SINGLE SOURCE AWARD **BID # SS-0387-18**

Subject: Maintenance Agreement for Electionware Software, Automark VAT & DS Maintenance

Department: Supervisor of Elections

Description of Purchase:
Recommend approval of Single Source Award to Election Systems and Software, LLC., for the maintenance agreement for electionware software, Automark VAT & DS maintenance for the Supervisor of Elections office. Period of service will be January 1, 2018 through December 31, 2018. Total requested expenditure not to exceed $163,523.72.

Funding for this award to be encumbered by account SERE011/SEEL011-04662, to be executed by purchase order(s).

Single Source Award To: Election Systems and Software, LLC.

Price Justification: See Attached

Total Award: $163,523.72 **Requisition #** 225435

Attachments: Single Source Form; Vendor Letter, Vendor Quote

Certification as to Single Source: Mike Hogan, Supervisor of Elections

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.206.

ANALYST: Chelsey Fleming

Gregory Pease, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

CHAIRMAN ***DATE***

ACTION OF AWARDING AUTHORITY

DATE: _____

APPROVED _____ **DISAPPROVED** _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

FORM GB-114, Revised 12/2007

REQ225435

SINGLE SOURCE REQUEST

Pursuant to the City of Jacksonville Procurement Code § 126.206 & § 126.312, when requesting a purchase from a vendor subject to the referenced sections, please complete this form to justify your request and submit to Procurement with applicable attachments.

REQUESTING AGENCY (DEPT./DIVISION): Supervisor of Elections

FUNDING SOURCE: SERE011 / SEEL011 - 04662

BRIEF DESCRIPTION OF GOODS/SERVICES:

Maintenance agreement for Electionware software, Automark VAT and DS maintenance

Agreement includes software and firmware updates and "break fix"

AMOUNT OF PROJECT (attach quote): $163,523.72

PROVIDE A SUMMARY OF THE SCOPE OF GOODS/SERVICES TO BE PROVIDED; IDENTIFY EACH ITEM, COMPONENT OR SERVICE BEING PROCURED (ATTACH QUOTE/PROPOSAL):

Election Systems and Software provides all hardware and software upgrades for all voter tabulation equipment in the Duval Supervisor of Elections inventory. This agreement ensures continued hardware and software support throughout the election cycle

PROVIDE A DETAILED JUSTIFICATION AS TO WHY THE REQUESTED GOODS/SERVICES CAN ONLY BE EFFICIENTLY AND EFFECTIVELY PROCURED THROUGH THE RECOMMENDED SINGLE SOURCE PROVIDER:

Election systems and Software has been the system of record for Duval county since 2012. ES&S is certified in the state of Florida to provide these services.

ASSERT THAT YOU HAVE RESEARCHED THE AVAILABILITY OF THE REQUESTED GOODS/SERVICES FROM OTHER SOURCES IN APPLICABLE MARKETS AND HAVE DISCUSSED AND EVALUATED THE SAME WITH COJ'S PROCUREMENT AND EBO DIVISIONS:

Yes

Submitted by: Robert D Phillips — Chief Elections Officer

(Name) (Title)

Date: 10/18/17

Requesting Agency's Director's Signature: Mike Hogan

Procurement Division ____

March, 2017

Quote

11208 John Gall Blvd
Omaha, NE 68137
Ph. 800-247-8683
Fx. 402-339-4742

Quote No	Quote Date
76881	11/9/2017

Page
1

Bill To
Duval County, Florida
General Accounting Div
117 W Duval St Ste 375
Jacksonville, FL 32202
US

Ship to
Duval County, Florida
Duval County Election
1 Imeson Park Blvd Building
Jacksonville, FL 32218
US

Customer No	Slspsn	Payment terms
17678	2861	NET 30 DAYS

Loc	PPD/COL	Ship via	Ship Date
01		CUST. GRND#O	A.S.A.P.

Qty Ordered	UOM	Item No	Unit price	Disc	Extended price
1.00	EA	/212801 ElectWare PYO Standard Renewal License Fee	37,593.7200		37,593.72
295.00	EA	/213100 Firmware License-DS200 Renewal License Fee	80.0000		23,600.00
4.00	EA	/213075 Firmware License-DS850 Renewal License Fee	1,575.0000		6,300.00
280.00	EA	/213805 Firmware License-AutoMARK Renewal License Fee	65.0000		18,200.00
295.00	EA	/211712 Hardware Maint-DS200 Bronze Ongoing Maintenance Fee	110.0000		32,450.00
4.00	EA	/211232 Hardware Maint-DS850 Gold Ongoing Maintenance Fee	3,995.0000		15,980.00
280.00	EA	/211402 Hardware Maint-AutoMARK BRNZ Ongoing Maintenance Fee	105.0000		29,400.00

