

PURCHASING AND LICENSING COMMITTEE

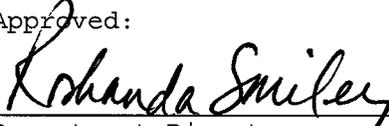
13-0344R

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 \$269,606.97.

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 \$252,941.20 plus \$16,665.77 sales tax, for a combined estimated total of \$269,606.97, payable from Capital Equipment Fund 250, Department/Agency 015 (public administration), Division 2013 (fiscal year), Object 5580 (capital equipment), Project CE250-E310.

Approved:



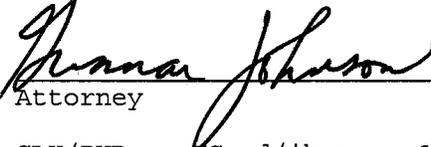
Department Director
Purchasing Agent *SP*

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

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.

City Contract No: _____

ELECTION EQUIPMENT AND SERVICES AGREEMENT

This Agreement is between the CITY OF DULUTH, STATE OF MINNESOTA, (the "CITY") 411 West First Street, Duluth, Minnesota 55812, and Election Systems & Software, LLC, a Delaware limited liability company with offices located at 11208 John Galt Boulevard, Omaha, Nebraska 68137 ("CONTRACTOR").

The parties agree as follows:

1. TERM AND TOTAL COST OF THE AGREEMENT

This Agreement shall commence upon the signing of this Agreement and shall continue in effect through the satisfactory completion of the services to be provided herein, unless terminated earlier in accordance with the provisions of this Agreement.

Contractor Fees and Expenses:

The Contractor shall be compensated for all services and expenses according to the payment and delivery schedule (Attachment 1), which is attached and incorporated herein.

2. SYSTEM AND SERVICES

As applicable, Capitalized terms shall have the meanings defined herein.

a. "System" shall mean all Equipment, Software, documentation and other products provided by CONTRACTOR and as further described and specified in Attachments 2 and 3.

b. "Equipment" shall mean the precinct counters, central counters, ballot on demand printers, and other equipment provided by CONTRACTOR hereunder and as further described and specified in Attachment 2.

c. "Software" shall mean all software, firmware, computer programs, applications, utilities, middleware, third-party software, documentation and other related code or technology as further described and specified in Attachment 3. Further, "Software" shall also include all security devices, updates, major and/or minor enhancements, versions, releases, corrections, or any other modifications, improvement or

enhancements provided as part of this Agreement. CONTRACTOR shall pass through all of its rights and obligations it has received from the third party to the CITY for the third-party software as part of this Agreement, including but not limited to executing documentation necessary to pass-through the same.

d. "Services" shall mean the System installation, implementation, maintenance, training and other support as further described and specified on Attachment 4, Election Support Services.

3. TESTING AND ACCEPTANCE

- A. The System shall be delivered and installed pursuant to the Milestone schedules set forth in Attachment 1 ("Milestone Release(s)"). Each Milestone Release shall be tested pursuant to the requirements, specifications, descriptions, procedures and protocols set forth in Attachment 6. The parties shall conduct and complete, within thirty (30) days after each Milestone Release, the acceptance testing procedures outlined in Attachment 6 to confirm that the Equipment and Software perform in accordance with its the specifications set forth herein (the "Acceptance Testing"). Upon completion of the Acceptance Testing, representatives of both parties will execute the "Certificate of Acceptance" included in Attachment 6 to confirm that the System, Equipment and Software have been accepted ("Accepted" or "Acceptance").
- B. In the event any Equipment or Software of the System does not pass the Acceptance Testing, the CITY will provide a detailed description of any Equipment or Software component or functionality that does not conform with the Acceptance Testing ("Non-conformity").
- C. CONTRACTOR will correct a Non-conformity, at CONTRACTOR's sole expense, within fifteen (15) days of receiving the Non-conformity notice. CITY shall then complete the Acceptance Testing on the corrected Equipment or Software. If CITY has not notified CONTRACTOR of a Non-conformity in the corrected Equipment or Software within fifteen (15) days pursuant to the acceptance testing procedures outlined in Attachment 6, the Equipment, Software or System shall be deemed to be "Accepted". Use of the Equipment, Software or System during the testing period shall not constitute Acceptance.
- D. If CONTRACTOR is unable to correct a Non-conformity within the fifteen (15) day period: (1) CITY may extend the correction period to a mutually agreeable date; (2) CITY may require further modification of the Equipment and Software by CONTRACTOR, at CONTRACTOR's sole expense, so that the Equipment and Software will be acceptable; (3) the Parties may mutually agree upon an

appropriate adjustment to the fees; or (4) CITY may, after the expiration of all applicable cure periods as set forth herein, terminate this Agreement and receive a refund of all monies paid with respect to the Non-conforming Equipment and Software plus any other direct costs related to the Non-conforming Equipment and Software including, but not limited to, amounts paid for Services, and the costs of removing and returning the System. CITY's election herein, for a Non-conformity and/or failure to cure the Non-conformity, shall not affect its right to terminate this Agreement or any other remedies the CITY is entitled to.

4. PRICING, PAYMENT TERMS AND REBATE

- A. Payment for the System and Services shall be made upon the Acceptance of Milestones as set forth in Attachment 1. Upon the Acceptance of a Milestone, CONTRACTOR shall invoice CITY the amount set forth in Attachment 1 for the indicated Accepted Milestone. Payment shall be made within thirty-five (35) days from receipt of the invoice. All invoices shall be sent to the CITY's address supplied by CITY.

No payment shall constitute an Acceptance of the System or Services or relieve the CONTRACTOR of its obligations under this Agreement.

If this Agreement expires or is cancelled or terminated, with or without cause, by either party, at any time before Acceptance of the final Milestone, CONTRACTOR shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then delivered and Accepted Milestones pursuant to the terms expressly set forth in this Agreement. In the event CONTRACTOR has performed work toward a Milestone that CITY has not Accepted at the time of cancellation or termination, CONTRACTOR hereby expressly acknowledges and agrees that CONTRACTOR shall not be entitled to any payment for said work including but not limited to incurred costs of performance, termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth herein.

