

ATTACHMENT B

DRAFT

JOINT POWERS AGREEMENT BETWEEN THE COUNTY OF DAKOTA AND THE DAKOTA COUNTY ELECTRONIC CRIMES TASK FORCE FOR LEGAL SERVICES

This Agreement is made and entered into by and between the County of Dakota, Minnesota ("County") by and through the Dakota County Attorney's Office ("Dakota County Attorney's Office") and the Dakota County Electronic Crimes Task Force ("ECTF") pursuant to the authority conferred By Minn. Stat. § 471.59. The County and the ECTF are also referred to herein as the "parties."

WHEREAS, the County is a political subdivision of the State of Minnesota;

WHEREAS, the ECTF is formed by a joint powers agreement (the "JPA") entered into by the Cities of Apple Valley, Burnsville, Farmington, Hastings, Inver Grove Heights, Lakeville, Mendota Heights, Rosemount, South St. Paul, West St. Paul, and the County pursuant to Minn. Stat. §471.59;

WHEREAS, pursuant to Minn. Stat. § 388.051, the Dakota County Attorney's Office is required by law to provide legal advice and assistance to the County Board of Commissioners and County departments but is not required to provide legal advice and assistance to the ECTF;

WHEREAS, the JPA provides that the Dakota County Attorney's Office serves the Electronic Crimes Task Force Administrative Board ("ECTF Board") and the ECTF in an advisory capacity and is designated the legal counsel for the ECTF Board and the ECTF;

WHEREAS, the JPA provides that the ECTF Board has been delegated the authority to enter into any contract necessary for the exercise of its powers or the fulfillment of its duties, including to retain legal counsel; and

WHEREAS, the ECTF Board desires, and the County and the Dakota County Attorney ("County Attorney") are willing, to have the County Attorney's Office provide legal advice and services to the ECTF Board and the ECTF, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and benefits realized by each party, the parties agree as follows:

1. Purpose

The purpose of this Agreement is to enable the County Attorney's Office to provide legal services to the ECTF, as detailed herein, and for the ECTF to secure such services from the County Attorney's Office, and to establish the terms on which such services shall be provided.

2. Term

Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on the date the last party executes this Agreement and shall continue in full force until December 31, 2027 unless terminated by either party pursuant to Section 5.e. of this Agreement.

3. Services to be Provided by Dakota County

- a. **Scope.** The County agrees that the Dakota County Attorney's Office may provide legal advice and representation to the ECTF and the ECTF Board upon request on an ad hoc basis, as defined in the terms of this Agreement.
- b. **Discretion to Decline Services.** The Dakota County Attorney's Office shall have discretion to decline to provide legal services under this Agreement if it determines it is unable to provide the

services requested. Nothing in this Agreement shall obligate the Dakota County Attorney's Office to provide legal services.

- c. **Discretion to Obtain Services from Other Sources.** The ECTF shall have sole and complete discretion to obtain legal services (including, without limitation, legal advice and representation) from sources other than the Dakota County Attorney's Office. Nothing in this Agreement shall obligate the ECTF to obtain legal services from the Dakota County Attorney's Office.
- d. **Conflicts of Interest.** If the Dakota County Attorney's Office determines that its representation of both the ECTF and the County and/or County departments may result in a conflict of interest or perceived conflict of interest (as determined under the Minnesota Rules of Professional Conduct or otherwise), the Dakota County Attorney's Office shall notify the Dakota County Manager and the Chair of the ECTF Board of the conflict and its effect on the Dakota County Attorney's Office's representation of the ECTF and the County and/or County departments. The Dakota County Manager and the Chair of the ECTF Board, with assistance of the Dakota County Attorney's Office, shall consult with their respective boards regarding conflict of interest issues and may request a waiver of the conflict of interest from their respective boards following disclosure of the information required for informed consent pursuant to the Minnesota Rules of Professional Conduct.
- e. **Withdrawal.** The Dakota County Attorney's Office may withdraw from representation of the ECTF, subject to and in accordance with the Minnesota Rules of Professional Conduct, at any time by providing written notice of withdrawal to the Chair of the ECTF Board.

4. Payment for Services

- a. **Hourly Rate.** During the term of this Agreement, the Dakota County Attorney's Office will provide the first 60 hours of legal service each calendar year (inclusive of both attorney and paralegal time) at no cost to the ECTF. In 2026, the ECTF shall pay for legal services in excess of the initial 60 hours at the rate of \$242 per hour for attorney time and \$132 per hour for paralegal time. In 2027, ECTF shall pay for legal services in excess of the initial 60 hours at the rate of \$251 per hour for attorney time and \$138 per hour for paralegal time. Notwithstanding the foregoing, in each calendar year of this Agreement the amount paid by the ECTF for services provided in excess of the initial annual 60 hours shall not exceed \$10,000, regardless of the number of hours invoiced by the Dakota County Attorney's Office.

Nothing herein shall constitute a waiver of the County's right to offset any of the County's contribution to the operating costs of the ECTF with the in-kind legal services provided under this Agreement.

