

COLORADO COUNTY COMMISSIONERS COURT
NOTICE OF OPEN MEETING

DATE OF MEETING: June 16, 2025 – 1:00 P.M.
BUILDING: Colorado County Courthouse, County Courtroom
STREET LOCATION: 400 Spring Street
CITY OF LOCATION: Columbus, Texas 78934

Pursuant to the authority granted under Government Code, Chapter 551, the Commissioners Court may convene in a closed meeting to discuss and deliberate agenda item(s) subject to the closed meeting exceptions. A final action, decision, or vote on a matter deliberated in a closed meeting shall only be made in an open meeting. Commissioners Court may use a telephone conference call, video conference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the governmental body or a private consultation with its attorney in a closed meeting of the governmental body. Immediately before any closed meeting, the specific section or sections of Government Code, Chapter 551, which provides statutory authority for closed meetings, will be announced.

On this the 16th day of June 2025, the Commissioners Court of Colorado County, Texas met in Special Session at 1:00 P.M., in their regular meeting place at the Colorado County Courthouse, County Courtroom, 400 Spring Street, in the City of Columbus, Texas.

The Following Members were present to wit:

Honorable Ty Prause	County Judge
Honorable Shannon Owers	Commissioner Precinct #1
Honorable Ryan Brandt	Commissioner Precinct #2
Honorable Darrell Gertson	Commissioner Precinct #4
Honorable Kimberly Menke	County Clerk

The Honorable Keith Neuendorff, Commissioner Precinct #3 was unable to attend.

The County Judge Ty Prause called the meeting to order at 1:00 P.M.

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
June 16, 2025**

DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:

- __1. Pledge of Allegiance to the American Flag and the Texas Flag.

Judge Prause led the Pledge of Allegiance to the American Flag and the Texas Flag.

- __2. Agenda as posted.

**Motion by Commissioner Brandt to approve the agenda as posted; seconded by
Commissioner Gertson; 5 ayes 0 nays; motion carried; it was so ordered.**

(See Attachment)

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING**

June 16, 2025

FILED FOR RECORD
COLORADO COUNTY, TX

COLORADO COUNTY COMMISSIONERS COURT 2025 JUN 12 PM 1:58
NOTICE OF OPEN MEETING

KIMBERLY MENKE
COUNTY CLERK MK

DATE OF MEETING: June 16, 2025 – 1:00 P.M.
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DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:

- ___1. Pledge of Allegiance to the American Flag and the Texas Flag.
- ___2. Agenda as posted.
- ___3. Public comments.
- ___4. Workshop at the County Elections building to demonstrate election equipment and what will be decertified with the SAVE Act.
- ___5. Resolution authorizing submission of grant application for "HAVA Election Security Grant" for 2025 and funding requirements by Colorado County.
- ___6. Approval of Purchase Order Agreements with Election System and Software and funding requirements by Colorado County.
- ___7. Announcements (without discussion and no action) by elected officials/department heads. (Types of Announcements: Events, Road Conditions, Weather Occurrences, Important Dates, Vacancies in Offices or Positions, Accomplishments of Individuals, and Notices)
- ___8. Commissioners Court Members sign all documents and papers acted upon or approved.
- ___9. Adjourn.

CERTIFICATION

NAME: Ty Prause
TITLE: Colorado County Judge
SIGNATURE OF CERTIFYING OFFICIAL:
DATE: June 12, 2025
TELEPHONE NUMBER: (979) 732-2604
FAX NUMBER: (979) 732-9389



The Colorado County Courthouse is wheelchair accessible and accessible parking spaces are available.

**MINUTES OF THE COLORADO COUNTY
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__3. Public comments.

None at this time.

__4. Workshop at the County Elections building to demonstrate election equipment and what will be decertified with the SAVE Act.

1:02 P.M. Recess to the County Elections building for workshop

2:10 P.M. Reconvene Meeting in the County Courtroom

(See Attachments)

**MINUTES OF THE COLORADO COUNTY
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SAVE Act (H.R. 22/S. 128) Executive Order

Legal Requirement:

Sec. 4. Improving the Election Assistance Commission.

(b)(i) The Election Assistance Commission shall initiate appropriate action to amend the ***Voluntary Voting System Guidelines 2.0*** and issue other appropriate guidance establishing standards for voting systems to protect election integrity. The amended guidelines and other guidance ***shall provide that voting systems should not use a ballot in which a vote is contained within a barcode or quick-response code in the vote counting process*** except where necessary to accommodate individuals with disabilities and should provide a voter-verifiable paper record to prevent fraud or mistake.

(ii) *Within 180 days of the date of this order*, the Election Assistance Commission shall take appropriate action to review and, if appropriate, re-certify voting systems under the new standards established under subsection (b)(i) of this section, and to rescind all previous certifications of voting equipment based on prior standards.

Recommendations

- Upgrade Expressvotes for ADA compliance
- Purchase 5 Ballot on Demand Printers
 - Based on recommended polling locations
 - Recommended by SOS
 - Limited quantities available through vendor
- Purchase 5 DS300
 - For 2.0 compliance
- Purchase 5 Express poll books
 - For 2.0 compliance
- Upgrades to all existing hardware including tabulators, reporting systems
 - For 2.0 compliance

Cost Breakdown

- \$96,824.00 Total (based on 5 polls)
- HAVA Grant \$42,500 (-20% match; \$8,500)
- **County Cost \$62,824.00**

**MINUTES OF THE COLORADO COUNTY
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2025 Legislative Summary

29 Election Bills Passed

- 5 other bills with financial impact
 - SB 2753 has the largest impact financially
 - Poll workers – **see below; \$32, 900.00 per election**
 - Publications- increase line item
 - Cost of advertising has increased substantially
 - We will have to advertise all these changes.
 - **\$6,000.00 total**
 - HB 2259 & HB2697
 - Reprinting of forms & Envelopes for Ballot by Mail
 - Additional cost of **\$400 per year**
 - HB 3909
 - Signage for cell phone distance markers
 - 1 time cost per location
 - **Estimate \$500**
 - SB827
 - increased the amount of partial manual count; more hours incurred
 - **\$576.00 (based on highest rate of turnout); per election**
 - SB2166
 - additional equipment test requirements.
 - requires more manpower; 16 hrs
 - **\$310.00 per election**

