

PURCHASING AND LICENSING COMMITTEE

13-0301R

RESOLUTION AUTHORIZING A CONTRACT WITH ELECTION SYSTEMS AND SOFTWARE, LLC, FOR THE PURCHASE AND DELIVERY OF OPTICAL SCAN VOTING SYSTEM EQUIPMENT, SOFTWARE AND RELATED SERVICES FOR A TOTAL ESTIMATED AMOUNT OF \$269,249.57.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Election Systems and Software, LLC, substantially the same as that on file as Public Document No. _____ with the office of the city clerk, for the purchase and delivery of optical scan voting system equipment, software and related services, in accordance with the Hennepin County agreement specifications and pricing, for an estimated amount of \$252,592 plus \$16,657.57 sales tax, for a combined estimated total of \$269,249.57, payable from Capital Equipment Fund 250, Department/Agency 015 (public administration), Division 2013 (fiscal year), Object 5580 (capital equipment), Project CE250-E310.

Approved:



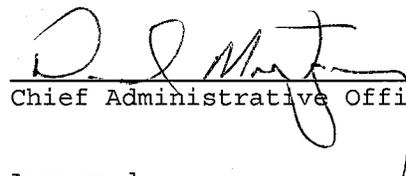
Department Director
Purchasing Agent *DS*

Approved as to form:



Attorney

Approved for presentation to council:



Chief Administrative Officer

Approved:



Auditor

STATEMENT OF PURPOSE: The city purchased the current voting equipment in the year 2000. The new voting unit has upgraded with enhancements of a digital scanner that includes a large 12 inch LCD touch screen for better voter information and easier to read for election judge diagnostics; larger, easily accessible ballot box and capabilities for wireless modem transfer of election night results. Already so far, Hennepin and Anoka counties and other jurisdictions have made commitment for over 1,100 of these units.

**ELECTION SYSTEMS & SOFTWARE, LLC
VOTER TABULATION SYSTEM AND SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

BETWEEN: Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S");

AND: City of Duluth, Minnesota ("Customer").

RECITALS:

A. Customer has agreed to purchase/license voter tabulation equipment and related software and services from ES&S for use in the City of Duluth, Minnesota (the "Jurisdiction"). The terms and conditions under which such equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

Exhibit A (Pricing Summary)

Exhibit B (ES&S Equipment Description and Pricing)

Exhibit C (ES&S Software Description and Pricing)

Exhibit D (Election Support Services)

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

Exhibit F (Acceptance Criteria)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Minnesota**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

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

CITY OF DULUTH, MINNESOTA
411 W 1st Street, Room 330
Duluth, MN 55802-1104
Fax No.: (218) 723-3336

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

**GENERAL TERMS
ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment and Third Party hardware or equipment.
- c. "ES&S Equipment" means ES&S' proprietary hardware or other equipment.
- d. "ES&S Hardware Maintenance Services" and "ES&S Software Maintenance and Support" means those services described on Exhibit E.
- e. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.
- f. "Software" means ES&S Software and Third Party software.

**ARTICLE 2
SALE OF ES&S EQUIPMENT AND THIRD PARTY ITEMS/LICENSE OF ES&S SOFTWARE**

2.1 **Purchase Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment and the Third Party Items described on Exhibits B and D. The payment terms for the ES&S Equipment and Third Party Items are set forth on Exhibit A. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the ES&S Equipment, ES&S Software and Third Party Items.

2.2 **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable, annually renewable 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"). 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 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. 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.

2.3 Prohibited Uses. Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

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 ES&S Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S 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 ES&S Software without ES&S' prior written consent; or

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

2.4 License Fees. In consideration for ES&S' grant of the license for the ES&S Software described in Section 2.2(a), Customer shall pay ES&S the ES&S Annual Software License, Maintenance and Support Fees set forth on Exhibit A. The consideration for ES&S' grant of the annual license for the ES&S Firmware is included in the cost of the ES&S Equipment. Any license or royalty fees payable to any Third Parties for the use of any Third Party Items are the sole responsibility of Customer.

