

RESOLUTION

Moved by Mills Seconded by Baker

that the following Resolution be adopted:

WHEREAS, in the Fall of 1997, the General Services Department issued RFPs for new voter equipment and a voter registration system following a presentation by the County Auditor to the Board of Supervisors at a Wednesday Board Staff meeting on September 24, 1997, and

WHEREAS, the two proposals that were received in response to the RFPs have been reviewed and researched over the past several months by the Polk County Election Office, and

WHEREAS, the proposal submitted by Election Systems and Software appears to correspond most closely to the needs of the County, and

WHEREAS, the County Auditor in conjunction with the County Attorney's Office has negotiated a proposed contract with Election Systems and Software.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby approves the proposed contract with Election Systems and Software for the purchase of new voter equipment and voter registration software in the total amount of \$1,426,176 to be paid as prescribed by the contract on file in the Auditor's Office.

BE IT FURTHER RESOLVED that the Chairperson of the Board is hereby authorized to sign the contract and related agreements on behalf of the County.

Polk County Board of Supervisors

Jack Bishop
Chairperson

Submitted by:

Michael A. Mauro
Michael A. Mauro
County Auditor

Contract Approved as to Form::

Chip Crown
Polk County Attorney's Office

ROLL CALL	
FOR ALLOWANCE	
DEC 29 '98	
Florence D. Buttr	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
George M. Mills	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Thomas E. Baker	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
John F. Mauro	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Jack Bishop	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yea <u>4</u>	Nay <u>0</u>
Above tabulated made by <u>AD</u>	
ALLOWED	
BY ABOVE VOTE OF BOARD	
<u>Jack Bishop</u>	
CHAIRPERSON	

#28

CONTRACT FOR PURCHASE OF GOODS AND SERVICES
DRAFT - 12-8-98

1. **Parties.** The parties to this contract are Polk County Board of Supervisors, 111 Court Avenue, Des Moines, IA, 50312, ("County") and Election Systems & Software, a Delaware Corporation, 11208 John Galt Boulevard, Omaha, Nebraska, 68317 ("Vendor").

2. Description of Contract Performance.

(a) Vendor has responded to a request for proposals for a precinct count optical scan system for the Polk County Election Office. The request for proposals, clarifications thereto, Vendor's response and relevant supporting literature submitted by Vendor are attached hereto, marked Appendix A, and incorporated herein by reference. Vendor agrees to deliver the Optech III-P Eagle System and all other goods and services as set forth in Appendix A, in the manner and according to the terms described by the parties therein, unless expressly modified in accordance with paragraph 3. References in Appendix A to "Business Records Corporation" or "BRC" shall be understood to refer to Vendor.

(b) Vendor has also responded to a request for proposals for an election management system for the Polk County Election Office. The request for proposals, clarifications thereto, Vendor's response and relevant supporting literature submitted by Vendor are attached hereto, marked Appendix A-1, and incorporated herein by reference. Vendor agrees to deliver the election management system and all other goods and services as set forth in Appendix A-1, in the manner and according to the terms described by the parties therein, unless expressly modified in accordance with paragraph 3. References in Appendix A-1 to "Business Records Corporation" or "BRC" shall be understood to refer to Vendor.

(c) The precinct count optical scan system and election management system shall be collectively referred to as the "System."

3. **Exceptions or Modifications.** Exceptions from or modifications to Appendix A are set forth in Appendix B, and exceptions and modifications to Appendix A-1 are set forth in Appendix B-1. Appendices B and B-1 are attached hereto and incorporated by reference herein.

4. **Time for Performance.** Vendor will deliver all goods within 30 to sixty days after this Agreement is signed by County, and will perform all services in within the time as specified herein.

5. **Payment.** Vendor will be paid an amount not to exceed \$1,426,176.00, plus shipping, as follows:

- a. One-half (\$713,088.00) when all equipment, hardware and

software are delivered; and

- b. One-half (\$713,088.00) upon acceptance of the System by County which is defined at the time the September, 1999, county-wide election is completed without any problems or malfunctions, and the system works as proposed.

This fee includes all travel and incidental expenses, including meals and lodging, of employees or agents of Vendor in performing this contract. Vendor understands that this fee is the only compensation, benefit, or payment of any kind that Vendor will receive for the performance of the duties stipulated herein.

