

THIRD AMENDMENT TO AGREEMENT

This Third 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 (“Original Agreement”) as amended by that certain First Amendment to Agreement dated June 17, 2019 (“First Amendment”) and that certain Second Amendment to Agreement dated June 1, 2020 (“Second Amendment”). The Original Agreement First Amendment and Second Amendment are collectively referred to herein as the “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, software and services in order to add additional products and services under the Agreement.

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:

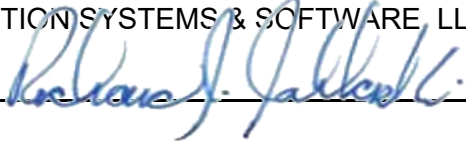
1. **Incorporation of Recitals.** The foregoing recitals are hereby specifically incorporated into, and deemed a material part of, this Amendment.
2. **Purchase Order.** The Purchase Order, attached hereto and incorporated herein by this reference is hereby added to the Agreement and shall be deemed a material part of the Agreement.
3. **Termination of Prior Agreements.** ES&S and the Customer are parties to that certain Sales Order Agreement dated July 27, 2020 for additional voting system equipment (the “Equipment Sales Order Agreement”) and that certain Sales Order Agreement dated July 27, 2020 for protective shields and boxes for such protective shields (the “Protective Shield Sales Order Agreement”). The Equipment Sales Order Agreement and the Protective Shield Sales Order Agreement are collectively referred to herein as the “Prior Agreements.” The parties desire to incorporate the Prior Agreements with and into this Amendment. Therefore, upon the execution of this Amendment the parties hereby agree to terminate the Prior Agreements after which the Prior Agreements shall be of no further force and effect.

4. **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 6th day of August, 2020.

ELECTION SYSTEMS & SOFTWARE, LLC.

COLLIN COUNTY, TEXAS

By: 

By: _____

Its: VP of Finance

Its: _____



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

Purchase Order Agreement

Customer P.O. #: _____

1st Election Date: November 3, 2020

Estimated Delivery Date: August 2020

Phone Number: (972) 547-1910

Fax Number: N/A

Customer Contact, Title: Bruce Sherbet

Customer Name: Collin County, Texas

Type of Sale: **NEW**

Type of Equip: **NEW** **REFURBISHED**

Bill To: _____
Collin County, Texas
Bruce Sherbet
2010 Redbud Boulevard
McKinney, TX 75069

Ship To: _____
Collin County, Texas
Bruce Sherbet
2010 Redbud Boulevard
McKinney, TX 75069

Item	Description	Qty	Price	Total
1	DS200 Model DS200 Scanner with Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, #2 Ballot Box Lock, Paper Roll, and One (1) Standard 4GB Memory Device - Version 6.1.0.0	30	\$5,750.00	\$172,500.00
2	DS200 Tote Bin	30	\$225.00	\$6,750.00
3	DS200 Standard 4GB Memory Device (Additional)	30	\$105.00	\$3,150.00
4	ExpressTouch Curbside Voting Solution ExpressTouch with Internal Battery Backup, Booth, Privacy Panels, Carrying Case, Reports Printers, Power Supply, Paper Roll, and One (1) Standard 4GB Memory Device - Version 6.1.0.0	30	\$3,850.00	\$115,500.00
5	ExpressTouch Curbside Voting Solution Smart Card - Supervisor	30	\$10.00	\$300.00
6	ExpressTouch Curbside Voting Solution UVC Keypad with Headset	30	\$200.00	\$6,000.00
7	DS200 Equipment Installation	30	\$115.00	\$3,450.00
8	ExpressTouch Curbside Voting Solution Equipment Installation	30	\$105.00	\$3,150.00
9	Printer ExpressVote Printer	125	\$725.00	\$90,625.00
10	Election Supply Item Check-In Protective Shield - Compact	125	\$125.00	\$15,625.00
11	Election Supply Item Box for Check-In Protective Shield - Compact (Holds up to 2 Shields)	75	\$10.00	\$750.00
12	BOD Compact Printer with Firmware and Five (5) Year Hardware Warranty	2	\$2,975.00	\$5,950.00
13	BOD Laptop Computer with Router	1	\$1,320.00	\$1,320.00
14	Services Ballot On Demand Training	1	\$1,700.00	\$1,700.00
15	Services Installation & Acceptance Testing	2	\$400.00	\$800.00
16	Shipping Shipping & Handling	1	\$7,225.00	\$7,225.00