2.5 Term of Licenses. The initial licenses for the ES&S Software granted in Section 2.2 shall commence upon the delivery of the ES&S Software described in Section 2.2 and expire one year thereafter (the, "Initial License Term"). The licenses shall automatically renew for successive one-year periods upon Customer's timely payment of the annual Software License, Maintenance and Support Fees set forth on Exhibits A and E (each, a "Renewal License Term"). ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.3, or 3.6 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 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.

2.6 Updates. During the Warranty Period (as defined in Section 3.2(a) below), 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. Upon termination of the Warranty Period, Customer shall be entitled to receive the Software License and Maintenance and Support described on Exhibit E if it has so elected in Section B of the signature page to this Agreement.

2.6 Compliance with Laws. In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of delivery, the Equipment and Licensed Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in the Customer's state. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for Maintenance and Support Services, the Equipment and Licensed Software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the Licensed Software (but not Equipment) as are technologically feasible and commercially reasonable. Customer shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by ES&S in order for such Equipment to remain compliant with applicable laws and regulations. Customer shall also be solely responsible for the cost of any third party items that are required in order for the Equipment and/or Licensed Software to remain compliant with applicable laws and regulations.

2.7 State Recertifications. In the event that any future state certifications or recertifications are required that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the Licensed Software and/or Equipment licensed and sold hereunder, Customer shall be responsible for:

- (i) the total cost of any third party items that are required in order for the Equipment and/or Licensed Software to remain certified;
- (ii) Customer's pro-rata share of such future state certification or recertification costs; and
- (iii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the Equipment and/or Licensed Software that may result from such future state certifications or recertifications.

Customer's pro-rata share of the costs included under subsections 2.7(ii) and 2.7(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.

ARTICLE 3 MISCELLANEOUS

3.1 **Delivery; Risk of Loss.** ES&S anticipates shipping the Equipment and Software identified on Exhibits B-D to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer, delays in certification, and other events. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the Equipment and Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer. The parties shall conduct and complete, within thirty (30) days after delivery, the acceptance testing procedures outlined on Exhibit F to confirm that the ES&S Equipment and ES&S Software perform in accordance with the warranties set forth in Sections 3.2(a) and 3.2(b) below (the "Acceptance Testing"). Upon completion of the Acceptance Testing, representatives of both parties will execute the "Certificate of Acceptance" included at Exhibit F.

3.2 **Warranties.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for the period beginning upon acceptance of the equipment and software through September 30, 2014 (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty 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 printer ribbons, paper rolls, batteries, removable media storage devices, cancellation stamps, ink pads, PCMCIA cards or marking devices. The Warranty Period will commence upon completion of the Acceptance Testing. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer promptly notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or 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, and (IV) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

b. **System.** ES&S warrants that the ES&S Equipment and ES&S Software will operate in conjunction with the Third Party Items during the Warranty Period, provided that (i) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S, and (ii) the Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, ES&S will repair or replace the item of ES&S Equipment or ES&S Software that is causing such breach to occur. Customer

acknowledges that ES&S has merely purchased the Third Party Items for resale or rental to Customer, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the Third Party Items which are provided to ES&S.

c. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF SUBSECTIONS 3.2(a) or 3.2(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.3 **Routine Maintenance For ES&S Equipment During Warranty Period.** During the Warranty Period, Customer may request that ES&S provide the Routine Maintenance Services described in Article II, Subsection 1(b) of Exhibit E for one or more units of ES&S Equipment. Any such request shall be made at least 60 days before the Routine Maintenance Services are desired. The per-unit fee for such Routine Maintenance Services is set forth on Exhibit A and shall be due within 30 days after invoice. The terms and conditions of Section 1(b) of Exhibit E shall govern the providing of the Routine Maintenance Services. When the ES&S Equipment is not in use, Customer shall properly store the ES&S Equipment in accordance with the storage requirements established in the Documentation. Upon termination of the Warranty Period, Customer shall be entitled to receive the Hardware Maintenance Services described on Exhibit E if it has so indicated in Section B of the signature page to this Agreement.

