

MEMORANDUM OF AGREEMENT

Between the United States of America and Shannon County, South Dakota

This Memorandum of Agreement ("Agreement"), effective on the date signed below, is entered into by and between the United States of America ("United States") and the Shannon County, South Dakota, Board of County Commissioners and the Shannon County Auditor ("the County"), in their official capacities.

By letter dated September 28, 2009, the United States informed the County that it had authority to file suit against the County, alleging violations of Section 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b ("Section 4(f)(4)"), Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a ("Section 203"), and Sections 301 and 302(a) and (b) of the Help America Vote Act ("HAVA"), 42 U.S.C. §§ 15481 and 15482(a) and (b), arising from the County's election practices and procedures as they affect American Indian residents of the county, including those American Indian residents who rely in whole or in part on the Lakota language.

The County, its agents, employees, contractors, successors, and all other persons representing the interests of the County (hereinafter, "the County and/or its agents") denies the United States' allegations and nothing in this agreement shall be a finding or an admission that the County or its agents has violated either the Voting Rights Act or HAVA.

The County and its agents have been required to provide election information and assistance in Lakota, pursuant to Sections 4(f)(4) and 203 for Lakota-speaking American Indians since 1976. This coverage has existed continuously since 1976 for Section 4(f)(4), and under Section 203 from 1975 through 1992, and from 2002 to the present. 42 U.S.C. §§ 1973b and 1973aa-1a(b)(2); 40 Fed. Reg. 43,044 (Sept. 18, 1975); 41 Fed. Reg. 783 (Jan. 5, 1976)

(corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)); 49 Fed. Reg. 25,887 (June 25, 1984); 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002); 28 C.F.R. §§ 55.1, 55.5(a), and 55.6(a) and Part 55 Appendix. A declaratory judgment has not been issued by the United States District Court for the District of Columbia relieving Shannon County of its obligations under Section 4(f)(4). *See* 42 U.S.C. § 1973b(a).

“Limited-English proficient” is defined in Section 203 as “unable to speak or understand English adequately enough to participate in the electoral process.” 42 U.S.C. § 1973aa-1a(b)(3)(B); 28 C.F.R. § 55.6(b). The American Indian Sioux voting age citizens who speak English less than very well (hereinafter, “limited-English proficient”) are not sufficiently proficient in English to participate effectively in the electoral process when conducted solely in the English language. *See* 42 U.S.C. §§ 1973b(f)(1) and 1973aa-1a(a); 28 C.F.R. 55.2(b).

Sections 4(f)(4) and 203 require that all information about voter “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” provided by the County and its agents in English must also be provided orally in the Lakota language to the extent necessary to allow language minority group members to be informed of and participate effectively in the electoral process and all voting-related activities. 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c). The requirements of Sections 4(f)(4) and 203 apply to all stages of the electoral process, “including, for example, the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.” 28 C.F.R. § 55.15. Because the Lakota language is a historically unwritten language, the County and its agents are required to

furnish oral instructions, assistance, and other information relating to registration and voting in the Lakota language to limited-English proficient Lakota-speaking voters. 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c); 28 C.F.R. § 55.12(c).

The County has been subject to the requirements of Section 301 of HAVA since January 1, 2006, and Sections 302(a) and (b) of HAVA since January 1, 2004. 42 U.S.C. §§ 15481(d) and 15482(d). Under Section 301(a)(3) of HAVA, the County and its agents are required to provide in each polling place a voting system that is accessible for individuals with disabilities and provides the same opportunity for access and participation, including privacy and independence, as for other voters during elections for federal office. 42 U.S.C. § 15481(a)(3). The voting system must also provide alternative language accessibility pursuant to the requirements of Section 203. 42 U.S.C. § 15481(a)(4). Under Section 302(a) of HAVA, the County and its agents are required to offer provisional ballots and provide provisional voters with written information informing them of a free system available to ascertain whether their vote was counted during elections for federal office. 42 U.S.C. §15482(a). Under Section 302(b) of HAVA, the County and its agents are required to post certain election-related information at each polling site during elections for federal office. 42 U.S.C. §15482(b).

According to the 2000 Census, the County has a total population of 12,465, of whom 11,090 (89%) are American Indian (Sioux). The County has a total voting age population ("VAP") of 6,855, of whom 5,900 (86%) are American Indian Sioux. Of the American Indian Sioux voting age citizens in the County, 400 (6.8%) are limited-English proficient and speak the Lakota language.

The United States alleges and the County and its agents deny that the County and its agents have not complied with Sections 4(f)(4) and 203 in conducting public elections within the County by, among other things, failing to provide all election information and materials orally in the Lakota language and by failing to adequately recruit and train bilingual election officials to provide this information and assist limited-English proficient Lakota-speaking American Indian voters with absentee and early voting and at the polls on election day, in a manner necessary for effective participation in the electoral process.

The United States further alleges, and the County and its agents deny, that the County and its agents have not complied with Sections 301 and 302 of HAVA by, among other things, failing to provide in each polling place a voting system that provides the same opportunity for access and participation by voters with disabilities, including privacy and independence, as for other voters during elections for federal office, by failing to make operational the alternative language accessibility on voting systems, by failing to offer provisional ballots to voters when they meet specified criteria, by failing to provide provisional voters with written information notifying them of a free system available to ascertain whether their vote was counted, and by failing to publicly post certain required election-related information at each polling site during elections for federal office.

