

FIRST AMENDMENT TO AGREEMENT

This First Amendment ("Amendment") shall be deemed a material part of that certain Sales Order Agreement by and between Election Systems & Software, LLC, a Delaware limited liability company ("ES&S") and Collin County, Texas ("Customer") dated January 31, 2019 ("Agreement"). The terms of this Amendment shall modify and supersede any and all inconsistent terms of the Agreement. Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Agreement.

RECITALS

WHEREAS, ES&S and Customer entered into the Agreement under which ES&S will be providing equipment, licensing software and performing certain services for Customer;

WHEREAS, both ES&S and Customer wish to amend the Agreement with respect to said equipment in order to remove certain equipment included under the original order, add new equipment as well as included new supplies under this Amendment.

WHEREAS, the Agreement is a valid and subsisting agreement between ES&S and Customer and both parties shall continue to be bound by the terms and conditions of the Agreement not otherwise amended herein.

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

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

2. **Sales Order Summary.** The Sales Order Summary page to the Agreement is hereby deleted in its entirety and replaced in its entirety with the Sales Order Summary page, attached hereto and incorporated herein by this reference.

3. **Updates.** Section 5 of the General Terms is hereby deleted in its entirety and replaced in its entirety with the following"

"5. **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 as well as the cost of any replacements, retrofits or modifications to the ES&S Equipment which may be necessary in order 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) install the Updates; (ii) train Customer on Updates, if such training is requested by Customer or (iii) 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 or corresponding replacements, retrofits or modifications to the ES&S Equipment and third party items are required due to changes in state law, with the exception of a change in law that prohibits the use of a direct record electronic device without a paper component ("DRE") in an election, in which case ES&S will not be required to provide any Update or corresponding replacements, retrofits or modifications to the DRE and any ancillary third party items that would enable the DRE to be used in an election, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any third party items that are required in order to comply with such changes in law and/or otherwise 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, corresponding replacements, retrofits or modifications to the ES&S Equipment and third party items.

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 affected ES&S 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 and corresponding replacements, retrofits or modifications to the ES&S Equipment and third party items which are required due to a change in local law or is otherwise requested or required by Customer. Customer assumes all risk and cost resulting from failing to comply with a change in state law that prohibits the use of a DRE in an election, and hereby waives and releases ES&S from any and all liability and claims for damages, including, but not limited to, any claims for refunds for the DRE's purchased hereunder."

4. **Schedule A1 to Exhibit A.** Schedule A1 to Exhibit A to the Agreement is hereby deleted in its entirety and replaced in its entirety with Schedule A1, attached hereto and incorporated herein by this reference.

5. **Exhibit C to Agreement.** A new Exhibit C, Supply Items and Pricing, attached hereto and fully incorporated herein by this reference, is hereby added to the Agreement.

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

EXECUTED as of the 4th day of JUNE, 2019.

ELECTION SYSTEMS & SOFTWARE, LLC.

COLLIN COUNTY, TEXAS

By:  _____

By: _____

Its: CFO _____

Its: _____



11208 JOHN GALT BLVD
OMAHA, NE 68137-2364
(402) 593-0101

Sales Order Agreement

Customer P.O. #: RFP No. 2018-241

1st Election Date: November 5, 2019 with the early voting starting Monday, October 21, 2019

Estimated Delivery Date: May/June 2019

Phone Number: 972-548-4113

Fax Number: 972-548-4694

Customer Contact, Title: Courtney Wilkerson, Senior Buyer

Customer Name: Collin County, Texas

Type of Sale: ☒ NEW

Type of Equip: ☒ NEW ☐ REFURBISHED

Bill To:

Collin County, Texas

Courtney Wilkerson, Senior Buyer

2300 Bloomdale Rd., Ste 3160

McKinney, TX 75071

Ship To:

Collin County, Texas

Courtney Wilkerson, Senior Buyer

2300 Bloomdale Rd., Ste 3160

McKinney, TX 75071

Item	Description	Qty	Price	Total
1	DS200 Model DS200 (Includes Scanner, Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll and Standard 4GB Jump Drive)	200	\$5,750.00	\$1,150,000.00
2	DS200 Soft-Sided Nylon Case	100	\$110.00	\$11,000.00
3	DS200 Tote Bin	400	\$225.00	\$90,000.00
4	DS850 Model DS850 (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, and Three (3) Standard 8GB Thumb Drives)	1	\$111,500.00	\$111,500.00
5	DS850 Initial Annual License Fee	1		Included
6	DS450 Model DS450 (Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, and Two (2) Standard 8GB Thumb Drives)	2	\$49,950.00	\$99,900.00
7	DS450 Initial Annual License Fee for Version 3.1.0.0 of the ES&S Software	1		Included
8	ExpressTouch Curbside Voting Solution ExpressTouch with Booth, Privacy Panels, Carrying Case and Report Printers, Internal Battery Backup, Power Supply, Paper Roll, and One (1) Standard 4GB Memory Device	200	\$3,850.00	\$770,000.00
9	ExpressTouch Curbside Voting Solution Smart Card - Administrator	10	\$10.00	\$100.00
10	ExpressTouch Curbside Voting Solution Smart Card - Supervisor	400	\$10.00	\$4,000.00
11	ExpressTouch Curbside Voting Solution UVC Keypad with Headset	200	\$200.00	\$40,000.00
12	ExpressVote BMD ExpressVote BMD Terminal with Internal Backup Battery, ADA Keypad, Headphones, Power Supply with AC Cord, and One (1) Standard 4GB Memory Device	1,800	\$3,325.00	\$5,985,000.00
13	ExpressVote BMD Soft-Sided Carrying Case	24	\$175.00	\$4,200.00
14	ExpressVote BMD Voting Booth	1,800	\$895.00	\$1,611,000.00
15	ExpressVote BMD ExpressVote Printer (For Printing of ExpressVote Activation Cards)	320	\$725.00	\$232,000.00
16	ExpressVote BMD ExpressVote Ballot Card Stock (Blank) - 14" (250 per pkg)	4,000	\$22.50	\$90,000.00
17	ExpressVote BMD ExpressVote Ballot Card Stock with Sequential Numbering - 14" (250 per pkg)	50	\$30.00	\$1,500.00
18	Other DS200 Standard 4GB Jump Drive (Additional)	250	\$105.00	\$26,250.00
19	Other ExpressVote Standard 4GB Flash Drive (Additional)	50	\$105.00	\$5,250.00

Sales Order Agreement

20	Ballot On Demand System	Compact Printer with Firmware	3	\$2,575.00	\$7,725.00
21	Ballot On Demand System	Laptop Computer	2	\$1,320.00	\$2,640.00
22	Third Party Products	EMS 3rd Party Hardware with On-Site Installation	1	\$30,303.00	\$30,303.00
23	Third Party Products	Election Supply Carrier Steel Cabinets	50	\$3,580.00	\$179,000.00
24	Software	ElectionWare Software - PYO Standard (Base Package with English Language Synthesized Voice Files)	1	\$49,500.00	\$49,500.00
25	Software	ExpressLink Software	1	\$4,070.00	\$4,070.00
26	Software	Synthesized Audio Capability - Spanish Language	1	\$2,310.00	\$2,310.00
27	Software	Balotar 1-Year Software License (Includes Multiple Request Capability)	2	\$2,450.00	\$4,900.00
28	Services	Equipment Operations Training	2	\$1,650.00	\$3,300.00
29	Services	Ballot On Demand Training	1	\$1,650.00	\$1,650.00
30	Services	Software Training	5	\$1,650.00	\$8,250.00
31	Services	Training Videos for DS200, ExpressVote, and ExpressTouch Equipment	3	\$7,500.00	\$22,500.00
32	Services	Dedicated Project Manager for Initial Implementation Year (days) Note: Additional requested Project Manager days will be billed at \$1,650.00 per day)	110	\$1,650.00	\$181,500.00
33	Services	Election On-Site Support for November 2019 Election (One Event includes a person on-site the day before, day of, and day after the election)	5	\$4,525.00	\$22,625.00
34	Services	Hardware Installation	1	\$240,700.00	\$240,700.00
35	Shipping and Handling		1	\$51,870.00	\$51,870.00
36	Performance Bond		1	\$181,873.00	\$181,873.00
37	Trade-In Allowance	Equipment Being Traded-In by Customer Includes: 5 - Optical Scanner with Ballot Box 1,800 - AccuVote TSX Terminal	1	(\$1,120,500.00)	(\$1,120,500.00)
				Order Total	\$10,105,916.00

Freight Billable: yes ☒ no ☐

Chris Moody
Regional Sales Manager


V.P. of Finance

6/4/19

Date

Customer Signature

Date

Title

Trade-In Equipment:

ES&S will coordinate and pay for the pickup and transportation of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties. ES&S is responsible for preparing, packaging and palletizing the trade-in equipment for shipment.