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING**

June 16, 2025

SB2753

Legal Requirements

- 12 Day voting period
- First 8 days, a minimum of 9 hours per day
- Last Saturday, Monday, and Tuesday (Election Day) 12-hour days
- Last Sunday only 9 hours
- Includes 2 weekends and holidays
- Allows combined and consolidated polling locations
- Limits voting locations to no more than 5,000 registered voters
- Countywide Voting – no longer a limit to applications*
- Poll workers *only*; not other boards required by law

Recommendations

- 5 polling locations
 - Combine 101 & 305 (Columbus/Glidden/Shaws Bend); Election Center, 1117 Travis, Columbus, TX
 - Consolidate 102 & 103 (Rock Island & Sheridan); *Need to find somewhere that isn't preferably a church*
 - Consolidate 201& 202; (Sheridan & Weimar/Oakland); Weimar City Hall; 106 E. Main, Weimar
 - Consolidate 302, 303, 304, (Frelsburg, Bernardo, Mentz); *Prefer to move out of the church; possibly to Frelsburg VFD or somewhere more centrally located.*
 - Consolidate 401 & 402 (Alleyton/Altair & Eagle Lake); *Prefer to move to the new Emergency Management Building*
 - *County buildings are the easiest to utilize for polling locations; no cost and no interruptions.*
- Hours of Polls
 - First 8 Days: 7:30 a.m. – 5:30 p.m. (10 voting hrs –1 working hr).
 - Last Saturday and Monday 7-7 (12 voting hrs + 1 working hr)
 - Last Sunday 8-5 (9 voting hrs + 1 working hr)
 - Last Tuesday (commonly known as Election Day) 7-7 (12 voting hrs + 4 working hrs)
- Poll Workers
 - 4 workers per location

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❖ Recommendation

- PAID Judge & Alt Judge (1 per party)
- COUNTY EMPLOYEES - 2 Clerks
 - Precinct workers from that precinct work in that poll.
 - Use JP Staff in 2 shifts per day in each precinct
 - Example using JP# 3 – Clerk #1 works 7:00 – 12:30;
Clerk #2 works 12:30 6:00.
 - Use Road & Bridge Staff either in 2 shifts or 2 divided into 6 days each.
 - Example using R&B #3 Crew member works Thursday – Tuesday; Different crew member works Wednesday – Tuesday.
 - Shifts divided by day could lead to overtime. Shifts divided by hour decrease the amount of overtime & comp time on county books.
 - Formula
 - $8 \text{ days} \times 11 \text{ hrs.} \times 5 \times \$24 = \$10,560$
 - $2 \text{ days} \times 13 \text{ hrs} \times 5 \times \$24 = \$3,120$
 - $1 \text{ day} \times 9 \text{ hrs} \times 5 \times \$24 = \$1,080$
 - $1 \text{ day} \times 16 \text{ hrs} \times 5 \times \$24 = \$1,920$
 - $5 \times \$35 \times 1 \text{ hr} = \175 2nd key holder (Sheriff or Judge)
 - $\$35 \times 5 = \245 Central Count required security
 - \$3,290 training, OT/taxes, ballot delivery fees
- **\$24,590, using county employees, per election**
- w/PAID 2 Clerks
 - Formula
 - $8 \text{ days} \times 11 \text{ hrs.} \times 5 \times \$42 = \$18,480$
 - $2 \text{ days} \times 13 \text{ hrs} \times 5 \times \$42 = \$5,460$
 - $1 \text{ day} \times 9 \text{ hrs} \times 5 \times \$42 = \$1,890$
 - $1 \text{ day} \times 16 \text{ hrs} \times 5 \times \$42 = \$3,360$
 - $5 \times \$35 \times 1 \text{ hr} = \175 2nd key holder (Sheriff or Judge)
 - $\$35 \times 5 = \245 Central Count required security
 - \$3,290 training, OT/taxes, ballot delivery fees
- **- \$32,900, not using county employees, per election**

**MINUTES OF THE COLORADO COUNTY
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Election Cost Comparisons

Every election is different; therefore, the cost of every election is different.

There is no apple-to-apples comparison.

Primary's (& Runoff):

- Election Day is paid for by the parties
- Early Voting is paid for by the County
- SB2753 – TBD

Local Elections (May)

- Cost divided between the political subdivisions participating by % of Registered Voters
- Locations and hours are decided by the needs of the political subdivisions and contests on the ballot.

General Elections (November)

- Odd years – Constitutional Amendment
 - Low turnout
 - Consolidated polling locations typically
- Even years – State & Federal
 - Presidential
 - Largest turnout
 - Requires most manhours
 - Governor
 - Medium turnout
 - Many factors play a role
- Cost is 100% on the county

Average cost per election: currently between \$30,000 - \$40,000.

- May 03, 2025
 - Local Cities & Schools + County ESD \$32,149.42 Total
 - \$18,744.25 Staffing Only
 - Early voting hrs 7:30 – 5:30; no weekends (7 days); 3 locations
- November 5, 2024
 - General Election higher cost; longer hours
 - \$32,576; Staffing Only
 - Early voting hrs. 7 – 7 with 1 weekend (12 days); 3 locations

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- Split shifts to keep OT to a minimum
 - Increased wages by \$1 per hr as a “bonus”.
- May 28, 2024
 - Primary Run-off Consolidated locations
 - \$3,398.00, Staffing Only
 - Short early voting period (5 days) 7-7; 1 location
- May 04, 2024
 - Local Cities & Schools Consolidated locations
 - \$3,398 Staffing Only
 - Short Early Voting Period 7:30 – 5:30; no weekends (7 days); 2 locations
- March 05, 2024
 - Primary
 - \$19,275.56 ED Staffing Only
 - Early voting hrs. 7 – 7 with 1 weekend (12 days); 3 locations
 - Early voting paid by county; election day paid by state

SB2753 will drive the cost of an average election up to an apx. \$55,000 using 5 polling locations and 4 paid workers; this is **not** inclusive of any increased additional materials or programming costs this bill can generate.