THE QUOTE TOTAL MAY NOT REFLECT MISCELLANEOUS CHARGES, FREIGHT OR SALES TAX

Quote Total
163,523.72

(C)2002 Exact Software North America

Election Systems & Software
MAINTAINING VOTER CONFIDENCE. ENHANCING THE VOTING EXPERIENCE.
EXPERIENCE RELIABILITY SECURITY INNOVATION
11208 John Galt Boulevard · Omaha, NE 68137 USA
Phone: 402.593.0101 · Toll-Free: 1.800.247.8683 · Fax: 402 593 8107
www.essvote.com

November 9, 2017

Chelsey Renfroe
Purchasing Analyst
Procurement Division
City of Jacksonville
214 N. Hogan St., 8th floor
Jacksonville, FL 32202

RE: Election Systems & Software ("ES&S") Hardware and Software License, Maintenance and Support Services ("License and Maintenance Services")

Dear Ms. Renfroe:

This letter is in response to your request for information regarding ES&S' License and Maintenance Services to be provided by ES&S to Duval County, Florida ("County"). Such License and Maintenance Services shall be performed by ES&S or its authorized representatives. The License and Maintenance Services to be performed by ES&S include the license, maintenance and support for ES&S' proprietary ElectionWare® Election Management Software and Firmware (collectively, "ES&S Software") as well as ES&S' Model DS200, ES&S' Model DS850 and ES&S AutoMark voting equipment (collectively, "ES&S Equipment").

Please be advised that ES&S is the sole and exclusive developer and licensor of the ES&S Software. As such, ES&S owns all patents, copyrights and trademarks ("Intellectual Property") in its proprietary ES&S Software. Further only ES&S can provide help desk support services for the ES&S Software as well as provide any and all upgrades, enhancements, maintenance patches and other changes to the ES&S Software as may be required by ES&S or its customers. No other vendor in the marketplace today is authorized to license or provide maintenance and support services for the ES&S Software.

With respect to the ES&S Equipment, please be advised that ES&S owns all Intellectual Property associated with the ES&S Equipment. Further, certain component parts of the ES&S Equipment are proprietary to ES&S and may only be obtained directly from ES&S. As certain component parts of the ES&S Equipment may only be obtained directly from ES&S, only ES&S can ensure that such ES&S proprietary component parts are installed in the ES&S Equipment. This is important to note as all ES&S Equipment certified both and the federal and State level require the replacement of the same component parts which were included in the voting equipment at the time such voting equipment was certified. By utilizing ES&S for the

performance of hardware maintenance services, the County will be assured that all component parts installed in the ES&S Equipment will be in compliance with both the federal and state certified equipment configuration.

In order for the County to receive License and Maintenance Services on the ES&S Software, the County must utilize ES&S for the license of the ES&S Software as well as the performance of software maintenance services as ES&S is the sole and exclusive licensor of the ES&S Software. In addition, in order to ensure that only certified component parts are utilized in the repair and maintenance of the ES&S Equipment, it is necessary for the County to obtain such hardware maintenance services directly from ES&S as ES&S owns certain proprietary component parts which are installed in the ES&S Equipment.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Timothy J. Hallett
Associate General Counsel

Attachment 1

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Maintenance Term: January 1, 2018 through December 31, 2020

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
4	Model DS850 Scanner ("Gold Coverage")	1/1/2018 through 12/31/2018	$3,995.00	$15,980.00
295	Model DS200 Scanner ("Bronze Coverage")	1/1/2018 through 12/31/2018	$110.00	$32,450.00
280	AutoMARK Voter Assist Terminal ("Bronze Coverage")	1/1/2018 through 12/31/2018	$105.00	$29,400.00
Total Maintenance Fees for the Coverage Period January 1, 2018 through December 31, 2018				**$77,830.00**
4	Model DS850 Scanner ("Gold Coverage")	1/1/2019 through 12/31/2019	$3,995.00	$15,980.00
295	Model DS200 Scanner ("Bronze Coverage")	1/1/2019 through 12/31/2019	$110.00	$32,450.00
280	AutoMARK Voter Assist Terminal ("Bronze Coverage")	1/1/2019 through 12/31/2019	$105.00	$29,400.00
Total Maintenance Fees for the Coverage Period January 1, 2019 through December 31, 2019				**$77,830.00**
4	Model DS850 Scanner ("Gold Coverage")	1/1/2020 through 12/31/2020	$3,995.00	$15,980.00
295	Model DS200 Scanner ("Bronze Coverage")	1/1/2020 through 12/31/2020	$110.00	$32,450.00
280	AutoMARK Voter Assist Terminal ("Bronze Coverage")	1/1/2020 through 12/31/2020	$105.00	$29,400.00
Total Maintenance Fees for the Coverage Period January 1, 2020 through December 31, 2020				**$77,830.00**
Total Hardware Maintenance Fees for the Initial Term				**$233,490.00**

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period for "Gold" Coverage Items shall be 55% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location: Duval County, Florida

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be $25.00 per unit for all units located at second or more locations.

