



BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

Wednesday, April 12, 2017
10:00 a.m. - Room 308

BOARD MEETING AGENDA

CALL TO ORDER/FLAG SALUTE

MINUTES:

Minutes, April 5, 2017 Board meeting.
Minutes, April 5, 2017 Staff meeting.

VISITOR COMMENTS - 5 MINUTE LIMIT

MATTERS:

- 1) Certificate of Recognition for Budget Presentation to Jennifer Cuellar & Department
- 2) Proclaim April 2017 at "National County Government Month"
- 3) 12:00 Lunch meeting with the Columbia County Parks Committee (Annex Room)

CONSENT AGENDA:

- (A) Ratify the Select to Pay for the week of 4.10.17.
- (B) Letter to Pauly Rogers extending the contract term and authorize Jennifer Cuellar to sign.
- (C) Appoint Leahnette River to the Solid Waste Advisory Committee, to replace Sally Ann Marson as At-Large member, term to expire 12.31.2019.
- (D) Appoint Sally Ann Marson to the Solid Waste Advisory Committee, Ex-Officio position, term to expire 12.31.2019.
- (E) 2017 Liquor License Renewal for Vernonia Golf Club.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (F) Public Procurement Contract with Elections Systems & Software, LLC, for Ballot Counting Equipment and Software.

DISCUSSION ITEMS:

- Janet Evans:

- Justice Reinvestment Carryover Agreement;
- Amendment #1 to Agreement with Cowlitz County for Juvenile Detention

COMMISSIONER HEIMULLER COMMENTS:

COMMISSIONER MAGRUDER COMMENTS:

COMMISSIONER TARDIF COMMENTS:

EXECUTIVE SESSION:

Pursuant to ORS 192.640(1), the Board of County Commissioners reserves the right to consider and discuss, in either open session or Executive Session, additional subjects which may arise after the agenda is published.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

PROCLAMATION

WHEREAS: The nation's 3,069 counties serving more than 300 million Americans provide essential services to create healthy, safe and vibrant; and

WHEREAS: Counties move America forward by providing health care, administering justice, keeping communities safe, creating economic opportunities and much more; and

WHEREAS: Columbia County and all counties take pride in their responsibility to protect and enhance the health, welfare and safety of its residents in efficient and cost-effective ways; and

WHEREAS: Through National Association of Counties President Bryan Desloge's "Brilliant Ideas at Work" initiative, NACo is encouraging counties to focus on the most innovative programs and services that strengthen communities; and

WHEREAS: In order to remain healthy, vibrant and safe, America's counties provide public health, justice, safety, infrastructure, transportation, technology, environmental stewardship and economic services that play a key role in everything from residents' daily commutes to emergency response; and

WHEREAS: Each year since 1991 the National Association of Counties has encouraged counties across the country to actively promote their own programs and services to the public they serve; and

NOW, THEREFORE, the Columbia County Board of Commissioners do hereby proclaim the month of April, 2017 at "**National County Government Month**" and encourages all county residents to join in this observation.

Dated at St. Helens, Oregon this 12th day of April, 2017.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

By: _____
Margaret Magruder, Commissioner

By: _____
Alex Tardif, Commissioner



COLUMBIA COUNTY

Department of Finance and Taxation

230 Strand Street • St. Helens, Oregon 97051
Phone 503-397-7252 • Fax 503-397-7251 • Email: Jennifer.Cuellar@co.columbia.or.us

April 3, 2017

Mathew Graves, CPA
Engagement Partner
Pauly, Rogers and Co., P.C.
12700 SW 72nd Avenue
Tigard, OR 97223

Mathew,

Pursuant to the terms of the Personal Services Agreement for Audit Services between Columbia County and Pauly, Rogers and Co., P.C. please accept this letter as confirmation of the County's desire to extend the terms of the agreement for one (1) additional yearly audit cycle for the 2016-17 fiscal year.

We look forward to working with you again this coming year.

