

BOARD OF COUNTY COMMISSIONERS  
SARPY COUNTY, NEBRASKA

13

RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN AGREEMENT WITH  
ELECTION SYSTEMS & SOFTWARE LLC

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104(6) (Reissue 2012), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and

WHEREAS, the Counties desire to enter into an Agreement with Election Systems & Software, LLC (“ES&S”) for ballot layout, coding, voice file, ballot printing, and other such election services contemplated in the attached agreement.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves the agreement with ES&S and any related documents, the same being approved by the Board.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the agreement with ES&S, a copy of which is attached hereto.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Attest

SEAL

\_\_\_\_\_  
Sarpy County Board Chairman

\_\_\_\_\_  
County Clerk

**ELECTION SYSTEMS & SOFTWARE, LLC  
ELECTION SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

**BETWEEN:** Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S");

**AND:** Sarpy County, Nebraska ("Customer")

**RECITALS:**

A. Customer has agreed to purchase certain election-related services from ES&S for use in **Sarpy County, Nebraska** (the "Jurisdiction"). The terms and conditions under which such services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

Exhibit A (Summary of Services)

Exhibit B (Ballot Layout, Coding, and Voice File Services)

Exhibit C (Ballot Printing Services)

Exhibit D (Election Support Services)

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Nebraska**.
- Represents and warrants to the other party that as of its signature date indicated below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC  
11208 John Galt Boulevard  
Omaha, NE 68137  
Fax No.: (402) 970-1291

SARPY COUNTY, NEBRASKA  
501 Olsen Drive - Suite 4  
Papillion, NE 68046  
Fax No.: (402) 593-5770

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Name (Printed or Typed)

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Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ARTICLE I  
GENERAL TERMS AND CONDITIONS**

1. **Consideration.** The consideration to be paid by Customer to ES&S for the services provided hereunder is set forth on the accompanying Exhibits.
2. **Limitation of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (a) Customer's failure to timely or properly install and use the most recent Update provided to it by ES&S or (b) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support.
3. **Excusable Nonperformance.** Except for a delay or failure in the payment of money, if either party is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.
4. **Exclusive Service Provider.** Customer hereby agrees to purchase the products and services set forth on Exhibits B-E attached hereto from ES&S for the Term of this Agreement at the pricing set forth on each applicable Exhibit. Customer's agreement to purchase all of such products and services from ES&S for the entire Term entitles Customer to receive the preferred pricing for each product or service as provided herein. Customer understands, acknowledges and agrees that ES&S' fees for the services as set forth on the accompanying exhibits are based upon (a) a contractual commitment by Customer to subscribe for and purchase such services for a period of at least five (5) years, (b) ES&S' dedication of sufficient resources during the Term to perform such services and provide associated prioritization of Customer in its service deliveries, and (c) the descriptions of such services in the accompanying exhibits. In the event that Customer changes its commitment to a period of less than five (5) years for any reason other than a termination for cause pursuant to Article I, Section 5, of this Agreement, or purchases any such products or services from a provider other than ES&S, or does not pay for such products or services provided by ES&S pursuant to the payment terms in Exhibit A during the Term Customer hereby agrees to promptly pay a balance due charge using the Non-Discounted Fees applied to the Ballot Layout, Coding and Voice File Services provided to the Customer up through the date of early termination.
5. **Term; Termination.** This Agreement shall be in effect for a five year period beginning on the Effective Date, covering all elections within the Jurisdiction beginning sixty (60) days after the Effective Date (the "Term"). This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching party.
6. **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign any of its rights hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld.
7. **Entire Agreement.** This Agreement, including all Exhibits hereto (all of which are incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party.
8. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax, sent by commercial overnight courier

(with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties.

9. **Disputes.**

**Remedies for Past Due Payments.** If any payment to ES&S is past due more than five (5) days, ES&S may suspend performance under this Agreement until such amount is paid.

**Dispute Resolution Process.** Time is of the essence in resolving disputes. The initiating party shall notify the responding party of any dispute, including all relevant information (e.g., the nature of the dispute, dates, times, persons involved). The responding party shall respond to the notification within five (5) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time. Notwithstanding anything in this Section 9 to the contrary, either party may apply to any court having jurisdiction over the subject matter of the dispute for a temporary restraining order, preliminary injunction, or other appropriate legal remedy at any time.