The original cost increase of \$91,000.00 presented to the Commissioner's Court was based on a sliding scale of costs for the number of polling locations, hours, and workers. Having more information from the SOS and further research has allowed me to more accurately prepare my budget request for 2026.

**MINUTES OF THE COLORADO COUNTY
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- ___5. Resolution authorizing submission of grant application for "HAVA Election Security Grant" for 2025 and funding requirements by Colorado County.

Rebecka LaCourse said the county is qualified and guaranteed \$42,500 with a 20% match (\$8,500). The application must be submitted by June 30, 2025.

Motion by Judge Prause to approve a resolution authorizing submission of grant application for "HAVA Election Security Grant" for 2025 and funding requirements by Colorado County; seconded by Commissioner Gertson; 4 ayes 0 nays; motion carried; it was so ordered.

(See Attachment)

**MINUTES OF THE COLORADO COUNTY
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Resolution for 2025 HAVA Election Security Grant Funding

WHEREAS the Colorado County Commissioners Court agrees that the expenditure of the funds will be in accordance with applicable federal and state law and any agreement between Colorado County and the State of Texas, Office of the Secretary of State as authorized under Section 101 of the Help America Vote Act of 2002 and in consultation and agreement with the county election official(s) as defined in Sections 12.001 and 31.091 of the Texas Election Code.

WHEREAS the Colorado County Commissioners' Court agrees to assign a single point of contact (SPOC) to act on behalf of the county in communicating with the Office of the Secretary of State, including the submission of all necessary reports.

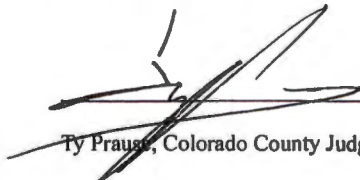
WHEREAS the Colorado County Commissioners Court agrees claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid.

WHEREAS the Colorado County Commissioners' Court agrees that it will not consider the availability of the funds in adopting the county budget.

WHEREAS the Colorado County Commissioners Court agrees that in the event of loss, misuse, or noncompliance pursuant to any grant award agreement with the Secretary of State, Colorado County Commissioners Court assures that the funds will be returned to the Office of the Secretary of State in full.

WHEREAS the Colorado County Commissioners Court designates the County Judge as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

THEREFORE, BE RESOLVED that Colorado County Commissioners Court approves submission of the grant application for the "2025 HAVA Election Security Grant" to the Office of Secretary of State.


Ty Prause, Colorado County Judge

Passed and Approved the 16th day of June 2025

ATTEST:

Kimberly Menke, Colorado County Clerk



**MINUTES OF THE COLORADO COUNTY
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- __6. Approval of Purchase Order Agreements with Election System and Software and funding requirements by Colorado County.**

Rebecka LaCourse stated she had contacted Election System Software and had received quotes to upgrade the current system. The Secretary of State recommends a BOD (Ballot on Demand) system. The quotes are for seven printers, poll books, tabulation equipment, and a tabulation computer. The total cost will be \$96,824, subtracting the \$42,500 grant and adding in the \$8,500 match, the county will be responsible for \$62,824. The wait time to receive the equipment is six months from the date the contract is signed.

SB2753 has an effective date of September 1, 2025, however the Secretary of State has not completed policy and procedures.

Motion by Judge Prause to approve Purchase Order Agreements with Election System and Software (including seven printers) and funding requirements by Colorado County; seconded by Commissioner Brandt; 4 ayes 0 nays; motion carried; it was so ordered.

(See Attachments)

MINUTES OF THE COLORADO COUNTY
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11208 JOHN GALT BLVD
OMAHA, NE 68137-2364
(402) 593-0101

Purchase Order Agreement

B.O. #: 4126

1st Election Date: November 4, 2025

Estimated Delivery Date: August 2025

Customer Contact, Title: Rebecka LaCourse - Election Administrator

Phone Number: 979-732-6860

Customer Name: Colorado County, Texas

Fax Number: N/A

Bill To:

Colorado County, Texas

Rebecka LaCourse - Election Administrator

1117 Travis Street

Columbus, TX 78934

Ship To:

Colorado County, Texas

Rebecka LaCourse - Election Administrator

1117 Travis Street

Columbus, TX 78934

Item	Description	Qty	Price	Total
1	Ballot on Demand Direct Print Compact Printer with Firmware	7	\$775.00	\$5,425.00
2	Ballot on Demand Direct Print Capability	7	\$599.00	\$4,193.00
3	Ballot on Demand Project Management Day	1	\$2,050.00	\$2,050.00
4	Services Ballot on Demand Training	1	\$2,050.00	\$2,050.00
5	Shipping Shipping & Handling	1	\$2,520.00	\$2,520.00
Order Total				\$ 16,238.00

Matt Kunz
Regional Sales Manager

V.P. of Finance Date

Customer Signature

Date

Title

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.

Invoices are due net 30 from invoice date.

Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.