Sincerely,

Jennifer Cuellar-Smith
Treasurer and Director, Finance and Taxation Department

cc: Sarah Hanson, County Counsel

PUBLIC PROCUREMENT CONTRACT
(ORS Chapter 279B)
by and between COLUMBIA COUNTY and
ELECTIONS SYSTEMS & SOFTWARE, LLC

This Agreement is made and entered into by and between COLUMBIA COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County", and Elections Systems and Software, LLC, hereinafter referred to as "Vendor" or "ES&S", for ballot counting equipment and software.

WITNESSETH:

IT IS HEREBY AGREED by and between the parties above-mentioned, in consideration of the mutual promises hereinafter stated, as follows:

1. Contract Term. This Agreement is effective on the date last signed, below.
2. Completion Date. This Agreement shall have be for a term of one (1) year, after which this Agreement shall automatically renew for five (5) years, as provided in Exhibit A of Attachment 1, unless sooner terminated as provided herein.
3. Goods Procured. Vendor agrees to provide the equipment and software described in the Sales Order Agreement and its exhibits, a copy of which is attached hereto, labeled Attachment 1 and incorporated herein by this reference. Vendor's services include Hardware Maintenance and Software License, Maintenance and Support Services, as provided in Exhibit A to Attachment 1. Vendor shall be responsible for the proper installation of the equipment and software. In case of conflict between Attachment 1 and this Agreement, this Agreement shall control.
4. Consideration.
 - A. County shall pay Vendor for the equipment and software, and installation of the equipment and software, an amount not to exceed \$47,219.38, as provided in Attachment 1, which shall be paid in lump sum upon satisfactory completion of the equipment and software delivery and installation. Vendor shall invoice County for payment.
 - B. As provided in Attachment 1, Exhibit A, Schedule A1, County shall pay Vendor for Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period), an amount not to exceed \$21,525.00, which shall be paid in five (5) annual installments, commencing after the initial one-year term, upon invoices submitted by Vendor.
 - C. The amounts stated herein are the complete compensation to Vendor for the equipment and services performed under this Agreement. This fee shall include all expenses. This Agreement is subject to the appropriation of funds by County, and/or the receipt of funds from state and federal sources. In the event sufficient funds shall not be appropriated, and/or received, by County for the payment of consideration required to be paid under this Agreement, then County may terminate this Agreement in accordance with

Section 17 of this Agreement.

5. Contract Representatives. Contract representatives for this Agreement shall be:

FOR THE VENDOR: Lori Mommaerts, Regional Sales Manager w/copy to: Office of General Counsel Election Systems & Software, LLC 11208 John Galt Blvd. Omaha, NE 68137 (402) 593-0101	FOR THE COUNTY: Don Clack, Elections Supervisor Columbia County 230 Strand Street St. Helens, OR 97051 (503) 397-7214
---	---

All correspondence shall be sent to the above addressees when written notification is necessary. Contract representatives can be changed by providing written notice to the other party at the address listed.

6. Permits - Licenses. Unless otherwise specified, Vendor shall procure all permits and licenses, pay all charges and fees and give all notices necessary for performance of this Agreement prior to commencement of work.
7. Compliance with Codes and Standards. It shall be the Vendor's responsibility to demonstrate compliance with all applicable building, health and sanitation laws and codes, and with all other applicable Federal, State and local acts, statutes, ordinances, regulations, provisions and rules. Vendor shall engage in no activity which creates an actual conflict of interest or violates the Code of Ethics as provided by ORS Chapter 244, or which would create a conflict or violation if Vendor were a public official as defined in ORS 244.020.
8. Reports. Vendor shall provide County with periodic reports about the progress of the project at the frequency and with the information as prescribed by the County.
9. Independent Contractor. Vendor is engaged hereby as an independent contractor and shall not be considered an employee, agent, partner, joint venturer or representative of County for any purpose whatsoever. County does not have the right of direction or control over the manner in which Vendor delivers services under this Agreement and does not exercise any control over the activities of the Vendor, except the services must be performed in a manner that is consistent with the terms of this Agreement. County shall have no obligation with respect to Vendor's debts or any other liabilities of Vendor. Vendor shall be responsible for furnishing all equipment necessary for the performance of the services required herein. In addition:
- A. Vendor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
 - B. This Agreement is not intended to entitle Vendor to any benefits generally granted to County employees. Without limitation, but by way of illustration, the benefits which

are not intended to be extended by this Agreement to the Vendor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, social security, workers' compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Vendor is presently a member of the Public Employees Retirement System).