- b. **Costs.** The ECTF shall reimburse the Dakota County Attorney's Office for any costs incurred by the Dakota County Attorney's Office in connection with providing legal services under this Agreement. Reimbursable costs include, without limitation, long-distance telephone charges, photocopying charges, printing charges, mileage charges (reimbursable at the Internal Revenue Service's then-applicable standard mileage rate), parking charges, delivery fees, messenger service fees, filing fees, deposition costs, witness fees, and other reasonable expenses incurred by the Dakota County Attorney's Office in providing legal services to the ECTF under this Agreement.
- c. **Billing.** The Dakota County Attorney's Office shall invoice the ECTF on a monthly basis for legal services provided to the ECTF pursuant to this Agreement and any costs incurred by the Dakota County Attorney's Office in connection with providing such services. Said invoices shall identify the persons providing legal services to the ECTF and itemize the services provided by each such person, the amount of time that each such person spent providing services, and any costs incurred by the Dakota County Attorney's Office in connection with providing such services.
- d. **Time of Payment.** The ECTF shall, within 30 calendar days after receipt of an invoice, tender payment to the Dakota County Attorney's Office for the entire balance of the invoice. In the event the ECTF disputes any amount billed to it under this Agreement, the ECTF may withhold payment of said amount until after the dispute has been resolved.

5. General Provisions

- a. **Independent Contractor.** For purposes of this Agreement, the County Attorney and staff of the Dakota County Attorney's Office shall be deemed to be independent contractors, and not employees of the ECTF. Any and all agents, servants, or employees of the Dakota County Attorney's Office, while engaged in the performance of any work or services required to be performed by the County Attorney under this Agreement, shall not be considered employees of the ECTF, and any and all claims that may or might arise against the ECTF, its agents or employees as a consequence of any act or omission on the part of the ECTF, its agents and employees or other persons, shall in no way be the obligation or responsibility of the County, Kathryn M. Keena or successor, or the Dakota County Attorney's Office.
- b. **Indemnification.** Each party to this Agreement shall be liable for the acts of their own officers, employees, and/or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, agents, and employees. The parties agree that the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability arising from the parties' acts or omissions. Nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. Nothing in this Agreement is intended as a waiver of any liability limits to which the parties are otherwise entitled under law.
- c. **Notices.** Except as provided elsewhere in this Agreement, any notice or demand ("Notice") must be in writing and provided as follows to the other party's Authorized Representative: (a) personal delivery; (b) first class mail; or (c) nationally recognized overnight courier, with tracking service and all fees and costs prepaid. Except as provided elsewhere in this Agreement, a Notice is effective only if the Authorized Representative has received the Notice ("Receipt"). Receipt is effective when Notice is delivered pursuant to the above-approved methods. However, if the Authorized Representative rejects or otherwise refuses to accept the Notice or if the Notice cannot be delivered because of a change of address for which no Notice was provided, then Receipt is effective upon rejection, refusal, or inability to deliver.
- d. **Authorized Representatives.** The following named persons, or their successors, are designated as the Authorized Representatives of the parties for purposes of this Agreement and notices described in Section 5.c. of this Agreement. The parties shall provide Notice to each other of any change to the Authorized Representative, which will be effective without necessitating written amendment of the Agreement.

To the County: Kathryn M. Keena, or successor
Dakota County Attorney
1560 Highway 55
Hastings, MN 55033

To the ECTF: Mike Running, or successor
ECTF Board Chair
SMART Center
9260 Courthouse Blvd.
Inver Grove Heights, MN 55077

- e. **Termination.** Either party may terminate this Agreement without cause upon giving at least 30 days written Notice. In the event of termination under this Section, and if requested by the ECTF Board, the County Attorney will provide the ECTF Board with copies of documents in the possession of the Dakota County Attorney's Office related to the provision of legal services under this Agreement. Upon termination, the Dakota County Attorney's Office shall be entitled to receive compensation for the legal services provided in a satisfactory manner up to and including the effective date of termination, including any costs incurred in providing such services.

- f. **Data Practices.** The ECTF and the County agree that all data created, collected, received, stored, used, maintained or disseminated in connection with the performance of activities pursuant to this Agreement shall be treated in accordance with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, and the Minnesota Rules implementing the Act, as well as any other applicable state or federal law that applies to such data.
- g. **Knowing and Voluntary Agreement.** The ECTF acknowledges that it has entered into this Agreement knowingly and voluntarily. The ECTF also acknowledges that it had a reasonable opportunity to consult with an attorney of its choosing in connection with the negotiation and preparation of this Agreement, and that it has not relied on any advice of the Dakota County Attorney’s Office in negotiating, preparing, or entering into this Agreement. Any ambiguity, inconsistency, or question of interpretation or construction will not be resolved strictly against the party that drafted this Agreement. It is the intent of the parties that all language used in this Agreement be constructed and construed to give its natural and ordinary meaning and effect, regardless of any rule to the contrary.
- h. **Amendments.** Any alterations, variations, or modifications of the provisions of this Agreement shall be valid only when reduced to writing, approved by the parties’ respective boards, and signed by the Authorized Representatives.
- i. **Waiver.** The waiver of any of the rights and/or remedies arising under the terms of this Agreement on any occasion by either party hereto shall not constitute a waiver of any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.
- j. **Severability.** The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement, unless the part or parts that are void, invalid, or otherwise unenforceable substantially impair the value of the entire Agreement with respect to either party.
- k. **Entire Agreement.** This Agreement shall constitute the entire Agreement between the parties and may not be modified orally or in any other manner except in writing signed by both parties.

IN WITNESS WHEREOF, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minn. Stat. § 471.59.

COUNTY OF DAKOTA

Kathryn M. Keena
Dakota County Attorney

Date of Signature _____

Dakota County Resolution No. 26- **

DAKOTA COUNTY ELECTRONIC CRIMES TASK FORCE

ECTF Board Chair

Date of Signature _____

Approved by ECTF Board on: [DATE]