Note 5: Upon expiration of the Initial Term, this Agreement shall automatically renew as set forth in Article I, Section 1.

Hardware Maintenance Services Provided by ES&S Under the Agreement

1. Telephone Support.

2. Issue Resolution.

3. ES&S posts Technical Bulletins available through Customer's ES&S Web-based portal.

4. Routine Maintenance Services.

    - Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:

        - Service performed by an ES&S trained and certified technician.

        - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.

        - Replacement of worn or defective with new or remanufactured federally and state certified parts.

        - Conducting a final test to verify that the unit is working according to manufacturer's specifications.

        - Use of a checklist tailored for each piece of equipment.

        - Update of maintenance records which are kept by serial number and available to you through your ES&S Web-based portal.

5. Repair Services.

    - Customer receives coverage for interim repair calls.

        - Interim calls may be scheduled during the regular Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity of Customer's location if they are not election critical.

        - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

    - Customer has access to the ES&S Help Desk for assistance.
    - The customer receives priority on service calls.
    - The customer receives priority on response time.
    - The customer receives priority on certified ES&S parts inventory.

Note: Except for those Hardware Maintenance Services specifically set forth herein, ES&S is under no obligation and shall not provide other Hardware Maintenance Services to the Customer unless previously agreed upon in writing by the parties.

ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES SOFTWARE

Initial License and Maintenance Term: January 1, 2018 through December 31, 2020

Listed below are the Software and Fees for which Software License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
1	ElectionWare Software – PYO Standard	1/1/2018 through 12/31/2018	$37,593.72
1	ElectionWare Software – PYO Standard	1/1/2019 through 12/31/2019	$37,593.72
1	ElectionWare Software – PYO Standard	1/1/2020 through 12/31/2020	$37,593.72
Total Software License, Maintenance and Support Fees for the Initial Term			**$112,781.16**

ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES FIRMWARE

Initial License and Maintenance Term: January 1, 2018 through December 31, 2020

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
4	Model DS850 Scanner	1/1/2018 through 12/31/2018	$1,575.00	$6,300.00
295	Model DS200 Scanner	1/1/2018 through 12/31/2018	$80.00	$23,600.00
280	AutoMARK Voter Assist Terminal	1/1/2018 through 12/31/2018	$65.00	$18,200.00
Total License, Maintenance and Support Fees for the Coverage Period January 1, 2018 through December 31, 2018				**$48,100.00**
4	Model DS850 Scanner	1/1/2019 through 12/31/2019	$1,575.00	$6,300.00
295	Model DS200 Scanner	1/1/2019 through 12/31/2019	$80.00	$23,600.00
280	AutoMARK Voter Assist Terminal	1/1/2019 through 12/31/2019	$65.00	$18,200.00
Total License, Maintenance and Support Fees for the Coverage Period January 1, 2019 through December 31, 2019				**$48,100.00**
4	Model DS850 Scanner	1/1/2020 through 12/31/2020	$1,575.00	$6,300.00
295	Model DS200 Scanner	1/1/2020 through 12/31/2020	$80.00	$23,600.00
280	AutoMARK Voter Assist Terminal	1/1/2020 through 12/31/2020	$65.00	$18,200.00
Total License, Maintenance and Support Fees for the Coverage Period January 1, 2020 through December 31, 2020				**$48,100.00**

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
Total Firmware License, Maintenance and Support Fees for the Initial Term				$144,300.00

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
    - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
    - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
    - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
    - Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.
4. Customer shall be responsible for the installation and integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
5. Customer shall be responsible for data extraction from Customer voter registration system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.

9. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.

10. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.

11. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

ELECTION SYSTEMS & SOFTWARE, LLC
HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S") and **Duval County, Florida** ("Customer").

RECITALS:

A. ES&S has sold to Customer the proprietary voter tabulation equipment ("Equipment") and licensed the software ("Software") described on Attachment 1 and Customer now desires to obtain maintenance services for such Equipment and license, maintenance and support services for such Software.