6. Records Available. All records of Vendor relating to this contract shall be retained for five (5) years following the date of final payment by County. Vendor agrees that the County or any authorized representative shall have access to and the right to examine, audit, excerpt and transcribe any directly pertinent books, documents, papers and records of Vendor relating to orders, invoices or payments under this contract.

7. Contract Modification, Integration and Assignment. Changes to the provisions of this contract may only be made in writing signed by all parties hereto. This contract integrates and memorializes all elements of the parties' agreement, and incorporates and supercedes any previous agreements or negotiations, whether oral or in writing. Vendor agrees there are no implied contracts of any nature between the parties. This contract may be assigned only with the consent of the County, in writing.

8. Default: Remedies of County.

(1) Any of the following events shall constitute cause for the County to declare Vendor in default of its obligations under this contract:

- a. Nonperformance of this contract;
- b. A failure of Vendor's work product and services to conform with any specifications noted herein;
- c. Defects in the services delivered by the Vendor as stipulated in the appendices; or
- d. A breach of any term in this contract.

(2) The County shall issue written notice of default providing for a thirty (30) day period in which Vendor shall have an opportunity to cure, provided that cure is possible and feasible. If, after opportunity to cure, the default remains, the County may do one or both of the following:

- a. Exercise any remedy provided by law;
- b. Terminate Vendor's services, and, upon return of all equipment and software, receive a full refund of all fees previously paid or deposited

(3) Vendor shall not be considered to be in default under this agreement if delivery is delayed or made impossible by an act of God, floods, fires, strikes and similar events; but in each such case, the delay or impossibility must be beyond the control and without the fault or negligence of Vendor, with County obligated only to reimburse actual expenses properly related to Vendor's attempt at contract performance.

9. Default: Remedies of Vendor. Should Vendor consider the County to be in default of its obligations under this contract, Vendor shall issue a written notice of default providing therein for a fifteen (15) day period in which the County shall have an opportunity to cure, provided that cure is possible and feasible. If, after opportunity to cure, the default remains, Vendor may exercise any remedies provided by law.

10. Source Code. Vendor agrees to establish an escrow account acceptable to the County for copies of the source code tape and documentation for all software used by the Vendor pursuant to this contract, if any, and to which the County will not be given direct access. Vendor must promptly deposit in such escrow account all existing, revised and modified releases of the source code tapes and documentation through the term of this contract, and any subsequent maintenance agreements. This does not apply to any custom software, the source code for which the Vendor must deliver to the County with the custom software.

The escrow agent will deliver to the County the contents of the escrow account in the event any of the following occurs:

- a. The Vendor ceases to function as a going concern, becomes insolvent under the bankruptcy laws, makes a general assignment for the benefit of creditors under any insolvency law, files a petition in bankruptcy or a petition of reorganization or arrangement under bankruptcy laws, or such petition is filed against Vendor and is not dismissed within thirty (30) calendar days.
- b. Vendor or its successors or assigns defaults in the performance of this contract, or any software license agreements or maintenance agreements with the County.

11. Performance and Acceptance. Acceptance by the County is dependant on the following standard of performance: completion of the first county-wide election without any problems or malfunctions, and the System works as proposed.

APPENDIX B

Modifications to the Response to Polk County Request for Proposals (RFP No.052-9798), "Precinct Count Optical Scan System" Submitted by Election Systems and Software

Section 2.12.1: On third line after words "United States patent," insert the following: "or copyright, or the trademark, trade secret, or unfair competition rights of a third party"

Section 4.1.3: The dates to be inserted in Vendor's proposed implementation plan must be acceptable to both parties.

Section 5.1.1: ES&S agrees that the acceptance date is defined in the Request for Proposals and in the Contract to Purchase Goods and Services. It is not the time when all equipment, hardware and software are received by the County.

Section 5.1.5.4: Change this language to state: "Provision of software upgrades at no additional cost as long as the Software License Agreement remains in effect."

Pricing Section:

Page 1: Maintenance Warranty: The Maintenance Warranty extends to one year after acceptance by the County. Strike sentence stating "No other warranty is express or implied."

Page 1: Hardware Maintenance Agreement: Change date from 12/31/98 to "one year after acceptance by the County."

Page 2: Change date from "1-1-99" to "one year after acceptance by the County."

Page 5: Change date at bottom of page: Delete "12/31/98." Insert "one year after acceptance by the County."