5. LICENSE

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants to CITY a royalty-free, annually renewable, world-wide, non-exclusive, non-transferable license for CITY'S bona fide full-time, part-time or temporary employees or individual contractors working on-site within the CITY's location to use the Software and all related operating instructions, user manuals and training materials supplied by CONTRACTOR (collectively the "Software

Documentation"). The license allows CITY to use and copy the Software (in object code only) and the Software Documentation, solely for the purposes of CITY's business including but not limited to defining an election and tabulating and reporting election results in the CITY. In addition, the CITY may use a reasonable number of copies of the Software and/or documentation for archival, testing, disaster recovery and other emergency purposes. The rights granted to CITY pursuant to this section may be collectively referred to as the "License". Notwithstanding the foregoing, in no event shall the CITY allow any competitors of the CONTRACTOR to utilize the Software for any purposes whatsoever without the prior written consent of CONTRACTOR.

- B. CITY shall not take any of the following actions with respect to the Software or Software Documentation:
- i. 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;
 - ii. Except as expressly authorized by the License above, cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Software 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 Software or Software Documentation by any third party to perform any services for CITY (including, but not limited to, any coding, programming or layout services) without CONTRACTOR's prior written consent, except that, CONTRACTOR hereby expressly authorizes CITY to allow use by a third-party contractor, with whom CITY has a direct or indirect business relationship, as such use is necessary solely to configure or connect the System to CITY's computer networks or other CITY systems; or
 - iii. Cause or permit any change to be made to the Software without CONTRACTOR's prior written consent; or
 - iv. Except as permissible by applicable law, including but not limited to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, cause or permit any copying, reproduction or printing of any output generated by the Software in which CONTRACTOR 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.

- C. The Licenses granted in Section 5 shall commence upon the delivery of the Software. The License shall survive the termination of all other obligations of the parties under this Agreement and the termination of all Attachments; provided, however, that CONTRACTOR may terminate the License if CITY fails to pay the consideration due for, or breaches Sections 5, or 18 with respect to, such License. Upon the termination of the License granted in Section 5 for the Software, CITY shall immediately return such Software and the related Software Documentation (including any and all copies thereof) to CONTRACTOR, or (if requested by CONTRACTOR) destroy such Software and Software Documentation and certify in writing to CONTRACTOR that such destruction has occurred.
- D. During the Warranty Period (as defined in Section 6 below), CONTRACTOR may provide new releases, upgrades or maintenance patches to the Software, together with appropriate Software Documentation ("Updates"), on a schedule defined by CONTRACTOR. CITY is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be CONTRACTOR Software for purposes of this Agreement upon delivery. CITY may install the Updates in accordance with CONTRACTOR's recommended instructions or may request that CONTRACTOR install the Updates. CONTRACTOR may charge CITY at its then-current rates to (i) deliver the Updates to the CITY, (ii) train CITY on Updates, if such training is requested by CITY; (iii) install the Updates or (iv) provide maintenance and support on the CONTRACTOR Software that is required as a result of CITY's failure to timely or properly install an Update. Upon termination of the Warranty Period, CITY shall be entitled to receive the Maintenance and Support described on Schedule 5-1 of Attachment 5 upon the payment of the applicable maintenance and support fees as set forth on Schedule 5-1 of Attachment 5.

6. RIGHTS, DUTIES, OBLIGATIONS AND WARRANTIES

- A. CONTRACTOR warrants that it is the lawful owner of the System, including but not limited to the Equipment and the Software, or, to the extent it is not the lawful owner, that it has all rights necessary to sell and/or license the same to CITY.
- B. Except as otherwise set forth herein, CONTRACTOR shall assign, convey and transfer to CITY all right, title and interest in and to all copyrightable material which CONTRACTOR may conceive or originate either individually or jointly with others, and which are specifically developed for the CITY under this Agreement. Upon request of the CITY, CONTRACTOR shall execute all papers and perform all other acts necessary to assist the CITY to obtain and register its ownership rights, including but not limited to copyrights. Where applicable, works for authorship

created by CONTRACTOR for the CITY in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act.

- C. CONTRACTOR assumes all risk for the System, including but not limited to Equipment, during periods of transportation to the CITY's designated location for the completion of Acceptance Testing. Upon delivery of the System to the CITY's designated location, risk of loss for the System shall pass to the CITY.
- D. CONTRACTOR warrants that the System shall not violate or in any way infringe any patent, patent application, copyright, trade secret, trademark, trademark application, or other proprietary or intellectual property rights ("Intellectual Property Rights").
- E. Services shall meet or exceed the service levels and delivery schedules set forth on Attachments 1 and 4.
- F. CONTRACTOR represents and warrants to CITY that the System shall perform in accordance with its operating instructions, user manuals and training materials as well as the descriptions and specifications in this Agreement: (1) for the period commencing upon the completion of Milestone 2 and continuing through December 31, 2014 (the "Warranty Period"); and (2) at all times during any maintenance period and/or any period that CONTRACTOR is providing maintenance and support services, provided the CITY has paid CONTRACTOR for such maintenance and support services ("Post Warranty Maintenance and Support").
- G. During the Warranty Period, CONTRACTOR will repair or replace any component of the Equipment and Software which, while under normal use and service: (i) fails to perform in accordance with its operating instructions, user manuals and training materials in all material respects, or (ii) is defective in material or workmanship. The warranty set forth herein shall not include the repair or replacement of any third party software or Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, paper rolls, removable media storage devices, memory cards, cancellation stamps, ink cartridges or marking instruments. The Warranty Period will commence upon completion of Milestone 5 Software Acceptance Testing (See Attachment 1). Any repaired or replaced item of Equipment or Software shall be warranted only for the unexpired term of the Warranty Period. All parts removed from the Equipment or Software will become the property of CONTRACTOR. This warranty is effective provided that (I) CITY promptly (within 15 days) notifies CONTRACTOR of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the Equipment or

Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by CONTRACTOR, (III) the Equipment or 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 CONTRACTOR or causes beyond the reasonable control of CONTRACTOR or CITY, 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) CITY has installed and is using the most recent Update, or the second most recent Update, provided to it by CONTRACTOR. 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 handled by the CITY in such a way 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.

