during the Web streaming video transmission to counties to be provided on a date to be determined by State, and any other guidance provided to the Deputy Recount Official by State. Appendix A is the list of participating jurisdictions and it will be updated prior to the commencement of the recount to reflect all participating jurisdictions. The general election recount will begin on December 3, 2018 at 9:00 A.M, and recounts will continue until all ballots in the jurisdictions being counted by the Deputy Recount Official are counted or designated as challenged. In the event that an election contest is filed in any of these elections and the court takes jurisdiction, the State may cancel the relevant portion of this agreement immediately and without any further cause. State and Governmental Unit agree that this process will be completed on December 10, 2018 for any general election recount, unless civil litigation delays completion. The results of the recount, along with all explanatory notes and any ballots challenged by candidates in the election shall be securely forwarded and provided to the State by personal delivery or express courier for delivery to the State, at the expense of the State at the conclusion of the recount process in the county or city.

**3. Payment**

- a) *Compensation.* Governmental Unit will be paid four cents for each ballot handled in the course of any recount covered by this agreement, with a minimum payment of \$100 if a recount occurs in the Governmental Unit's jurisdiction. The Governmental Unit will submit a log of all ballots handled to State to verify the total.
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The total obligation of the State under this agreement will not exceed an aggregate of \$120,000 for all Governmental Units for the general election.

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(1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Governmental Unit, including its employees and subcontractors, in the performance of this Agreement, the Governmental Unit will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

(2) Representation. The Governmental Unit must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Governmental Unit nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Governmental Unit represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 6, the Governmental Unit will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Governmental Unit's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Governmental Unit will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Governmental Unit's or the State's opinion is likely to arise, the Governmental Unit must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

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Signatures for this agreement are being obtained by the signing of counterparts. Each Contractor will sign signature block #2 and return the entire agreement document to elections.dept@state.mn.us, or to Elections Division, Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul MN 55155-1299.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: [Signature]  
Date: 7/2/2018

3. STATE AGENCY

By: \_\_\_\_\_  
(with delegated authority)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SWIFT Contract No. 144225 SWIFT PO 2613

**2. GOVERNMENTAL UNIT**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

**4. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

By: \_\_\_\_\_

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

**APPENDICES ATTACHED:**

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