

AGREEMENT

THIS AGREEMENT, made and entered into by and between the County of Lancaster, Nebraska, on behalf of the Lancaster County Election Commissioner, hereinafter referred to as “County”, and Steve McClatchey, 247 Walnut Street (PO Box 21), Greenwood, Nebraska, 68366, hereinafter referred to as “Contractor.”

WHEREAS, the County, through the Election Commissioner, is responsible for facilitating the City Primary Election to be held on Tuesday, April 9, 2019;

WHEREAS, the County desires the services of an individual to deliver the voting equipment, hereinafter referred to as “Automarks” and other miscellaneous equipment such as chairs and tables to the polling locations listed in Attachment “A”, attached hereto and incorporated by this reference; and

WHEREAS, the Contractor is qualified with the necessary skills and equipment to provide the County with the delivery services for the Primary Election;

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by and between the parties hereto, as follows:

1. Term. This Agreement shall commence upon execution by both parties and shall continue through and including April 12, 2019.
2. Responsibilities. The Contractor shall have the following duties and responsibilities:
 - A. Deliver Automarks and other equipment, including but not limited to chairs, tables, and extension cords as needed, to the polling locations listed in Attachment “A” for the Primary Election.
 - B. Commence the delivery of Automarks and miscellaneous equipment on Thursday, April 4, 2019, and complete delivery to those polling locations listed in Attachment “A” by 5:00 p.m. on Monday, April 8, 2019. Contractor will also be responsible for picking up the Automarks and equipment after the Primary Election and returning it to the storage facility located at 440 South 8th Street, Lincoln by Friday, April 12, 2019.
 - C. Contractor agrees that all transport vehicles utilized to deliver the Automarks and miscellaneous equipment shall be enclosed vehicles, i.e., open pick-up trucks shall not be utilized by Contractor to deliver the Automarks and equipment.
 - D. Contractor agrees that he is responsible for any and all damage, destruction, or theft that may occur to the Automarks and/or miscellaneous equipment while such items are being transported, are within his possession or control, or within his transport vehicles. Contractor agrees that the County has no liability for any damages or expenses that may occur as a result of Contractor’s transporting the Automarks and miscellaneous equipment. Contractor agrees that if any Automark does

not properly function as a result of transporting such unit, Contractor is responsible for the repair or replacement of such unit. Contractor further agrees that if any Automark is stolen while such unit is in his possession or control, or within his transport vehicle, Contractor is responsible for the replacement of such unit.

3. Compensation. The County shall compensate the Contractor at a rate of Sixty Dollars (\$60.00) per polling location, as listed in Attachment "A", for delivery services. Such compensation of Sixty Dollars (\$60.00) includes both delivery to the polling location and delivery back to the storage facility after the special election, the delivery services listed in Paragraph 2.A through 2.D. above, and also includes any and all miscellaneous expenses such as fuel and insurance. Compensation shall be paid only upon presentment of a statement for reimbursement and satisfactory documentation that services have been provided pursuant to this Agreement. The Contractor, in seeking reimbursement under this Agreement, agrees that he shall not be paid until services have been provided as outlined in this Agreement. Contractor further agrees that he will make any additional information available to the County to support any claim for services rendered.

The County shall not be responsible for the direct payment of any wages, insurance or fringe benefits, including but not limited to, vacation, overtime, retirement benefits, workers' compensation insurance, and unemployment insurance.

4. Termination. This Agreement may be terminated without penalty by either party hereto by giving written notice of such intent to the other party at least five (5) days prior to the proposed date of termination.

5. Indemnification. The Contractor shall indemnify and hold harmless, to the fullest extent allowed by law, the County, its agents, employees and representatives from all claims, demands, suits, actions, payments, liability, judgments and expenses (including court-ordered attorney's fees), arising out of or resulting from the performance of this Agreement that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of tangible property, including the loss of use resulting therefrom, and that are caused in whole or in part by the Contractor, its employees, agents, or representatives, either directly or indirectly employed by them. Contractor further agrees that he is responsible for any and all damage, destruction, or theft that may occur to the Automarks and/or miscellaneous equipment while such items are being transported, are within his control or possession, or within his transport vehicles. This section will not require Contractor to indemnify or hold harmless the County for any losses, claims, damages and expenses arising out of or resulting from the sole negligence of the County, its agents, employees, or representatives.

6. Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship, and the Contractor, or any employee or other person acting on behalf of the Contractor in the performance of this Agreement, shall be deemed

to be independent contractor(s) during the entire term of this Agreement. The Contractor shall be responsible for all benefits payable under this Agreement and the Contractor shall not be entitled to any salary from the County or the Election Commissioner, including, but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. The Contractor shall also be responsible for maintaining any applicable worker's compensation insurance, unemployment insurance and any applicable malpractice insurance coverage for themselves, and for payment of all federal, state, local and any other payroll taxes with respect to their compensation.

7. Insurance. The Contractor shall, prior to beginning work, provide proof of insurance coverage in a form satisfactory to the County, which shall not withhold approval unreasonably. The coverages and minimum levels required by this Agreement are set forth below and shall be in effect for all times that work is being done pursuant to this Contract. No work on the Project or pursuant to this Agreement shall begin until all insurance obligations herein are met to the satisfaction of the County, which shall not unreasonably withhold approval. Self-insurance shall not be permitted unless consent is given by the County prior to execution of the Agreement. Deductible levels shall be provided in writing from the Contractor's insurer and will be no more than \$10,000.00 per occurrence.

Workers' Compensation Insurance. Contractor does not maintain Workers' Compensation Insurance and thus Contractor agrees that Contractor alone will perform all obligations outlined in this Agreement and will not delegate any obligations to a third party.

Commercial General Liability. The Contractor shall provide proof of Commercial General Liability Insurance with the coverages and at the minimum limits set forth herein. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/ Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury and shall be no less than \$1,000,000 Each Occurrence and \$1,000,000 Aggregate. Such coverage shall be endorsed for the general aggregate to be on a PER PROJECT basis, and the contractor shall provide an additional insured endorsement acceptable to the County. The description of operations must state "Blanket coverage for all projects and operations of Contractor" or similar language that meets the approval of the County, which approval shall not be unreasonably withheld.

Automobile Liability. The Contractor shall provide proof of Automobile coverage, which shall include: Comprehensive Form, Owned, Hired and Non-Owned. Bodily Injury and Property Damage Combined Single Limit shall be at least \$1,000,000 Per Accident.

Additional Insured. An Additional Insured endorsement shall be provided to County naming County as additional insureds using ISO additional insured endorsement (CG20 10), edition date 11/85, or an equivalent (e.g. CG 2010, edition date 10/93, plus CG 20 37, edition date 10101), under the commercial general liability.

Certificates. The Contractor shall provide certificates of insurance and endorsements evidencing compliance with these requirements. Upon request, the Contractor shall furnish a full and complete copy of any policy of insurance (other than workers' compensation), required by this Contract, to the County within a reasonable time, not to exceed thirty days. The certificates of insurance shall provide for at least thirty (30) days' firm written notice in the event of cancellation. Intent to notify is not acceptable. During the term of the Agreement and during the period of any required continuing coverages, the Contractor shall provide, prior to expiration of the policies, certificates and endorsements evidencing renewal insurance coverages. The parties agree that the failure of County to object to the form of a certificate and/or additional insured endorsement provided shall not constitute a waiver of this requirement.

Minimum Scope of Insurance. All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted otherwise.

Sovereign Immunity. Nothing contained in this Section or other Sections of this Agreement shall be construed to waive the Sovereign Immunity of the County

8. Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

9. Equal Employment Opportunity. Contractor agrees that in providing services pursuant to this Agreement, he shall not discriminate against any employee, applicant for employment, or any other person on the basis of race, color, religion, sex, disability, national origin, age, marital status, receipt of public assistance, or any other basis prohibited by applicable state or federal law.

10. Assignment. Contractor shall not assign its duties and responsibilities under this Agreement without the express written permission of the County.

11. Forbearance not Waiver. County's failure or neglect to enforce any of its rights under this Agreement will not be deemed to be a waiver of County's rights.

12. E-Verify. In accordance with Neb. Rev. Stat. § 4-108 through § 4-114, Contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise 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 pursuant to the Immigration Reform

and Control Act of 1986. Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. Contractor shall require any subcontractor to comply with the provisions of this section.

13. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous verbal and written communications, agreements, assurances and understandings between the Parties with respect thereto. No amendments, additions or deletions to the Agreement shall be binding unless approved by both parties in writing.

Executed on this _____ day of _____, 2019, by Contractor.

By: _____
Steve McClatchey

Executed on this _____ day of _____, 2019, by Lancaster County.

By: _____
Jennifer Brinkman, Chair
Lancaster County Board
of Commissioners

Approved as to form
this _____ day of
_____, 2019.

Deputy County Attorney
For Pat Condon
County Attorney

Approved by:

David J. Shively
Election Commissioner