To avoid protracted and costly litigation, the parties, through counsel, have agreed that this matter should be resolved through the terms of this Agreement. Whenever the County or its agents enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of the County or its agents, the County and its agents shall require such entity to agree to abide by the terms of this Agreement as if such entity

were a party to this Agreement with the United States.

Accordingly, it is hereby agreed by the parties that:

1. The County and its agents are committed to comply fully with all of the requirements of Sections 4(f)(4) and 203 of the Voting Rights Act and Sections 301 and 302(a) and (b) of HAVA in future elections. Therefore, the County and its agents stipulate and agree to:

(a) orally provide in the Lakota language “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” that they provide in English, as required by Sections 4(f)(4) and 203, and to ensure that poll officials receive the necessary training to provide the same;

(b) ensure that poll officials receive adequate training regarding the use and functions of the accessible voting system, the need to ensure that the voter is able to vote privately and independently, and the availability of the Lakota audio ballot on the voting system and how to operate it, as required by Section 301 of HAVA;

(c) ensure that poll officials receive adequate training regarding the circumstances under which provisional ballots should be offered, and the need to provide written information to the voter that informs them of a free system available to them to ascertain whether their provisional ballot was counted, as required by Section 302(a) of HAVA; and,

(d) ensure that poll officials receive adequate training regarding the need to post all HAVA-required information, as required by Section 302(b) of HAVA.

Lakota Election Information Program Coordinator

2. The County and its agents shall designate and employ a part-time individual to coordinate (“Coordinator”) the County’s Lakota Election Information Program (“Program”) that

will incorporate the duties and responsibilities contained within this Agreement and focus on providing voter education, and election information and materials in the Lakota language for all elections administered by the County, and ensure proper implementation of procedures unique to HAVA for all elections for federal office administered by the County. The Coordinator shall understand and speak Lakota and English fluently and perform those responsibilities specified in this Agreement and closely related election activities, as may be provided in a separate written agreement of the parties.

3. The Coordinator shall be hired by the County after seeking recommendations from the President of the Oglala Sioux Tribe (hereinafter, "tribal president" or "OST") or his or her designee, and in compliance with the County's normal job selection process. The County recognizes that the ability of the Coordinator to work closely and cooperatively with the OST is an essential job-related requirement for the position.

4. The Coordinator shall be hired on a part-time basis and duties carried out according to the schedule attached hereto as Attachment A.

5. The Coordinator shall be fully briefed and trained by the contracting election official and the Secretary of State's Office, as appropriate, concerning the duties and responsibilities under this Program and all aspects of the federal, state and local election process, and shall attend all election seminars conducted by those offices.

6. The Coordinator shall oversee the County's Program generally and attend County Commissioner meetings on a regular basis, make him or herself available for presentation and comment at each tribal council meeting, and seek to attend and present election information at other public meetings and gatherings within the county, including but not limited to monthly

tribal district elderly meetings and elderly lunch program gatherings, as outlined in Attachment A.

7. In July of 2010 and February and July of 2012, the Coordinator shall work with the tribal president or his/her designee to identify other opportunities to disseminate election information to elderly American Indians within the county. During that time, the Coordinator shall compile a list of such possible meetings, functions or groups before whom presentations might be made, and determine a schedule for attendance. Soon thereafter, the Coordinator shall notify the tribal president or his/her designee and the United States, in writing, of the meetings and groups before which the Coordinator will appear.

8. The Coordinator shall work primarily out of a Satellite Elections Office established within the County. *See* paragraphs 11-13, *infra*. The parties recognize that the Coordinator may need to be present in the office of the contracting election official at times, but understand that during the month prior to any election, the Coordinator should be present in the County to provide services to elderly American Indian voters.

9. The Coordinator shall be available on election day in Shannon County to assist in whatever capacity upon direction from the contracting election official, such as obtaining a replacement for any last-minute bilingual poll official vacancy, transmitting supplies, calling in election related questions or issues, fixing voting machines, etc.

10. The County shall provide the Coordinator with support sufficient to meet the goals of the program, such as establishing a travel, equipment, and supply budget.

Satellite Elections Office

11. The County shall establish a Satellite Elections Office within the County at a

location convenient to the Lakota-speaking population, and with the cooperation and consent of the tribal president or his/her designee. The United States is available for consultation and suggestions regarding locations that have proven successful in other jurisdictions.

12. The Satellite Elections Office shall serve as the principal place of business for the Coordinator, as a library of written and recorded election information, as a distribution point for the dissemination of election information, and as a site for the performance of other election-related functions. The Satellite Elections Office shall contain a locked room or space to store materials such as registration forms, absentee ballot applications, and other supplies.

13. A supply of all forms, copies and materials collected or produced as a result of or necessary to complete the duties and functions of this Agreement, shall be maintained at each Satellite Elections Office.

