

**STATE OF TEXAS** §  
§  
**COUNTY OF FORT BEND** §

## ADDENDUM TO ELECTION SYSTEMS & SOFTWARE LLC HARDWARE MAINTENANCE SERVICES AGREEMENT

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Election Systems & Software, LLC Hardware Maintenance Services Agreement, ("ES&S"), a company authorized to conduct business in the State of Texas (hereinafter each referred to as a "party" or collectively as the "parties").

WHEREAS, subject to the changes herein, the parties have executed and accepted ES&S' Hardware Maintenance Services Agreement (the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for the purchase of a specified maintenance services (the "Services"); and

WHEREAS, County desires that ES&S provide Services as will be more specifically described in this Agreement; and

WHEREAS, ES&S represents that it is qualified and desires to perform such Services; and

WHEREAS, the Texas County Purchasing Act, § 262.024(a)(7) Texas Local Government Code, exempts from competitive bidding contracts that may be obtained from only one source; and

WHEREAS, ES&S is the sole source provider of the Services, as indicated by the letter attached hereto as Exhibit "B" and incorporated fully by reference; and

WHEREAS, the Fort Bend County Commissioners Court specifically finds that this Agreement is a sole source agreement and therefore grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply; and

WHEREAS, the following changes are incorporated as if a part of the Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

## AGREEMENT

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Term.** The term of the Agreement is effective as of January 1, 2024, and shall expire no later than December 31, 2025, unless terminated sooner pursuant to the Agreement. This Agreement shall not automatically renew, but may be subsequently renewed in writing upon agreement of the parties. The parties acknowledge and agree that services were and will be

supported by good and valuable consideration during the Term of this Agreement, the sufficiency of which is acknowledged by the parties.

3. **Scope of Services.** Subject to this Addendum, ES&S will render Services to County as described in Exhibits A and B.
4. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoices. Upon receipt of initial invoice, after execution of this Agreement, County will pay ES&S Two Hundred Twenty-Six Thousand, Five Hundred dollars and 00/100 (\$226,500.00) for the coverage period of January 1, 2024, through December 31, 2024. ES&S will subsequently invoice County no earlier than November 1, 2024 for the coverage period of January 1, 2025 through December 31, 2025. Upon receipt of this second invoice, County will make a subsequent payment to ES&S in the amount of Two Hundred Twenty-Six Thousand, Five Hundred dollars and 00/100 (\$226,500.00). ES&S may submit invoice(s) electronically in a form acceptable to County via: [apauditor@fortbendcountytx.gov](mailto:apauditor@fortbendcountytx.gov). If County disputes charges related to the invoice submitted by ES&S, County shall notify ES&S no later than twenty-one (21) days after the date County receives the invoice(s). If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar days. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
5. **Limit of Appropriation.** ES&S clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Four Hundred Fifty-Three Thousand dollars and 00/100 (\$453,000.00), specifically allocated to fully discharge any and all liabilities County may incur. ES&S does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that ES&S may become entitled to and the total maximum sum that County may become liable to pay to ES&S shall not under any conditions, circumstances, or interpretations thereof exceed Four Hundred Fifty-Three Thousand dollars and 00/100 (\$453,000.00). In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties. Additional funding for this Agreement is contingent upon further appropriations from the County's Commissioners Court; the appropriation of additional funds is not guaranteed.
6. **Public Information Act and Open Meetings Act.** ES&S expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will

make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by ES&S shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

ES&S expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

7. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless ES&S for any reason are hereby deleted. ES&S shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of ES&S, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of ES&S or any of ES&S' agents, servants or employees.
8. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by ES&S in any way associated with the Agreement.
9. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, ES&S hereby verifies that ES&S and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
  - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, ES&S does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
  - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, ES&S does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
  - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, ES&S does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
10. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
11. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, ES&S ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
12. **Use of Customer Name.** ES&S may use County's name without County's prior written consent only in any of ES&S' customer lists, any other use must be approved in advance by County.
13. **Product Assurance.** ES&S represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by ES&S to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. ES&S will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of ES&S' Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and



ES&S' liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the parties.