Order Subtotal **\$434,795.00**

Tabulation Hardware Discount **(\$13,500.00)**

Order Total **\$ 421,295.00**

Freight Billable: yes no

Sales Order Agreement

Chris Moody

Regional Sales Manager

Customer Signature

Date

V.P. of Finance

Date

Title

Note 1:

Ballot On Demand Fees and Consumables:

ELECTION SET-UP FEES:

(Subject to change after the Initial Term)

Initial Election Set-Up Fee per Election Event

Black and White Ballot Set-Up:

\$450.00 per election set-up + \$1.00 per unique PDF for first Computer
\$75.00 for each additional Computer set-up

Color Ballot Set-Up:

\$550.00 per election set-up + \$1.00 per unique PDF for first Computer
\$75.00 for each additional Computer set-up

Rework of Set-Up due to Customer Changes After Initial Set-Up is Complete:

\$175.00 per change event for first Computer set-up
\$75.00 for each additional Computer set-up

Other:

\$350.00 fee for L&A Test Deck Creation
On-Site Set-Up: \$1,700.00 per person, per day

Election Set-Up Fees are due within thirty (30) days of receipt of ES&S invoice.

Consumables:

Customer shall be responsible for the purchase, shipping and installation of all components that are consumed in the normal course of operating the ES&S Equipment, including, but not limited to, toner, drums, transfer belts, fusers, and ballot stock (collectively, "Consumables"). All Consumables shall meet ES&S' specifications and may be purchased directly from ES&S or from authorized dealers. In the event the Customer purchases Consumables which do not meet ES&S specifications, Customer shall be solely responsible for any and all costs, expenses, liabilities, losses and damages resulting from the Customer's failure to purchase Consumables which meet ES&S' specifications.

OPTIONAL PRE-ELECTION SERVICES FEES:

Upon request by the Customer and the payment of the associated fees, ES&S shall provide the following services to the Customer.

DESCRIPTION:

Printer Cleaning, Pre-Election Testing, Roller Replacement, Parts Inspection, Ballot-Folder Adjustment/Testing and Onsite Assistance with Print-Alignment, Clearing Jams and other Hardware Adjustments.

SERVICE FEE PER DAY:

\$1,700.00 Per Person Per Day for the Initial Term

\$210,647.50 of Order Total will be invoiced upon Contract Execution.

\$210,647.50 of Order Total will be invoiced as Equipment is delivered to Customer.

Payment Terms

Invoices are due net 30 from invoice date.

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

Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Warranty Period (Years):

One (1) Year From Equipment Delivery

Terms and Conditions

The equipment, software and services, as applicable, set forth in this Purchase Order shall be governed by the terms and conditions of that certain Sales Order Agreement between the parties dated January 31, 2019 as amended (collectively, the "Agreement") to the extent not otherwise amended herein, the terms and conditions of the Agreement shall govern.

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

The terms and conditions for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A of the Agreement. The pricing for the equipment and license of software for the post warranty period for the equipment and software purchased and licensed hereunder are set forth on Schedule A1 attached hereto. This shall be in addition to the equipment and software previously set forth in the Agreement.

8/4/2020

Schedule A1
Pricing Summary

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$8,700.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$4,770.00
Total Annual Maintenance Fees for the Initial Four (4) Year Term:		\$13,470.00
<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
30	DS200 Tabulator	Years 2 - 5	\$185.00	\$5,550.00
30	ExpressTouch (With Printer)	Years 2 - 5	\$105.00	\$3,150.00
Total Annual Maintenance Fees for the Initial Term				\$8,700.00

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
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
30	DS200 Tabulator	Years 2 - 5	\$87.00	\$2,610.00
30	ExpressTouch (With Printer)	Years 2 - 5	\$72.00	\$2,160.00
Total Annual Firmware License, Maintenance and Support Fees for the Initial Term				\$4,770.00

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.