



# Board of County Commissioners Agenda Request

21  
Agenda Item #

**Requested Meeting Date:** June 14, 2016

**Title of Item:** Election Services Agreement

<input type="checkbox"/> REGULAR AGENDA	<b>Action Requested:</b>	<input type="checkbox"/> Direction Requested
<input checked="" type="checkbox"/> CONSENT AGENDA	<input checked="" type="checkbox"/> Approve/Deny Motion	<input type="checkbox"/> Discussion Item
<input type="checkbox"/> INFORMATION ONLY	<input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Hold Public Hearing* <i>*provide copy of hearing notice that was published</i>
<b>Submitted by:</b> Kirk Peysar		<b>Department:</b> Auditor
<b>Presenter (Name and Title):</b> Kirk Peysar		<b>Estimated Time Needed:</b> n/a
<b>Summary of Issue:</b>  Approve election services agreement with SeaChange.		
<b>Alternatives, Options, Effects on Others/Comments:</b>		
<b>Recommended Action/Motion:</b>  Approve the contract with SeaChange.		
<b>Financial Impact:</b> Is there a cost associated with this request? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ Is this budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

**Kirk Peysar**  
**Aitkin County Auditor**  
209 Second Street Northwest Room 202  
Aitkin, Minnesota 56431  
218.927.7354

June 7, 2016

To: Board of Commissioners   
From: Kirk Peysar, County Auditor  
Re: Election Services Agreement with SeaChange

SeaChange has been our ballot and programming services provider for several election cycles. Their services include ballot layout and printing, programming for the AutoMARK assistive voting equipment and M-100 tabulators.

SeaChange has proposed a services agreement with counties covering the 2016-2020 election cycles. The agreement provides us discounted fees/charges on the services and materials utilized during the election processes. SeaChange has provided responsive and timely service.

I am requesting County Board authorization to sign the services agreement with SeaChange.

**SEACHANGE  
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:** SeaChange Print Innovations, a Minnesota corporation ("SeaChange")

**AND:** Aitkin County Board of Commissioners ("Customer")

**RECITALS:**

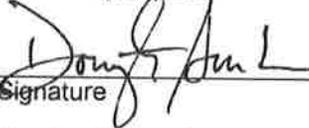
- A. This agreement shall commence on June 1, 2016 ("Effective Date") and expire May 31, 2020.
- B. Customer has agreed to purchase certain election-related services from SeaChange for use in Aitkin County (the "Jurisdiction"). The terms and conditions under which such services shall be provided are set forth in the **GENERAL TERMS** attached hereto.
- C. 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 and Related Services)
  - Exhibit C (Ballot Printing 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 Minnesota.
- 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.

SEACHANGE  
Attn: Doug Sunde  
14505 27th Avenue North  
Plymouth, MN 55447  
Phone No.: (763) 586-3751  
Fax No.: (320) 203-1290

Aitkin County  
Attn: Auditor  
209 2nd Street NW #202  
Aitkin, MN 56431-

  
Signature

\_\_\_\_\_  
Signature

Douglas T. Sunde  
Name (Printed or Typed)

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

Vice-President, Election Services  
Title

\_\_\_\_\_  
Title

April 25, 2016  
Date

\_\_\_\_\_  
Date

**ARTICLE I  
GENERAL TERMS AND CONDITIONS**

1. **Consideration.** The consideration to be paid by Customer to SeaChange for the services provided hereunder is set forth on the accompanying Exhibits.

2. **Limitation of Liability.** Neither party shall be liable for the other party's negligent or willful misconduct. SeaChange's total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to SeaChange hereunder. Any action by Customer against SeaChange must be commenced within one (1) year after the cause of action has accrued. SeaChange 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 Customer's failure to comply with election deadlines as set forth by Minnesota Rules, Statutes and the production calendar provided by SeaChange for each and every election. This Section 2 shall not apply to third party claims for indemnification that arise pursuant to Section 15 solely as a result of SeaChange's actions or inactions.