14. **Performance Warranty.** ES&S warrants to County that ES&S has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and ES&S will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

ES&S warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

15. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict.
16. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
17. **Inspection of Books and Records.** ES&S will permit County, or any duly authorized agent of County, to inspect and examine the books and records of ES&S for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four (4) years.
18. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
19. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
20. **County Data.** As applicable, nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code. Nothing in this Agreement will be construed to waive the requirements of any record retention laws applicable to County.
21. **Personnel.** ES&S represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that ES&S shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of ES&S shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of ES&S or agent of ES&S who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at the County, ES&S shall comply with, and ensure that all ES&S Personnel comply with, all rules, regulations and policies of County that are communicated to ES&S in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

22. **Compliance with Laws.** ES&S shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, ES&S shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
23. **Confidential Information.** ES&S acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by ES&S or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by ES&S shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by ES&S) publicly known or is contained in a publicly available document; (b) is rightfully in ES&S' possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of ES&S who can be shown to have had no access to the Confidential Information.

ES&S agrees to hold Confidential Information in strict confidence, using at least the same degree of care that ES&S uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. ES&S shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential

Information. Without limitation of the foregoing, ES&S shall advise County immediately in the event ES&S learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and ES&S will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or ES&S against any such person. ES&S agrees that, except as directed by County, ES&S will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, ES&S will promptly turn over to County all documents, papers, and other matter in ES&S' possession which embody Confidential Information.

ES&S acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. ES&S acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

ES&S in providing all Services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

24. **Third Party Beneficiaries.** This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.
25. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
26. **Insurance.**
  - A. Prior to commencement of the Services, ES&S shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. ES&S shall provide certified copies of insurance endorsements and/or policies if requested by County. ES&S shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. ES&S shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
  3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
  4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
  5. Professional Liability Insurance may be on a Claims Made form with limits not less than \$1,000,000.00.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of ES&S shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.
- C. If required coverage is written on a claims-made basis, ES&S warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. ES&S shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of ES&S.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)



IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

ELECTION SYSTEMS & SOFTWARE, LLC

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Authorized Agent – Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jared Plath  
Authorized Agent- Printed Name

ATTEST:

\_\_\_\_\_  
VP of Finance  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

\_\_\_\_\_  
04/25/2024  
Date

REVIEWED:

\_\_\_\_\_  
Fort Bend County Elections Department

#### AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

Exhibit A: ES&S' Hardware Maintenance Services Agreement; and  
Exhibit B: Sole Source Agreement

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ADDENDUM TO ELECTION SYSTEMS & SOFTWARE LLC HARDWARE MAINTENANCE SERVICES AGREEMENT  
Contract #24-Elections-100593

# Exhibit A



**Company** 0001 - FBC INVENTORY  
COMPANY  
**Requesting Location** 4111A - Elections  
Administration  
**Requisition** 235047 - Unreleased  
**Purchase From**  
**Buyer** 32 - Paul Herrera

**Cost Default Vendor** 12616 - ELECTION  
SYSTEMS AND SOFTWARE  
**Requisition Description**  
**Requester** cantucat - Cantu, Cathy  
**Deliver To**

Item	Item Type	Quantity Ordered	UOM	Unit Cost	Extended Cost	Distributions	Activity / Account Category	Distribution Allocation	Requested Delivery Date	Sourcing Event Required
HARDWARE AGREEMENT	Special	1.00	EA	226500.00000	226500.00000	100411102-063000- 0000		100.0%	Mar 1, 2024	No

**THIS HARDWARE MAINTENANCE AGRE**

Vendor : ELECTION SYSTEMS AND SOFTWARE

Gtin : 00000000000000

THIS HARDWARE MAINTENANCE AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S") and Fort Bend County, Texas ("Customer"). A. ES&S has sold to Customer the proprietary voter tabulation equipment ("Equipment") described on Attachment 1 and Customer now desires to obtain maintenance services for such Equipment.

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

\$226,500.00 due upon Contract Execution for the Coverage Period of January 1, 2024 through December 31, 2024. Sole source item.

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<b>Totals: 1 Lines</b>	<b>1.00</b>	<b>226500.00</b> <b>USD</b>
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**ELECTION SYSTEMS & SOFTWARE, LLC  
HARDWARE MAINTENANCE SERVICES AGREEMENT**

THIS HARDWARE MAINTENANCE AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S") and **Fort Bend County, Texas** ("Customer").