- H. CONTRACTOR warrants that the Equipment and Software will operate in conjunction with the third party items provided by CONTRACTOR during the Warranty Period, provided that (i) CITY has installed and is using the most recent Update, or the second most recent Update, provided to it by CONTRACTOR, 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, which shall be reviewed at the time of installation of Updates to ensure continuation of proper functioning. In the event of a breach of this warranty, CONTRACTOR will repair or replace the item of Equipment or Software that is causing such breach to occur. CITY acknowledges that CONTRACTOR has merely purchased the third party items for resale to CITY, and that the proprietary and intellectual property rights to the third party items are owned by parties other than CONTRACTOR ("Third Parties"). CITY further acknowledges that except for the payment to CONTRACTOR for the third party items, all of its rights and obligations with respect thereto flow from and to the Third Parties. CONTRACTOR shall provide CITY with copies of all documentation and warranties for the third party items which are provided to CONTRACTOR.
- I. IN THE EVENT OF A BREACH OF SUBSECTIONS 6(F) or 6(G), CONTRACTOR'S OBLIGATIONS AS DESCRIBED IN SUCH SUBSECTIONS ARE CITY'S SOLE AND EXCLUSIVE REMEDIES. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER 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.

- J. CONTRACTOR represents and warrants that the System, including but not limited to the Software, and the media used to distribute it are free of: (1) code that may disrupt, damage, or interfere with CITY's use of its computers, systems and/or telecommunications, e.g., malicious code, viruses, etc.; and (2) devices that are capable of automatically or remotely stopping the System/Software from operating, e.g., passwords, fuses, time bombs, etc; or (3) other harmful code. CONTRACTOR also represents and warrants to CITY that it has developed and engineered its System/Software without any "back doors" or "trap doors" which allow for bypassing any security features.
- K. CONTRACTOR, for itself and CONTRACTOR personnel, agrees to comply with all of CITY's requirements in relation to the security of the CITY computing environment, facilities and otherwise including but not limited to installation and use of antivirus and firewall software per CITY standards on any computing device connecting to the CITY's network facilities. CONTRACTOR shall ensure that its personnel, including but not limited to employees, contractors or other personnel, agree, in writing, to protect and keep private and secure access passwords and to not release passwords to any unauthorized individual. CONTRACTOR agrees to be responsible for any and all damages resulting from (a) unauthorized use of access password(s) by any authorized or unauthorized individual, or (b) any virus transmitted to CITY computer systems due to CONTRACTOR's failure to maintain antivirus software at its most current level.
- L. CONTRACTOR will not alter or disable any hardware or software security programs residing on CITY's hardware or systems. CONTRACTOR will not allow unauthorized traffic to pass into CITY's computers, systems, networks or facilities. If CONTRACTOR does allow unauthorized traffic to pass into CITY's networks, CITY may immediately terminate said access in addition to any other remedies that CITY may have under this Agreement. CONTRACTOR will immediately notify CITY of any actual or suspected security breach.
- M. CONTRACTOR represents and warrants that it will provide competent individuals with the skills, knowledge, and training necessary to perform Services for CITY under this Agreement. Said individuals will perform such Services in a diligent and professional manner, in strict compliance with all performance specifications, and in accordance with generally accepted industry standards.
- N. CITY will have the right to remove any CONTRACTOR personnel in its sole discretion, provided the CITY acts reasonably in any such request. CITY also has the right to ask that specific employees or personnel be assigned to the project, however, CITY acknowledges and agrees that CONTRACTOR shall not be obligated to provide nor continue to provide such specific employees or

personnel throughout the term of the Agreement. Notwithstanding the foregoing, CONTRACTOR agrees that it shall make commercially reasonable efforts to assign any specific employees or personnel requested by the CITY.

- O. Unless expressly set forth otherwise, each of the foregoing warranties is continuous in nature and will be deemed provided by CONTRACTOR on the effective date hereof, and through the pendency of this Agreement. Nothing herein shall limit or modify any other right or remedy available to the CITY under this Agreement, law, statute, rule, and/or equity.

7. INDEPENDENT CONTRACTOR

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing the relationship of co-partners between the parties or as constituting CONTRACTOR as the agent, representative, or employee of the CITY for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement. CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of CONTRACTOR or other persons while engaged in the performance of any work or services required by CONTRACTOR will have no contractual relationship with the CITY and will not be considered employees of the CITY. The CITY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or the Workers' Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against CONTRACTOR, its officers, agents, contractors, or employees shall in no way be the responsibility of the CITY. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from the CITY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

8. NON-DISCRIMINATION

No person shall illegally be excluded from employment rights in, be denied the benefits of, or be otherwise subjected to unlawful discrimination in the program which is the subject of this Agreement.

9. INDEMNIFICATION

- A. If the System or Services become, or in CITY's opinion may become, the subject of any claim, suit or proceeding for infringement of any Intellectual Property Rights or is held or otherwise determined to infringe any Intellectual Property

Rights, CONTRACTOR will, at its expense, defend, indemnify and hold harmless CITY from any liability, judgment, claim, cause of action, suit, proceeding, costs, fees, and expenses including reasonable attorney's fees directly or indirectly related to said Intellectual Property Rights. CONTRACTOR shall (1) keep CITY informed of, and consult with CITY in connection with, the progress of any litigation or settlement; and (2) not settle any claim without CITY's written consent if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation, admission or acknowledgement of any liability or wrongdoing on the part of CITY. If a claim may endanger or disrupt CITY'S quiet use and enjoyment of the System, CONTRACTOR shall, at CONTRACTOR's sole expense, achieve the following results in the listed order of preference: (1) secure for CITY the right to continue using the System; or (2) replace or modify the System to make it non-infringing without degrading its performance or utility; or (3) direct CITY to cease use of the infringing item, and refund the depreciated cost for the infringing item (as determined in accordance with the Generally Accepted Accounting Principles (GAAP)) to CITY, and CITY shall cease and desist from any further use thereof and return the infringing item to CONTRACTOR. As consistent with other remedies throughout this Agreement, the above remedies shall be in addition to any other right or remedy available to the CITY under this Agreement, law, statute, rule, and/or equity. Notwithstanding the foregoing, CONTRACTOR shall not be liable for any infringement claims nor be required to indemnify the CITY for any infringement claims resulting from i) CITY's failure to timely or properly install and use any Update provided to it by CONTRACTOR; (ii) the use of any Equipment or Software in combination with other equipment, hardware or software not meeting CONTRACTOR's specifications for use with such Equipment or Software; or (iii) CITY's modification or alteration of any item of Equipment or Software without the prior written consent of CONTRACTOR.