Intergovernmental Coordination

14. The County shall request and accept all training, materials, and services available from the State of South Dakota in furtherance of the implementation of this program, and shall encourage the production of such materials by the State. The Coordinator shall remain in regular contact with the contracting election official for advice and assistance associated with the Program. The County shall encourage the assistance of such state personnel, and shall at all times welcome their presence to assist in implementation of this Program or in any phase of the election process.

15. The County is encouraged to work with other counties in South Dakota and the Secretary of State's Office, including the development of standard terminology for the translation of election materials into Lakota, and to obtain cost savings in the implementation of effective

American Indian language programs for elderly American Indian voters.

16. The County shall invite the tribal president or his/her designee to assist in all phases of the Program. To assist in uniformity and accuracy in the translation of election materials prior to dissemination of any translation, the County shall make such translations available to the tribal president or his/her designee and shall provide reasonable opportunity for review and comment.

17. The parties recognize the separate powers and authority of the tribal government, and nothing in this Agreement limits or infringes on tribal powers or authority. Accordingly, where this Agreement provides for the County to perform acts in consultation and cooperation with the government of the Oglala Sioux Tribe, the County is obligated to undertake all good faith and reasonable efforts to perform such consultation and obtain such cooperation. In the event consultation or cooperation is not possible, the County shall notify counsel for the United States promptly and prior to the date for the performance of the act or event. To avoid misunderstanding, the Shannon County Board of County Commissioners and the contracting election official agree to seek, within ten (10) days of the date of this Agreement and at least annually thereafter, meetings with the tribal president or his/her designee to discuss their respective governmental structures, schedules and decision-making processes, and the implementation of this Agreement.

Translations and Dissemination of Election-Related Information

18. All election-related materials, information, and announcements that the County plans to disseminate to voters, shall be orally translated into the Lakota language by the Coordinator or outside sources and recorded on audio tapes, video tapes or compact discs, as

appropriate, within ten (10) days of its availability to the County. These audio translations shall be disseminated to media outlets within the county and made available to elderly American Indian voters through the Coordinator.

19. Separate audio recordings shall be provided for each election-related subject matter so as to avoid lengthy recordings, and enable easy access to particular topics, and the County shall make every effort to ensure that recordings do not exceed five minutes in length. A library of currently applicable audio recordings, together with English transcripts or text, shall be maintained by the Coordinator at the Satellite Elections Office. Copies of all materials prepared pursuant to this Agreement shall be provided to the tribal president or his/her designee and the United States.

20. The County shall ensure the creation of accurate translations of election information, either by the Coordinator or by entering into written contracts with qualified persons. The County may use audio recordings provided by the State of South Dakota, and may coordinate the production of recordings with other counties within the State, but the County shall be responsible for addressing promptly and, if necessary, correcting or clarifying any translation upon an adverse report from the Coordinator, the tribal president or his/her designee, or the Lakota translator utilized by the State. The County shall seek the assistance of the State in identifying and retaining translators or subject matter experts to assist in translation of technical or complicated election-related materials. In the event the State fails to provide such translators or subject matter experts, or in the event a dispute as to translation arises, the County shall contact counsel for the United States.

21. The County, through the Coordinator, shall make a formal request and engage in all reasonable efforts to make oral presentations and ensure that the relevant subject matter recording(s) is played in at least one tribal council meeting, at least one monthly elderly meeting, and at least one elderly lunch gathering per month, as outlined in Attachment A and in accordance with paragraph 24, *infra*. At those meetings, the Coordinator shall be available to answer any questions concerning the subject matter of the tape or other election information or procedures discussed.

22. Election information shall be distributed in the Lakota language through the radio. Dissemination of these minority language announcements shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information. Each dissemination shall refer the audience to the Coordinator for detailed information.

23. The County's obligation to make such media announcements in the Lakota language shall be satisfied by "notice" announcements providing a brief general description of the subject matter and a reminder that detailed information is available with the Coordinator. The County shall not be required to broadcast in the Lakota language the full text of constitutional amendments, election proclamations, or other lengthy election-related announcements. The County shall distribute audio recordings for broadcast on KILI Radio in Porcupine.

24. The County shall disseminate the following election information in the Lakota language through taped radio broadcasts (and presentations discussed in paragraph 21, *supra*). The Coordinator shall transmit the oral translations of notices and information to KILI Radio

starting on the same date as required by state law for written notices or as listed below if not required by state law, with specific directives to air those notices as Public Service Announcements ("PSAs") at least once a day for the information contained in paragraphs (a) through (b) and twice a week for the information contained within paragraph (c):

(a) Voter Registration (One week prior to registration deadline for the June 8, 2010 election and 30 days prior to registration deadline for all other elections): Voter registration procedures; voter registration cutoff dates, voter registration locations; the availability of voter registration opportunities at monthly elderly meetings; and the name of the Coordinator who can assist the elderly in registering to vote.

(b) Absentee Voting (during absentee period for June 8, 2010 election and 10 days prior to and during absentee period for all other elections): Absentee voting procedures; the absentee ballot application and ballot; the deadlines of same; the availability of the Coordinator to assist elderly voters in completing their ballot application and their ballot; and the times and locations for doing so.