**RECITALS:**

- A. ES&S has sold to Customer the proprietary voter tabulation equipment ("Equipment") described on Attachment 1 and Customer now desires to obtain maintenance services for such Equipment.
- B. ES&S has agreed to provide such services, subject to the terms and conditions of this Agreement.
- C. This Agreement supersedes and replaces in their entirety any and all prior agreements between ES&S and Customer respecting maintenance services for such Equipment.

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

**ARTICLE I  
GENERAL**

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

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services under this Agreement, Customer shall pay to ES&S the Hardware Maintenance set forth on Attachment 1 for the Initial Term and any Renewal Periods. The Hardware Maintenance for the Initial Term are due as set forth on Attachment 1. ES&S may increase the Hardware Maintenance for a Renewal Period by not more than 10% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period.

**ARTICLE II  
HARDWARE**

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



a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services". Routine Maintenance Services shall be provided once each **Twelve (12) Months** during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Attachment 1 and shall be due within thirty (30) days after invoice date. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services.

b. **Repair Services.**

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

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) use, modification, dismantling, disassembly, or transfer to third party without ES&S's prior written consent, (3) accident, theft, vandalism, neglect, abuse, liquid contact, use of adhesive materials on ballots or use that is not in accordance with instructions or specifications furnished by ES&S or (4) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

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

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



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

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

e. **Environment Conditions.** Products should be stored in a clean, dry and secure environment. During the storage and operation of the Products, the temperature and moisture ranges should be maintained in accordance with the Product's Documentation.

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

### **ARTICLE III** **MISCELLANEOUS**

1. **Taxes; Interest.** Customer will provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

2. **Limitation of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into

this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services.

3. **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

4. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

5. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

6. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns. This Agreement, including **Attachment 1** (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Attachment to this Agreement and these General Terms, the provision contained in the Attachment shall control. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing Equipment and services to Customer as an independent contractor and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment or services but shall remain fully responsible for such performance. The provisions of Article II, Section 1(f) and Article III shall survive the termination of this Agreement, to the extent applicable.

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

of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

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

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

FORT BEND COUNTY TEXAS  
301 Jackson Street  
Richmond, TX 77469  
Fax No.: N/A



Signature

Jared Plath

Name (Printed or Typed)

V.P. of Finance

Title

04/25/2024

Date

Signature

Name (Printed or Typed)

Title

Date



**PRICING SUMMARY AND PAYMENT TERMS**

<b><u>Sale Summary:</u></b>		
<b>Description</b>	<b>Refer To</b>	<b>Amount</b>
ES&S Hardware Maintenance Fees	Attachment 1	\$453,000.00
<b>Total Maintenance Fees for the Initial Term:</b>		<b>\$453,000.00</b>
<b><u>Terms &amp; Conditions:</u></b>		
<b>Note 1:</b> Any applicable state and local taxes are not included and are the responsibility of Customer.		
<b>Note 2: <u>Invoicing and Payment Terms:</u></b>		
\$226,500.00 due upon Contract Execution for the Coverage Period of January 1, 2024 through December 31, 2024.		
\$226,500.00 due on or before December 1, 2024 for the Coverage Period of January 1, 2025 through December 31, 2025.		



**Attachment 1**

**ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES**

Initial Term: January 1, 2024 through December 31, 2025

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
300	Model DS200 Scanner	1/1/2024 through 12/31/2024	\$160.00	\$48,000.00
1,700	ExpressVote BMD	1/1/2024 through 12/31/2024	\$105.00	\$178,500.00
<b>Total Maintenance Fees for the Coverage Period January 1, 2024 through December 31, 2024</b>				<b>\$226,500.00</b>
300	Model DS200 Scanner	1/1/2025 through 12/31/2025	\$160.00	\$48,000.00
1,700	ExpressVote BMD	1/1/2025 through 12/31/2025	\$105.00	\$178,500.00
<b>Total Maintenance Fees for the Coverage Period January 1, 2025 through December 31, 2025</b>				<b>\$226,500.00</b>
<b>Total Hardware Maintenance Fees for the Initial Term</b>				<b>\$453,000.00</b>

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

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

**Note 3:** Customer's Designated Location: Fort Bend County, Texas

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

**Hardware Maintenance Services Provided by ES&S Under the Agreement**

1. Telephone Support.
2. Issue Resolution.
3. ES&S posts Technical Bulletins available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
  - Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:
    - Service performed by an ES&S trained and certified technician.
    - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.