- B. CONTRACTOR agrees to defend, indemnify, and hold harmless the CITY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of CONTRACTOR personnel, the unlawful disclosure and/or use of protected data,

or other noncompliance with the requirements of the Data Practices provisions set forth in Section 9 hereof.

10. INSURANCE

- A. CONTRACTOR agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force those insurance coverages as set forth on Attachment 7.

11. DATA AND DATA PRACTICES; TECHNOLOGY USAGE AGREEMENT

- A. In collecting, storing, using and disseminating data on individuals in the course of providing services hereunder, the Contractor agrees to abide by all pertinent state and federal statutes, rules and regulations covering data privacy, including, but not limited to, the Minnesota Data Practices Act and all rules promulgated pursuant thereto by the Commissioner of the Department of Administration. All data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing this Agreement is also subject to the provisions of Minn. Stat. § 13 et. seq. (the Minnesota Government Data Practices Act) and, pursuant to that statute, the Contractor must comply with the requirements of that statute as if it were a government entity. All remedies set forth in Minn. Stat. § 13.08 shall also apply to the Contractor. The Contractor is not required to provide public data to the public if that same data is available from the CITY, unless stated otherwise in this Agreement.
- B. Through the review and assessment of the CITY's systems, the CONTRACTOR may be exposed to CITY data and/or data on individuals or organization which are confidential in nature. In addition, the CONTRACTOR may be exposed to confidential information relating to the CITY's computers, network, and programs. Hereinafter, this data and information is collectively referred to as "CITY Information." In recognition of the need to protect the CITY Information, the CONTRACTOR covenants and agrees that it shall regard and treat each item of CITY Information as a trade secret and/or confidential information and that it will not, without the express written consent of the CITY or except as required by law, redistribute, market, publish, disclose or divulge to any other person, firm, or entity, or use or modify for use, directly or indirectly, in any way, for any person or entity, any of the CITY Information. At the termination of this Agreement, the

CONTRACTOR shall return to the CITY all CITY Information. Unauthorized use of the CITY's data may be a criminal offense and violators will be prosecuted.

12. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5, CONTRACTOR agrees that the CITY, the State Auditor or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Agreement. CONTRACTOR shall maintain these materials and allow access during the period of the Agreement and for six (6) years after its termination or cancellation.

13. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to the CITY for all covenants, agreements and obligations contained in the contract documents.
- B. CONTRACTOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of the CITY. A consent to assign shall be subject to such reasonable conditions and provisions as the CITY may deem necessary, accomplished by execution of a form prepared by the CITY and signed by CONTRACTOR, the assignee and the CITY. Permission to assign, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement.
- C. CONTRACTOR shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of the CITY. Such consent shall not be unreasonably withheld. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions specified. CONTRACTOR shall

make contracts between CONTRACTOR and subcontractors available upon request.

- D. CONTRACTOR shall notify the CITY in writing if another person/entity acquires, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. The CITY reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

14. MERGER AND MODIFICATION

- A. It is understood and agreed that the entire Agreement, including any and all Attachments, Schedules and Exhibits attached hereto which are specifically incorporated herein, between the parties is contained herein. This Agreement supersedes all other agreements, written or oral, including, but not limited to, any provisions in any “shrink-wrap” or “click-through” type agreements previously or subsequently provided elsewhere, and negotiations or oral representations made by or between the parties relating to the subject matter. Further, this Agreement supersedes any other license terms and conditions supplied by CONTRACTOR with the System or otherwise and the same shall have no effect and are superseded by the Agreement. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. The express substantive legal terms contained in this Agreement including but not limited to the License, Payment Terms, Warranties, Indemnification and Insurance, Merger and Modification, Default and Cancellation or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope or work, development specification or other development process or document.

15. DEFAULT AND CANCELLATION

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, it shall be in default. The CITY shall provide written notice to CONTRACTOR of any

default under the Agreement. Upon receipt of the written notice of default, CONTRACTOR shall have thirty (30) days in which to cure any default unless CONTRACTOR's default is excused by the CITY. In the event CONTRACTOR fails to cure any default under the Agreement within thirty (30) days of its receipt of written notification from the CITY, the CITY may cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the material terms of this Agreement shall be just cause for the CITY to delay payment for those specific products and/or services which are the subject of such non-compliance until CONTRACTOR's compliance. In the event of a decision to withhold payment, the CITY shall furnish prior written notice to CONTRACTOR. Notwithstanding the foregoing, CITY shall timely pay for all Milestones which have been provided and Accepted in accordance with the terms of the Agreement.

B. Upon cancellation or termination of this Agreement:

1. At the discretion of the CITY and as specified in writing by the City Clerk, CONTRACTOR shall deliver to the City Clerk copies of all writings so specified and paid for by the CITY and specifically prepared by CONTRACTOR for the CITY in accordance with this Agreement. The term "writings" is defined as:

Handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording, including electronic media, any form of communication or representation, including letters, works, pictures, drawings, sounds, or symbols, or combinations thereof.

2. The CITY shall have full ownership and control of all such writings specifically developed by the CONTRACTOR for the CITY under this Agreement. CONTRACTOR shall have the right to retain copies of the writings. However, it is agreed that CONTRACTOR without the prior written consent of the CITY shall not use these writings for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such writings; and shall not do anything which in the opinion of the CITY would affect the CITY's ownership and/or control of such writings.

C. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR shall remain liable to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by CONTRACTOR. Following notice from the CITY of

the claimed breach and damage, CONTRACTOR and the CITY shall attempt to resolve the dispute in good faith.

- D. The above remedies shall be in addition to any other right or remedy available to the CITY under this Agreement, law, statute, rule, and/or equity.
- E. The CITY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- F. CITY may cancel this Agreement with or without cause upon thirty (30) days' written notice.
- G. If CITY fails to perform any of the provisions of this Agreement or so fails to administer its obligations as to endanger the performance of the Agreement, it shall be in default. The CONTRACTOR shall provide written notice to CITY of any default under the Agreement. Upon receipt of the written notice of default, CITY shall have thirty (30) days in which to cure any default unless CITY's default is excused by the CONTRACTOR. In the event CITY fails to cure any default under the Agreement within thirty (30) days of its receipt of written notification from the CONTRACTOR, the CONTRACTOR may cancel or terminate this Agreement in its entirety.