APPENDIX B-1

CLARIFICATIONS AND MODIFICATIONS OF THE "RESPONSE TO THE POLK COUNTY REQUEST FOR PROPOSAL (RFP) 053-9798 FOR A NEW ELECTION MANAGEMENT SYSTEM" SUBMITTED BY ELECTION SYSTEMS AND SOFTWARE.

The following clarifications and modifications of the Response identified above are hereby agreed to between the Polk County Board of Elections (referred to as the County) and Election Systems and Software (referred to as ES&S). These clarifications are incorporated into and are a part of the Response.

1. Wherever in the Response to a requirement the terms "capable", "able", or "support" appear, in any of their derivations, the term shall be interpreted to mean that the system will immediately perform that particular function described in the requirement without further outlays or modifications by the County.
2. In the Response to requirement 5.9, the term "major election cycles" means the time period from May 1 to November 30 of even numbered years. In the second paragraph of that Response, the term "four hours" is modified to "three hours".
3. In the Response to requirement 5.11, the parties agree that the increase in the cost of maintenance agreements past the quoted time period will not exceed three percent (3%) per year.
4. In the Response to requirement 6.2.3 and 6.14.4 ES&S will provide certification from a recognized standards testing organization that its proposed solution is year two thousand compliant, or alternatively, ES&S will provide on-site testing of the system to show compliance with these two sections of the proposal.
5. In the Response to requirement 6.3.5 it is agreed that ES&S will perform all actions necessary to meet the requirements at the time of installation.
6. In the Response to requirement 6.9.1 it is agreed that ES&S will perform all actions necessary to meet this requirement at the time of installation.

7. In the Response to requirement 6.10.2 ES&S will perform all actions necessary to meet this requirement at the time of installation.
8. In the Response to requirement 6.14.3, second requirement, ES&S will perform all actions necessary to meet this requirement at the time of installation.
9. In the Response to requirement 6.19.1, first and second requirement, ES&S will provide a system which produces all reports requested by the County.

APPENDIX C

WARRANTY:

This Opetch III-P Eagle equipment and software, and the election management system ("System") carries a one year warranty, which begins upon acceptance of the System by the Polk County Board of Elections, as set forth in the Contract to Purchase Goods and Services.

Elections Systems & Software (ES&S) warrants this System including all hardware, software, labor and services, to be free from defects in material and workmanship for the above agreed upon period. ES&S warrants the System for merchantability as judged by the Polk County Board of Elections, and fitness for the particular purpose described in the proposal, and ES&S warrants this system for title. ES&S agrees to correct any defect which may develop during proper and normal usage during the term of the warranty. ES&S reserves the right to repair or replace defective parts and software as ES&S deems appropriate. Repair or replacement parts shall be warranted only for the unexpired term of the original warranty.

If authorized in writing to do so, the County shall ship the defective component to ES&S or to a place designated by ES&S by prepaid freight. ES&S will return the component by prepaid land transportation.

ES&S further warrants that all equipment and accessories to be furnished are new, the latest model in current production, and are made of excellent quality, workmanship and material. In addition, ES&S warrants all equipment, hardware, software, labor and services to keep the System in proper working order for one year from the date of acceptance.

EXCLUSIONS FROM WARRANTY:

The foregoing warranty does not extend to any item of equipment which ES&S determines has been subjected to misuse, neglect, accident, vandalism, abuse, improper installation, improper storage or use not in accordance with instructions furnished by ES&S.

Neither this warranty nor any other warranty, express or implied, shall extend beyond the warranty period. No responsibility is assumed for any incidental or consequential damages.

The warranty does not extend to or apply to any equipment which has been repaired or altered at any place other than the appropriate factory designated by ES&S or by persons not expressly approved by ES&S, or to any equipment from which the serial numbers on file with ES&S have been removed, defaced or changed.

WARRANTY SERVICE:

Please contact ES&S, Warranty Supervisor, 601 28th Ave. South, Waite Park, Minnesota, 56387.