- Replacement of worn or defective with new or remanufactured federally and state certified parts.
- Conducting a final test to verify that the unit is working according to manufacturer's specifications.
- Use of a checklist tailored for each piece of equipment.

#### 5. Repair Services.

- Customer receives coverage for interim repair calls.
  - Interim calls may be scheduled during the regular Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity of Customer's location if they are not election critical.
  - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

#### 6. Priority Services.

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

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

# Exhibit B

April 15, 2024

**VIA ELECTRONIC MAIL**

Ms. Brooke Lindemann  
Fort Bend County Purchasing  
301 Jackson Street, Suite 201  
Richmond, TX 77469

**RE: Election Systems & Software, LLC ("ES&S") Equipment, Software  
and Support Services**

Dear Ms. Lindemann:

This letter is in response to the Fort Bend County, Texas ("County") request for information regarding ES&S' proprietary election equipment, proprietary election software, supplies and election support services. This letter provides the County with information on ES&S' proprietary Model DS200® precinct and central count scanner, ES&S Proprietary ExpressVote®, ES&S' proprietary Model DS450® central count scanner and ES&S' Proprietary ExpressTouch® (the "ES&S Equipment"), as well as ES&S' proprietary ES&S Equipment firmware (the "ES&S Software") and ESS&S ballot stock and other components and supplies.

Please be advised that ES&S owns all patents, copyrights and trademarks ("Intellectual Property") associated with the ES&S Equipment. As such, ES&S is the sole and exclusive developer and manufacture of the ES&S Equipment and ES&S Software and only ES&S may sell the ES&S Equipment in the marketplace. Further, certain component parts of the ES&S Equipment are proprietary to ES&S and may only be obtained directly from ES&S. As certain component (maintenance) parts of the ES&S Equipment may only be obtained directly from ES&S, only ES&S and ES&S trained technicians can ensure that such ES&S proprietary component parts are installed in the ES&S Equipment. This is important to note as all ES&S Equipment certified both at the federal and State level requires the replacement of the same certified component parts which were included in the ES&S Equipment at the time such ES&S Equipment was certified. By purchasing the ES&S Equipment from ES&S as well as utilizing ES&S for the performance of preventative and repair maintenance and support services, the County will be assured that all component parts installed in the ES&S Equipment will be in compliance with both the federal and state certified equipment configuration.

Mr. Brooke Lindemann  
April 15, 2024  
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With respect to the ES&S Software, please be advised that ES&S is the sole and exclusive developer and licensor of the ES&S Software. As such, ES&S owns all Intellectual Property in its proprietary ES&S Software. Furthermore, only ES&S can provide help desk support services for the ES&S Software, as well as provide any and all upgrades, enhancements, maintenance patches and other changes to the ES&S Software as may be required by ES&S or its customers. No other vendor in the marketplace today is authorized to license or provide maintenance and support services for the ES&S Software.

With respect to other ES&S components and supplies, including the DS200 Blue Tote Bins and ExpressTouch booths and stands, the components and supplies being provided to the County by ES&S meet ES&S' specifications and have been certified for use with ES&S' voting system products. As you are aware, only ES&S may certify its voting systems including all components and supplies. This is important to note as ES&S' voting systems are certified both at the Federal and State level and require the replacement and use of the same certified component and supplies which were included in ES&S' voting systems at the time such ES&S voting systems were certified. By purchasing ES&S components and supplies from ES&S, the County will be assured that all components and supplies installed in and used with ES&S' voting systems will be in compliance with both the federal and state certification requirements.

With respect to the any contemplated purchase of additional ES&S Equipment, Blue Tote Bins and ExpressTouch booths and stands and other components and supplies, that such purchase will work seamlessly and in conjunction with the County's current Voting System.

Please let me know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Anderson', with a stylized, cursive script.

Eric Anderson  
General Counsel

cc: Matt Kunz, ES&S