

STATE OF TEXAS

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COUNTY OF FORT BEND

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**FIFTH AMENDMENT TO SALES ORDER AGREEMENT FOR PRODUCTS, SERVICES
AND RESOURCES TO IMPLEMENT NEW ELECTION MANAGEMENT SOFTWARE**

THIS FIFTH AMENDMENT ("Fifth Amendment") 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, ("ES&S"), a company authorized to conduct business in the State of Texas (collectively referred to as the "parties").

WITNESSETH:

WHEREAS, the parties previously entered into the Addendum to Sales Order Agreement for Products, Services and Resources to Implement New Election Management Software on or about October 8, 2019; and as amended on or about December 15, 2020, February 8, 2022, April 25, 2023, and January 23, 2024 (collectively referred to as the "Agreement"), and incorporated fully by reference as if set forth verbatim herein for all purposes; and

WHEREAS, ES&S is the sole source provider of ES&S' equipment, software, and support services, as indicated by the letter attached hereto as Exhibit "B-5" and incorporated fully by reference; and

WHEREAS, County and ES&S desire to amend said Agreement as set forth below; and

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

I. Amendments

1. **Scope of Services.** ES&S shall provide product and/or services as specified in ES&S' Quotation (Quotation Number: 15757), attached as Exhibit "A-5" and incorporated fully by reference; and in accordance with the requirements and specifications of Exhibit B-5.
2. **Term.** ES&S will provide the specified products and/or services as described in Exhibit A-5 from January 1, 2025-December 31, 2025 to County. This Fifth Amendment shall not automatically renew, but may be renewed upon written agreement of the parties.
3. **Limit of Appropriation.** ES&S' fees shall be calculated at the rates set forth in the attached Exhibit A-5. The Maximum Compensation for the performance of services within the Scope of Services as described in Exhibit A-5 is \$201,605.32. In no case shall the amount paid by County under this Fifth Amendment exceed this Maximum Compensation without an approved change order. ES&S clearly understands and

agrees, such understanding and agreement being of the absolute essence of this Agreement and Fifth Amendment, that County shall have available the total maximum sum of \$201,605.32, 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 and Fifth Amendment, 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 \$201,605.32.

4. **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.
5. **Modifications.** Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
6. **Conflict.** If there is a conflict among documents, the most recently executed document will prevail with regard to the conflict.

7. **Understanding, Fair Construction.** By execution of this Fifth Amendment, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Fifth Amendment. This Fifth Amendment, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

(Execution Page Follows)


(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Fifth Amendment 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 Fifth Amendment 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

ELECTIONS SYSTEMS & SOFTWARE, LLC

KP George, County Judge



Authorized Agent - Signature

Date

Jared Plath

Authorized Agent- Printed Name

ATTEST:

VP of Finance

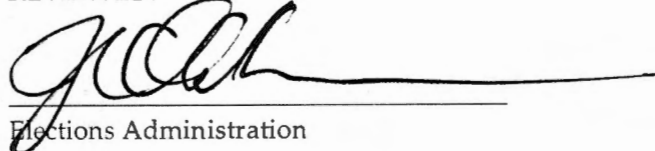
Title

Laura Richard, County Clerk

11/27/2024

Date

REVIEWED:



Elections Administration

REVIEWED:

Robyn Doughtie

Information Technology Department

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A-5: ES&S' Quotation (Quotation Number: 15757); and
Exhibit B-5: Sole Source Letter

EXHIBIT A-5

**Election Systems & Software, LLC****Quotation - Preliminary**

Quotation Date:	Date Printed:	Quotation Number:
	10/8/24	15757
Customer Number:	Expiration Date:	Payment Terms:
38887		30 Days Net
Customer RFQ Number:		Wanted Delivery
		1/1/25

Document Address:
Fort Bend County, Texas
Fort Bend County Auditor
301 Jackson St
Richmond, TX 77469
US - UNITED STATES

Delivery Address:
Fort Bend County, Texas
Elections
4520 Reading Road
Rosenberg, TX 77471
US - UNITED STATES

Sales

Pos	Part No Description	Sale Qty	Unit	Price	Disc. % Planned Delivery Date	Net Amount USD
1	212801 Electionware PYO Standard - Renewal License Fee	1	EA	42,926.630	0.00 1/1/25	42,926.63
2	212807 Electionware Additional Synthesized Audio - Renewal License Fee	1	EA	2,510.390	0.00 1/1/25	2,510.39
3	212814 ExpressLink Software License - Renewal License Fee	1	EA	4,423.070	0.00 1/1/25	4,423.07
4	212816 Electionware Regional Transmission - Renewal License Fee	1	EA	6,563.970	0.00 1/1/25	6,563.97
5	213100 Firmware License - DS200	300	EA	82.800	0.00 1/1/25	24,840.00
6	213110 Firmware License - ExpressVote 1/2.1 BMD	1,700	EA	67.280	0.00 1/1/25	114,376.00
7	213120 Firmware License - DS450	2	EA	1,630.130	0.00 1/1/25	3,260.26
8	212910 Balotar Software License Renewal License Fee	1	EA	2,705.000	0.00 1/1/25	2,705.00

**Election Systems & Software, LLC****Quotation - Preliminary**

Quotation Date:	Date Printed:	Quotation Number:
	10/8/24	15757
Customer Number:	Expiration Date:	Payment Terms:
38887		30 Days Net
Customer RFQ Number:		Wanted Delivery
		1/1/25

Sub Total:	201,605.32
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Total Exclusive Tax:	201,605.32
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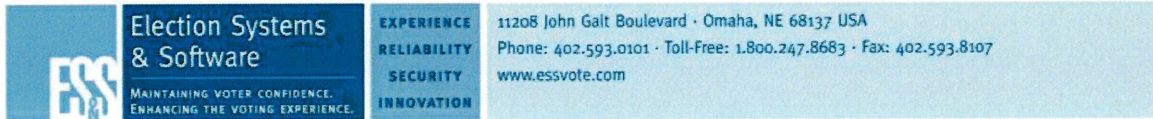
Tax Total	0.00
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Gross Total	201,605.32
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FOOTNOTES:

1. This quote is an estimate and is subject to final review and approval by both ES&S and the Customer.
2. Rates valid for 30 days and thereafter may change.
3. Any applicable (City, County & State) sales taxes are an estimate and will be invoiced at sales tax rates in effect at time of invoicing.
4. Subject to state, municipal, jurisdictional, provincial or territory laws to the contrary, the above pricing information is confidential, proprietary and trade secret information of ES&S and is intended only for the use of the individual or entity to which the document is directed to. This information may not be disclosed or reproduced either publicly or to any other individual or entity without the prior written authorization of ES&S.
5. The quantity of service days (if included) reflect a reasonable estimate for implementation and selected ongoing election services. Quantities may change depending on specific Customer needs.
6. If Freight is not stated in Quotation, Freight Cost will be determined at time of order.

EXHIBIT B-5



January 06, 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 ES&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
January 06, 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