(c) Prior to Election Day (During the thirty (30) days leading up to the June 8, 2010 election and during the sixty (60) days prior to Election Day for all other elections) -Information regarding the following: the date of the election; polling place hours; locations of polling places; the offices on the ballot, and the names and party affiliation of each candidate; a brief summary of each ballot proposition; polling place procedures; the identification requirement and affidavit option; how to cast a vote; provisional ballots, including what they are, when they are used, and how to cast one; the availability of written information that informs provisional voters of a free system through which they can ascertain whether their vote was counted; the availability of a

voting machine that is accessible to persons with disabilities and allows them to vote with privacy and independence and provides the audio ballot in Lakota; the availability of trained bilingual Lakota-speaking poll officials at the polls to provide Lakota language assistance; the need for bilingual Lakota-speaking individuals to serve as poll officials and provide Lakota language assistance to elderly American Indian voters; and the information contained in the 2"x3" poster created by the Secretary of State required to be posted in the polls on election day (i.e. general information on voting rights, who to contact if these rights have been violated, information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation).

(d) Any other election information provided or published in English, according to the same deadlines or publication dates as required for English.

25. The Coordinator shall coordinate publicity efforts with tribal president or his/her designee and utilize same for the training of poll officials and conducting voter education to elderly Lakota-speaking American Indian voters in the County.

Lakota Language Assistance

26. Lakota language assistance shall be available at all polling places through trained bilingual personnel who are able to understand and speak Lakota and English fluently. The County shall consult with the tribal president or his/her designee to identify bilingual individuals qualified to work at the polls.

27. Consistent with *S.D. Codified Laws* § 12-15-1 and 12-15-2, at least thirty (30) days prior to the election, the County Auditor and Coordinator, shall recruit, hire, and assign bilingual poll officials, including individuals to serve as a backup in the case of a cancellation, to

provide effective language assistance to limited-English proficient, elderly American Indian Lakota-speaking voters in each precinct on election day. The parties recognize that the County may need to make adjustments to precinct boards by hiring and assigning additional poll officials, within thirty (30) days prior to the election, consistent with *S.D. Codified Laws* § 12-15-1 and 12-15-2. The Coordinator shall conduct oral testing of the bilingual poll officials' language ability, in Lakota, to ensure the effectiveness and confidence of those individuals.

28. The bilingual, Lakota-speaking poll officials shall be prepared to offer to every elderly Lakota-speaking American Indian voter, orally in Lakota and without being asked to do so by the voter, election information contained in the English signage located inside and outside the polling sites, the contents of the ballot, and the availability of the AutoMark electronic voting system. Each polling place on election day shall have a bilingual poll official trained to operate the AutoMark electronic voting system.

Poll Official Training and Election Day Procedure

29. At least seven (7) days prior to the election, at a location within the County and in the Lakota language, in addition to any required State training, the County shall train all poll officials and other election personnel present at the polls regarding the following:

- (a) Election day procedures including the identification requirement, the contents and issues appearing on the ballot, and the necessary signage to be posted;
- (b) The requirements of Sections 4(f)(4) and 203, including the legal obligation and implementation of that obligation to provide language assistance and election information to elderly American Indian voters in Lakota, and the requirement that poll officials

be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments;

(c) The provisions of federal and state law regarding assistance to voters, including who can assist voters, when and how.

(d) The provisions of Section 301 of HAVA, including the requirement to ensure an electronic voting system, such as the AutoMark, is operational in each polling place and is accessible to persons with disabilities in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters; and includes a working Lakota audio ballot;

(e) The provisions of Section 302(a) of HAVA, including having provisional ballots available at each polling place, the circumstances in which voting by provisional ballot is appropriate, the procedures for completing a provisional ballot, the need to give provisional voters written information that informs them of a free system by which they can ascertain whether their vote was counted and, if not, why not; and,

(f) The provisions of Section 302(b) of HAVA, including posting all HAVA-required signs so that all voters can easily view such signs in each polling location.

In addition to the general training for poll officials, the County shall train all bilingual poll officials on Lakota language election terminology, including translation of the entire ballot, voting instructions, information on signs to be posted in the polls, and other election-related issues. Further, the County shall train all bilingual poll officials on Lakota language terminology on voting machine operation, including the operation of electronic voting systems that are accessible for voters with disabilities. Such training shall include the use of audio, video or

compact disc recordings of the entire ballot in the Lakota language. A copy of all such recordings shall be provided to each poll official at the training, along with an English language sample ballot, and the County shall ensure that the poll officials have access to appropriate equipment for playing the recordings during the period prior to the election. The County shall maintain a written record of each training session, including the date, time, location, training personnel involved, and the names of all poll officials attended.

30. The Coordinator and poll officials shall monitor the polls during the course of each election to identify and record each instance in which unreasonable delays occur either in voting or in translation of the ballot. Where such delays occur, the County shall take whatever steps are necessary to ensure that such delays do not recur in future elections.

31. Poll officials in each precinct shall maintain a record of all persons who come to the polls but are not allowed to vote in that precinct. This record shall include each voter's name, race, address, the reason the person thought he or she was eligible to vote at that site, the reason for not permitting the person to vote, and whether the voter was offered a provisional ballot.

32. A list of the persons not permitted to vote and the reasons given shall be provided to the Coordinator. The Coordinator shall contact each such person who is otherwise eligible to vote and provide an opportunity for that person to register to vote at the earliest possible time, and create a record containing the date of contact and registration, and any additional training, publicity, or other steps that the coordinator believes would be useful to prevent a similar incident in the future.