16. LIMITATION OF LIABILITY

The following provisions in this Section 16, LIMITATION OF LIABILITY, apply to any contract or tort claims of either party, as well as the applicable party's indemnification obligations. 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 sole negligence or willful misconduct. CONTRACTOR's total liability to CITY arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to CONTRACTOR hereunder. Any action by CITY against CONTRACTOR must be commenced within the applicable statutory of limitations period. By entering into this Agreement, CITY agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve CITY'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 CONTRACTOR 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 CONTRACTOR to perform. CONTRACTOR shall not be liable

under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused solely by (y) CITY's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by CONTRACTOR or (z) CITY's election not to receive, or to terminate, the Post Warranty Maintenance and Support Services.

17. 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. CONTRACTOR agrees to work with CITY, at CITY's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

18. PROPERTY RIGHTS

Subject to the terms herein, CONTRACTOR owns the Software (or has obtained the rights to use and license the Software), all CONTRACTOR documentation and training materials provided by CONTRACTOR, the design and configuration of the CONTRACTOR Equipment and the format, layout, measurements, design and all other technical information (except for CITY supplied information such as election information) associated with the ballots to be used with the CONTRACTOR Equipment. CITY has the right to use the aforementioned items to the extent specified in this Agreement. CONTRACTOR 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 CONTRACTOR that are protected by law and are of substantial value to CONTRACTOR.

19. SURVIVAL OF PROVISIONS

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive, including, but not limited to, Sections 2, 5,6, 8, 9, 10, 13, 14, 15, 16, 18, 19, 23, 24, and 26.

20. CONTRACT ADMINISTRATION

In order to coordinate the services of CONTRACTOR with the activities of the CITY so as to accomplish the purposes of this Agreement, Jeff Cox, City Clerk Manager, or his or her successor, shall manage this Agreement on behalf of the CITY and serve as liaison between the CITY and CONTRACTOR.

21. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CONTRACTOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, CONTRACTOR shall comply with all applicable conditions of the specific referenced or attached grant.
- C. CONTRACTOR certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.
- D. CONTRACTOR warrants to CITY that, at the time of delivery, the Equipment and 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 CITY's state. CONTRACTOR further warrants that during the Warranty Period and thereafter so long as CITY is subscribing and paying for Post Warranty Maintenance and Support Services, the Equipment and Software shall be maintained or upgraded by CONTRACTOR in such a way as to remain compliant with all applicable election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the Software (but not Equipment) as are technologically feasible and commercially reasonable. CITY 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 CONTRACTOR in order for such Equipment to remain compliant with applicable laws and regulations. CITY shall also be solely responsible for the cost of any third party items that are required in order for the Equipment and/or Software to remain compliant with applicable laws and regulations.
- E. In the event that any future state certifications or re-certifications are required that are not otherwise required as a result of any changes or modifications

voluntarily made by CONTRACTOR to the Software and/or Equipment licensed and sold hereunder, CITY shall be responsible for:

- i. the total cost of any third party items that are required in order for the Equipment and/or Software to remain certified;
- ii. CITY's pro-rata share of such future state certification or recertification costs; and
- iii. CITY'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 Software that may result from such future state certifications or re-certifications.

CITY's pro-rata share of the costs included under subsections 21 (E)(ii) and 21(E)(iii) above shall be determined at the time by dividing the number of registered voters in CITY's jurisdiction by the total number of registered voters in all counties in CITY's state to which CONTRACTOR has sold and/or licensed the Equipment and/or Software purchased and licensed by CITY under this Agreement.

22. SUBCONTRACTOR PAYMENT

CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of payment from the CITY for undisputed services provided by the subcontractor pursuant to applicable law.

23. NOTICES

Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance 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. Notices shall be addressed to the following:

CITY:

City of Duluth
Attn: City Clerk
303 City Hall
411 West First Street
Duluth, MN 55802

CONTRACTOR:

Election Systems & Software, LLC
Office of General Counsel
11208 John Galt Boulevard
Omaha, Nebraska 68137
Fax Number: (402) 970-1291

Fax Number: (218) 730-5923

With a copy to:
City of Duluth
Attn: City Attorney
410 City Hall
411 West First Street
Duluth, MN 55802

24. CONFLICT OF INTEREST

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. CONTRACTOR agrees that, should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR will immediately notify the CITY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the CITY whether CONTRACTOR will or will not resign from the other engagement or representation.

25. PROMOTIONAL LITERATURE

CONTRACTOR agrees that the terms "Duluth" or any derivative shall not be utilized in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of the CITY.

26. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within Duluth, Minnesota or within the Eighth Judicial District. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized officers. Upon proper execution this agreement will be legally valid and binding.

CITY OF DULUTH

By _____
Mayor

Attest:

City Clerk
Date: _____

Countersigned:

Auditor

Approved as to Form:

City Attorney

CONTRACTOR

Contractor warrants that the person who executed this Agreement is authorized to do so on behalf of Contractor as required by applicable articles, bylaws, resolutions or ordinances.*

By: _____

Printed Name: _____

Printed Title: _____

Date: _____

*CONTRACTOR shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time CONTRACTOR returns the Agreement to the CITY. Documentation is not required for a sole proprietorship.

