

AMENDED AND SUBSTITUTED COUNTY ELECTRONIC SERVICES SYSTEM 28E AGREEMENT

WHEREAS, the Iowa County Recorders Association (hereinafter referred to as “Association”) and the following Counties to wit: Placeholder list Counties and date and Book and page number of agreement... entered into the above described County Electronic Services System 28E Agreement; and

WHEREAS, the Electronic Services System was created in 2005 and has implemented electronic recording and electronic transactions in each county and has developed a model statewide land record information system and website to provide electronic access to records and information in the State; and

WHEREAS, the Association and each participating county have been instrumental in creating and expanding the public’s access to public records while at the same time assuring the creation and development of a system that redacts and protects confidential information efficiently and accurately; and

WHEREAS, the Electronic Services System has efficiently and successfully provided online records access and has facilitated the electronic recording of documents and access to public records while protecting the privacy of Iowans through the redaction of personally identifiable information; and

WHEREAS, the Electronic Services System has successfully fulfilled its fiduciary responsibilities to Iowa citizens and counties by transmitting fees paid by customers to Iowa counties for the public services rendered by the System and by conducting an annual financial audit assuring the integrity and efficiency of the Electronic Services System created and developed by the participating Counties and the Association; and

WHEREAS, HF 882 (2005 acts) has been amended to allow the organization to contract directly for services thereby eliminating the financial liability of the Association for the direct contractual liability for the Electronic Services System while at the same time allowing for a representative governance system assuring continued governance by elected County recorders across the State; and

WHEREAS, in accordance with recent amendments by the Iowa legislature the parties seek to amend and Substitute the County Electronic Services System 28E Agreement and in the process make certain modifications to create further efficiencies in governance and frequency of meetings of the govern board; and

NOW THEREFORE, the undersigned counties and the Association hereby Amend and Substitute the aforementioned County Electronic Services System 28E Agreement entirely with this **AMENDED AND SUBSTITUTED COUNTY ELECTRONIC SERVICES SYSTEM 28E AGREEMENT as follows:**

- 1. PURPOSE.** This Agreement is an Amended and Substituted Intergovernmental Agreement creating and continuing the Electronic Services System a/k/a the Iowa Land Records Information System. The purpose of the Electronic Services System was to establish a system and the necessary associated infrastructure to allow both for the recordation of various land records by interested parties in all areas of the State while providing reasonable public access to the public to land record information. At the same time assuring that personally identifiable information was redacted in accordance with Iowa Law prior to public access to such records through the system(s) portal.

2. **STATUS AS LEGAL ENTITY.** The Electronic Services System shall hereafter be constituted as a separate and distinct legal entity formed and established pursuant to chapter 28E of the Iowa Code (2020) governed by the governing board as set forth herein. As so constituted, it shall have the following powers:
- a. To receive and disburse electronically into bank accounts designated by each County Recorder authorized fees for electronic recording and other services.
 - b. To provide Iowa counties with an electronic services system for other services provided through the Office of the County Recorder;
 - c. To provide Iowa counties with an electronic services system for other services subject to the approval of the Board of Directors of an affiliate of the Iowa State Association of Counties, other local government association or other organization;
 - d. To contract with any public or private entity to provide all necessary services;
 - e. To rent, lease or purchase any tangible personal property, real estate or services reasonably necessary to fulfill the purposes of this Agreement;
 - f. To establish a system of accounting and budgeting, and a system for receiving payments;
 - g. To retain legal counsel, accountants and other professional individuals needed in order to fulfill the purposes of this Agreement; and
 - h. To exercise any other power or do any other legal act necessary to discharge its obligations and fulfill the purposes of this Agreement.
 - i. Take other routine or ministerial action as needed to provide for the successful operation of the Electronic Services System and the county land record information system.
 - j. Establish Bylaws to provide for the operation of the ESS Coordinating Committee.
 - k. Establish subcommittees as needed to carry out the duties and responsibilities established by the ESS Coordinating Committee.
 - l. To sue, or be sued, acquire and own real or personal property necessary for its corporate purpose.
 - m. Adopt a corporate seal and alter the at its pleasure.
 - n. To issue debt as it deems necessary to fulfill its purposes.
 - o. Execute all powers conferred in chapter 28E of the Iowa Code (2020) and as subsequently amended from time to time.
3. **DURATION.** This Agreement shall become effective at such time as the undersigned counties have executed this Agreement in the manner hereinafter provided, and this Agreement is filed and recorded as required by Iowa Code section 28E.8 (2020). Copies of the filed and recorded Agreement shall be provided to the member counties. The operations of ESS shall be perpetual unless terminated in accordance with this Agreement.
4. **GOVERNING BOARD.** The Electronic Services System shall be governed by the Committee known as the ESS Coordinating Committee.
- a. **Composition of Committee.** Initially the Committee shall consist of 15 members, and the number of members may be adjusted in the manner provided pursuant to paragraph 4(d). The members of the Committee shall be selected by the Iowa County Recorders Association Executive Board.