Voter Registration

33. The County shall provide the Coordinator with necessary voter registration lists, forms, maps and materials, and these materials shall be maintained by the Coordinator in the Satellite Elections Office.

34. The contracting election official shall be available to offer assistance, expertise, and training regarding voter registration to those employees at the voter registration agencies designated pursuant to Section 7 of the National Voter Registration Act of 1993, ("NVRA"), 42 U.S.C. § 1973gg-5.

Absentee and Early Voting

35. The County is committed to maximizing absentee voting opportunities for elderly Lakota voters who are limited-English proficient. The Coordinator shall have an adequate supply of absentee ballot applications and be authorized to deliver those applications to elderly American Indian voters and provide language assistance for their completion. The Coordinator shall be authorized to provide language assistance to elderly American Indian voters in completing their absentee ballots and assist in the delivery of those ballots to the U.S. Mail.

36. The contracting election official shall immediately notify the Coordinator when absentee ballot applications have been rejected and the Coordinator shall assist those persons in correctly completing a new application.

37. If the County conducts early voting, the County shall hire at least one trained bilingual poll official to be present on site and provide an operational voting machine on site during the early voting. Notice regarding the early voting dates, times, locations, and the presence of bilingual poll official(s) and voting machine(s) with an audio ballot in Lakota, shall

be published in the Lakota language in the manner and frequency set forth in paragraphs 18-23, 24(b) and 25, *supra*.

Program of List Maintenance

38. Whenever a voter in the County is scheduled to be removed from the voter rolls on the basis of a change of address, the name of the voter shall be given to the Coordinator. In the event the contracting election official determines that the voter is eligible to vote, the Coordinator shall contact that individual and offer assistance in updating that individual's registration.

Election Monitoring

39. To ensure effectiveness of this Agreement, the County understands that the United States may deploy personnel to monitor the elections conducted in the County during the life of the Agreement. The County recognizes the authority of the election monitors to observe all aspects of voting conducted in the polls on election day, including the authority to view County personnel providing assistance to voters during voting, except where the voter objects. Any monitors deployed by the United States shall immediately introduce themselves to poll officials upon entering the polling place, and to any other County personnel as they come to the attention of the monitors, and provide credentials upon request.

Evaluation of the Program

40. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Election Information Program and to ensure compliance with the Voting Rights Act and the Help America Vote Act. The County shall evaluate the Program after each election to determine which areas are functioning well, those that need

improvement, and how to implement needed improvements. The United States shall provide similar input to the County after each election, and be available to confer regarding adjustment and changes to the Program. The Program may be adjusted at any time upon joint written agreement of the parties, and subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

Record Keeping and Reporting Requirements

41. Throughout the duration of this Agreement, the County shall maintain at the office of the contracting election official and the Satellite Elections Office, written records of all actions taken pursuant to this Agreement, all written and audio materials produced, and statistical records, including but not limited to:

(a) Voter Registration – The total numbers of registered voters and new registrations by precinct on a monthly basis, including where and by whom they were registered, including voter registration agencies;

(b) Voters Removed from Voter Rolls - During each list maintenance period, by precinct: the total number of voters removed from voter rolls for failure to vote and date of removal; the total number of voters reinstated by returning post cards and dates of reinstatement; and the total number of voters validated by other means;

(c) Absentee Voting - For each election, per precinct: The total number of mail requests for absentee ballots and number of absentee votes cast pursuant to mail requests; the total number of absentee or early voting ballots cast in person at the office of the contracting election official; and

(d) Publicity - For each election, the date, time, place and substance of each: radio; written publication and posting; presentation by the Coordinator, including the occasion for the presentation and the approximate number of persons in attendance; instance in which an election-related recording was played, including the occasion for same and the approximate number of persons in attendance.

42. The County shall also maintain and produce copies, if requested by the United States, of these records, recordings and papers, along with all other records related to voter registration and acts requisite to voting, as otherwise required by federal law.

43. Throughout the duration of this Agreement, at least 30 days before each County-administered election, the County, shall provide to counsel for the United States:

- (a) the name, address, and precinct designation of each polling place;
- (b) the name and title of each poll official appointed and assigned to serve at each precinct;
- (c) a designation of which poll officials are fluent in English and Lakota;
- (d) copies of all signs and written information provided at polling places; and,
- (e) copies of all recorded audio translations of notices, ballots or other election-related information to be used by the County or any other entity, and a schedule of the expected dates and times for broadcasting or dissemination of the information contained therein.

The County shall promptly supplement this information as any changes develop or new information is received. Within twenty-one (21) days after each such election, the County shall provide to counsel for the United States any updated report regarding changes in these items as

well as information about all complaints the County received at the election regarding language or assistance issues, by electronic mail to counsel of record, facsimile, or express mail to the following address:

[Counsel of Record]
Voting Section, Civil Rights Division
United States Department of Justice
1800 G Street, N.W., Room NWB-7254
Washington, D.C. 20006
Facsimile: (202) 307-3961

The United States is willing to supply its billing number for express mail to the County for transmittal of information in this manner. Any other notice to the United States shall be conducted in this same manner.