3.4 **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.

3.5 **Taxes; Interest.** Customer shall 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; provided, however, Customer 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 3.5, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

3.6 **Proprietary Rights.** Customer acknowledges and agrees as follows:

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.7 **Indemnification.** Customer shall indemnify and hold harmless ES&S from and against any and all Adverse Consequences arising out of or relating to the following:

a. Any 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;

c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer's Representatives; and

d. 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 3.7, 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.

3.8 **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.

3.9 **Term; Termination.** This Agreement shall be effective on the Effective Date. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching party.

3.10 **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.

3.11 **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 fax, (c) sent by commercial overnight courier (with written verification of receipt) or (d) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

3.12 **Disputes.**

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable, enter the premises where the ES&S Equipment and Third Party Items are located and remove them.

3.13 **Other.** 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 2 and Sections 3.2(c), 3.4-3.9, 3.11 and 3.12(b) of these General Terms shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING SUMMARY**

Sale Summary:								
Description	Refer to	Amount						
ES&S Equipment	Exhibit B	\$241,846.20						
ES&S Software Initial License Fees	Exhibit C	\$0.00						
Election Support Services	Exhibit D	\$10,300.00						
Shipping and Handling	Note 1	Included						
Total Net Sale		\$252,176.20						
Terms & Conditions:								
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.5. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.</p>								
<p>Note 2: <u>Payment terms are as follows:</u> \$63,044.05 Due Within Ten (10) Business Days After Agreement Execution: \$189,132.15 Due Thirty (30) Calendar Days after Equipment Delivery</p>								
<p>Note 3: Services in excess of those set forth in <u>Exhibit D</u> shall be charged at the rate of \$1,500 per day, including expenses.</p>								
<p>Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:</p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>Equipment/Software</u></td> <td style="text-align: center;"><u>Estimated Delivery Date</u></td> </tr> <tr> <td style="text-align: center;">ES&S Equipment</td> <td style="text-align: center;">To be agreed to by the parties</td> </tr> <tr> <td style="text-align: center;">ES&S Software</td> <td style="text-align: center;">To be agreed to by the parties</td> </tr> </table>			<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	ES&S Equipment	To be agreed to by the parties	ES&S Software	To be agreed to by the parties
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>							
ES&S Equipment	To be agreed to by the parties							
ES&S Software	To be agreed to by the parties							
<p>Note 5: Total Net Sale of \$252,176.20 is based upon Customers commitment to subscribe to ES&S Ballot Printing Services for a period of five (5) years beginning upon Contract Execution. Ballot Printing Services will be provided at a rate of \$0.3220 per printed ballot, not including shipping and handling, for the five (5) year term. In the event the Customer terminates its Ballot Printing Services with ES&S prior to the expiration of the five (5) year term as set forth herein, any discounted rates, fees or pricing will be retroactively invoiced to the Customer per the terms of the Hennepin County, Minnesota Request for Proposal dated February 15, 2013 and ES&S' response to the same. Customer shall remit payment to ES&S immediately upon receipt of such invoice.</p>								
Warranty:								
<p>ES&S Equipment and ES&S Software – Warranty Period: Anticipated Warranty Period: Beginning Upon Completion of Acceptance Testing through September 30, 2014</p>								
Ongoing Services:								
Description	Refer to	Annual Fee						
Routine Maintenance Services during Warranty Period; Payment is due 30 days after invoice.	Section 3.3	N/A						
Post Warranty Hardware Maintenance Services	Exhibit E	\$7,862.40						
<p>Services commence on October 1, 2014 Fees reflect a one-year term. Payment is due at the start of the maintenance period.</p>								
Post Warranty Software License, Maintenance & Support Services								
- ES&S Firmware	Exhibit E	Included in Hardware Maintenance Fee						
- All Other ES&S Software	Exhibit E	N/A						
<p>Services commence on October 1, 2014. Fees reflect a one-year term. Payment is due at the start of the maintenance period.</p>								