- C. The Vendor is an independent contractor for purposes of the Oregon workers' compensation law (ORS Chapter 656) and is solely liable for any workers' compensation coverage under this Agreement. If the Vendor has the assistance of other persons in the performance of the Agreement, the Vendor shall qualify and remain qualified for the term of this Agreement as a carrier-insured or self-insured employer under ORS 656.407. If the Vendor performs this Agreement without the assistance of any other person, unless otherwise agreed to by the parties, Vendor shall apply for and obtain workers' compensation insurance for himself or herself as a sole proprietor under ORS 656.128.
10. Statutory Provisions. Pursuant to the requirements of ORS 279B.220 through 279B.235 and Article XI, Section 10 of the Oregon Constitution, the following terms and conditions are made a part of this Agreement:
- A. Vendor shall:
 - (1) Make payment promptly, as due, to all persons supplying to Vendor labor or material for the performance of the work provided for in this Agreement. [ORS 279B.220 (1)]
 - (2) Pay all contributions or amounts due the Industrial Accident Fund from the Vendor or any subcontractor incurred in the performance of this Agreement. [ORS 279B.220 (2)]
 - (3) Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished. [ORS 279B.220 (3)]
 - (4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279.220 (4)]
 - B. Vendor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness and injury, to the employees of Vendor, of all sums that Vendor agrees to pay for the services and all moneys and sums that Vendor collects or deducts from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [ORS 279B.230 (1)]
 - C. Vendor shall pay employees at least time and a half pay for work the employees perform under this Agreement on the legal holidays specified in a collective

bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. [ORS 279B.235 (5)(a)]

- D. Vendor shall notify employees in writing, who work under this Agreement, either at the time of hire or before work begins on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the vendor may require the employees to work. [ORS 279A.235 (5)(b)]
 - E. All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [ORS 279B.230 (2)]
 - F. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.
11. Non-Discrimination. Vendor agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, handicap or age, suffer discrimination in the performance of this Agreement when employed by Vendor. Vendor certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise that is certified under ORS 200.055 in awarding a subcontract.
12. Tax Law Compliance Warranty and Covenant. As required by ORS 279B.045, Vendor represents and warrants that Vendor has complied with the tax laws of this state and all political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Vendor shall continue to comply with the tax laws of this state and all political subdivisions of this state during the term of the public contract. Vendor's failure to comply with the tax laws of this state or a political subdivision of this state before the Vendor executes this Agreement or during the term of this Agreement is a default for which County may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law.
13. Nonassignment; Subcontracts. Vendor shall not assign, subcontract or delegate the responsibility for providing services hereunder to any other person, firm or corporation without the express written permission of the County, except as provided in the Specifications.
14. Nonwaiver. The failure of the County to enforce any provision of this Agreement shall not constitute a waiver by the County of that or any other provision of the Agreement.
15. Indemnity. Vendor shall indemnify, defend, save, and hold harmless the County, its officers, agents and employees, from any and all claims, suits or actions of any nature, including claims of injury to any person or persons or of damage to property, caused directly

or indirectly by reason any error, omission, negligence, or wrongful act by Vendor, its officers, agents and/or employees arising out the performance of this agreement. This indemnity does not apply to claims, suits or actions arising solely out of the negligent acts or omissions of the County, its officers, agents or employees.