- b. Members of the ESS Coordinating Committee shall consist of eight County Recorders who shall be representative of the Electronic Services System membership as follows:
 - i. One County Recorder shall be appointed from each of the six geographic districts established by the Iowa County Recorders Association.
 - ii. One County Recorder shall be appointed from one of five counties with the highest population based on the most recent official U.S. census.
 - iii. One County Recorder who is a member of the Iowa County Recorders Association Executive Board. To the extent practicable, the County Recorders should be representative of the various indexing and imaging systems utilized throughout Iowa. Deputy Recorders shall be eligible to serve on the ESS Coordinating Committee.
- c. Members of the Coordinating Committee shall also include representatives of stakeholders and professionals who develop, originate or process official real estate documents. These members shall be qualified as follows:
 - i. One representative of Iowa financial institutions including banks, credit unions or mortgage companies.
 - ii. One member who is representative of professionals active in the practice of real estate law.
 - iii. One member who is representative of professional realtors or brokers.
 - iv. One member who is representative of professionals in abstracting and land title management.
 - v. One member who is representative of professional and licensed land surveyors.
- d. Adjustments may be made to the composition of the Committee by resolution approved by at least 75% of the Committee and effective upon ratification by the Iowa County Recorders Association Executive Board. In the event the Iowa County Recorders Association Executive Board does not ratify the change in composition of the Committee within ____ days of adoption of the resolution by the Committee, any such change shall be considered defeated.

5. VOTING

- a. In the conduct of the Committee's business, each member of the Committee will have one vote, and the majority vote of those members present and voting shall decide such matters.
- b. The Chair, or in the Chair's absence, the Vice Chair of the Committee, may vote and participate in discussion, but shall not make or second a motion.

6. OFFICERS

- a. The officers of the Committee shall be the Chair, the Vice Chair and the Secretary, each of whom shall be elected by vote of the Committee at the annual meeting of the Committee.
- b. The Chair shall preside at all meetings of the Committee. The Chair or the Vice Chair in the absence of the Chair shall sign any instruments which the Committee has authorized to be executed, except in cases where the signing of instruments

shall be required by law or protocol to be otherwise signed or executed, or where the resolution of the Committee authorizes the signing of such instrument by another person.

- c. In the absence of the Chair, or in the event of the death, inability to act or refusal to act by the Chair, the Vice Chair shall perform the duties of the Chair, and when so acting, shall have all the powers of and be subject to all the restrictions upon that office.
- d. The Secretary shall have responsibility for (i) the taking and preservation of minutes of the proceedings of the Committee, (ii) the giving of all notices in accordance with this Agreement or any bylaws, or as otherwise directed by the Committee or required by law, (iii) acting as custodian of the records of the ESS and (iv) keeping a current registry of the names and addresses of the members of the governing body of each Participating Community, and of each Participating Community's principal officers and of the Committee representatives and alternates.
- e. The officers of the Committee shall be elected annually by and from the members of the Committee present at the annual meeting of the Committee. The Nominating Committee shall select and offer nominations for each office at the annual meeting. Nominations shall also be accepted from the representatives present at the annual meeting. All nominees, including those offered by the Nominating Committee, must receive a second in order to be considered a candidate and voted on for office.
- f. Each officer shall hold office until his or her successor has been duly elected. Alternates shall not be eligible to serve as officers. Each of the officers shall be from different Participating Communities. A vacancy in the office of Chair, Vice-Chair or Secretary shall be filled by the Committee for the unexpired portion of the term.