**EXHIBIT B
ES&S EQUIPMENT DESCRIPTION AND PRICING**

QUANTITY	DESCRIPTION	TOTAL PRICE
42	DS200 Scanner with Firmware, Reverse Wound Paper Roll and 4GB Jump Drive.	\$221,970.00
40	DS200 Plastic Ballot Box with Steel Door and e-Bin	\$33,000.00
40	DS200 4GB Jump Drives (Additional)	\$4,400.00
42	DS200 Paper Roll	\$46.20
40	DS200 Tote Bin	\$6,000.00
	Total Purchase Price	\$265,416.20
	Less: Trade-In Allowance for the Following Equipment: <ul style="list-style-type: none"> - 44 Model 100 Precinct Scanners @ \$425.00 each - 44 Model 100 Steel Ballot Boxes @ \$100.00 each - 44 Model 100 PCMCIA Memory Cards @ \$10.00 each 	(\$23,540.00)
	Net Purchase Price	\$241,876.20
<p>Note: ES&S will remove the Model 100 Precinct Counters at the same time the DS200 Scanners are delivered to the City. The DS200 Ballot Box delivery and removal of the Model 100 Steel Ballot Box will be performed at a time to be agreed to by the parties.</p>		

EXHIBIT C
ES&S SOFTWARE DESCRIPTION AND PRICING

DESCRIPTION	NUMBER OF LICENSES
Unity Election System licensed pursuant to Section 2.2(a) of the General Terms (check modules being licensed):	1
Unity Election Reporting Manager (ERM) Upgrade to Version 8.9.0.0	1
ES&S AutoMARK Firmware Upgrade to Version 1.8.4.0	1
ES&S DS200 Firmware Version 2.10.0.0	1
Total Initial License Fees (including all applicable Documentation)	\$0.00

Note 1: ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates.

Note 2: ES&S DS200 Firmware license fee included in the total cost of the ES&S Equipment.

**EXHIBIT D
ELECTION SUPPORT SERVICES**

1. **Covered Elections.** The services described herein shall be provided only for the following elections (the "Elections"):

TBD

2. **Services.** The election support services to be provided by ES&S, a description of such services and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the Elections set forth above, and the descriptions listed in the table below, and that a change in the Elections or descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S' provision of Election Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Election Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or four hour portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Shipping Material	Dispose of shipping materials (boxes, packaging, etc.)	Customer	
Training – DS200 Scanner	ES&S will provide classroom-style training with hands-on practice using the DS200 Scanner. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	ES&S 1-Day	\$1,575.00

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Election Day Support	For each site support event, ES&S provides one trained representative who is available to the customer the day immediately prior to the election, Election Day and until noon on the day immediately after Election Day ("Site Support Event"). Site Support Event representatives are not technicians. Although needs vary by customer, depending upon the customer's needs and the customer's scheduling of support staff for an election, Site Support Event representatives may assist with election administration, procedural guidance, hardware and software operation, Election Day call center staffing, as a roving troubleshooter during Election Day, and election night accumulation of results. They also will liaison with ES&S support desks if necessary. Note: It is not the responsibility of the Site Support Event representatives to repair tabulation or results reporting equipment. If you have a technical issue, the Site Support Event representative will assist in contacting the technicians in the appropriate support office. Site Support Events are billed per person, per Site Support Event.	ES&S 1-Event	\$4,125.00 per person, per event
	Total Fees: \$5,700.00		

Role/Function	Area of Work or Description	Primary Responsibility
Installation/Acceptance Testing – DS200 Scanner	ES&S will inspect the DS200 Scanner at the customer's delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S
	Total Installation Fees: \$4,600.00	

[END OF EXHIBIT D]