Warranty Period (Years):

One (1) Year from Equipment Delivery

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

Sales Order Agreement
Texas Buyboard Contract # 710-23

B.O. #: 4146

1st Election Date: November 4, 2025

Estimated Delivery Date: July 2025

Customer Contact, Title: Rebecka LaCourse - Election Administrator

Phone Number: 979-732-6860

Customer Name: Colorado County, Texas

Fax Number: N/A

Bill To:

Colorado County, Texas

Rebecka LaCourse - Election Administrator

1117 Travis Street

Columbus, TX 78934

Ship To:

Colorado County, Texas

Rebecka LaCourse - Election Administrator

1117 Travis Street

Columbus, TX 78934

Item	Description	Qty	Price	Total
1 DS300	DS300 Poll Place Scanner and Tabulator: Model DS300 Scanner with Internal Backup Battery, Paper Roll, and One (1) Standard 4GB Memory Device - Version 6.3.0.0	7	\$5,995.00	\$41,965.00
2 DS300	DS300 Ballot Box with Power Supply and AC Cord	7	\$995.00	\$6,965.00
3 DS300	Tote Bin	7	\$395.00	\$2,765.00
4 DS300	Standard 4GB Memory Device (Additional)	7	\$115.00	\$805.00
5 DS300	#2 Ballot Box Lock	7	\$11.00	\$77.00
6 DS300	Equipment Installation	1	\$2,050.00	\$2,050.00
7 Services	Equipment Operations Training Day	1	\$2,050.00	\$2,050.00
6 Trade-In Allowance	Equipment Being Traded-In by Customer Includes: 6 - Model DS200 Scanner 6 - Model DS200 Ballot Box	1	(\$3,750.00)	(\$3,750.00)
9 Shipping	Shipping & Handling	1	\$2,660.00	\$2,660.00
Order Total				\$ 55,587.00

Matt Kunz
Regional Sales Manager

V.P. of Finance Date

Customer Signature

Date

Title

MINUTES OF THE COLORADO COUNTY
COMMISSIONER’S COURT SPECIAL MEETING
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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.
	Invoices are due net 30 from invoice date.
	Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.
Warranty Period (Years):	One (1) Year from 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	

MINUTES OF THE COLORADO COUNTY
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GENERAL TERMS

1. **Definitions:**
- All capitalized terms used, but not otherwise defined, in these Hardware Purchase and Software License Terms ("General Terms") or in an Exhibit shall have the following meanings:
- a. "Documentation" means any and all written or electronic documentation furnished or generally made available to Customer by ES&S relating to the ES&S Hardware and ES&S Software, including any operating instructions, user manuals or training materials.
 - b. "ES&S Firmware" means ES&S' proprietary software which is installed on the ES&S Hardware.
 - c. "ES&S Hardware Maintenance Services" and "ES&S Software License, Maintenance and Support Services" means those services described on Exhibit A.
 - d. "ES&S Software" means the ES&S Software and ES&S Firmware as set forth on the front side of this agreement.
 - e. "ES&S Hardware" means ES&S's proprietary vote tabulation hardware set forth on the front side of this Agreement.
 - f. "Software" means ES&S Software and Third-Party software.
 - g. "Third-Party Items" means hardware and software manufactured and developed by parties other than ES&S.
2. **Hardware Purchase and Software License Terms.** Subject to the terms and conditions of this Sales Order Agreement ("Agreement"), ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Hardware and ES&S Software described on the front side of this Agreement. The payment terms for the ES&S Hardware and ES&S Software are set forth on the front side of this Agreement. The consideration for ES&S' grant of the license during the Initial License Term for the ES&S Firmware is included in the cost of the ES&S Hardware.
- a. **Hardware Purchase.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Hardware. Title to the ES&S Hardware shall pass to Customer when Customer has paid ES&S the total amount set forth on the front side of this Agreement for the ES&S Hardware.
 - b. **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, part time or temporary employees to use the ES&S Software and the Documentation in the Jurisdiction while Customer is using the ES&S Hardware 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 Hardware and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction.
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;
 - c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent;
 - d. Cause or permit any review, testing, examination, or audit of the ES&S Software without ES&S' prior written consent; or
 - e. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except finished ballots by ballot printers selected by Customer) 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(b) shall commence upon the delivery of the ES&S Software described in Section 2(b) and shall continue for a one (1) 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 front side of this Agreement. The license terms for any License Renewal Term shall be set forth on Exhibit A. ES&S may terminate any of the licenses granted hereunder if Customer fails to pay the consideration due for, or breaches Sections 2(b), 3, or 9 with respect to, such licenses. Upon the termination any of the licenses granted in Section 2(b) 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 for which Customer has paid the associated renewal fees, ES&S may provide new releases, upgrades, or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule solely defined by ES&S. Customer is solely responsible for obtaining and purchasing any upgrades or Third-Party Items required to operate the Updates, as well as the cost of any replacements, retrofits or modifications to the ES&S Hardware which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Updates to the ES&S Firmware will be incorporated by ES&S into a regularly scheduled preventative maintenance event at no additional charge to Customer. If Customer requests installation of an Update at a time other than a regularly scheduled preventative maintenance event, then Customer shall execute and deliver to ES&S a purchase order therefore and ES&S shall charge Customer accordingly for such installation. ES&S shall also charge Customer at its then-current rates to: (i) train Customer on Updates, if such training is requested by Customer and (ii) if applicable, 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. Notwithstanding the foregoing, Customer shall pay ES&S to install all ES&S Software Updates. If applicable, 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 the most recent Update provided to it by ES&S. 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 Hardware contracted for herein that may be developed and offered by ES&S in order for such ES&S Hardware 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 ES&S Hardware and/or ES&S 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 and First Election Use (if any) set forth on the front side of this Agreement are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement, because of delays in executing this Agreement, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Hardware and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Hardware and ES&S Software and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement have been paid by Customer.
7. **Warranty.**
- a. **ES&S Hardware/ES&S Software.** ES&S warrants that for a one (1) year period (the "Warranty Period"), it will repair or replace any component of the ES&S Hardware 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 Hardware components that are consumed in the normal course of operating the ES&S Hardware, including, but not limited to, headphones and headphone protective covers, protective coatings, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. The Warranty shall not include the repair or replacement of any ES&S Hardware due to cosmetic damages, including, but not limited to, screen cracks, scratches, dents and broken plastic or any defects resulting from normal wear and tear. ES&S has no obligation under this Agreement to assume the obligations under any existing or expired warranty for a Third-Party Item. Any repaired or replaced item of ES&S Hardware or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Hardware or ES&S Software will become the property of ES&S. This warranty is effective provided that (i) Customer notifies ES&S within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the ES&S Hardware 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 Hardware or ES&S Software to be repaired or replaced has been maintained or repaired by an individual other than an authorized representative of ES&S (iv) the ES&S Hardware or ES&S Software to be repaired or replaced has not been used, displayed, disseminated, transferred, loaned, disassembled, dismantled, modified, and/or tampered with by a third party without ES&S prior written consent (v) the ES&S Hardware or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact, use of adhesive materials on ballots, use which is not in accordance with the Documentation or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (vi) Customer has installed and is using the most recent Update provided to it by ES&S. This warranty is void for any units of hardware which: (i) have not been stored or operated in a temperature range according to 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. Upon expiration of the Warranty Period, Customer shall be entitled to receive Hardware Maintenance and Software Maintenance and Support Services, the terms of which are set forth on Exhibit A.
 - b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. 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 HARDWARE, 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