7. **MEETINGS.**

- a. Regular meetings shall be held at least quarterly at the place, day and hour set forth in a schedule of regular meetings for the following year that is approved by the Committee by no later than the last meeting in December of each year. A copy of the agenda and all materials to be considered at the meeting shall be mailed or delivered to the members of the Committee, at least four (4) days prior to the meeting, or as may otherwise be set forth in the bylaws.
- b. Special meetings of the Committee, for any purpose or purposes not inconsistent with this Agreement, may be called by the Chair and shall be called by the Chair at the request of any six Participating Counties. The notice requirements of subsection (a) shall apply to all special meetings.
- c. All meetings of the Committee shall be conducted in compliance with Chapter 21 of the Code or any successor laws, as the same may be amended or supplemented in the future, and in general accordance with Robert's Rules of Order.

- d. The presence of a majority of Committee members shall constitute a quorum. A quorum is required to be present to convene a meeting of the Committee and for the conduct of its business. The Chair shall determine whether a quorum exists, shall cause the names of all members present to be entered into the meeting minutes, and shall call the meeting to order if a quorum exists.
8. **POLICIES AND PROCEDURES**. The Committee may adopt Policies and Procedures relating to the notice and conduct of its meetings and those of any committees it shall establish. Such bylaws may be adopted, and may be amended or repealed, by a majority vote of the members of the Committee present and voting taken at any regularly scheduled or specially called meeting as described in Article III, Section 5 hereof, provided that such Policies and Procedures or proposed amendment or repeal of such Policies and Procedures, was presented in writing at a prior regular meeting of the Committee, and provided that notice of the impending vote thereon is contained in the meeting notice and agenda of the meeting at which such vote is to be taken.
 9. **DUTIES**. The Electronic Services System shall have the following duties.
 - a. To execute contracts necessary for implementation of the county land record information system as required by law.
 - b. To adopt policies and procedures for the county land record information system and other public services.
 - c. To maintain the county land record information website(s)
 - d. To Integrate land record information managed by county recorders with from other sources
 - e. To implement processes for redacting personally identifiable information contained in electronic documents which are displayed for public access or transferred to another person
 - f. To establish standards for recording, processing and archiving electronic documents and records
 - g. To expand access to records by encouraging electronic indexing and scanning of documents recorded in prior years
 10. **BUDGET**. The ESS Coordinating Committee shall, prior to January 1 of each year, prepare and adopt a budget for the operation of ESS for the next calendar year. The ESS Coordinating Committee shall make a copy of the ESS budget available to each member county. The ESS Coordinating Committee may amend the ESS budget during the fiscal year.

The accounts of ESS shall be audited and verified by a certified public accountant within two hundred seventy (270) days of each fiscal year and a copy thereof provided to the Board of Supervisors and County Recorder of each member of the Agreement, the Auditor of the State of Iowa and, upon request, to any other elected official in a county that is a party to this Agreement.

11. **FUNDING**. ESS shall provide the services referred to in this Agreement to each member county. Funding for the operation of ESS shall be provided through any recording fee established for these purposes as specified in the Iowa Code, any transaction service or user fees, and other sources deemed appropriate by the Electronic Services System and its members to be charged to those utilizing the services or data.