B. ES&S has agreed to provide such services, subject to the terms and conditions of this Agreement.

C. This Agreement supersedes and replaces in their entirely any and all prior agreements between ES&S and Customer respecting maintenance services for such Equipment and license, maintenance and support services for such Software.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

ARTICLE I
GENERAL

1. **Term; Termination.** This Agreement for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Attachment 1 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Agreement terminated by the first to occur of (a) either party's written election not to renew , which shall be delivered to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this is Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software License, Maintenance and Support Services under this Agreement, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Attachment 1 for the Initial Term and any Renewal Periods. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Attachment 1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during

the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Agreement through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance and Software License, Maintenance and Support plan coverage.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment set forth on Attachment 1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products identified on Attachment 1 as "**Gold Coverage**" working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "'Routine Maintenance Services. Routine Maintenance Services shall be provided once each **Twelve (12) Months** during the Initial Term or any Renewal Period thereof for those hardware products indentified as "**Gold Coverage**" on Attachment 1. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Attachment 1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Attachment 1 as "**Bronze Coverage**" shall only be provided pursuant to Section 1(b) below.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at

ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefore), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Attachment 1.

iv. **Loaner Unit.** At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

d. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Storage.** When not in use, Products should be stored in a clean, secure environment. During operation of the Products, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 50% relative humidity.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged

at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

ARTICLE III
ANNUAL LICENSE OF SOFTWARE

1. **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time employees to use the Software and all related operating instructions, user manuals and training materials supplied by ES&S (collectively the "Documentation") in **Duval County, Florida** ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction. The licenses granted in this Section do not permit Customer to use the source code for the ES&S Software. The license does not permit Customer to take any of the following actions:

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any coding, programming or layout services) without ES&S' prior written consent; or

c. Cause or permit any change to be made to the Software without ES&S' prior written consent.

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2. **License Fees**. In consideration for ES&S' grant of the license for the ES&S Software described in Section 1, Customer shall pay ES&S the ES&S Software License Fees set forth on Attachment 1. Any license or royalty fees payable to any Third Parties for the use of any third party items are the sole responsibility of Customer.

3. **Term of License.** The licenses granted in Section 1 shall commence upon the delivery of the ES&S Software described in Section 1 and shall continue for a one-year period (the "Initial License Term). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on Attachment 1. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 1, 2, or 4 with respect to, such license. Upon the termination of either of the licenses granted in Section 1 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

4. **Proprietary Rights.** Customer acknowledges and agrees that ES&S owns all right, title and interest in and to the Software and Documentation, subject to the license granted herein. ES&S likewise owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation. The Software and Documentation also contain confidential

and proprietary trade secrets of ES&S which are protected by law and are of substantial value to ES&S. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.

5. **Indemnification By Customer.** To the fullest extent permitted under applicable law, Customer shall indemnify and hold harmless ES&S from and against any and all claims, damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to the following:

a. Any claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's copyright, trademark or patent existing as of the date hereof (a "Third Party Infringement Claim") resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S;

b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any Third Party Items; and

c. Customer's election not to receive, or to terminate, ES&S Hardware Maintenance Services or ES&S Software License and Maintenance and Support.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 5, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

ARTICLE IV
SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Attachment 1.

2. **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, Customer shall be responsible for:

(i) the total cost of any third party items that are required in order to operate the Updates;

(ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and

(iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, including a reinstatement charge, which would have been due to ES&S had the Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services..

ARTICLE V
MISCELLANEOUS

1. **Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant

to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

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. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. 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 (y) Customer's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software License and Maintenance and Support.

3. **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, 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. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) 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, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

5. **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, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.

6. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces 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 Attachment to this Agreement and these General Terms, the provision contained in the Attachment 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. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing Equipment, Software and 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 may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Article II, Section 1(f) and Article III, and Article IV, Sections 1-6 shall survive the termination of this Agreement, to the extent applicable.

7. **Counterparts; Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by the last of the parties hereto.

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

Signature

Name (Printed or Typed)

V.P. of Finance
Title

Date

DUVAL COUNTY, FLORIDA
117 W. Duval Street – Suite 375
Jacksonville, FL 32202
Fax No.: N/A

Signature

Name (Printed or Typed)

Title

Date

PRICING SUMMARY AND PAYMENT TERMS

Sale Summary:		
Description	**Refer To**	**Amount**
ES&S Hardware Maintenance Fees	Attachment 1	$233,490.00
ES&S Software License, Maintenance and Support Fees	Attachment 1	$112,781.16
ES&S Firmware License, Maintenance and Support Fees	Attachment 1	$144,300.00
Total Maintenance Fees for the Initial Term:		**$490,571.16**

Terms & Conditions:

Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.

Note 2: **Invoicing and Payment Terms are as Follows:**

$163,523.72 due on or before December 1, 2017 for the Coverage Period of January 1, 2018 through December 31, 2018.

$163,523.72 due on or before December 1, 2018 for the Coverage Period of January 1, 2019 through December 31, 2019.

$163,523.72 due on or before December 1, 2019 for the Coverage Period of January 1, 2019 through December 31, 2019.

Note 3: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.