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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. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any hardware, software or services not provided by ES&S and used with the ES&S Hardware or ES&S Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services 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 provided by ES&S, the design and configuration of the ES&S Hardware and the format, layout, measurements, design, and all other technical information associated with the ballots to be used with the ES&S Hardware. 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 Hardware, the ES&S Software, the Documentation, and ballots that are provided, and all permitted copies of the foregoing

10. **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.

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

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

13. **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 to 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. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

14. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S or any business operations thereof to a successor who has asserted its intent to continue the applicable 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.

15. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Hardware and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of federal and 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. The ES&S Hardware and ES&S Software, including all components will be provided to Customer with a hardened network in accordance with the guidelines of the United States Election Assistance Commission. In the event Customer fails to maintain the ES&S Software in the hardened network or allows any internal or external access to the hardened network, Customer agrees to indemnify and hold harmless ES&S from and against any and all claims, damages, losses, liens, obligations, liabilities, judgments, assessed damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to the Customer's breach of its obligations hereunder.

16. **Voting System Reviews.** In the event that the Jurisdiction or the State require any future reviews or examinations ("Reviews") of current or previous versions of state-certified ES&S voting systems or components thereof 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 Hardware licensed and sold hereunder, Customer shall be responsible for:

(i) Customer's pro-rata share of such Review costs;

(ii) 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 Hardware and/or ES&S Software that may result from such Reviews; and

(iii) the total cost of any Third-Party Items that are required in order for the ES&S Hardware and/or ES&S Software to satisfy any new requirements resulting from such Reviews in order to remain certified;

Customer's pro-rata share of the costs included under subsections 16(ii) and 16(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 Hardware and/or ES&S Software purchased and licensed by Customer under this Agreement.

17. **Certification.** By execution of this Agreement, ES&S represents and warrants that:

a) In accordance with Texas Government Code § 2270, ES&S does not boycott Israel currently and will not boycott Israel during the term of this Agreement; and

b) In accordance with Texas Government Code § 2252, that, at the time of the execution of this Agreement and for the duration of the term of this Agreement and any renewal terms, ES&S is not entered on the list prepared pursuant to Section 2252.152 of the Texas Government Code by the Texas State Comptroller of companies known to have contracts with or provide supplies or services to a foreign terrorist organization

18. **Customer Enhancements.** In the event that Customer requests any future enhancements of the ES&S Hardware and/or ES&S Software ("Enhancements"), such requests shall be submitted in writing to ES&S. ES&S will evaluate each of the Enhancements to determine if any of such Enhancements are technologically feasible, commercially reasonable and consistent with ES&S's security protocol and procedures. In the event that ES&S determines that any of such Enhancements meet the foregoing requirements, then ES&S shall prepare a scope of work which shall include an estimated timeline and the estimated costs for design, development, testing, certification and implementation of such Enhancements (the "SOW"). ES&S shall provide the SOW to Customer for review and written approval. After ES&S's receipt of written approval of the SOW by Customer, ES&S shall prepare a written change order for Customer's execution. ES&S shall solely own and retain any and all intellectual proprietary rights in any Enhancements developed and provided to Customer.

19. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form, or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing hardware, software, and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the hardware, software, or services, but shall remain fully responsible for such performance. The provisions of Sections 1-5, 7(b), 8-9, 12, 13(b), 14-16, and 19 of these General Terms shall survive any termination or expiration of this Agreement, to the extent applicable.

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

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A for ES&S Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Post-Warranty Term"). Upon expiration of the Initial Post-Warranty 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 sixty (60) days prior to the end of the Initial Post-Warranty 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 (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the ES&S Hardware Maintenance Services contemplated hereunder, (d) the date on which the ES&S Hardware or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. 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(b), 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide ES&S Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the ES&S Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Post-Warranty Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Post-Warranty 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 10% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. 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 any Add-On units or New Products during the Initial Post-Warranty Term or any Renewal Period thereof, ES&S will charge incremental Software License, Maintenance and Support Fees for any Add-On units or New Products purchased by Customer at the then-current applicable rates at the time.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The ES&S Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S Hardware 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**

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(12) Months during the Initial Post-Warranty Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Hardware components that are consumed in the normal course of operating the ES&S Hardware, including, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. Customer may request that Routine Maintenance Services be performed more than once during the Initial Post-Warranty 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. 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 ES&S Hardware Maintenance Services.

b. Repair Services.

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

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

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

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

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

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

f. **Reinstatement of ES&S Hardware Maintenance Services; Inspection.** If the Initial Post-Warranty Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving ES&S 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 ES&S 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 ES&S 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, 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.

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2. **Updates.** During the Initial Post-Warranty Term, or any renewal or extension thereof, ES&S may continue to provide Updates in accordance with the terms of Section 5 of the General Terms. Unless otherwise agreed to by the parties, and subject to Customer's prior execution of a purchase order therefor, ES&S shall install ES&S Firmware Updates in accordance with Section 5 of the General Terms. ES&S shall install such ES&S Firmware Updates in conjunction with a scheduled Routine Maintenance Services event provided Customer is subscribing to and has paid for ES&S' hardware maintenance services which include Routine Maintenance Services. Customer shall pay ES&S to install all ES&S Firmware Updates which are requested to be installed outside of a scheduled Routine Maintenance Services event or in the event the Customer has not subscribed to ES&S' hardware maintenance services which include Routine Maintenance Services. Notwithstanding the foregoing, Customer shall pay ES&S to install all election management software Updates.