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. SeaChange 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 use SeaChange as its exclusive provider for the products and services set forth on Exhibits B and C attached hereto from SeaChange for the Term of this Agreement at the pricing set forth on each applicable Exhibit. However, it is not mandatory that the county utilize SeaChange for the items listed as optional "Other Layout Related Services" in Exhibit B. Customer's agreement to purchase the ballot layout and printing services from SeaChange for the entire Term entitles Customer to receive the preferred pricing for each product or service as provided herein. In the event that Customer terminates its purchase commitment prior to expiration of the Term of this Agreement for any reason other than for cause pursuant to Article I, Section 5, of this Agreement, or purchases any such products or services from a provider other than SeaChange, or does not pay for such products or services provided by SeaChange pursuant to the payment terms in Exhibit A during the Term, Customer shall no longer be entitled to receive the pricing set forth on Exhibits B-C, as applicable, and shall pay SeaChange its then current rates for future products and services and pay the recovery amount described in Exhibit A.

5. **Term; Termination.** This Agreement shall be in effect for a four-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 or as otherwise set forth in Exhibit A attached hereto. Subject to the terms and conditions set forth on Exhibit A, this Agreement may be terminated by either party without cause upon thirty (30) days written notice to the other. In addition, this Agreement may be terminated by either party, upon seven (7) days written notice, in the event the Customer purchases and/or licenses a voting system from a vendor other than Election Systems & Software, LLC.

6. **Subcontracting & Assignment.** SeaChange shall not enter into any subcontract or performance of any services contemplated under this Agreement, nor assign any interest in the Agreement without the prior written approval of the Customer and subject to such conditions and provisions as the Customer may deem necessary. SeaChange shall be responsible for the performance of all subcontractors. In the event of the sale, transfer or assignment of all or substantially all of the ownership interest or assets of SeaChange, or the complete termination of the Government Division of SeaChange, either of which shall be substantiated with reasonably sufficient documentation of the same, either party may terminate this agreement by providing sixty (60) calendar days prior written notice.

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 SeaChange is past due more than thirty (30) days, SeaChange 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 located within the State of Minnesota 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. **Data Privacy.** All data collected, created, received, maintained or disseminated, or used for any purposes in the course of SeaChange's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (the "Act"), or any other applicable state statutes and any state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. SeaChange agrees to abide by these statutes, rules and regulations as they may be amended.

11. **Compliance with Laws; Governing Law.**

a. In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations.

b. No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance, creed, or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination including but not limited to the Civil Rights Act of 1964. SeaChange will furnish Customer all reports required by Executive Order No. 11246 and Revised Order No. 4, and by the rules and regulations and orders of the Secretary of Labor, the Minnesota Department of Human Services for purposes of investigation to ascertain compliance with such rules, regulations and orders. The provisions of Minn. Stat. Section 181.59, regarding nondiscrimination and violations related therefrom are incorporated in this Section by reference as an obligation of SeaChange. If during the term of this Agreement, it is discovered that SeaChange is not in compliance with the applicable statutes and regulations or if SeaChange engages in any discriminatory practices, then Customer may cancel this Agreement as set forth in Section 5 above.

c. The laws of the State of Minnesota shall govern this Agreement.

12. **Independent Contractor.** SeaChange 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.

13. **Record Disclosures/Monitoring Procedures.** SeaChange records, documents, papers, accounting procedures and practices, and other evidences relevant to this Agreement are subject to the examination, duplications, transcription and audit by Customer and either the legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. SeaChange agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or make or longer if any audit in progress requires a longer retention period.

14. **Insurance.** During the term of this Agreement, SeaChange shall maintain the following insurance:

Commercial General Liability and Professional Liability: \$1,000,000 per incident; \$2,000,000 aggregate;

Automobile Coverage: \$1,000,000 per incident/aggregate; and Workers' Compensation Insurance.

15. **Indemnification.** SeaChange, as one party, and Customer, as another party, hereby agree to indemnify, defend and hold harmless the other party from and against any and all claims, liabilities, losses, damages, costs and expenses, including, but not limited to, court costs and attorneys' fees, which result from or relate to a breach of such party's obligations under this Agreement. The County's obligation to indemnify shall be limited by tort liability caps in Chapter 466 of Minnesota Statutes, and the County does not waive any defenses or immunities it may possess related to such a claim.

16. **Ownership of Documents.** Any reports, studies, or other documents prepared by SeaChange in the performance of its obligations under this Agreement shall be the exclusive property of the Customer, and all such materials shall be remitted to the Customer by the SeaChange upon completion, termination, or cancellation of this Agreement. SeaChange shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of SeaChange's obligations under this Agreement without the prior written consent of the Customer.

