



CITY COUNCIL ACTION REPORT

Date September 26, 2007

TO: Phillip L. Nelson, City Manager

FROM: Tonni L. Bartholomew, City Clerk

SUBJECT: **Oakland County Agreement – Board of Canvassers**

Background:

- City of Troy has canvassed their local elections in the past. These elections contained ballot questions that pertained only to the City with no questions that crossover the municipal boundary.
- The Board of Canvassers is established pursuant to Michigan Election Law. The law requires the canvass, however it does not require the canvass to be performed by a Local Board of Canvassers. Additionally, the Troy City Charter references a Board of Canvassers, again however it does not, differentiate between a local and county board.
- Effective with this November 6, 2007 Election, the ballot will contain questions from multiple school districts. Oakland County has the responsibility, by law to administer these elections which will include the canvass of the school related questions.
- The dual canvass will require a duplication of all election materials election night prior to the delivery of results to the County. This duplication process will be very labor and time intensive and will delay reporting to the County.
- The Troy Board of Canvassers, in the past, has been called to order, early in the morning following the election to canvass election results for accuracy. This process is completed in approximately 6 hours. This process will be a duplication of the canvass being conducted by the Oakland County Board of Canvassers.
- The fee for Oakland County to perform the canvass will be \$25.00 per precinct. The City of Troy utilizes 17 consolidated precincts for local elections.

Financial Considerations:

- Funds for this service are available in Elections 192 Account.

Legal Considerations:

- There are no legal considerations associated with this item.

Policy Considerations:

- There are no policy considerations associated with this item.

Options:

- City Management recommends the City of Troy enter into an Agreement with Oakland County to provide election canvassing at a dollar amount of \$25.00 per precinct per election.

**AGREEMENT BETWEEN THE CITY OF TROY
AND OAKLAND COUNTY
TO UTILIZE THE SERVICES OF THE
OAKLAND COUNTY BOARD OF CANVASSERS**

This AGREEMENT TO UTILIZE THE SERVICES OF THE OAKLAND COUNTY BOARD OF CANVASSERS (hereafter this "Agreement") is made and entered into between the City of Troy, a Michigan Constitutional and Municipal Corporation whose address is 500 West Big Beaver Road, Troy, Michigan 48084-5285 (hereafter the "Municipality"), and the County of Oakland, a Michigan Constitutional and Municipal Corporation, whose address is 1200 North Telegraph Road, Pontiac, Michigan 48341 (hereafter the "County"). In this Agreement, the County or the Municipality may also be referred to as a "Party" and jointly as the "Parties".

PURPOSE OF AGREEMENT. Pursuant to the Urban Cooperation Act of 1967, 1967 PA 7, MCL 124.501, *et. seq.*, the County and the Municipality enter into this Agreement to delineate the relationship and responsibilities between the Parties to provide election canvassing services.

Current Michigan Election Law provides that: "A 4-member board of canvassers is established in every city and township having more than 5 precincts, notwithstanding any statutory or charter provision, or any other rule or law to the contrary." [MCL 168.30a(1)] This statute further provides that: "The city council or the township board of any city or township having more than 5 precincts may contract with the board of supervisors of the county in which all or the greater portion of the city or township's population resides to provide that the board of county canvassers of that county shall perform all the functions of the board of city or township canvassers." [MCL 168.30a(2)]

Finally, this statute provides that: "Financial arrangements of such a contract may provide that the city or township shall bear all or part of cost of such work." [MCL 168.30a(2)] The Municipality has requested the County's assistance in meeting the Municipality's obligation to provide all the functions of the board of city or township canvassers (hereafter, "Municipality Canvassers") through the Oakland County Board of Canvassers, and the County is agreeable to provide such services in accord with the terms and conditions of this Agreement.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, or addendum.
 - 1.2. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
 - 1.3. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.4. **Expenses** shall include, but not be limited to, any and all actual amounts paid to, for, or on behalf of any and all members of the Oakland County Board of Canvassers in connection with or for any and all services, activities, or the performance of any and all statutory functions for the Municipality under the term of this Agreement as provided under the applicable state statutes and/or as otherwise allowed or authorized by the Oakland County Board of Commissioners.
 - 1.5. **Legislative Body** when referring to Oakland County means the Oakland County Board of Commissioners. When referring to the City of Troy, it means the Troy City Council.
 - 1.6. **Municipality** means the City of Troy, a Municipal and Constitutional Corporation including, but not limited to, its Council, Board, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors.
2. **COUNTY RESPONSIBILITIES.** The Oakland County Board of Canvassers shall perform all the statutory functions which would otherwise be required to be performed by the Municipality Canvassers pursuant to MCL 168.30a(2). When performing services under this Agreement, the County Board of Canvassers shall have all the powers, duties and functions that would otherwise have been afforded to the Municipality Canvassers.
 3. **MUNICIPALITY RESPONSIBILITIES.** The Municipality agrees that it shall provide the necessary information and assistance required to enable the Oakland County Board of Canvassers to carry out their legal responsibilities.
 4. **EFFECTIVE DATE , DURATION AND AMENDMENTS.**
 - 4.1. This Agreement and any amendments shall become effective upon the passage of a resolution by each Party's Legislative Body. An executed copy of

this Agreement shall be filed with the Clerk for the County and the Clerk for the Municipality. This Agreement and certified copies of the resolutions, as well as any amendments, shall be filed with the Secretary of State by the Oakland County Clerk. Any subsequent amendments shall only become effective and binding upon the Parties after each Party's Legislative Body has passed a resolution approving the amendment.