ATTACHMENT 1
Pricing Summary and Payment Schedule

Sale Summary:														
Description	Refer to	Amount												
CONTRACTOR Equipment	Attachment 2	\$242,411.20												
CONTRACTOR Software License Fees	Attachment 3	\$0.00												
Election Support Services	Attachment 4	\$10,530.00												
Shipping and Handling	Note 1	Included												
Total Net Sale		\$252,941.20												
Terms & Conditions:														
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of CITY. 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: Milestones and Payment Terms:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><u>Milestone</u></th> <th style="text-align: center;"><u>Milestone Description</u></th> <th style="text-align: center;"><u>Milestone Payment</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><u>1</u></td> <td>Delivery of Equipment to CITY's Delivery Location</td> <td>50% of CONTRACTOR Equipment fee (\$121,205.60)</td> </tr> <tr> <td style="text-align: center;"><u>2</u></td> <td>Completion of Equipment Acceptance Testing</td> <td>50% of CONTRACTOR Equipment fee (\$121,205.60)</td> </tr> <tr> <td style="text-align: center;"><u>3</u></td> <td>Rendering of Election Support Services (Project Management, Training and Site Support)</td> <td>100% of CONTRACTOR Services fees due as such services are rendered (\$10,530.00)</td> </tr> </tbody> </table> <p>All Milestone Payments shall be due within thirty-five (35) days of CITY's receipt of CONTRACTOR's Invoice.</p> <p>Certain Milestones may be completed simultaneously with other Milestones. Payment by the CITY shall be due and payable once a Milestone has been completed.</p> <p>Note: CONTRACTOR will issue a credit on account for any support days that have been paid for by the CITY and are unused at the conclusion of the 2014 State General Election.</p>			<u>Milestone</u>	<u>Milestone Description</u>	<u>Milestone Payment</u>	<u>1</u>	Delivery of Equipment to CITY's Delivery Location	50% of CONTRACTOR Equipment fee (\$121,205.60)	<u>2</u>	Completion of Equipment Acceptance Testing	50% of CONTRACTOR Equipment fee (\$121,205.60)	<u>3</u>	Rendering of Election Support Services (Project Management, Training and Site Support)	100% of CONTRACTOR Services fees due as such services are rendered (\$10,530.00)
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<p>Note 3: Services in excess of those set forth in Attachment 4 shall be charged at the rate of \$1,575.00 per day for all services including expenses except Election Site Support which will be charged at the rate of \$4,125.00 per person per 3-day site support event, including expenses.</p>														
<p>Note 4: CONTRACTOR anticipates delivering the Equipment and Software as follows:</p> <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Deliverable</u></th> <th style="text-align: left;"><u>Estimated Delivery Date</u></th> </tr> </thead> <tbody> <tr> <td>CONTRACTOR Equipment and Software</td> <td>On or before July 10, 2013</td> </tr> <tr> <td>Election Support Services (Installation & Training)</td> <td>On or before July 22, 2013</td> </tr> </tbody> </table>			<u>Deliverable</u>	<u>Estimated Delivery Date</u>	CONTRACTOR Equipment and Software	On or before July 10, 2013	Election Support Services (Installation & Training)	On or before July 22, 2013						
<u>Deliverable</u>	<u>Estimated Delivery Date</u>													
CONTRACTOR Equipment and Software	On or before July 10, 2013													
Election Support Services (Installation & Training)	On or before July 22, 2013													
<p>Note 5: Total Net Sale of \$252,941.20 is based upon CITY's commitment to subscribe to CONTRACTOR Ballot Printing Services for a period of five (5) years beginning upon Contract Execution. Ballot Printing Services will be provided at a rate of \$0.195 per printed ballot, including shipping and handling, for the five (5) year term. In the event the CITY terminates its Ballot Printing Services with CONTRACTOR 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 CITY per the terms of the Hennepin County, Minnesota Request for Proposal dated February 15, 2013 and CONTRACTOR'S response to the same. CITY shall remit payment to CONTRACTOR immediately upon receipt of such invoice.</p>														

<u>Warranty:</u>		
CONTRACTOR Equipment and CONTRACTOR Software – Warranty Period: Anticipated Warranty Period: Beginning Upon Completion of Milestone 5 Software Acceptance Testing through December 31, 2014 (Please see Section 6(F) for more detail)		
Ongoing Services:		
Description	Refer to	Annual Fee
Routine Maintenance Services during Warranty Period; Payment is due 35 days after invoice.	Attachment 5	N/A
Post Warranty Hardware Maintenance Services	Attachment 5	\$7,862.40
Services commence upon Expiration of Warranty. Fees reflect an annual rate for a five-year term commitment. Payment is due at the start of the maintenance period.		
Post Warranty Software Maintenance & Support Services		
- CONTRACTOR Firmware	Attachment 5	Included in Hardware Maintenance Fee
- All Other CONTRACTOR Software	Attachment 5	N/A
Services commence upon Expiration of Warranty. Fees reflect an annual rate for a five-year term commitment. Payment is due at the start of the maintenance period.		

ATTACHMENT 2
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	<i>DS200 Tote Bin</i>	\$6,000.00
	<i>Total Purchase Price</i>	\$265,416.20
	<i>Less: Trade-In Allowance for the Following Equipment:</i> - 43 Model 100 Precinct Scanners @ \$425.00 each - 43 Model 100 Steel Ballot Boxes @ \$100.00 each - 43 Model 100 PCMCIA Memory Cards @ \$10.00 each	(\$23,005.00)
	<i>Net Purchase Price</i>	\$242,411.20
Note: CONTRACTOR 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.		

ATTACHMENT 3
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
CONTRACTOR AutoMARK Firmware Upgrade to Version 1.8.4.0	1
CONTRACTOR DS200 Firmware Version 2.10.0.0	1
Total Initial License Fees (including all applicable Documentation)	\$0.00

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

Note 2: CONTRACTOR Firmware license fee included in the total cost of the CONTRACTOR Equipment.

ATTACHMENT 4
Election Support Services

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

September 10, 2013

2. **Services.** The election support services to be provided by CONTRACTOR, a description of such services and total fees are described below. CITY acknowledges that CONTRACTOR'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 CONTRACTOR to change the fees charged to CITY. For purposes of CONTRACTOR'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 CITY's facilities, as applicable, by one (1) CONTRACTOR 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 CITY through the provision of Election Support Services by one (1) CONTRACTOR employee, contractor or agent on each of ten (10) different calendar days, two (2) CONTRACTOR employees, contractors or agents on each of five (5) different calendar days, or ten (10) CONTRACTOR 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.)	CITY	
Training – DS200 Scanner	CONTRACTOR 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.	CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR 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.	CONTRACTOR 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	CONTRACTOR 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.	CONTRACTOR
	Total Installation Fees: \$4,830.00	