Notice or other transmittal of information to the County by the United States shall be sent by electronic mail to counsel of record, facsimile, or express mail to the following address:

[Counsel of Record]
Fall River County State's Attorney
906 N. River St.
Hot Springs, SD 57747
Facsimile: (605) 745-3855

The parties shall notice each other of any change in the above addresses within ten (10) days of said change.

44. For the life of the Agreement, the County shall compile a Quarterly Report of the efforts taken pursuant to this agreement during the preceding three months, an assessment of the effectiveness of each phase of the Program, and a recommendation of the steps to be taken, if any, to improve the participation of elderly, limited-English proficient voters. Copies of the report shall be provided to the United States and the tribal president or his/her designee.

Other Provisions

45. Nothing in this Agreement changes, limits, or absolves the responsibilities and obligations of the County under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, to obtain preclearance of all changes affecting voting before implementation, or under any other federal law. The County shall promptly submit all proposed changes affecting voting for review under Section 5 of the Voting Rights Act.

46. Defendants shall, within twenty (20) days after entry of this Agreement, submit to the Attorney General for administrative review under Section 5 of the Voting Rights Act, the voting changes occasioned by this Agreement.

47. This Agreement is final and binding between the parties and their successors in office. It shall remain in effect through February 28, 2013.

48. This agreement is made with the understanding that this is the beginning of a positive working relationship between the parties which shall continue in the future to ensure that each successive election is better than the last. The United States agrees to provide written feedback regarding any concerns it has with the County's implementation of the terms of this Agreement. The parties shall then confer in an attempt to resolve those concerns. The County shall be given a reasonable opportunity to cure those concerns. Both parties to the agreement are committed to making this relationship successful.

49. If the United States concludes that the County or its agents are in substantial and material breach of this agreement, upon notice by the United States, the County shall have thirty (30) days to cure the alleged breach. Prior to filing any action in federal court to enforce the terms of the agreement herein, the County's designee(s) and the United States' designee(s) shall

meet face-to-face to resolve any disagreements and/or disputes concerning such breach. In the event the alleged breach is not cured, the United States reserves the right to file an enforcement action in federal court.

50. Nothing in this agreement shall be construed so as to place personal liability upon any Shannon County official, Fall River County official, poll official, contracted agent, contracted election official, and or any election official in their personal capacity.

51. The parties recognize that the program outlined herein will receive funding through HAVA reimbursement from the South Dakota Secretary of State's Office as described in Attachment B.

Agreed to this 23 day of April, 2010

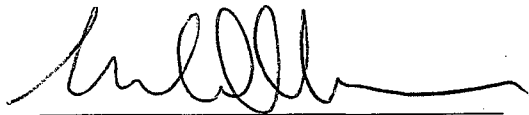
AGREED AND CONSENTED TO:

For the Plaintiff,
UNITED STATES OF AMERICA:

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MEMORANDUM OF AGREEMENT
Between the United States of America and Shannon County, South Dakota

ATTACHMENT A

Shannon County, South Dakota, Election Information Program
Voting Rights Coordinator (VRC) Duties/Timetable for Elections:

June 8, 2010 and November 2, 2010

June 5, 2012 and November 6, 2012

Primary Election June 2010:

April

Third week in April:

- County Commissioners and/or County Auditor will interview applicants and hire a VRC no later than April 23, 2010.

Last week in April:

- Attend training session in Hot Springs with County Auditor related to election procedures generally, duties of the VRC, and the requirements of the Memorandum of Agreement.
- Contact the Secretary of State to obtain their Lakota translations of the ballot, and the voter registration notice. Upon receipt of that information, begin duplicating those translations on tapes or other appropriate media for use by KILI radio and outreach efforts, as set out in paragraphs 18-25 of the Agreement.
- Begin translations of procedures and information set out in paragraphs 24(a) and (b) of the Agreement in the manner set out in paragraphs 18-25 of the Agreement.
- Begin preparing the dissemination directions and packets for KILI radio to eventually accompany the translations.
- Send letter to the Tribal President or her designee requesting a list of names of potential bilingual Lakota-speaking poll officials for election day.
- Request KILI radio to publicize the County's hiring of the Coordinator, including his or her name and duties related to elderly, Lakota-speaking voters, and to advertise for bilingual Lakota-speaking poll officials.

May

First week in May:

- Create and/or update translations and record them on tapes, along with those received from the Secretary of State. Translations should include that information contained in paragraph 24 of the Agreement, and in the manner described in paragraphs 18-25 of the Agreement.
- Schedule elderly meetings to attend the second and third weeks in May.
- Finalize and send dissemination directions/packets/applicable translations to be sent to

KILI radio of all translated information, including advertisements about the Coordinator's presence at elderly meetings during the second and third weeks in May to present election information and assist with absentee voting, and the need for bilingual poll officials.

- Begin recruiting bilingual poll officials including meeting with Tribal President or designee, coordinating with Shannon County commissioners, and advertising on KILI radio.
- Assist elderly Lakota-speaking voters in filling out registration applications, absentee ballot applications and absentee ballots.