4.2. Unless extended by mutual written agreement by both Parties, this Agreement shall remain in effect for five (5) years from the date the Agreement is executed by both Parties or until cancelled or terminated by either of the Parties as provided herein.

5. **PAYMENT.** The Municipality hereby agrees to pay to the County the following amounts:

5.1. For any and all such County services associated with any general, primary, or county-wide special election, when the ballot includes a local issue or election, the Municipality shall pay to the County an amount equal to TWENTY-FIVE (\$25.00) DOLLARS for each and every election precinct within the Municipality.

5.2. For any and all such County services associated with any Municipality or local ballot issue or election, which is not part of any general or primary election and/or which involves no county-wide, state or federal election or ballot question, the Municipality agrees and shall pay to the County an amount equal to full amount of any and all actual County "Expenses" incurred and/or paid by the County in providing any and all such Oakland County Board of Canvassers services under this Agreement.

5.3. The County, through its Department of Management and Budget and upon such frequency as deemed appropriate by the County, shall prepare and forward to the Municipality an itemized invoice for such Oakland County Board of Canvassers services provided to the Municipality pursuant to this Agreement. The Municipality agrees to pay the full amount shown on any such invoice within thirty (30) calendar days after the date shown on any such invoice.

5.4. The Parties agree that the Municipality's obligation to pay the County any and all amounts due and owing under this Agreement shall be absolute and unconditional and shall not be affected, in any way, by the occurrence of either Party's default or any term or condition of this Agreement nor shall any other occurrence or event relieve, limit, or impair the obligation of the Municipality to pay the County as provided for herein.

5.5. The Municipality agrees that the County may, at its sole option, recover any such amounts due and owing the County as shown on any County Invoice by offsetting such amounts from any monies or other amounts in the possession of

the County and/or otherwise held by the County for any reason or for any purpose that are otherwise payable, due, or owing to the Municipality by or from the County. For purposes of illustration, but without limitation, the Municipality agrees that if there is any amount due and owing to the County under this Agreement still unpaid to the County at the time the County is scheduled to distribute funds, if any, to the Municipality from the Delinquent Tax Revolving Fund ("DTRF"), the County shall be entitled, at its sole option, to reduce, set-off, and permanently retain from any amount otherwise then payable to the Municipality from Delinquent Tax Revolving Fund ("DTRF"), any amount then still due and owing the County from the Municipality pursuant to this Agreement.

6. **ASSURANCES.**

- 6.1. Each Party shall be responsible for its own acts and the acts of its employees, and agents, the costs associated with those acts, and the defense of those acts.
- 6.2. This Agreement does not create any direct or indirect obligation or right to be indemnified (i.e., contractually, legally, equitably or by implication) nor any right to be subrogated to any rights in this Agreement.
- 6.3. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 6.4. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

7. **LIMITATION OF LIABILITY.** In no event shall the County be liable to the Municipality or any other person, for any consequential, incidental, direct, indirect, special, and punitive or other damages arising out of this Agreement.

8. **TERMINATION OR CANCELLATION OF AGREEMENT.** Either Party may terminate or cancel this Agreement upon ninety (90) days written notice, without incurring a penalty or additional liability, for any reason, including convenience. The effective date of termination and/or cancellation shall be clearly stated in the written notice. The Party desiring to cancel this Agreement shall provide the Clerk of the other Party's Legislative Body with a resolution passed by the canceling Party's Legislative Body, which indicates the clear desire of that Party to cancel this Agreement.

9. **RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.

10. **LIMITATION OF LIABILITY/RESERVATION OF RIGHTS.** Except as expressly provided otherwise herein, this Agreement does not, and is not intended to, create, diminish, delegate, transfer, assign, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, civil or legal responsibility, obligation, duty of care, liability, capacity, immunity, or authority of either the Municipality or the County to any other person or Party. The Parties further agree, notwithstanding any other term or condition in this Agreement, that no provision in this Agreement is intended, nor shall it be construed, as a waiver of any governmental immunity by either Party for that Party and/or any of that Party's agents as provided by statute or applicable court decisions.
11. **NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
- 11.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Clerk, 1200 North Telegraph Road, Pontiac, Michigan, 48341 and Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph, Pontiac, Michigan 48341.
- 11.2. If Notice is sent to the Municipality, it shall be addressed to: City Clerk, City of Troy, 500 West Big Beaver Road, Troy, Michigan 48084-5285.
- 11.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.
12. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
13. **ENTIRE AGREEMENT.** This Agreement constitutes the complete and entire agreement between the Municipality and the County regarding this subject matter and supersedes any and all prior agreements, representations or understandings related to the subject matter of this Agreement.

For and in consideration of the mutual promises, acknowledgments, and representations set forth in this Agreement, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the County and the Municipality hereby agree to be bound by the above terms and provisions.

IN WITNESS WHEREOF, _____ hereby acknowledges that he/she has been authorized by a resolution of the City of Troy, a certified copy of which is attached, to execute this Agreement on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, Bill Bullard, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
Bill Bullard, Jr., Chairperson
Oakland County Board of Commissioners

WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, Ruth Johnson, in her official capacity as the Oakland County Clerk, a Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
Ruth Johnson, Clerk/Register of Deeds
County of Oakland

WITNESSED: _____ DATE: _____

(2007-0662)