ATTACHMENT 5
Post Warranty Maintenance and Support Services

1. **Term; Termination.** This Attachment 5 for Hardware Maintenance and Software Maintenance and Support Services shall be in effect for the coverage period as described in Schedule 5-1 (the "Initial Term"). Upon expiration of the Initial Term, this Attachment 5 shall automatically renew for an unlimited number of successive **Two-Year Periods** (each a "Renewal Period") until this Agreement 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 Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after CONTRACTOR notifies CITY 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 CITY's jurisdiction, or (e) the date which is thirty (30) days after CITY fails to pay any amount due to CONTRACTOR under this Agreement. Upon the termination of the license, CITY shall immediately return the Software and Documentation (including any and all copies thereof) to CONTRACTOR, or (if requested by CONTRACTOR) destroy the Software and Documentation and certify in writing to CONTRACTOR that such destruction has occurred. The termination of this Agreement shall not relieve CITY of its liability to pay any amounts due to CONTRACTOR hereunder and shall only entitle CITY to a prorated refund of any fees already paid to CONTRACTOR in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for CONTRACTOR's agreement to provide Hardware Maintenance and Software Maintenance and Support Services under this Agreement, CITY shall pay to CONTRACTOR the Hardware Maintenance and Software Maintenance and Support Fees set forth on Schedule 5-1 for the Initial Term. The Hardware Maintenance and Software Maintenance and Support Fees for any Renewal Period shall be as agreed to by the parties and such fees will not exceed CONTRACTOR's list prices which are in effect at the time of commencement of such 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 Maintenance and Support Fees shall be comprised of (i) a fee for the Software Maintenance and Support of the CONTRACTOR Firmware, and (ii) a fee for the Software Maintenance and Support for all other CONTRACTOR Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If CITY elects to receive Hardware Maintenance or Software Maintenance and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, CONTRACTOR will charge an incremental fee for such services. In the event CITY terminates this Agreement through no fault of CONTRACTOR and later desires to subscribe to a Hardware Maintenance or Software Maintenance and Support Plan, or otherwise changes its Hardware Maintenance or Software Maintenance and Support Plan with CONTRACTOR during the Initial Term or any renewal thereof, CONTRACTOR will charge the CITY its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance or Software Maintenance and Support Coverage.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to CITY under this Agreement for the CONTRACTOR equipment listed on Schedule 5-1 is set forth on Schedule 5-1 (the "Products") and shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** A CONTRACTOR 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 CONTRACTOR 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. CITY 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 5-1 and shall be due within thirty (30) days after invoice date. At the request of CITY, CONTRACTOR shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. CONTRACTOR will schedule the Routine Maintenance Services with CITY. The Routine Maintenance Services will be provided at CITY's Designated Location. CITY's "Designated Location" shall mean CITY's owned or leased facility at which CITY desires CONTRACTOR to perform the Hardware Maintenance Services. CITY acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Schedule 5-1 as "depot 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, CITY shall promptly notify CONTRACTOR, and CONTRACTOR shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by CONTRACTOR pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". CONTRACTOR 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 CITY's Designated Location.

ii. **Defects Due to CITY 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 CONTRACTOR, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by CONTRACTOR or (3) causes beyond the reasonable control of CONTRACTOR or CITY, 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 CITY does not notify CONTRACTOR within 72 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, CITY shall pay CONTRACTOR for the Repair Services at CONTRACTOR'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 CONTRACTOR and CITY. If CITY requires CONTRACTOR to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided within 72 hours after CITY notifies CONTRACTOR of the need therefor), and such emergency Repair Services are not needed as a result of an action, error or omission by CONTRACTOR, CITY shall pay a surcharge, as set forth on Schedule 5-1.

iv. **Loaner Unit.** At CITY's request and if such product is available, CONTRACTOR shall use reasonable efforts to promptly make available to CITY 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, CITY shall pay CONTRACTOR for the use of the Loaner Unit at CONTRACTOR's then-current rates including the cost of shipping.

c. **Exclusions.** CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR shall no longer be required to provide Hardware Maintenance Services for such Product. CONTRACTOR shall also refund to CITY 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.** CITY shall not permit any individual other than an CONTRACTOR 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. CITY shall provide CONTRACTOR Representatives with all information necessary to enable them to provide Hardware Maintenance Services. CITY 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, CITY may thereafter resume receiving Hardware Maintenance Services upon (a) notification to CONTRACTOR and (b) the granting to CONTRACTOR of access to the Products. CONTRACTOR requires CITY 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 CONTRACTOR Technician labor rate and shall be due from CITY within thirty (30) days of its receipt of CONTRACTOR's invoice therefore. If any of the Products is not in Normal Working Condition, CONTRACTOR, at the option of CITY, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at CITY's expense with respect to the cost of any labor (charged at the current published CONTRACTOR 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 MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** CONTRACTOR shall provide license, maintenance and support services ("Software Maintenance and Support") for the CONTRACTOR Software and CONTRACTOR Firmware (collectively, "CONTRACTOR Software"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by CONTRACTOR and each party's obligations with respect to such services are set forth on Schedule 5-1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, CONTRACTOR may provide new releases, upgrades or maintenance patches to the CONTRACTOR Software, along with appropriate documentation ("Updates"), on a schedule defined by CONTRACTOR. CITY 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 CONTRACTOR's license of the Software, upon delivery. CITY shall install Updates in accordance with CONTRACTOR's recommended instructions or may request that CONTRACTOR install the Updates. In the event CITY requests CONTRACTOR to install an CONTRACTOR Firmware Update, CONTRACTOR shall install such Update only in connection with the Routine Maintenance Services provided herein. CONTRACTOR may charge CITY 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 CITY's failure to timely install an Update or (d) train the CITY on the Updates. CITY shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by CITY's failure to install and use the most recent Update provided to it by CONTRACTOR. If CITY proposes changes in the Software to CONTRACTOR, such proposals will become CONTRACTOR's property. CONTRACTOR may, in its sole discretion, elect to make or not to make such changes without reference or compensation to CITY or any third party. CONTRACTOR represents to CITY that the Updates will comply with all applicable state law requirements at the time of delivery. CITY shall be responsible to ensure that it has installed and is using only certified versions of Software in accordance with applicable law. CITY shall pay CONTRACTOR for any Update which is required due to a change in federal or state law.

3. **Conditions.** CONTRACTOR shall not provide Software Maintenance and Support for any item of CONTRACTOR Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by CONTRACTOR, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by CONTRACTOR, (c) causes beyond the reasonable control of CONTRACTOR or CITY, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) CITY's failure to timely and properly install and use the most recent update provided to it by CONTRACTOR, (e) CITY's failure to notify CONTRACTOR within 24 hours after CITY knows of the need for such services, or (f) if CITY is otherwise not in compliance with its obligations under this Agreement. Any such Software Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises. Replacement versions of Software requested by CITY as a result of items set forth in this Section 3 or as a result of CITY's actions or inactions shall be billable to CITY at CONTRACTOR's then current rates.