16. Insurance. For the duration of the Agreement, Vendor shall, at its own expense, purchase and maintain from a company or companies licensed to do business in the State of Oregon, the following insurance with limits not less than those indicated, or greater if required by law:
- A. Workers' Compensation and employer's liability insurance meeting statutory limits mandated by state and federal laws. Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
 - B. Commercial General Liability Insurance covering bodily injury, death, and property damage in the amount of \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). This insurance shall include personal injury liability, products and completed operations.
 - C. The Vendor or its insurer must provide thirty (30) days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
 - D. Vendor shall provide certificate(s) of insurance for all required insurance before the Vendor performs under the contract. The certificate(s) shall be accompanied by an Additional Insured Endorsement naming Columbia County, its officers, agents and employees as additional insureds.

The insurance requirements herein supersede those in any attached exhibit.

17. Termination. This Agreement may be terminated at any time in whole or in part by mutual consent of both parties. The County may terminate this Agreement, effective upon delivery of written notice to Vendor, or at such later date as may be established by the County under the following conditions, provided that the County shall provide Vendor with written notice setting forth the defaults and a period of no less than thirty (30) days in which to cure any default under subsections A or B:
- A. If Vendor fails to perform the work in a manner satisfactory to County.
 - B. If any license or certificate required by law or regulation to be held by Vendor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
 - C. If funding becomes inadequate to allow the work to continue in accordance with the project schedule.

In case of termination, Vendor shall be required to repay to County the amount of any funds

advanced to Vendor, which Vendor has not earned or expended through the provision of goods and/or equipment and/or services in accordance with this Agreement. However, Vendor shall be entitled to retain all costs incurred and fees earned by Vendor prior to that termination date, and any amounts remaining due shall be paid by County not to exceed the maximum amount stated above and decreased by any additional costs incurred by County to correct the work performed.

The rights and remedies of the County related to any breach of this Agreement by Vendor shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued before such termination.

18. Time of the Essence. The parties agree that time is of the essence in this Agreement.
19. Ownership of Documents. Except as provided in Attachment 1, all documents of any nature and/or electronic data including, but not limited to, working papers, reports, material necessary to understand the documents and/or data, drawings, works of art and photographs, produced, prepared and/or compiled specifically by Vendor for the County pursuant to this Agreement are the property of County, and it is agreed by the parties that such documents are works made for hire. Vendor hereby conveys, transfers, and grants to County all rights of reproduction and the copyright to all such documents.
20. Mediation. In the event of a dispute between the parties arising out of or relating to this Contract, the parties agree to submit such dispute to a mediator agreed to by both parties as soon as practicable after the dispute arises, and preferably before commencement of litigation or any permitted arbitration. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.
21. Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.
22. Venue. Venue relating to this Agreement shall be in the Circuit Court of the State of Oregon for Columbia County, located in St. Helens, Oregon.
23. Attorneys' Fees. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for its own attorneys' fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
24. Severability. If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof.
25. No Third-Party Rights. This Agreement is solely for the benefit of the parties to this Agreement. Rights and obligations established under this Agreement are not intended to benefit any person or entity not a signatory hereto.

26. Warranty. Vendor warrants the goods and/or equipment delivered and installed, and the services provided, under this Agreement to be free from defects in design, material, and workmanship for a minimum of one year from the date installation of the goods and/or equipment is complete and accepted by County. Should any of the goods and/or equipment, or the services provided, be found defective, Vendor shall furnish the necessary parts and labor to correct such defect. If Vendor or the manufacturer provides a warranty which differs or exceeds that required by this paragraph, the warranty which provides the greatest protection to County shall control. This warranty is in addition to warranties of merchantability and fitness for a particular purpose as provided by law.
27. ENTIRE AGREEMENT. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. VENDOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE(S) BELOW, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

VENDOR :

By: _____

Print Name: _____

Date: _____

Approved as to form

By: _____
Office of County Counsel

OWNER:

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

By: _____
Margaret Magruder, Commissioner

By: _____
Alex Tardif, Commissioner

Date: _____



11208 JOHN GALT BLVD
 OMAHA, NE 68137-2364
 (402) 593-0101

ATTACHMENT 1

Sales Order Agreement

Customer P.O. #: _____

1st Election Date: To be Agreed Upon by the Parties

Estimated Delivery Date: To be Agreed Upon by the Parties

Phone Number: (503) 397-3796

Fax Number: (503) 397-7266

Customer Contact, Title: Betty Huser - County Clerk

Customer Name: Columbia County, Oregon

Type of Sale: NEW
 Type of Equip: NEW REFURBISHED

Bill To: _____
Columbia County, Oregon
Betty Huser - County Clerk
230 Strand Street
St. Helens, OR 97051

Ship To: _____
Columbia County, Oregon
Betty Huser - County Clerk
230 Strand Street
St. Helens, OR 97051

Item	Description	Qty	Price	Total
1	DS450 Model DS450 High Speed Digital Image Scanner with Steel Table, Report Printer, Audit Printer, Start-Up Kit, Dust Cover, Battery Backup, Two (2) USB Cables, and Two (2) 8GB Thumb Drives	1	\$49,950.00	\$49,950.00
2	Initial Annual License Fee Model DS450 Scanner	1	Included	Included
3	Equipment Installation/ Training Fee Model 450 Scanner	1	\$3,500.00	\$3,500.00
4	Services Election On-Site Support Event	1	\$4,525.00	\$4,525.00
5	Discount Installation/Training Fee Discount	1	(\$3,500.00)	(\$3,500.00)
6	Trade-In Allowance Equipment Being Traded-In by Customer Includes: 1 - Model 650 Scanner	1	(\$5,273.00)	(\$5,273.00)
7	Shipping Shipping & Handling	1	\$500.00	\$500.00

Freight Billable: yes no

Order Subtotal \$ **49,702.00**
 Customer Discount **(\$2,482.62)**
 Order Total \$ **47,219.38**

 Lori Mommaerts
 Regional Sales Manager

 Customer Signature Date

 V.P. of Finance Date

 Title

Trade-In Equipment:
 ES&S will coordinate and pay for the pickup and transportation of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties. Customer is responsible for preparing, packaging and palletizing the trade-in equipment for shipment. If Customer is unable or unwilling to prepare, package and palletize the trade-in equipment for shipment, ES&S will assume these responsibilities and Customer shall reimburse ES&S for all costs incurred.

Special Notes:
 ES&S agrees to provide Customer, on a temporary basis, the use of one (1) ES&S DS850 Central Count Scanner until such time as the ES&S DS450 Scanner is certified for use in the State of Oregon. Upon certification of the ES&S DS450 Scanner, ES&S will coordinate with the Customer to deliver the ES&S DS450 Scanner and pick up the ES&S DS850 Scanner which shall be in good working condition, normal wear and tear excepted. In the event the ES&S DS850 is returned to ES&S with excessive wear and tear, Customer shall be responsible for restoring the unit to good working order.

Payment Terms
 100% of Order Total due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.
 Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.
 Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Warranty Period (Years): One (1) Year After Equipment Delivery

Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)
 The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.

SEE GENERAL TERMS AND CONDITIONS

ATTACHMENT 1

GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Equipment, ES&S Software and ES&S Firmware described on the reverse side. The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The payment terms for the ES&S Equipment and ES&S Software are set forth on the reverse side. Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the reverse side for the ES&S Equipment. The consideration for ES&S' grant of the license during the Initial Term for the ES&S Firmware is included in the cost of the ES&S Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time employees to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable annual ES&S Software License, Maintenance and Support Fees set forth on Schedule A1. The licenses allow such bona fide employees to use and copy the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in Customer's jurisdiction. The licenses granted in this Section 2 do not permit Customer to access or in any way use the source code for the ES&S Software.

