

**MEMORANDUM OF AGREEMENT
BETWEEN THE SOUTH DAKOTA SECRETARY OF STATE'S OFFICE
AND JACKSON COUNTY, SOUTH DAKOTA.**

MEMORANDUM OF AGREEMENT is entered into this 13th day of November, 2015, by the State of South Dakota, South Dakota Secretary of State's Office, 500 East Capitol Ave. #204, Pierre, SD 57501, hereinafter identified as "Secretary of State" and Jackson County, South Dakota, acting through its Board of County Commissioners, P.O. Box 280, Kadoka, SD 57543, hereinafter referred to as "Jackson County".

WHEREAS, the Secretary of State has the authority under The 2014 State HAVA Plan and the Help America Vote Act of 2002, Pub.L. 107-252, 42 U.S.C. § 15301 et seq., hereinafter identified as "HAVA" to improve the administration of federal elections; and

WHEREAS, Jackson County has the authority to enter into this type of agreement pursuant to a determination by the Jackson County Commission; and

WHEREAS, Jackson County has only \$1,541.64 in its State-held HAVA fund; and

WHEREAS, Jackson County's low tax revenue complicates its ability to fund federal elections; and

WHEREAS, the Secretary of State and Jackson County believe by entering into this agreement federal elections held in

Jackson County will be improved to the benefit of the State of South Dakota and Jackson County;

NOW THEREFORE, it is mutually agreed as follows:

1. That the term of this Agreement shall commence upon the execution hereof effective the day and year above and continue until January 1, 2023, unless amended or terminated or extended pursuant to the terms hereof. However, the Secretary of State unilaterally reserves the right to terminate this agreement should the lawsuit currently pending against Jackson County, *Poor Bear et al. v. County of Jackson et al. 5:14-cv-05059*, proceed to a decision on the merits.

2. This Agreement depends upon continued availability of HAVA funding for the purposes contemplated herein. This Agreement will be terminated if the Federal Government, through the Election Assistance Commission (EAC) or through appropriations or legislation under HAVA or otherwise, fails to appropriate sufficient funding or grant expenditure authority for the use of these funds as outlined in this agreement. It is also terminated should HAVA funds become unavailable for the purposes described herein for any reason. This Agreement also depends upon the continued availability of appropriated funds and expenditure authority from Jackson County for these purposes. If sufficient funding or expenditure authority is not available to a party, whether through a lack of appropriations, expenditure authority, or if a party otherwise lacks sufficient funds to carry out its obligations and responsibilities under

this Agreement, or if funds become unavailable to a party by operation of law or federal funds reductions, that party shall provide written notice of termination within seven days of determining that it lacks the necessary funding. Termination for the reasons set forth in this section shall not constitute a default.

3. This agreement is intended to assist Jackson County in funding an in-person absentee satellite voting location to improve the administration of federal elections in accordance with state and federal law and in compliance with and authorized by the State HAVA Plan in effect and as amended from time to time and the Help America Vote Act of 2002, Pub.L. 107-252, 42 U.S.C. § 15301 et seq. as directed by the Secretary of State.

4. In consideration of the Secretary of State's and Jackson County's observance and performance of the covenants, terms and conditions set forth herein, the Secretary of State agrees as follows:

(a) The Secretary of State agrees to reimburse Jackson County, from the State's state-held HAVA account, various amounts as needed as shown by appropriate reimbursement forms and applicable receipts, up to the amount of sixty-one thousand, six hundred eighty-four dollars (\$61,684) to be used for an in-person absentee satellite voting site in accordance with the State HAVA Plan, as amended from time to time, and

the Help America Vote Act of 2002, Pub.L. 107-252, 42 U.S.C. § 15301 et seq.

(b) The amount available pursuant to paragraph 4(a) above will be in addition to the current balance in Jackson County's state-held HAVA account of one thousand five-hundred forty-one dollars and sixty-four cents (\$1,541.64) (as of November 12, 2015) and in addition to any other HAVA funds awarded to Jackson County through the HAVA Grant Application process for routine federal election expenses.

(c) The funds available to Jackson County under paragraph 4(a) and (b) above will be available to Jackson County as provided for and authorized by the State HAVA Plan, as amended from time to time, in compliance with Public Law 107-252 Section 253(b), otherwise known as The Help America Vote Act of 2002, Pub.L. 107-252, 42 U.S.C. § 15301 et seq.

5. In consideration of the Secretary of State's observance and performance of covenants, agreements, terms and conditions set forth herein, Jackson County agrees to seek HAVA reimbursement only for those expenses in compliance with and authorized by the State HAVA Plan, as amended from time to time, and the Help America Vote Act of 2002, Pub.L. 107-252, 42 U.S.C. § 15301 et seq. as directed by the Secretary of State. In order to meet its obligations under this Agreement, Jackson County agrees to appropriate, through their usual budgetary process, and expend, an amount which in conjunction with the funds provided under Paragraph 4 above and other HAVA money it obtains, according to

all State and Federal laws, funds to pay for federal elections in Jackson County, including funding for an in-person absentee satellite voting location until January 1, 2023.

6. This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.

7. This Agreement may not be assigned without the express prior written consent of all parties. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

8. The failure of a party to enforce strict performance of any covenant, promise, term, or condition herein contained, shall not operate as a waiver of that party's right thereafter to require that the terms hereof be strictly performed.

9. The parties declare that no specific entity, as contemplated in SDCL 1-24-4, is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the Secretary of State, and Jackson County and their authorized designees as contemplated in SDCL 1-24-5.

10. This Agreement and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests and assigns to the respective parties hereto.

11. All Notices or communications herein shall be in writing and shall be sufficiently given and shall be deemed given as delivered, if delivered by personal delivery to the Secretary of State, and Jackson County or their authorized designees or by mail to the parties at the following addresses:

Secretary of State of South Dakota
500 East Capitol Ave. # 204
Pierre, SD 57501

Jackson County Commission
PO Box 280
Kadoka, SD 57543

The parties, by giving notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

12. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

14. This Agreement is intended only to govern the rights and interests of the Parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

15. By the signature of their representative below, the Secretary of State and Jackson County certify that approval of this Agreement has been obtained by that governmental entity's governing body or officer by ordinance, resolution or other appropriate means, and that the representative is authorized to sign on the party's behalf. A copy of Jackson County's authorizing resolution or ordinance is attached to this Agreement and incorporated herein by reference.

16. The Parties acknowledge that a true and correct copy of this Agreement will be filed with the attorney general and Legislative Research Council not more than fourteen days after being executed pursuant to SDCL 1-24-6.1. The Parties further agree that a final copy of this agreement will be kept on file with the Secretary of State's Office and the Jackson County Commission.

IN WITNESS HERETO, the parties have set their hand effective the day and year above first written.

Secretary of State's Office

Shantel Krebs

Shantel Krebs
Secretary of State

November 13, 2015
Date

Glen A. Bennett

Jackson County Commission

11-13-15
Date

ATTEST:

Vicki L. Wilson

Jackson County Auditor
Vicki Wilson

11-13-15
Date

Kenneth Graupmann

Jackson County Commissioner
District 1: Kenneth Graupmann

11/13/15
Date

Larry L. Johnston

Jackson County Commissioner
District 2: Larry Johnston

11/13/2015
Date

Larry Denke

Jackson County Commissioner
District 3: Larry Denke

11-13-15
Date

Ron Twiss

Jackson County Commissioner
District 4: Ron Twiss

November 13, 2015
Date

Glen A. Bennett

Jackson County Commissioner
District 5: Glen Bennett

11-13-15
Date