17. **Other.** SeaChange will not be responsible for (a) user errors, (b) voter errors or (c) problems encountered by any individual in voting. SeaChange 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, 10, 13, 15 and this Section 16 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 and File Management Services	Exhibit B
Ballot Printing Services	Exhibit C
<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:</b> Payment terms: Ballot Layout and Ballot Printing Services will be invoiced as Services are provided. 100% of invoice total due within 35 calendar days of invoice date.	
<b>Note 3:</b> Customer understands, acknowledges and agrees that SeaChange's discounted fees for the products and services described on the accompanying exhibits are based upon (a) a contractual commitment by Customer to exclusively subscribe for and purchase such products and services for a period of at least four (4) years, (b) SeaChange's dedication of sufficient resources during the Term to provide such products, perform such services and provide associated prioritization of Customer in its service deliveries, and (c) the descriptions of such products and services in the accompanying exhibits. In the event that Customer either (a) changes its commitment to a period of less than four (4) years for any reason other than a termination "for cause" pursuant to Article I, Section 5, of this Agreement, or (b) elects to purchase SeaChange's products and/or services on a non-exclusive basis, Customer hereby agrees to promptly pay to SeaChange a fee in an amount equal to the difference between (i) the amount paid or to be paid by Customer for the products and services provided by SeaChange during the immediately preceding twelve month period computed by using the Discounted Fees and (ii) the amount that would have been paid by Customer for such products and services during the same period computed by using the Non-Discounted Fees (the "Recovery Amount"). For purposes of clarification, the Recovery Amount is an amount in addition to (and not in lieu of) any and all other costs, expenses and fees owed by Customer to SeaChange pursuant to the terms of this Agreement.	
<b>Note 4:</b> The fees set forth in Exhibit B and Exhibit C apply to the original order at the time of Customer submission. Any changes, alternations, re-prints or additional ballots are not subject to the fees as set forth in Exhibit B and Exhibit C.	
<b>Note 5:</b> SeaChange may increase the per unit fees as set forth in the accompanying exhibits in 2020 by not more than 8% of the amount of the most recent per unit fees paid by Customer.	
<b>Note 6:</b> The fees set forth in this agreement are for services provided to the Customer. In the event the Customer acts as a facilitator of services for other jurisdictions within their county, in whole or in part, and is the billing entity for the services provided, the fees in the accompanying exhibits would apply.	

**EXHIBIT B  
BALLOT LAYOUT SERVICES**

<b>Ballot Layout Service Pricing</b>		
<b>Description</b>	<b>Non-Discounted Fees</b>	<b>Discounted Fees</b>
<b>Paper Ballot Layout</b>		
<b>English only:</b>		
1 to 500 Ballot Styles	\$90.00 per style	\$55.00 per style
501 or more Ballot Styles	\$70.00 per style	\$45.00 per style
<b>Languages other than English:</b>		
1 to 500 Faces, per Language	\$120.00 per style	\$65.00 per style
501 or more Faces, per Language	\$110.00 per style	\$55.00 per style
<b>Other Layout Related Services (Optional Services)</b>		
<b>UOCAVA Extracted PDF files</b>	\$10.75 per style	\$5.40 per style
<b>SOS Web Formatted Electronic PDF files</b>	\$10.75 per style	\$5.40 per style
<b>Publication Ballot – Federal, State, &amp; County Offices Only</b>	\$350.00	\$185.00
<b>Publication Ballot – All Offices for given election</b>	\$700.00	\$375.00

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

**Note 2:** Any applicable state and local taxes are not included, and are the responsibility of Customer.

**Note 3:** Payment terms are 100% of invoice total due within 35 calendar days of invoice date.

**[END OF EXHIBIT B]**

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**EXHIBIT C  
BALLOT PRINTING SERVICES**

Service Description	Price per Ballot (Based on Ballots Ordered)	
	< 100,000	> 100,000
<b>Optical Scan Ballots:</b>		
Base ballot charge – 14" Ballot	\$0.26	\$0.25
Base ballot charge – 17" Ballot	\$0.29	\$0.28
Backside of ballot	\$0.03	\$0.03
Stub and / or numbering	\$0.03	\$0.03
Folding (Set-up charge of \$30 also applies)	\$0.04	\$0.04
Corner Cutting ballots	\$0.01	\$0.01
Packaging (if other than 100's)	\$0.01	\$0.01
<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:** Unexpected and material changes in costs, such as paper, may result in changes to the fees reflected above.

**Note 3:** SeaChange may increase the per unit fees in years 2020 by not more than 8% of the amount of the most recent per unit fees paid by Customer.

**[END OF EXHIBIT C]**

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