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

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party without ES&S' prior written consent; or

c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or

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

4. **Term of Licenses.** The licenses granted in Section 2 shall commence upon the delivery of the ES&S Software described in Section 2 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on the reverse side. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

5. **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any third party items that are required in order to operate the Updates;
- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and
- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

6. **Delivery; Risk of Loss.** The Estimated Delivery Dates set forth on the reverse side are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer and other events. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location.

7. **Warranty.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a 1-year period (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will

commence upon delivery. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the ES&S Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer promptly notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) Customer has installed and is using the most recent update, or the second most recent update, provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product. The terms of post-warranty license, maintenance and support are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer.** EXCEPT AS OTHERWISE SET FORTH IN THE AGREEMENT, ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' INSTALLATION AND ACCEPTANCE TESTING SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH RESPECT TO THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

8. **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. Except for claims associated with intellectual property infringement, personal injury (including death) and property damage, 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 the ES&S Equipment and ES&S Software to achieve Customer's intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent update, or the second most recent update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the ES&S Software Maintenance and Support.

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

ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

10. **Intentionally Omitted.**

11. **Termination.** This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

12. **Disputes.**

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

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than 60 days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable. Any undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date in accordance with applicable law.

13. **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.

14. **Compliance with Laws.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment and ES&S Software sold and

ATTACHMENT 1

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 Customer's state.

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

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

Customer's pro-rata share of the costs included under subsections 15(ii) and 15(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Equipment and/or ES&S Software purchased and licensed by Customer under this Agreement.

ATTACHMENT 1 - EXHIBIT A

EXHIBIT A **HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES** **(POST-WARRANTY PERIOD)**

ARTICLE I **GENERAL**

1. **Term; Termination.** This Exhibit A for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Term"). Upon expiration of the Initial Term, this Exhibit A shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit A 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 ninety (90) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit A, if the breaching party fails to cure such breach, (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, or (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. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this is Exhibit A is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule A1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% 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. The Software License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Exhibit A through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance and Software License, Maintenance and Support plan coverage.

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 Schedule A1 (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,

ATTACHMENT 1 - EXHIBIT A

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, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule A1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services.

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) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided 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 Schedule A1.

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, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot

ATTACHMENT 1 - EXHIBIT A

practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

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

e. **Storage.** When not in use, Products should be stored in a clean, secure environment. During operation of the Products, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 50% relative humidity.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal 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 **SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**

1. **License and Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to allow Customer to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 5 of the General Terms.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (e) Customer's failure to

ATTACHMENT 1 - EXHIBIT A

notify ES&S within three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Exhibit A. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Exhibit A. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Exhibit A.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, including a reinstatement charge, which would have been due to ES&S had the Initial Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

ATTACHMENT 1 - EXHIBIT A

Schedule A1
Pricing Summary

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$13,650.00
ES&S Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$7,875.00
Total Maintenance Fees for the Initial Term:		\$21,525.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		
Note 2: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

ATTACHMENT 1 - EXHIBIT A

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Expiration of the Warranty Period through the **fifth** anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
1	Model DS450 Scanner	Year 1	\$2,730.00	\$2,730.00
1	Model DS450 Scanner	Year 2	\$2,730.00	\$2,730.00
1	Model DS450 Scanner	Year 3	\$2,730.00	\$2,730.00
1	Model DS450 Scanner	Year 4	\$2,730.00	\$2,730.00
1	Model DS450 Scanner	Year 5	\$2,730.00	\$2,730.00
Total Hardware Maintenance Fees for the Initial Term				\$13,650.00

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: Columbia County, Oregon

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.

Note 5: Upon expiration of the Initial Term, this Schedule A1 shall automatically renew as set forth in Article I, Section 1.

Hardware Maintenance Services Provided by ES&S Under this Schedule A1

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). 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 parts with new or remanufactured federally and state certified parts.

ATTACHMENT 1 - EXHIBIT A

- 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 ES&S Equipment.
- Update of maintenance records which are kept by serial number and available to the Customer through the Customer's ES&S Web-based portal.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs 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.