**EXHIBIT E
LICENSE AND MAINTENANCE SERVICES
(POST-WARRANTY PERIOD)**

**ARTICLE I
GENERAL**

1. **Term; Termination.** This Exhibit E for Hardware Maintenance and Software License Maintenance and Support Services shall be in effect for the coverage period as described in Schedule E1 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive **Two-Year Periods** (each a "Renewal Period") until this Exhibit E is 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 thirty (30) 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 Exhibit E, 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 Exhibit E. The termination of this Exhibit E 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 Exhibit E is terminated pursuant to subsection 1(c) or 1(d) below.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit E, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule E1 for the Initial Term and any Renewal Periods. The Hardware Maintenance and Software License, Maintenance and Support Fees for any Renewal Periods shall be as agreed to by the parties and such fees will not exceed ES&S' list prices which are in effect at the time of commencement of any Renewal Period. The Renewal Period fees are due and payable no later than thirty (30) days prior to the beginning of such renewal period. The Software License, Maintenance and Support Fees shall be comprised of (i) a fee for the Software License, Maintenance and Support of the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit E. If Customer elects to receive Hardware Maintenance or Software License, Maintenance and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, ES&S will charge an incremental fee for such services. In the event Customer terminates this Exhibit E through no fault of ES&S and later desires to subscribe to a Hardware Maintenance or Software License, Maintenance and Support Plan, or otherwise changes its Hardware Maintenance or Software License, Maintenance and Support Plan with ES&S during the Initial Term or any renewal 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 or Software License, Maintenance and Support Coverage.

**ARTICLE II
HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment listed on Schedule E1 is set forth on Schedule E1 (the "Products") and 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 in Normal Working Condition ("Routine Maintenance Services") once each **Twenty Four (24) Months** during the Initial Term or any

renewal thereof. 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, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges 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 Schedule E1 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 Schedule E1 as "repair only" 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 preventative maintenance event as follows: Repair Services for Products covered under this Agreement will be performed at 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 24 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 within 48 hours after Customer notifies ES&S of the need therefor), 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 Schedule E1.

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, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges 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 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 fit for the ordinary purpose for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published ES&S Technician labor rate 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 the current published ES&S Technician labor rate) 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

SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively,

“ES&S Software”) in order for the Customer to continue to license and use the ES&S Software in accordance with the license terms set forth herein as well as 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 License, Maintenance and Support services provided by ES&S and each party’s obligations with respect to such services are set forth on Schedule E1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation (“Updates”), on a schedule defined by ES&S. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be “Software”, and shall be subject to all the terms and conditions of ES&S’ license of the Software, upon delivery. Customer shall install Updates in accordance with ES&S’ recommended instructions or may request that ES&S install the Updates. In the event Customer requests ES&S to install an ES&S Firmware Update, ES&S shall install such Update only in connection with the Routine Maintenance Services provided herein. ES&S may charge Customer at its then-current rates to (a) ship the Updates, (b) install the Updates (c) provide maintenance and support on the Software which is required as a result of Customer’s failure to timely install an Update or (d) train the Customer on the Updates. 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 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 Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in federal or state or local law.

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 24 hours 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 License, Maintenance and Support 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 new Software License and resume receiving Software License, 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.

Schedule E1

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Twenty Four (24) Months Commencing on the Expiration of the Warranty Period

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
42	DS200 Scanners	Initial Term	\$187.20	\$7,862.40
Total Hardware Maintenance Fees for the Initial Term				\$7,862.40

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 24-month period shall be 55% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be 150% of the then current maintenance fee per unit.

Note 3: Customer's Designated Location: City of Duluth, Minnesota

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 the Agreement

1. Telephone support
 - ES&S will provide Hardware support on procedural questions of a specific nature not covered in ES&S' Hardware User Manuals;
 - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution (to be provided on a limited basis)
 - ES&S will provide Hardware issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Equipment User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Equipment User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
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

3. 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.

4. 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

Initial Term: Twenty Four (24) Months Commencing on the Expiration of the Warranty Period

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
42	DS200 Scanners	Initial Term	Included in Hardware Maintenance Fee	Included in Hardware Maintenance Fee
Total Annual Firmware License Maintenance and Support Fees for the Initial Term				Included in Hardware Maintenance Fee

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

1. Telephone support
 - ES&S will provide Software support on procedural questions of a specific nature not covered in ES&S' Software User Manuals;
 - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.

2. Issue Resolution (to be provided on a limited basis)
 - ES&S will provide Software issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Software User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.