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) use, modification, dismantling, or transfer to third party without ES&S' prior written consent, (c) accident, theft, vandalism, neglect, abuse, liquid contact or use that is not in accordance with the Documentation, (d) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (e) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, or (f) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services. 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 and/or Third-Party Items or any services required in order to replace the same 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 Post-Warranty 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, which would have been due to ES&S had the Initial Post-Warranty 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.

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**Schedule A1
Pricing Summary**

<u>Sale Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$1,575.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$735.00
Total Maintenance Fees for the Initial Post-Warranty Term:		\$2,310.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included and are the responsibility of Customer.		
Note 2: Annual Post-Warranty License and Maintenance and Support Fees are not listed on Texas BuyBoard Contract # 710-23.		
Note 3: <u>Invoicing and Payment Terms are as Follows:</u>		
ES&S shall Invoice Customer annually for each year of the Initial Post-Warranty Term.		
Payment is due before the start of each period within the Initial Post-Warranty Term.		

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ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Post-Warranty Term: Expiration of the Warranty Period through the first anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee in Total
7	Model DS300 Scanner	Year 1	\$225.00	\$1,575.00
Total Hardware Maintenance Fees for the Initial Post-Warranty Term				\$1,575.00

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 under this Exhibit A.

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: Colorado County, Texas

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

ES&S 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.
 - 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 Tabulation Hardware.
5. Repair Services.
 - Customer will receive coverage for interim repair calls.

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

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

Initial Post-Warranty Term: Expiration of the Warranty Period through the first 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
7	Model DS300 Scanner	Year 1	\$105.00	\$735.00
Total Firmware License, Maintenance and Support Fees for the Initial Post-Warranty Term				\$735.00

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 ES&S 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 hardware firmware and make changes to date and time settings.
 - Customer shall have the ability to change accessible consumable items on hardware. Any other changes made by the customer must be pre-approved in writing by ES&S.
2. Customer shall have reviewed a complete set of User Manuals.
3. 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.
4. Customer shall be responsible for data extraction from Customer's voter registration system.

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5. 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 Hardware and ES&S Software.
6. Customer shall be responsible for the acceptance of the ES&S Hardware and ES&S Software, unless otherwise agreed upon, in writing, by the parties.
7. Customer shall be responsible for the design, layout, set up, administration, maintenance, or connectivity of the Customer's network.
8. 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' Hardware and Software.
9. 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.
10. 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.

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

Sales Order Agreement

B.O. #: 4147

1st Election Date: November 4, 2025

Estimated Delivery Date: July 2025

Customer Contact, Title: Rebecka LaCourse - Election Administrator

Phone Number: 979-732-6860

Customer Name: Colorado County, Texas

Fax Number: N/A

Bill To:

Colorado County, Texas

Rebecka LaCourse - Election Administrator

1117 Travis Street

Columbus, TX 78934

Ship To:

Colorado County, Texas

Rebecka LaCourse - Election Administrator

1117 Travis Street

Columbus, TX 78934

Item			Description	Qty	Price	Total
1	Pollbook	ExpressPoll System including Tablet, Flip Stand, Mobile Device Management, and ExpressPoll Software Application - Version 7.2.8.0		6	\$1,295.00	\$7,770.00
2	Pollbook	Dual Unit Case		3	\$85.00	\$255.00
3	Shipping	Shipping & Handling		1	\$150.00	\$150.00
Order Total					\$	8,175.00

Matt Kunz
Regional Sales Manager

V.P. of Finance Date

Customer Signature

Date

Title

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.

Invoices are due net 30 from invoice date.

Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.

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

Software License, Maintenance and Support Services (Post-Warranty Period)

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

SEE GENERAL TERMS

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GENERAL TERMS

1. Definitions

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means any and all written or electronic documentation furnished or generally made available to Customer by ES&S relating to the ES&S Hardware and ES&S Software, including any operating instructions, user manuals or training materials.
- b. "ES&S Hardware" means ES&S's proprietary electronic pollbook tablet, electronic pollbook stand and ExpressVote Activation Card Printer,
- c. "ES&S Software" means ES&S's proprietary electronic pollbook software installed on ES&S's electronic pollbooks
- d. "ES&S Software License, Maintenance and Support Services" means those services described on Exhibit A.
- e. "Software" means ES&S Software and Third-Party software.
- f. "Third Party Items" means hardware, equipment and software manufactured and/or developed by parties other than ES&S, including but not limited to, non-proprietary peripheral printers, wireless routers, USB drives and/or SD Cards.

2. **Hardware Purchase and Software License Terms.** Subject to the terms and conditions of this Sales Order Agreement ("Agreement"), ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Hardware and ES&S Software described on the front side of this Agreement. The payment terms for the ES&S Hardware and ES&S Software are set forth on the front side of this Agreement. The consideration for ES&S' grant of the license for the Initial Term for the ES&S Software is included in the cost of the ES&S Hardware.

a. **Hardware Purchase.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Hardware. Title to the ES&S Hardware shall pass to Customer when Customer has paid ES&S the total amount set forth on the front side of this Agreement for the ES&S Hardware.

b. **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, part time or temporary employees to use the ES&S Software and the Documentation in the Jurisdiction while Customer is using the ES&S Hardware 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 the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Hardware and managing the ES&S Software voter lists and voter registration process at each polling location in Customer's jurisdiction.