ATTACHMENT 1 - EXHIBIT A

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES
FIRMWARE**

Initial License and Maintenance Term: Expiration of the Warranty Period through the **fifth** anniversary thereof

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	Firmware License, Maintenance and Support Fee In Total
1	Model DS450 Scanner	Year 1	\$1,575.00	\$1,575.00
1	Model DS450 Scanner	Year 2	\$1,575.00	\$1,575.00
1	Model DS450 Scanner	Year 3	\$1,575.00	\$1,575.00
1	Model DS450 Scanner	Year 4	\$1,575.00	\$1,575.00
1	Model DS450 Scanner	Year 5	\$1,575.00	\$1,575.00
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$7,875.00

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

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
 - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
 - Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.

ATTACHMENT 1 - EXHIBIT A

4. Customer shall be responsible for the installation and integration of any third party hardware or software application or system purchased by the customer, unless otherwise agreed upon, in writing, by the parties.
5. Customer shall be responsible for data extraction from Customer voter registration system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
9. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
10. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.
11. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

CRIMINAL JUSTICE COMMISSION
JUSTICE REINVESTMENT GRANT PROGRAM
GRANT AGREEMENT # JR-15-019

AMENDMENT NO. 1

This is Amendment Number **1** to Grant Agreement # **JR-15-019** "Agreement" between the State of Oregon, acting by and through the Criminal Justice Commission "CJC", and Columbia County "Grantee".

I. The Agreement is hereby amended as follows:

A. Section 6.c. is amended and restated as follows:

c. Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of the Project End Date or termination of this Agreement ("Unexpended Funds") must be returned to CJC. Grantee shall return all Misexpended Funds to CJC promptly after CJC's written demand and no later than 15 days after CJC's written demand. Grantee shall return all Unexpended Funds to CJC within 14 days after the earlier of the Project End Date or termination of this Agreement, except as otherwise provided below. If Grantee intends to apply for funding from CJC's Justice Reinvestment Grant Program for the 2017-2019 biennium, Grantee may retain any Unexpended Funds pending action on Grantee's application, as further described below. If CJC and Grantee enter into an agreement on or before September 30, 2017 for funding from CJC's Justice Reinvestment Grant Program for the 2017-2019 biennium, the use and disposition of the Unexpended Funds shall be governed by that agreement. If CJC and Grantee do not enter into an agreement on or before September 30, 2017 for funding from CJC's Justice Reinvestment Grant Program for the 2017-2019 biennium, the Project End Date set forth in Exhibit A will, on October 1, 2017, be amended to June 30, 2018, without further action of the Parties, and Grantee shall return all Unexpended Funds to CJC within 14 days after the earlier of termination of this Agreement or June 30, 2018, the new Project End Date.

II. The obligation of CJC under this Amendment is subject to the condition that, on or prior to April 30, 2017, Grantee delivers, or causes to be delivered, to CJC a certificate of the action taken by Grantee to authorize the execution and delivery of this Amendment Number 1, in form and substance satisfactory to CJC and its counsel, if required by CJC.

III. Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect. By its execution of this Amendment, Grantee certifies to CJC that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment. Capitalized terms not defined herein have the meaning ascribed thereto in the original Agreement. This Amendment Number 1 may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on both Parties, notwithstanding that both Parties are not signatories to the same counterpart.

Grantee

By:

Signature of Grantee

Date

Name & Title

Federal Tax ID Number

State Tax ID Number

Criminal Justice Commission

By:

Michael Schmidt, Executive Director

Date

**AMENDMENT NO. 1 to
Agreement for Detention of Columbia County Juveniles in the Cowlitz County
Juvenile Detention Facility**

1. This Amendment No. 1 to Agreement is between Cowlitz County, Washington, ("COWLITZ"), and Columbia County, Oregon ("COLUMBIA") shall take effect and be in force on the date last signed below.
2. COWLITZ AND COLUMBIA have entered into an Agreement for juvenile services, to wit: AGREEMENT FOR DETENTION OF COLUMBIA COUNTY JUVENILES IN THE COWLITZ COUNTY JUVENILE DETENTION FACILITY, effective August 1, 2012 (the "Original Agreement").
3. COLUMBIA is now in need of continuing or modifying the Original Agreement with COWLITZ under the Original Agreement, as set forth herein, and COWLITZ is amendable to this amendment in providing services to COLUMBIA, under the same terms and conditions of the Original Agreement.