10. **Other.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. ES&S is providing its services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S will not be responsible for (a) user errors, (b) voter errors or (c) problems encountered by any individual in voting. ES&S may engage subcontractors to provide certain of the services, but shall remain fully responsible for such performance. The provisions of Sections 1-4, 6, 8 and this Section 10 shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A  
SUMMARY OF SERVICES**

<b>Sale Summary:</b>	
<b>Description</b>	<b>Refer to</b>
Ballot Layout, Coding, and Voice File Services	Exhibit B
Ballot Printing Services	Exhibit C
Election Support Services	Exhibit D
<b>Terms &amp; Conditions:</b>	
<b>Note 1:</b> Any applicable state and local taxes are not included, and are the responsibility of Customer.	
<b>Note 2: <u>Payment Terms are as Follows:</u></b> Ballot Layout, Coding, Voice File, Ballot Printing, and Election Support Services will be invoiced as Services are provided. 100% of invoice total due within 30 calendar days of invoice date.	
<b>Note 3:</b> Customer understands, acknowledges and agrees that ES&S' fees for the services as set forth on the accompanying exhibits are based upon (a) a contractual commitment by Customer to subscribe for and purchase such services for a period of at least five (5) years, and (b) the descriptions of such services in the accompanying exhibits. In the event that Customer changes its commitment to a period of less than five (5) years for any reason other than a termination for cause pursuant to Article I, Section 5, of this Agreement, Customer hereby agrees to promptly pay a balance due charge using the Non-Discounted Fees applied to the Ballot Layout, Coding and Voice File Services provided to the Customer up through the date of early termination, and a \$1,100.00 per day service rate applied to the services provided to the Customer as presented in Exhibit D up through the date of such early termination.	
<b>Note 5:</b> The Customer acknowledges and agrees that the pricing set forth herein for certain services is based on information provided by the Customer ("Customer Data") and that such Customer Data is accurate and complete. In the event the Customer requests any changes to the Customer Data (including but not limited to, changes as a result of Customer errors, Customer requested modifications, court orders or other changes not otherwise caused by ES&S) which requires additional services to be performed by ES&S, the Customer shall be subject to additional fees for such services at ES&S' then current rates.	

**EXHIBIT B  
BALLOT LAYOUT, CODING, AND VOICE FILE SERVICES**

	<b>Non-Discounted Fees</b>	<b>Discounted Fees</b>
<b>Paper Ballot Layout (Price per Ballot Face)</b>		
<b>English and Spanish (combined):</b>		
1 to 500 Faces	\$31.50	\$15.75
501 or more Faces	\$26.25	\$13.15
<b>Languages other than English/Spanish</b>		
1 to 500 Faces, per Language	\$63.00	\$31.50
501 or more Faces, per Language	\$52.50	\$26.25
<b>Base Charge for Ballot On Demand (BOD)</b>	\$492.45	\$443.20
<b>Electronic Screen Layout - AutoMARK or iVotronic</b>		
<b>English and Spanish (combined):</b>		
Per Ballot Style, or precinct, whichever is greater	\$18.90	\$15.75
<b>Languages other than English/Spanish</b>		
Per Ballot Style, or precinct, whichever is greater	\$37.80	\$31.50
<b>Notes:</b>		
1. Electronic Screen Layout does NOT apply to iVotronic customers when ES&S performs voice file services.		
2. Electronic Screen Layout does NOT apply to AutoMARK customers when ES&S performs paper ballot layout and voice file services.		
<b>Programming Services</b>		
<b>Base Charge per Equipment Type</b>	\$459.40	\$390.45
<b>Base Charge for ERM file set-up</b>	\$459.40	\$390.45
<b>Ballot types created</b> (open primary or multiple-page ballots)	\$65.65	\$55.80
<b>Precincts</b> (for every precinct in the election)	\$6.55	\$5.60
<b>Splits</b> (for every additional ballot style within a precinct.)	\$6.55	No Charge
<b>Ballot Face Configurations</b> (every unique ballot face in the election)	\$13.15	\$11.15
<b>Contest / Issue Entries</b> (total number of contests, referenda, questions, and/or propositions in the election)	\$15.75	\$13.40
<b>Candidate / Response Entries</b> (total number of candidates &/or responses, including referenda and all write-ins for each contest/issue)	\$6.55	\$5.60
<b>Headers</b> (Central Tabulators)	\$1.85	\$1.55
<b>Re-Coding Fees</b>	\$459.40 + applicable fee for each changed element	\$390.50 + applicable fee for each changed element
<b>Voice Files per iVotronic and AutoMARK Equipment Type</b>		
Language Setup Charge - English	\$299.25	\$269.30
Language Setup Charge - Spanish	\$299.25	\$269.30
Language Setup Charge - All Other languages	\$451.50	\$406.35
Political Parties	\$6.10	\$5.50
Ballot Faces	\$12.30	\$11.05
Contests / Issues	\$12.30	\$11.05
Candidates / Yes-No Responses	\$8.50	\$7.65
Propositions / Amendments / Instructions	\$18.05	\$16.25
Price per word in excess of 1200 total words (Instructions / Propositions / Amendments)	\$0.32	\$0.28

