

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

MEMORANDUM OF AGREEMENT is entered into this 3rd day of August, 2012, 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 Shannon, County, South Dakota, acting through its Board of County Commissioners, 906 N. River Street, Hot Springs, SD 57747, hereinafter referred to as "Shannon County".

WHEREAS, the Secretary of State has the authority under The 2010 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, Shannon County has the authority to enter into this type of agreement pursuant to a determination by the Shannon County Commission; and

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

WHEREAS, the Secretary of State and Shannon County believe by entering into this agreement federal elections held in Shannon County will be improved to the benefit of the State of South Dakota and Shannon 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, 2019, unless amended or terminated or extended pursuant to the terms hereof.
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 Shannon 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 Shannon County in funding federal elections, including absentee voting, 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 Shannon 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 will transfer, from the State-Held HAVA account, to Shannon County's state-held account established under HAVA, various amounts as needed as shown by appropriate reimbursement forms and applicable receipts, up to and including the amount of one-hundred-and-eleven thousand dollars (\$111,000.00) to be used 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 transferred in paragraph a) above will be in addition to the current balance in Shannon County's state-held HAVA account of sixty-eight thousand nine-hundred ten dollars and seventy-eight cents (\$68,910.78) (as of December 30, 2011).
- c) The funds available to Shannon County under paragraph 4(a) and (b) above will be available to

Shannon 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.

- d) Pursuant to this Agreement, Shannon County is required to spend the current \$68,910.78 plus interest currently being held in Shannon County's state-held HAVA account before first receiving the additional funds as referenced in Paragraph a) above. Should, at any time, Shannon County receive any additional HAVA fund distributions in its State-held HAVA account before spending the then remaining balance of its State-held HAVA account, Shannon County will be required to spend those funds before receiving additional funding contemplated under Paragraph a) above.
- e) At any time before the expiration of this Agreement, should Shannon County spend its State-held HAVA account down to zero dollars (\$0), in accordance with paragraph d) above, Shannon County will receive additional distributions as described in Paragraph a) above provided that the Secretary of State's Office receives from Shannon County the appropriate reimbursement request and applicable receipts and such request is in compliance with the State HAVA Plan, as amended from time to time, and the Help American Vote Act of 2002, Pub.L. 107-252, 42 U.S.C. § 15301 et seq. The requests must be submitted to

the Secretary of State by August 1 and December 1 of each year.

5. In consideration of the Secretary of State's observance and performance of covenants, agreements, terms and conditions set forth herein, Shannon County agrees to seek HAVA funding only for those funds 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.

a) Shannon County further agrees that the funds under 4(a) and (b) above, in conjunction with County funding, are sufficient to fund, according to all state and federal laws in existence as of the date of this Agreement's signing, federal elections in Shannon County until January 1, 2019. Shannon County agrees that the funding provided for in Paragraph 4 above will currently be sufficient to fund four federal election cycles; 2012, 2014, 2016, and 2018.

b) In order to meet its obligations under this Agreement, Shannon County agrees to appropriate, through their usual budgetary process, and expend, an amount which in conjunction with the funds provided under Paragraph 4 above, funds, according to all State and Federal laws, federal elections in Shannon County, including absentee voting, until January 1, 2019.

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 rights and remedies herein conferred shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. 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 Shannon County and their authorized designees as contemplated in SDCL 1-24-5.

10. This Agreement and the covenants herein contained shall insure 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 Shannon 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

Shannon County Commission
906 N. River Street
Hot Springs, SD 57747

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

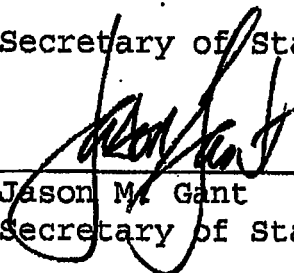
intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

15. By the signature of their representative below, the Secretary of State and Shannon 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 Shannon 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 Secretary of State's Office and the Shannon County Commission within 30 days of its final execution.

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

Secretary of State's Office



Jason M. Gant
Secretary of State

8-3-12
Date

Bryan J. Kehn
Shannon County Commissioner
District 1: Bryan J. Kehn

8-3-12
Date

Deloris Hagman
Shannon County Commissioner
District 2: Deloris Hagman

8-3-12
Date

Shannon County Commissioner
District 3: Eugenio B. White Hawk

Date

Shannon County Commissioner
District 4: Wendell Yellow Bull

Date

Lyla Hutchison
Shannon County Commissioner
District 5: Lyla Hutchison

8/3/12
Date