Second week in May

- Conduct one (1) elderly-focused meeting per tribal district (6 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices on ballot; the identification requirement; the presence of bilingual poll officials at the polls to provide Lakota language assistance; the availability of Lakota audio on voting machine; and provisional ballot information, etc.
- Confirm that publication packets have been received by KILI Radio and that publications are on track according to the Agreement, particularly regarding absentee voting, the upcoming elderly meetings to be attended by the Coordinator, the date of the election, and the presence of bilingual poll officials at the polls.
- Finalize bilingual poll official recruitment and hiring, including a list of backup bilingual poll officials.
- Prepare for bilingual poll official translation training.

Third Week of May:

- Conduct one (1) elderly-focused meeting per tribal district (6 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices on ballot; the identification requirement; the presence of bilingual poll officials at the polls to provide Lakota language assistance; the availability of Lakota audio on voting machine; and provisional ballot information, etc.
- Continue to finalize bilingual poll officials and prepare for bilingual poll official translation training.
- Ensure that KILI Radio is broadcasting according to the agreement, with particular emphasis on the contents of the ballot, absentee voting and the presence of bilingual poll officials at the polls.

Last full week of May:

- Continue outreach to elderly Lakota-speaking voters regarding polling places, hours the polls are open, the presence of bilingual poll officials at the polls on election day to provide Lakota language assistance and the names of those officials, and the contents of the ballot.
- Train bilingual poll officials on the Lakota translation of the entire ballot content and

election procedures, how to provide effective Lakota language assistance at the polls, and how to assist elderly Lakota-speakers in using the voting machines.

- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Anytime during the Month:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters with election information, and absentee voting assistance.

- Keep reports up to date.

June

Full Week Prior to Election Day:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters education, information, and absentee voting assistance.

- Assist elderly Lakota-speaking voters in filling out absentee ballots.

- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Election Day:

- Visit polling places to ensure that bilingual poll officials are present and engaged with voters providing election information in Lakota, and that other procedures are in place, including voting machines are operational, provisional ballots and verification information is available and being used, and signage is properly posted.

Week After the Election:

- Compile Post-Election Report.

General Elections November 2010 and 2012:

July

- Attend training sessions in Hot Springs with County Auditor (training on: election procedures generally; duties of the Coordinator; and requirements of Memorandum of Agreement.

- Meet with Tribal President or designee to identify opportunities to disseminate election information to elderly Lakota-speaking county residents.

August

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present

election information in Lakota, including: registration procedures; registration deadlines; assist in filling out registration applications; dates of primary election; and the presence of bilingual poll officials at the polls. Inquire as to suggestions for bilingual poll officials.

- Keep reports up to date.

First Two Weeks In August:

- Create/Update translations and record them on tapes. Translations should include that information contained in paragraph 24 of the Agreement, and in the manner described in paragraphs 18-25 of the Agreement.

- Start recruitment of bilingual poll officials including meeting with Tribal President or designee and coordinating with Shannon County commissioners.

Last Two Weeks in August:

- Prepare dissemination directions/packets/applicable translations to be sent to KILI radio; these should include registration and absentee voting procedures and deadlines, along with other information defined in the Agreement.

September

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present election information in Lakota, including: registration procedures; registration deadlines; assistance in filling out registration applications; absentee ballot procedures; assistance with completing absentee ballot applications; dates of primary election; offices and propositions on the ballot; the availability of bilingual poll officials at the polls; and the availability of a Lakota audio ballot on the voting machine.

- Continue recruitment of bilingual poll officials.

- Keep reports up to date.

- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of September:

- Obtain translations from Secretary of State and put translations on tapes.

- Confirm that publication packets have been received by KILI Radio and that all is on track for publication according to the Agreement.

October

Anytime during the Month:

- 2 elderly-focused meetings per tribal district per month (12 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices and propositions on ballot; the identification requirement;

presence of bilingual poll officials at the polls; the availability of Lakota audio on voting machine; and provisional ballot information, etc.

- Assist elderly Lakota-speaking voters in filling out absentee ballot applications and absentee ballots.
- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters with election information, and absentee voting assistance.
- Keep reports up to date.
- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of October (2010, 2012):

- Finalize bilingual poll official recruitment and hiring, including a list of backup bilingual poll officials.

Second Week in October (2010); Second and Third Weeks of October (2012):

- Prepare for bilingual poll official translation training.

Third Week of October (2010); Fourth Week of October (2012):

- Outreach to elderly Lakota-speaking voters regarding polling places, hours the polls are open, the presence of bilingual poll officials at the polls on election day to provide Lakota language assistance and the names of those officials, the contents of the ballot.
- Train bilingual poll officials on translation of the entire ballot content including offices, parties, and propositions; training Lakota language assistance on procedural issues; and training on how to assist elderly Lakota-speakers in using the voting machines.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

November

Full Week Prior to Election Day:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters education, information, and absentee voting assistance.
- Assist elderly Lakota-speaking voters in filling out absentee ballots.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Election Day:

- Visit polling places to ensure that bilingual poll officials are present and engaged with voters providing election information in Lakota, and that other procedures are in place, including voting machines are operational, provisional ballots and verification information is available and being used, and signage is properly posted.

Week After the Election:

- Compile Post-Election Report.