Sales Order Agreement

Special Notes:

1. Collin County must approve the final prototype of the Voting Booths referenced as Item 14 above in finished form prior to ES&S ordering. If Collin County does not give approval, Collin County will not be responsible for payment.

2. ES&S shall charge no more than \$30.00 per hour for temporary workers used to assist in activities related to Logic and Accuracy Testing.

3. Ballot On Demand Processing Fees:

- Ballot Processing Fee for each Black & White Ballot Sheet Printed \$0.35 Per Sheet
- Ballot Processing Fee for each Ballot Sheet Printed with Color \$0.45 Per Sheet

Ballot On Demand Processing Fee includes:

- Black Toner
- Black Image Drum
- Color Toners
- Color Drums
- Transfer Belts
- Fusers
- Consumables Shipping & Handling
- Hardware Break/Fix Maintenance

Ballot On Demand Blank Ballot Stock Fee:

- Blank Ballot Stock \$0.10 each, plus Shipping & Handling

4. Ballot on Demand Election Set-Up Fee per Election Event:

- Remote Access: Remote Access: \$350 per election set-up + \$1 per unique PDF (up to 4 computers). \$40 per computer over 4 units.

Payment Terms

Milestone Invoicing Plan:

Approved Resources and Project Plan & Schedule (14.8%)	\$1,492,455.00
Delivery of ESC Cabinets (4.9%)	\$497,485.00
Delivery of Required Hardware/Software (~20.3%)	
DS200	\$264,216.00
DS850	\$26,786.00
DS450	\$24,485.00
ExpressTouch	\$163,183.00
ExpressVote BMD	\$1,219,723.00
ExpressVote Booth	\$300,930.00
ExpressVote Activation Printer	\$43,337.00
Ballot On Demand System	\$2,732.00
Software & Network Components	\$20,538.00
	\$2,065,930.00
Acceptance of Equipment and Complete Testing (~50%)	
DS200	\$605,724.00
DS850	\$65,945.00
DS450	\$60,280.00
ExpressTouch	\$401,747.00
ExpressVote BMD	\$3,003,153.00
ExpressVote Booth	\$740,873.00
ExpressVote Activation Printer	\$106,693.00
Ballot On Demand System	\$6,727.00
Software & Network Components	\$50,565.00
	\$5,041,707.00
Completion of Successful Election (Certification of Election Results (~10%))	\$1,008,939.00
	\$10,105,916.00

Note 1: Customer, a County in the State of Texas, represents and warrants that it is exempt from state and local taxes.

Warranty Period (Years):

One (1) Year From Equipment Delivery

Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)

The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.

SEE GENERAL TERMS AND CONDITIONS

Schedule A1
Pricing Summary

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$283,455.00
ES&S Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$60,780.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$166,125.00
Total Annual Maintenance Fees for the Initial Four (4) Year Term:		\$510,360.00
<u>Payment Terms:</u>		
ES&S shall Invoice Customer annually for each year of the Initial Term. All payments shall be made in accordance with Texas Government Code Section 2251 and shall be due before the start of each period within the Initial Term.		
<u>Terms & Conditions:</u>		
Note 1: Customer is a County located in the State of Texas and represents and warrants that it is exempt from state and local taxes.		
Note 2: 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.		
Note 3: Annual Post-Warranty Fees after the initial 5-year term are not to exceed a 3.5% increase per year.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Expiration of the Warranty Period through the **fourth** anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Annual Maintenance Fee In Total
200	DS200 Tabulator	Years 2 - 5	\$185.00	\$37,000.00
1	DS850 Scanner	Years 2 - 5	\$3,995.00	\$3,995.00
2	DS450 Scanner	Years 2 - 5	\$2,730.00	\$5,460.00
200	ExpressTouch (With Printer)	Years 2 - 5	\$105.00	\$21,000.00
1,800	ExpressVote BMD Terminal	Years 2 - 5	\$120.00	\$216,000.00
Total Annual Maintenance Fees for the Initial Term				\$283,455.00

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period 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: Collin County, Texas

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.