	<b>Non-Discounted Fees</b>	<b>Discounted Fees</b>
Resubmission	\$299.25 for English & Spanish and \$451.50 (for each additional language), plus the applicable fee for each element changed for each language	\$269.30 for English & Spanish and \$406.35 (for each additional language), plus the applicable fee for each element changed for each language
<b>Other Services (Standard Overnight Delivery Charges Will Apply and Will Be Billed Separately)</b>		
<b>Media burn</b> (Flash / PCMCIA Cards, Mem Packs, PEBs, and Jump Drives)	\$10.50	\$10.50
<b>Electronic transfer files</b> (one charge per county, per election)	\$131.25	\$131.25
<b>SOS Media</b>	\$52.50	\$52.50
<b>.pdf File Extraction (per Style)</b>	\$5.25	\$5.25
<b>Sample Ballot Creation</b>	\$30.00	\$30.00
<b>Publication Ballot Creation</b>	\$150.00	\$150.00
<b>Auto Test Deck PDF Creation</b>	\$262.50	\$262.50
<b>Ballot Assignment Chart</b>	\$367.50	\$367.50
<b>Download Results From Media</b>	\$54.10	\$54.10
<b>ERM State Utility File</b>	\$367.50	\$367.50

**Note 1:** All prices are exclusive of freight which will be billed separately.

[END OF EXHIBIT B]

**EXHIBIT C  
BALLOT PRINTING SERVICES**

Description	Price per Ballot
<b>14" and 17" Ballots:</b>	
Base ballot charge	\$0.24
Backside of ballot	\$0.03
Stub and / or numbering	\$0.03
Folding	\$0.02
Scoring	\$0.02
Packaging	\$0.01
Color requirements – defined as a color bar on the ballot. Other designs or methods will be subject to a separate quote.	\$0.02
<b>Prices are exclusive of freight, which will be billed separately.</b>	
<b>19" ballots are quoted separately.</b>	

**Note 1:** Special requests, including watermarking, unique packaging requirements and expedited delivery requirements are not included in the table above, and will be priced separately.

**Note 2:** The above pricing assumes the use of ES&S partner printers. The use of a Customer requested printer may result in a change in the fees outlined above.

**Note 3:** Unexpected and material changes in costs such as paper may result in changes to the fees reflected above.

**Note 4:** Customer will only be charged for the backside of the ballot when used. Customer will not be charged for the backside if the backside is not utilized for that particular style.

**[END OF EXHIBIT C]**

**EXHIBIT D  
ELECTION SUPPORT SERVICES**

1. **Term.** The services described herein shall be provided for the following elections (the "Elections"):

**All requested Elections during the Term**

2. **Services.** The election support services to be provided by ES&S, a description of such services, and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the descriptions listed in the table below, and that a change in the descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S' provision of Election Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Election Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent for a minimum of four (4) hours and maximum of twelve (12) hours on any one (1) calendar day. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

<b>Role/Function</b>	<b>Area of Work or Description</b>	<b>Price per Day</b>
Election Day Support	ES&S will provide Election Day Support. ES&S may assist with election administration, procedural guidance, hardware and software operation, election night accumulation of results, and troubleshooting during the day.	\$1,100.00

**Note 1:** In exchange for the Customer's commitment to enter into a five (5) year term Agreement, ES&S shall provide Customer with two (2) Service Days of Election Day Support, at no additional charge, upon prior request by Customer during the Term of this Agreement.

**[END OF EXHIBIT D]**



**AMMENDMENT TO ELECTION SERVICES AGREEMENT**

- I. RESIDENCY VERIFICATION CLAUSE: Pursuant to Neb. Rev. Stat. § 4-114 *et seq.*, each party shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
  
- II. NONDISCRIMINATION CLAUSE: Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A. § 1985, *et seq.*), and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, *et seq.*, in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.
  
- III. INSURANCE: During the course of services provided for by this Agreement, the ES&S shall maintain Worker's Compensation Insurance in accordance with the Worker's Compensation laws of the State of Nebraska; Professional Liability Insurance with a minimum coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate; Automobile Liability Insurance with a combined single limit coverage of \$1,000,000 for each accident; and Commercial General Liability of \$1,000,000 per occurrence, \$2,000,000 aggregate. For the Commercial General Liability and Automobile Liability Insurance, the County is to be named as an additional insured on the insurance coverage identified in this section. In addition, the insurance coverage identified in this section shall be kept in force during the life of the Agreement and if there is any event of cancellation or, or material change in any of the insurance coverage, the ES&S shall notify the County within thirty (30) days. ES&S shall furnish proof of insurance coverage, if requested by the County.

ELECTION SYSTEMS & SOFTWARE, LLC  
11208 John Galt Boulevard  
Omaha, NE 68137

SARPY COUNTY, NEBRASKA  
501 Olsen Drive  
Papillion, NE 68046

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Signature

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