Primary Election June 2012:

February

- Attend three training sessions in Hot Springs with County Auditor (training on: election procedures generally; duties of the Coordinator; and requirements of Memorandum of Agreement).
- Meet with Tribal President or designee to identify other opportunities to disseminate election information to elderly Lakota-speaking county residents.

March

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present election information in Lakota, including: registration procedures; registration deadlines; assist in filling out registration applications; dates of primary election; the presence of bilingual poll officials at the polls. Inquire as to suggestions for bilingual poll officials.
- Keep reports up to date.

First Two Weeks In March:

- Create translations and record them on tapes. Translations should include that information contained in paragraph 24 of the Agreement, and in the manner described in paragraphs 18-25 of the Agreement.
- Start recruitment of bilingual poll officials including meeting with Tribal President or designee and coordinating with Shannon County commissioners.

Last Two Weeks in March:

- Prepare dissemination directions/packets/applicable translations to be sent to KILI radio; these should include registration and absentee voting procedures and deadlines, along with other information defined in the Agreement.

April

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present election information in Lakota, including: registration procedures; registration deadlines; assistance in filling out registration applications; absentee ballot procedures; assistance with completing absentee ballot applications; dates of primary election; offices on ballot; the availability of bilingual poll officials at the polls; and the availability of a Lakota audio ballot on the voting machine.

- Continue recruitment of bilingual poll officials.
- Keep reports up to date.
- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of April:

- Obtain translations from Secretary of State and put translations on tapes.
- Confirm that publication packets have been received by KILI Radio and that all is on track for publication according to the Agreement.

May

Anytime during the Month:

- 2 elderly-focused meetings per tribal district per month (12 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices on ballot; the identification requirement; presence of bilingual poll officials at the polls; the availability of Lakota audio on voting machine; and provisional ballot information, etc.
- Assist elderly Lakota-speaking voters in filling out absentee ballot applications and absentee ballots.
- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters with election information, and absentee voting assistance.
- Keep reports up to date.
- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of May:

- Finalize bilingual poll official recruitment and hiring, including a list of backup bilingual poll officials.

Second and Third Weeks of May:

- Prepare for bilingual poll official translation training.

Last full week of May:

- Outreach to elderly Lakota-speaking voters regarding polling places, hours the polls are open, the presence of bilingual poll officials at the polls on election day to provide Lakota language assistance and the names of those officials, the contents of the ballot.
- Train bilingual poll officials on the Lakota translation of the entire ballot content and election procedures, providing Lakota language assistance at the polls, and how to assist elderly Lakota-speakers in using the voting machines.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

June

Full Week Prior to Election Day:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters education, information, and absentee voting assistance.
- Assist elderly Lakota-speaking voters in filling out absentee ballots.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Election Day:

- Visit polling places to ensure that bilingual poll officials are present and engaged with voters providing election information in Lakota, and that other procedures are in place, including voting machines are operational, provisional ballots and verification information is available and being used, and signage is properly posted.

Week After the Election:

- Compile Post-Election Report.

MEMORANDUM OF AGREEMENT
Between the United States of America and Shannon County, South Dakota

ATTACHMENT B

This message was sent with high importance.

Ganje, Sue

From: Headlee, Jennifer **Sent:** Fri 2/26/2010 3:08 PM
To: vicki.wilson@state.sd.us; adele.enright@state.sd.us; cindy.longbrake@state.sd.us; dawn.sattler@state.sd.us;
jerry.schwartz@state.sd.us; kathleen.fiakus@state.sd.us; mcauditor@sbtc.net; sandra.raap@state.sd.us;
sue.ganje@state.sd.us; susan.williams@state.sd.us
Cc: Nelson, Chris (SOS); Bray, Teresa; Warne, Kea; Trapp, Debbie
Subject: Lakota Language Assistance Reimbursement
Attachments:

Dear Auditors:

Secretary of State Chris Nelson has authorized reimbursement from a county's Title II HAVA state held account for the following expenses related to Lakota language assistance:

1. Translation of election materials in audio format (SDCL 12-3-9).
2. AutoMARK Lakota expenses (no change from current practice).
3. Broadcasting election notices and information in Lakota.
4. Training interpreters in election procedures.
5. Providing interpreters at polling places.
6. Providing oversight of interpreters and use of AutoMarks containing Lakota audio.
7. Providing interpreters for absentee voting.
8. A coordinator for Lakota language assistance. A coordinator would provide oversight to ensure compliance with Lakota language requirements.

Each county will determine how to best meet the Lakota language requirements of the Voting Rights Act. Your county may not have expenditures in all eight categories. Individual counties will also determine whether to request Title II reimbursement for allowable Lakota expenditures or pay for the expenses with county general funds.

Reimbursement requests would be placed on line 17 as SOS approved project 17-12 (Lakota Language Assistance) on the HAVA Title II Reimbursement Form.

If you have any questions please let me know.

Thank you

Jennifer Headlee
Help America Vote Act Coordinator
Office of South Dakota Secretary of State
500 East Capitol Ave, Ste 204
Pierre, SD 57501
Phone: (605) 773-5003 Fax: (605) 773-6580
Webpage: <http://www.sdsos.gov>