NOW THEREFORE, the Parties agree as follows:

1. The Original Agreement is amended as follows:

- a. Section H "COSTS PER BED" is amended to read as follows:

From the effective date of this Amendment 1 through December 31, 2017, COLUMBIA COUNTY will pay \$137.00 per bed day for an average of 1.0 beds per day and for a total of (365) bed days during an annual term of this Agreement, equaling a monthly amount of \$4,167.00 through December 31, 2017.

From January 1, 2018 through December 31, 2018, COLUMBIA COUNTY will pay \$144.00 per bed day for an average of 1.0 beds per day and for a total of (365) bed days during an annual term of this Agreement, equaling a monthly amount of \$4380.00, during the period of January 1, 2018 through December 31, 2018.

From January 1, 2017 through December 31, 2017, any bed days incurred by COLUMBIA COUNTY in excess of (365) bed days during any annual term will be paid at the rate of \$137.00 per each additional bed day.

From January 1, 2018 through December 31, 2018, any bed days incurred by COLUMBIA COUNTY in excess of (365) bed days during an annual term will be paid at the rate of \$144.00 per each additional bed day.

- b. Section I "REIMBURSEMENT OF COSTS" is amended to read as follows:

From the effective date of this Amendment 1 through December 31, 2017, COWLITZ COUNTY agrees to bill COLUMBIA COUNTY every month by the 15th of the month following the billed period for all services pursuant to this agreement at the rate of \$4,167.00, plus any costs as set forth herein. All shall be paid within thirty (30) days of billing.

During the period from January 1, 2018 through December 31, 2018, COWLITZ COUNTY agrees to bill COLUMBIA COUNTY every month by the 15th of each month following the billed period for all services pursuant to this agreement at the rate of \$4380.00, plus any costs as set forth herein. All shall be paid within thirty (30) days of billing.

c. Section M "EFFECTIVE DATE AND RENEWALS" is amended to read as follows:

This agreement becomes effective on August 1, 2012, by signature of this document by the parties hereto. The term of the Agreement shall expire on December 31, 2018, unless otherwise modified or terminated as provided herein. This Agreement may be terminated by either party, effective no less than sixty (60) days after receipt of written notice given by the party seeking to terminate. This Agreement may be modified only after written notice of intention to modify and by mutual written agreement of the parties.

2. This Amendment No. 1 is effective on the date last signed below.
3. Except as provided above in this Amendment No. 1, all terms, conditions, duties, obligations and provisions of the Original Agreement and any prior Amendment(s) shall remain in full force and effect.

The parties hereto have executed this Amendment No. 1 and each signatory to this Amendment No. 1 warrants that he/she is duly authorized and executes this Amendment for and on behalf of the below-inscribed parties hereto.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
OF COWLITZ COUNTY, WASHINGTON

By: _____
Henry Heimuller, Chair

By: _____
Joe Gardner, Chairman

By: _____
Margaret Magruder, Commissioner

By: _____
Dennis P. Weber, Commissioner

By: _____
Alex Tardif, Commissioner

By: _____
Arne Mortensen, Commissioner

Date: _____

Date: _____

ATTEST:

T. Ostreim, Cowlitz Clerk of Board

APPROVED AS TO FORM:

Date: _____

BY: _____

COLUMBIA COUNTY COUNSEL

CONTRACT AMENDMENT FORM HAS BEEN
APPROVED BY COWLITZ PROSECUTING ATTYS
OFFICE – CIVIL SECTION