

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

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

THIS FOURTH AMENDMENT ("Fourth 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, on or about February 8, 2022, and on or about April 25, 2023 (collectively 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 and software, and ES&S maintenance services, as indicated by the letter attached hereto as Exhibit "B" 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' Invoice Number CD2073092, attached as Exhibit "A" and incorporated fully by reference; and in accordance with the requirements and specifications of Exhibit B.
2. **Term.** ES&S will provide the specified products and/or services as described in Exhibit A from January 1, 2024-December 31, 2024 to County. This Fourth 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. The Maximum Compensation for the performance of services within the Scope of Services as described in Exhibit A is \$217,399.00. In no case shall the amount paid by County under this Fourth 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 Fourth Amendment, that County shall have available the total maximum sum of \$217,399.00, 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 and Fourth 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 \$217,399.00.

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 Fourth Amendment, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Fourth Amendment. This Fourth Amendment, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

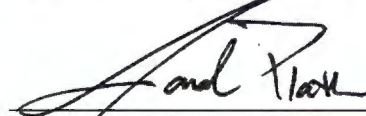
IN WITNESS WHEREOF, this Fourth Amendment is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Fourth Amendment and the attachments and exhibits hereto. All parties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

FORT BEND COUNTY



KP George, County Judge

ELECTIONS SYSTEMS & SOFTWARE, LLC



Authorized Agent – Signature

1.23.24

Date

ATTEST:



Laura Richard, County Clerk

Jared Plath

Authorized Agent- Printed Name

VP of Finance

Title

01/03/2024

Date



REVIEWED:



Elections Administration

REVIEWED:



Information Technology Department



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 217,399.00 to accomplish and pay the obligation of Fort Bend County under this Agreement.



Robert Ed Sturdivant, County Auditor

Exhibit A: ES&S' Invoice Number CD2073092; and

Exhibit B: Sole Source Letter

EXHIBIT A



Election Systems & Software,
LLC
6055 Paysphere Circle
Chicago, IL 60674
(877) 377-8683

Invoice

Invoice Date 12/13/23
Order Date 12/13/23
Customer Number 38887
Customer's PO No
Terms of Payment 30 Days Net
Order Number 166418

ORIGINAL

Invoice Number CD2073092
Election Date
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Invoice Address

Fort Bend County, Texas
Fort Bend County Auditor
301 Jackson St
Richmond, TX 77469

Delivery Address

Fort Bend County, Texas
Elections
4520 Reading Road
Rosenberg, TX 77471

Invoice for Service Contract: 2642, DS4-2;DS2-300;EV-1700;ET-300;EW;BOD;EL, Fort Bend County, Texas

Sales

Pos	Description	Sales Qty	Unit	Price	Disc %	Tax %	Net Amount USD
1	HMA - DS450 Extended Warranty with Annual Maintenance 01-JAN-24 to 31-DEC-24	2.00	EA	2,866.500	0.00	0.00	5,733.00
2	Electionware PYO Standard - Renewal License Fee 01-JAN-24 to 31-DEC-24	1.00	EA	41,475.000	0.00	0.00	41,475.00
3	Electionware Additional Synthesized Audio - Renewal License Fee 01-JAN-24 to 31-DEC-24	1.00	EA	2,425.500	0.00	0.00	2,425.50
4	ExpressLink Software License - Renewal License Fee 01-JAN-24 to 31-DEC-24	1.00	EA	4,273.500	0.00	0.00	4,273.50
5	Firmware License - ExpressTouch 01-JAN-24 to 31-DEC-24	300.00	EA	65.000	0.00	0.00	19,500.00
6	Firmware License - DS200 01-JAN-24 to 31-DEC-24	300.00	EA	80.000	0.00	0.00	24,000.00
7	Firmware License - ExpressVote BMD 01-JAN-24 to 31-DEC-24	1,700.00	EA	65.000	0.00	0.00	110,500.00
8	Firmware License - DS450 01-JAN-24 to 31-DEC-24	2.00	EA	1,575.000	0.00	0.00	3,150.00
9	Electionware Regional Transmission - Renewal License Fee 01-JAN-24 to 31-DEC-24	1.00	EA	6,342.000	0.00	0.00	6,342.00

Sub Total Amount

217,399.00



Election Systems & Software,
LLC
6055 Paysphere Circle
Chicago, IL 60674
(877) 377-8683

Invoice

Invoice Date
12/13/23
Order Date
12/13/23
Customer Number
38887
Customer's PO No

Terms of Payment
30 Days Net
Order Number
166418

ORIGINAL

Invoice Number
CD2073092
Election Date

Page
2 (2)

Total Exclusive Tax **217,399.00**

Total Tax **0.00**

Invoice Amount **217,399.00**

Customer Number	Invoice Number	INVOICE AMOUNT	Election Systems & Software
38887	CD2073092	217,399.00	ABA Routing No: 071000039
			Account No: 5800923558

TX: Texas

PLEASE DETACH AND RETURN THIS STUB WITH YOUR PAYMENT. THANK YOU.

Exhibit A

EXHIBIT B

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

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

ELECTION SYSTEMS & SOFTWARE, LLC
Omaha, NE United States

Certificate Number:
2023-1104760

Date Filed:
12/15/2023

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County, TX

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

22-IT-100489-A2
Fourth Amendment to Sales Order Agreement for Products, Services, and Resources per Contract # 22-IT-100489-A2

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	GOVERNMENT SYSTEMS, SOFTWARE & SERVICES, INC.	Omaha, NE United States	X	

5 Check only if there is NO Interested Party.

☐


6 UNSWORN DECLARATION

My name is Jared Plath, and my date of birth is 03/04/1987.

My address is 11208 John Galt Blvd., Omaha, NE, 68137, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Douglas County, State of Nebraska, on the 15 day of December, 20 23.
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

ELECTION SYSTEMS & SOFTWARE, LLC
Omaha, NE United States

Certificate Number:
2023-1104760

Date Filed:
12/15/2023

Date Acknowledged:
01/23/2024

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County, TX

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

22-IT-100489-A2
Fourth Amendment to Sales Order Agreement for Products, Services, and Resources per Contract # 22-IT-100489-A2

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	GOVERNMENT SYSTEMS, SOFTWARE & SERVICES, INC.	Omaha, NE United States	X	

5 Check only if there is NO Interested Party.☐**6 UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)