Hardware Maintenance Services Provided by ES&S Under this Schedule A1

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). 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 parts 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 ES&S Equipment.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs 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 Term: Expiration of the Warranty Period through the **fourth** anniversary thereof

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

Qty	Description	Coverage Period	Annual Software License, Maintenance and Support Fee In Total
1	ElectionWare Software – PYO Standard	Years 2 - 5	\$49,500.00
1	ExpressLink Software	Years 2 - 5	\$4,070.00
1	Synthesized Audio – Spanish Language	Years 2 - 5	\$2,310.00
2	Balotar Software – MRS Capability	Years 2 - 5	\$4,900.00
Total Annual Software License, Maintenance and Support Fee for the Initial Term			\$60,780.00

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

Initial Term: Expiration of the Warranty Period through the **fourth** anniversary thereof

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	Annual Firmware License, Maintenance and Support Fee In Total
200	DS200 Tabulator	Years 2 - 5	\$87.00	\$17,400.00
1	DS850 Scanner	Years 2 - 5	\$1,575.00	\$1,575.00
2	DS450 Scanner	Years 2 - 5	\$1,575.00	\$3,150.00
200	ExpressTouch (With Printer)	Years 2 - 5	\$72.00	\$14,400.00
1,800	ExpressVote BMD Terminal	Years 2 - 5	\$72.00	\$129,600.00
Total Annual Firmware License, Maintenance and Support Fees for the Initial Term				\$166,125.00

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.
2. Customer shall have reviewed a complete set of User Manuals.
3. 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.
4. Customer shall be responsible for data extraction from Customer voter registration system.
5. 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.
6. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
7. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
8. 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.
9. 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.
10. 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.

EXHIBIT C

Supply Items and Pricing

Early Voting Packets - \$51.00 Each

Early Voting Packets will be assembled in either a plastic ziplock bag or the reusable expandable folders from the county. Neither option will affect the pricing

- All forms from sample Early Voting kit will be included.
- There is a slight buffer in the pricing of these kits to accommodate any full color, equipment specific forms and checklists that the county is looking to create and add to the kits.
- These kits do not include any signs, Magnifier sheet, Judge Handbooks and the Expandable file folders per the customer's request.

Election Day Judge Packets - \$19.00 Each

Election Day packets will be assembled and delivered in a plastic ziplock bag.

- There is a slight buffer in the pricing of these kits to accommodate any full color, equipment specific forms and checklists that the county is looking to create and add to the kits.

Provisional Kits - \$38.10 Each

Provisional kits will include the following items, enough for 50 Provisional Voters:

- AFF-01 Affidavit for Provisional Ballot, Green Envelope
- SEC-01 Secrecy Envelops, White Envelope
- Notice to Provisional Voters, Full Color, Double Sided Document
- List of Provisional Voters – 2 Green Sheets
- Assembled in a Plastic Ziplock Bag

Seals

The following seals can be added to kits. Pricing is per 100 Seals

- RED Tamper Evident Seals, Pack of 100 - **\$44.95**
- BLUE Tamper Evident Seals, Pack of 100 - **\$44.95**
- RED Barcoded Pull Tite Seals, Pack of 100 - **\$34.95**
- BLUE Barcoded Pull Tite Seals, Pack of 100 - **\$34.95**

Absentee by Mail Envelope Kit - \$1.15 each

The Absentee kits will include the following items and will be assembled into one packet per voter.

- Ballot Envelope, White Envelope
- Carrier Envelope, Yellow Envelope
- Envelope to Mail Voter Early Voting Ballot, Green Envelope

EXHIBIT C
Supply Items and Pricing

- Carrier Insert, Folded, Double sided document

Bulk Items, Forms to be ordered in bulk for the ESC Units

- Sticker Sheets - **\$0.15 each**
- Poll List, 3 part duplicate form - **\$0.29 each**
- Statement of Residence, Yellow Form - **\$0.15 each**

Pre-Marked Test Decks

Pre-marked Test Decks will be priced per page. The total number of pages will be determined once programming is completed.

- Double sided ballots will be **\$0.32 per page**

Sample Ballots

- Sample ballots are packets printing on yellow paper, double sided. One packet of full sample ballots will be sent per location. Pricing is per sheet.
- **\$0.20 per page**

All Ballot Package

- The all ballot package includes every race for the election. Printed white legal paper, double sided
- **\$0.15 per page**

S&H is not included in the above pricing. All S&H will be billed separately. Pricing shall remain firm through December 31, 2020