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;
- c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or
- d. Cause or permit any review, testing, examination, or audit of the ES&S Software without ES&S' prior written consent

4. **Term of Licenses.** The licenses granted in Section 2(b) shall commence upon the delivery of the ES&S Software described in Section 2(b) and shall continue for a one (1) 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 Exhibit A. The license terms for any License Renewal Term shall be set forth on Exhibit A. ES&S may terminate any of the licenses granted hereunder if Customer fails to pay the consideration due for, or breaches Sections 2(b), 3, or 9 with respect to, such licenses. Upon the termination any of the licenses granted in Section 2(b) 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 for which Customer has paid the associated renewal fees, ES&S may provide new releases, upgrades, or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule solely defined by ES&S. Customer is solely responsible for obtaining and purchasing any upgrades or Third-Party Items required to operate the Updates, as well as the cost of any upgrades, replacements, retrofits or modifications to the ES&S Hardware which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Updates to the ES&S Software shall be made on a scheduled agreed upon in writing by ES&S and Customer. Updates can be installed in accordance with ES&S's recommended practice and instructions, or Customer may request that ES&S install the Updates at Customer's designated location. ES&S shall charge Customer at its then-current rates to: (i) install the updates (ii) train Customer on Updates, if such training is requested by Customer and (iii) if applicable, provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely install an Update. 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 Hardware contracted for herein that may be developed and offered by ES&S in order for such ES&S Hardware 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 ES&S Hardware and/or ES&S 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 and First Election Use (if any) set forth on the front side of this Agreement are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement, because of delays in executing this Agreement, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Hardware and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Hardware and ES&S Software and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement have been paid by Customer.

7. Warranty.

a. **ES&S Hardware/ES&S Software.** ES&S warrants that for a one (1) year period (the "Warranty Period"), it will repair or replace any component of the ES&S Hardware 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 Hardware components that are consumed in the normal course of operating the ES&S Hardware, including, but not limited to, headphones and headphone protective covers, protective coatings, printer cartridges or ribbons, paper, batteries, removable media storage devices (e.g. USB Drives and/or SD Cards), seals, keys, power supplies/cords, or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. The Warranty shall not include the repair or replacement of any ES&S Hardware due to cosmetic damages, including, but not limited to, screen cracks, scratches, dents and broken plastic or any defects resulting from normal wear and tear. ES&S has no obligation under this Agreement to assume the obligations under any existing or expired warranty for a Third-Party Item. ES&S shall not provide a warranty for Third Party Items. Customer acknowledges ES&S purchases Third Party Items for resale to Customer and that proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S. Customer further acknowledges that except for payment to ES&S for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. Any repaired or replaced item of ES&S Hardware or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Hardware or ES&S Software will become the property of ES&S. This warranty is effective provided that (i) Customer notifies ES&S within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the ES&S Hardware 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 Hardware or ES&S Software to be repaired or replaced has been maintained or repaired by an individual other than an authorized representative of ES&S (iv) the ES&S Hardware or ES&S Software to be repaired or replaced has not been used, displayed, disseminated, transferred, loaned, disassembled, dismantled, modified, abuse, liquid contact, use which is not in accordance with the Documentation or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (vi) Customer has installed and is using the most recent Update provided to it by ES&S. This warranty is void for any units of hardware which: (i) have not been stored or operated in a temperature range according to 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. Upon expiration of the Warranty Period, Customer shall be entitled to receive Software License, Maintenance and Support Services, the terms of which are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. 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 HARDWARE, 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. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Hardware or ES&S Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to

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timely or properly install and use the most recent update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the ES&S Software Maintenance and Support

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

ES&S owns the ES&S Software, all Documentation provided by ES&S, the design and configuration of the ES&S Hardware and the format, layout, measurements, design, and all other technical information associated with the ballots to be used with the ES&S Hardware. 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 Hardware, the ES&S Software, the Documentation, and ballots that are provided, and all permitted copies of the foregoing.

10. **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.

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

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

13. **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 to 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. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

14. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S or any business operations thereof to a successor who has asserted its intent to continue the applicable 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.

15. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Hardware and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in Customer's state.

16. **Pollbook System Reviews.** In the event that the Jurisdiction or the State require any reviews or examinations ("Reviews") of current or previous versions of state-certified ES&S Hardware and/or ES&S Software or components thereof 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 Hardware licensed and sold hereunder, Customer shall be responsible for:

(i) Customer's pro-rata share of such Review costs;

(ii) 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 Hardware and/or ES&S Software that may result from such Reviews; and

(iii) the total cost of any Third-Party items that are required in order for the ES&S Hardware and/or ES&S Software to satisfy any new requirements resulting from such Reviews in order to remain certified.

Customer's pro-rata share of the costs included under subsections 16(ii) and 16(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 Hardware and/or ES&S Software purchased and licensed by Customer under this Agreement.

17. **Additional Services; Changes.** Unless otherwise provided in this Agreement, Customer shall be solely responsible for all costs related to services entered into in separate agreements such as, but not limited to, election coding, data conversion costs and network set up and communication. Customer shall also be solely responsible for all equipment and associated setup costs for the network infrastructure for data transfer and application communication, unless otherwise specified in this Agreement or separate agreements between the parties. In the event that Customer makes any changes, updates, enhancements or otherwise modifies Customer's currently existing voter registration system and such changes, updates, enhancements or modifications result in ES&S having to re-

perform any services provided under this Agreement, Customer shall be responsible for any such additional charges, which shall be invoiced at ES&S's then current rates.

18. **Customer Enhancements.** In the event that Customer requests any future enhancements of the ES&S Hardware and/or ES&S Software ("Enhancements"), such requests shall be submitted in writing to ES&S. ES&S will evaluate each of the Enhancements to determine if any of such Enhancements are technologically feasible, commercially reasonable and consistent with ES&S's product direction, security protocol and procedures. In the event that ES&S determines that any of such Enhancements meet the foregoing requirements, then ES&S shall prepare a scope of work which shall include an estimated timeline and the estimated costs for design, development, testing, certification and implementation of such Enhancements (the "SOW"). ES&S shall provide the SOW to Customer for review and approval. After ES&S's receipt of written approval of the SOW by Customer, ES&S shall prepare a written change order for Customer's execution. ES&S shall solely own and retain any and all intellectual proprietary rights in any Enhancements developed and provided to the Customer.

19. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form, or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing equipment, software, and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the equipment, software, or services, but shall remain fully responsible for such performance. The provisions of Sections 1-5, 7(b), 8-9, 12, 13(b), 14-16, and 19 of these General Terms shall survive any termination or expiration of this Agreement, to the extent applicable.

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

**ARTICLE I
GENERAL**

1. **Term; Termination.** This Exhibit A for Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Post-Warranty Term"). Upon expiration of the Initial Post-Warranty 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 thirty (30) days prior to the end of the Initial Post-Warranty 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 (except for a breach pursuant to subsection 1.(d) below which will require no notice), (c) the date on which the ES&S Software is no longer certified by federal and/or state authorities for use in Customer's jurisdiction; or (d) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder.

2. **Fees.** In consideration for ES&S' agreement to provide ES&S Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Post-Warranty Term. The Software License, Maintenance and Support Fees for the Initial Post-Warranty Term are due as set forth on Schedule A1. ES&S may increase the Software License, Maintenance and Support Fees for a Renewal Period by not more than 10% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of 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 any Add-On units or New Products during the Initial Post-Warranty Term or any Renewal Period thereof, ES&S will charge incremental Software License, Maintenance and Support Fees for any Add-On units or New Products purchased by Customer at the then-current applicable rates at the time.

**ARTICLE II
HARDWARE**

1. **Maintenance Services.** Hardware Maintenance Services are not provided for any annual or other periodic predetermined fees for the ES&S Electronic Pollbook Hardware. Any Hardware Maintenance Services shall only be available on a time, travel, and materials basis at ES&S' then current rates and only after Customer has delivered a written purchase order or other written agreement to pay for such services in advance of ES&S' provision of the same.

**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, 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.

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2. **Updates.** During the Initial Post-Warranty Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 4 of the General Terms. Unless otherwise agreed to by the parties, ES&S shall install Updates in accordance with Section 4 of the General Terms. Updates to the ES&S Software shall be made on a scheduled agreed upon in writing by ES&S and Customer. Updates can be installed in accordance with ES&S's recommended practice and instructions, or Customer may request that ES&S install the Updates at Customer's designated location. ES&S shall also charge Customer at its then-current rates to; (i) install the Updates; (ii) train Customer on Updates, if such training is requested by Customer and (iii) if applicable, provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely install an Update.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for the ES&S Software if such item requires such services as a result of (a) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (b) repairs, changes, modifications or alterations not authorized or approved by ES&S, (c) use, modification, dismantling, or transfer to third party without ES&S's prior written consent, (d) accident, theft, vandalism, neglect, abuse, liquid contact or use that is not in accordance with the Documentation, (e) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, or (f) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services. 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 Post-Warranty 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, which would have been due to ES&S had the Initial Post-Warranty 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.

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Schedule A1
Pricing Summary

<u>Sale Summary:</u>		
Description	Refer To	Amount
ES&S Electronic Pollbook Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$900.00
Total Maintenance Fees for the Initial Post-Warranty Term:		\$900.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included and are the responsibility of Customer.		
Note 2: <u>Invoicing and Payment Terms are as follows:</u>		
ES&S shall Invoice Customer annually for each year of the Initial Post-Warranty Term.		
Payment is due before the start of each period within the Initial Post-Warranty Term.		

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

Initial Term: Expiration of the Warranty Period through the first anniversary thereof

Listed below is the Software and Fees for which Software License, Maintenance and Support will be provided:

Qty	Description	Annual Fee Per Unit	Electronic Pollbook Software License, Maintenance and Support Fee in Total
6	ExpressPoll Software Application	\$150.00	\$900.00
Total Software License, Maintenance and Support Fees for the Initial Post-Warranty Term			\$900.00

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

1. Telephone Support
2. Issue Resolution
3. Technical Bulletins 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 Customer Responsibilities

1. Customer shall have completed a full software training session for the ES&S Software.
2. Customer shall have reviewed a complete set of User Manuals.
3. 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.
4. Customer shall be responsible for data extraction from Customer's voter registration system. Customer shall additionally be responsible for the accuracy of its voter registration data.
5. 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 Software.
6. Customer shall be responsible for the design, layout, set up, administration, maintenance, or connectivity of the Customer's network.
7. 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 ES&S Software User Manuals.
8. If applicable, Customer shall be responsible to ensure that its electronic pollbooks are properly connected to Customer's network for purposes of election day use and updates.

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- __7. Announcements (without discussion and no action) by elected officials/department heads. (Types of Announcements: Events, Road Conditions, Weather Occurrences, Important Dates, Vacancies in Offices or Positions, Accomplishments of Individuals, and Notices)**

Commissioner Gertson wished Commissioner Neuendorff well and hopes to see him soon.

Motion by Judge Prause to appoint Commissioner Gertson Temporary County Judge Pro-Tem while Commissioner Neuendorff is out and then revert back to Commissioner Neuendorff when he returns; seconded by Commissioner Brandt; 4 ayes 0 nays; motion carried it was so ordered.

- __8. Commissioners Court Members sign all documents and papers acted upon or approved.**

Judge Prause announced it is now time to sign all documents and papers.

- __9. Adjourn.**

Motion by Judge Prause to adjourn at 2:19 P.M.; seconded by Commissioner Brandt; 4 ayes 0 nays; motion carried; it was so ordered.

An audio recording of this meeting of June 16, 2025 is available in the County Clerk's Office.

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**Minutes were taken and prepared by Kimberly Menke, County Clerk on the
16th day of June 2025 with Judge Ty Prause presiding.**

**I, KIMBERLY MENKE, COUNTY CLERK AND EX-OFFICIO OF THE
COMMISSIONERS COURT IN AND FOR COLORADO COUNTY, TEXAS do hereby
certify that the foregoing is a true and correct copy of the minutes of the
Commissioner Court in session on the 16th day of June 2025.**

Given under my hand and official seal of office this date June 16, 2025.

