

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

11/002445

RESOLUTION APPROVING SECOND AMENDMENT TO ELECTION SERVICES AGREEMENT

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), 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; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County previously entered into an Agreement with Election Systems & Software, Inc. (ES&S) for ballot layout, coding, voice file, ballot printing and other such election services contemplated in the Agreement on or about March 3, 2008. Further, ES&S and Sarpy renewed said Agreement on or about February 15, 2011 (First Amendment); and,

WHEREAS, ES&S changed its form of legal entity from a C-corporation to a limited liability company. Election Systems & Software, LLC has assumed all rights and obligations under the Agreement; and

WHEREAS, the County and Election Systems & Software, LLC wish to amend the prior Agreement with the provisions outlined in the Second Amendment, a copy of which is attached here to.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts this Second Amendment to the Agreement with Election Systems & Software, LLC for election services, a copy of the Second Amendment is attached.

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 Second Amendment to the Agreement with Election Systems & Software, LLC, a copy of the Second Amendment is attached, and any other related documents, the same being approved by the Board.

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 6th day of December, 2011.

Attest

SEAL



Debra J. Houghtaling
County Clerk

Tom Richard
Sarpy County Board Chairman

SECOND AMENDMENT TO AGREEMENT

This Second Amendment ("Amendment") shall be deemed a material part of that certain Election Services Agreement by and between Election Systems & Software, LLC, a Delaware limited liability company ("ES&S") and Sarpy County, Nebraska ("Customer") dated March 3, 2008 ("Initial Agreement") as amended by that certain Election Services Renewal Agreement dated February 15, 2011 ("First Amendment".) The Initial Agreement and the First Amendment are collectively referred to herein as the Agreement. The terms of this Amendment shall modify and supersede any and all inconsistent terms of the Agreement. Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Agreement.

RECITALS

WHEREAS, ES&S and Customer entered into the Agreement under which ES&S will be supplying certain ES&S election services to Customer;

WHEREAS, effective October 1, 2011, ES&S changed its form of legal entity from a C-corporation to a limited liability company. As a result of the foregoing and by operation of law, Election Systems & Software, LLC has assumed all rights and obligations set forth under this Agreement;

WHEREAS, Customer wishes to amend the Agreement in order to license services through ES&S from partner vendors which ES&S provides sales services to ES&S customers ("Partner Vendors"); and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby specifically incorporated into, and deemed a material part of, this Amendment.

2. **Customer Indemnification of ES&S.** Customer hereby agrees to hold ES&S and all of its successors, assigns, subsidiaries, affiliates, officers, directors, employees and agents completely harmless and not liable and release them from any and all liability whatsoever and agrees not to sue ES&S on account of or in connection with any claims, causes of action, injuries, damages, cost or expenses arising out of Customer's or a third party's use of any software provided or services performed by any Partner Vendors, including without limitation, those based on death, bodily injury, property damage or any other claim associated with the partner vendor, including all indirect, incidental, consequential, punitive, exemplary or any other types of damages.

3. **Continuing Validity of Agreement.** Except as specifically set forth in this Amendment, all remaining terms and conditions of the Agreement shall remain in full force and effect.

EXECUTED as of the 22 day of December, 2011.

ELECTION SYSTEMS & SOFTWARE, LLC.
a Delaware limited liability company

By: [Signature]
Its: VP of Finance

SARPY COUNTY, NEBRASKA

By: Tom Richard 12/6/2011
Its: Chairman