4. **Proprietary Rights.** CONTRACTOR 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 CITY or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance and Support Fees, CONTRACTOR hereby grants to CITY a non-exclusive license to use that portion of such corrections, programs, information and work product that CONTRACTOR actually delivers to CITY pursuant to this Agreement. All licensed items shall be deemed to be CONTRACTOR Software for purposes of this Agreement. Except and to the extent expressly provided herein, CONTRACTOR does not grant to CITY 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 Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, CITY may thereafter resume receiving Software Maintenance and Support upon (a) notification to CONTRACTOR, (b) payment of all fees, including a reinstatement charge, which would have been due to CONTRACTOR had the Initial Term or any Renewal Period not expired, and (c) the granting to CONTRACTOR of access to the CONTRACTOR Software, so that CONTRACTOR may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support.

Schedule 5-1

CONTRACTOR HARDWARE MAINTENANCE FEES

Initial Maintenance Term: Five (5) Years Beginning Upon Expiration of the Warranty Period

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

Note 1: The Per-Unit Fees if CITY 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: CITY's Designated Location: City of Duluth, Minnesota

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

Hardware Maintenance Services Provided by CONTRACTOR Under the Agreement

1. Telephone support
 - CONTRACTOR will provide Hardware support on procedural questions of a specific nature not covered in CONTRACTOR's Hardware User Manuals;
 - CONTRACTOR will verify the appropriate steps to take to resolve issues identified by the CITY.

2. Issue Resolution (to be provided on a limited basis)
 - CONTRACTOR will provide Hardware issue resolution on a limited basis once the CITY 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 CITY has not followed the appropriate Equipment User Manual and/or training directives, CITY will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing CONTRACTOR Election Services. The CITY may also be advised that additional training may be necessary to ensure the CITY has the appropriate level of issue resolution training.

3. CONTRACTOR posts Technical Bulletins available through CITY's CONTRACTOR Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:
 - Service performed by a CONTRACTOR 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 City through your CONTRACTOR Web-based portal
5. Repair Services.
 - CITY 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 CITY's location if they are not election critical.
 - A Product may be sent to CONTRACTOR's Depot location for repairs at a time to be mutually agreed upon by CONTRACTOR and CITY.
6. Priority Services.
 - CITY has access to the CONTRACTOR Help Desk for assistance.
 - The customer receives priority on service calls.
 - The customer receives priority on response time.

- The customer receives priority on certified CONTRACTOR parts inventory.

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

CONTRACTOR SOFTWARE LICENSE, MAINTENANCE AND SUPPORT FEES

Initial Maintenance Term: Five (5) Years Beginning Upon 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
40	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 CONTRACTOR Under the Agreement

1. Telephone support

- CONTRACTOR will provide Software support on procedural questions of a specific nature not covered in CONTRACTOR's Software User Manuals;
- CONTRACTOR will verify the appropriate steps to take to resolve issues identified by the CITY.

2. Issue Resolution (to be provided on a limited basis)

- CONTRACTOR will provide Software issue resolution on a limited basis once the CITY 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 CITY has not followed the appropriate Software User Manual and/or training directives, CITY will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing CONTRACTOR Election Services. The CITY may also be advised that additional training may be necessary to ensure the CITY has the appropriate level of issue resolution training.

3. CONTRACTOR will provide Technical Bulletins available on the CONTRACTOR CITY Portal on a schedule to be determined by CONTRACTOR regarding specific issues the CITY may be experiencing.

Note: Except for those Software Maintenance and Support services specifically set forth herein, CONTRACTOR is under no obligation and shall not provide other Software maintenance and support services to the CITY unless previously agreed upon by the parties.

Software License Maintenance and Support and Hardware Maintenance and Support Services – CITY Responsibilities

1. CITY's current software and hardware operator shall have completed a full Unity training session for each product selected.
 - CITY shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
 - CITY shall have the ability to install firmware and application software and make changes to date and time settings.
 - CITY shall have the ability to store equipment in accordance with CONTRACTOR requirements.
2. CITY shall have reviewed a complete set of User Manuals.
3. CITY shall have reviewed Training Checklists.
4. CITY 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. CITY shall be responsible for data extraction from CITY VR system.
6. CITY shall be responsible for implementation of any security protocols physical, network or otherwise
7. CITY shall be responsible for CITY Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
8. CITY shall be responsible for any error or exception handling not identified in the User Guides as part of CONTRACTOR software or hardware.
9. CITY shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.
10. CITY shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-CONTRACTOR Ballot Partner Printers ballots.

**ATTACHMENT 6
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
 - o 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.

**ATTACHMENT 6
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 Accepted</u>

Firmware Version: _____

CITY: _____

Representative: _____
(Printed Name & Title)

(Signature)

CONTRACTOR

Representative: _____
(Printed Name)

(Signature)

Date: _____/_____/_____

[END OF ATTACHMENT 6]

ATTACHMENT 7

City of Duluth Insurance Requirements

PROFESSIONAL LIABILITY INSURANCE

Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days notice prior to any cancellation or modification shall be required; and in such event, Consultant (Service Provider) agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

(Updated 06/24/09)

INSURANCE

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City from all liability described in the paragraph above, subject to provisions of subparagraph below.

- (1) Worker's compensation in accordance with the laws of the state of Minnesota.
- (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,00** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) City of Duluth shall be named as **Additional Insured** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Contractor shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
- (5) The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms –
 - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004); and

2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Contract.
- d. The City shall be named as an additional insured on each liability policy other than the workers' compensation policies of the Contractor.
- e. The certificates shall provide that the policies shall not be changed or canceled during the life of this Contract without at least 30 days advanced notice being given to the City.
- f. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City which is reasonably available.

PRE-2004 CG 2010

A. **Section II - Who Is an Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

NOTICE OF CANCELLATIONS ENDORSEMENT

IL-7002 (10-90)

All Coverage Parts included in this policy are subject to the following condition: If we cancel this policy for any reason other than non-payment of premium, we will mail advance notice to the person(s) or organization(s) as shown in the Schedule.

Schedule	
Person or Organization (Name and Address)	Advance Notice (Days)
City of Duluth Purchasing Division Room 100 City Hall 411 West First Street Duluth, MN 55802	30

(Updated February 16, 2011)