3. ES&S will provide Technical Bulletins available on the ES&S Customer Portal on a schedule to be determined by ES&S regarding specific issues the Customer may be experiencing.

Note: Except for those Software Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software 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's current software and hardware operator shall have completed a full Unity training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
 - 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 store equipment in accordance with ES&S requirements.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.
4. Customer shall be responsible for 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 VR system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise
7. Customer shall be responsible for Customer Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for any error or exception handling not identified in the User Guides as part of ES&S software or hardware.
9. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.
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.

**EXHIBIT F
ACCEPTANCE CRITERIA**

DS200 Acceptance Testing Criteria

Date: _____ **Machine SN:** _____ **Certified Firmware:** _____

Visual Inspection:

- Ensure that there are no scratches or gouges on any part of the unit
- Verify that all labels are placed in their appropriate place and in their correct orientation
- Ensure the Printer paper roll is installed in the Printer.

Physical Inspection:

- Apply AC to Wall Power Adapter. Connect Wall Power Adapter to the back of the unit and press the "POWER" button.
- Observe the rear LED, located next to the Wall Power Adapter Cord Connector, if the LED is amber and blinking slowly this indicates that the Battery Pack is charging. If the LED is a solid green, the Battery Pack is completely charged.
 - o Verify AC Plug Icon is present and does not have an "X" located in upper right corner of the screen.
- Enter the Touch Screen Calibration by pressing the "Close Polls" button for two seconds when prompted to do so at the Startup screen.
 - o Touch the two circles (one in the Upper Left Corner and one in the Lower Right Corner of the screen) and then touch the "Save & Exit" button.
- Verify the DS200 Firmware Version is 1.1.0.0; PMB is 0.8.0.0; Scanner is 2.6.0.0.0 on Startup Printout.
- Insert the 512MB Flash Drive containing the BMW Demo Election in USB port B.
 - o When the unit recognizes the 512MB Flash Drive w/ Demo Election, the Election Icon will go from having an "X" to a green ✓ mark on it.
- Check the date and time on the top portion of the display to ensure the date and time is correct.
 - o If a change is needed, press the lower right arrow on the display screen then press the "go to admin button" and on the next screen enter the password.
 - o Go to "systems settings", "date and time" and then press date or time and a keyboard will come up so you can make changes. Press the "enter key". You will go back to the original screen where you will press previous and here you will "accept new time."
- Press the "OPEN POLLS" button on the screen to scan the BMW Demo Ballots.
- Ensure that the test ballots scan in all four orientations.
- Insert the 2 Demo Ballots to check the Multi-Sheet Sensor. Two sheets should be rejected.
- Press and hold the "CLOSE POLLS" button for two seconds to close the polls.
- Verify that the Precinct Report Printout should read 4 ballots cast.
- Disconnect the Wall Power Adapter cord from unit.
 - o Unit should continue to operate, and the X should appear over the AC icon.
- Re-connect Wall Power Supply cord

- The X should disappear from the AC icon.
- Check Modem Operation. (If Unit is equipped with a Modem)
- Power down the unit by touching the "Shutdown" button on the Touch Screen.
- Verify that the Display switch operates correctly by completing the following:
 - With the Wall Power Adapter still connected to the unit, lower the Display to the closed position.
 - Raise the Display back to the opened position.
 - The unit should power back up.

Note: The Display switch will not operate if the Wall Power Supply cord has been removed.

- Verify all Locks and Doors have a smooth function and are locked.

**EXHIBIT F
ACCEPTANCE CRITERIA**

CERTIFICATE OF ACCEPTANCE

The undersigned do hereby certify that the Equipment listed below has been tested and accepted under the criteria specified in the Agreement. Serial Numbers of respective Equipment are attached.

DS200 Units
<u>Units Delivered</u>
<u>Units Delivered</u>

Firmware Version: _____

Customer: _____

Representative: _____
(Printed Name & Title)

(Signature)

ES&S
Representative: _____
(Printed Name)

(Signature)

Date: ____/____/____

[END OF EXHIBIT F]