12. **ADDITIONAL MEMBERSHIP.** After June 30, 2021, any Iowa county may become party to this Agreement and gain membership in ESS by adoption of this Agreement, as it may have been amended, by motion of its board of supervisors. Membership shall be effective upon filing and recording of the Agreement as required by Iowa Code section 28E.8 (2020), with a copy of the filed and recorded Agreement to be provided to Electronic Services System Coordinating Committee and the new member county.
13. **WITHDRAWAL.** Any county, by motion of its board of supervisors, if specifically authorized by a session law, signed by the governor, may withdraw from ESS by giving written notice to the Electronic Services System Coordinating Committee no later than June 15 preceding the calendar year of withdrawal. Any such withdrawal will become effective no earlier than January 1 following the date notice is given, or the date specified in the notice, whichever is later. Services of ESS shall continue to be provided to the withdrawing county until the date of withdrawal.
14. **STANDARDS.** Members shall comply with all standards, policies and requirements for the delivery of electronic services adopted by the Electronic Services System Coordinating Committee.
15. **AMENDMENTS.** This Agreement may be amended by motion of the Electronic Services System Coordinating Committee which must be approved by at least 75% of the Committee, the passed amendment shall then be submitted to the individual member counties. A separate explanation of the reasons for the amendment shall be included in the transmission of the proposed amendment to the individual member counties. Each county desiring to vote upon the amendment shall do so by motion and return to Electronic Services System Coordinating Committee a certified copy of the motion indicating the county's vote on any such amendment within sixty (60) days of the date that the county receives a copy of the proposed amendment. Any county not voting upon the amendment within this time shall be considered to have approved the amendment. If the amendment receives a majority of the votes of all County members, it shall become effective ten (10) days following the date the vote is tabulated. Amendments shall be filed and recorded as required by Iowa Code section 28E.8 (2019).
16. **NON-LIABILITY.** ESS is a public corporation. The Electronic Services System Coordinating Committee and individual counties shall not be liable for any acts, deeds, resolutions or other actions of ESS. Each individual county, and its assets and taxing authority may not be reached, attached or executed upon by any creditor or claimant of ESS. The Electronic Services System Coordinating Committee and its assets may not be reached, attached or executed upon by any creditor or claimant of ESS.
17. **THIRD PARTY BENEFIT.** Neither the provisions of this Agreement nor the provisions of any agreement that ESS may have with any public or private agency shall inure to the benefit of any other third party or any individual resident or taxpayer of any county and neither this Agreement nor any agreement that ESS may have with any public or private agency may be the basis of a claim or cause of action on behalf of any other third party or any individual resident or taxpayer of any county.
18. **TERMINATION.** If specifically authorized by a session law, signed by the governor, this Agreement may be terminated by motion of the Electronic Services System Coordinating Committee which must be approved by at least 75% of the Committee which shall then by

submitted for consideration by the individual member counties. A separate explanation of the reasons for the termination shall be included in the transmission of the proposal to the individual member counties. Each county desiring to vote upon the termination shall do so by motion and return to Electronic Services System Coordinating Committee a certified copy of the motion indicating the county's vote on any such amendment within sixty (60) days of the date that the county receives a copy of the proposed termination. Any county not voting upon the termination within this time shall be considered to have approved the termination. If the termination receives _____% vote of all County members, it shall become effective one hundred and eighty (180) days following the date the vote is tabulated. The termination shall be filed and recorded as required by Iowa Code Chapter 28E (2020).

19. DISPOSITION OF ASSETS. The assets of ESS have been a direct result of payments received for services rendered to the public at large. In the event this Agreement is terminated and ESS is abolished, all property of ESS shall be delivered, assigned and conveyed to the State of Iowa, or as otherwise directed by applicable Iowa Law, after payment of all just debts, obligations and liabilities of ESS.

20. SEVERABILITY. If any portion of this Agreement or the application of this Agreement to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given affect without the invalid provisions or applications, and to this end, the provisions of this Agreement are declared to be severable.

THE EXECUTION OF THIS AGREEMENT BY EACH UNDERSIGNED COUNTY SHALL CONSTITUTE ADOPTION OF THIS AGREEMENT. FOR EACH UNDERSIGNED COUNTY, SUCH EXECUTION SHALL BE PURSUANT TO AUTHORITY GRANTED BY MOTION OF THE BOARD OF SUPERVISORS.

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28E AGREEMENT
ELECTRONIC SERVICES SYSTEM

Kathy Jurries
Chair, Electronic Services System

Date _____

STATE OF IOWA)
) ss
COUNTY OF POLK)

I, Kathy Jurries, being first duly sworn on oath depose and state that I am the Chair of the ESS Coordinating Committee, and that I executed the foregoing instrument as the Chair of the ESS Coordinating Committee and that the statements contained therein are true.

Kathy Jurries, Association President

Subscribed and sworn to before me this _____ day of _____, 2020.

Notary Public in the State of Iowa
Name of Notary _____

(SEAL)

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