HARDWARE MAINTENANCE AGREEMENT

THIS HARDWARE MAINTENANCE AGREEMENT (the "Agreement") is made and entered in this _____ day of _____, 1998, by and between Election Systems & Software, a Delaware corporation, having a principal place of business at 11208 John Galt Boulevard, Omaha, NE 68317-2364 USA ("ES&S"), and Polk County, Iowa having a principal place business at 120 2nd Avenue, Des Moines, IA, 50309 (Customer). In consideration of the mutual covenants herein contained, the parties hereby agree as follows:



1. **Term and Termination** - This Agreement shall become effective with regard to the computer equipment, hardware, peripheral equipment and other products described in Exhibit "A" attached hereto and incorporated herein by reference (the "Products") on expiration of the warranty period (the "Commencement Date"), may be terminated by the parties (i) immediately upon delivery of written notice by ES&S of its intent to terminate, if Customer assigns, delegates or otherwise

transfers, directly or indirectly, in whole or in part, any of its rights or obligations under this Agreement without ES&S's prior written approval as provided under Paragraph 9(F), (ii) if either party delivers written notice to the defaulting party that it is in breach of this Agreement, and such breach continues unremedied for forty-five (45) days after delivery of such the notice, or (iii) if either party delivers written notice to the other party that an assignment has been made of the other party's business for the benefit of its creditors, or a receiver, trustee in bankruptcy or similar office has been appointed to take charge of the property of the other party, or the other party is adjudged as bankrupt, provided however, such assignment, appointment or judgment is not remedied or reversed within twenty (20) days of delivery of the notice.

2. **Inspection** - ES&S reserves the right to inspect the Products prior to Commencement of ES&S's obligations, pertaining to the same, under this Agreement. There is no charge to customer for services or travel-related expenses under this paragraph. ES&S may in its sole discretion, perform such adjustments and repairs as it deems reasonable and necessary to place any of the Products in good working condition.

3. **Price and Payment** - In consideration for this Agreement, Customer shall pay ES&S the sums described below:

A. An amount equal to the aggregate of the initial maintenance fees on the Products as set forth in Exhibit "A" payable on the Commencement Date.

B. If Customer selects any of the options described on Exhibit "B" as an Additional Service to be performed by ES&S under this Agreement, then Customer shall pay an additional sum equal to the aggregate of the Option Fees described on Exhibit "C".

C. The payments described in paragraphs 3(A) through 3(B) shall be invoiced to Customer and due within thirty (30) days of the date such invoice is delivered. If ES&S has not received Customer's payment by the due date, Customer shall pay interest on such overdue payment at the then-current prime rate.

4. **Responsibilities of ES&S:**

A. Pursuant to Paragraphs 6 and 8, ES&S shall maintain the Products in good working condition during the Term of this Agreement. If Customer ships the Products to and from the maintenance facility designated by ES&S, Customer shall bear (i) all risk of loss or damage to the Products during such shipments (ii) any expense for insurance, and (iii) all costs associated with shipping the Products both to and from ES&S.

B. If Customer elects to have ES&S maintain the Products at Customer's facilities, Customer shall notify ES&S, during normal working hours by telephone or in writing of its request. Notwithstanding the foregoing, ES&S shall make one (1) on-site preventative maintenance inspection of the Products during each twelve (12) month period within the Term of this Agreement, without charge, for the purposes of inspecting and providing routine maintenance of the Products.

C. Except for the parts listed on Exhibit "E" (the "Parts"), and subject to Paragraphs 6 and 8, ES&S shall supply all parts necessary to maintain the Products in good working condition free of charge during the Term of this Agreement. The Parts supplied by ES&S shall be either (i) new standard Parts, or (ii) Parts of reasonable quality. These shall be substituted and exchanged for any old Parts, of which the old Parts shall become the property of ES&S.

5. **Responsibilities of Customer:**

A. Customer shall provide ES&S with complete access to the Products, when and if ES&S performs any maintenance services as set forth in this Agreement.

B. If any maintenance is performed by ES&S on the Customer's premises, Customer agrees to provide ES&S with adequate working space including, but not limited to, heat, light, ventilation, electric current and outlets, and adequate storage space, if required, for spare Parts for the Products, the working and storage space shall be (i) within a reasonable distance from the Products, and provided by Customer at no charge to ES&S.

C. Upon request from ES&S, Customer agrees to record, in reasonable detail, the operating information relating to the Products. These records shall clearly indicate the operating history of the Products, including but not limited to any history of malfunctions as well.

6. **Excluded Services** - The Services and Products provided herein do not include the repair or replacement of (i) ribbons or other supplies damaged as a result of normal wear and tear, (ii) Products which have been repaired, altered or transported by persons other than those expressly pre-approved in writing by ES&S, (iii) Products from which the serial numbers have been removed, defaced or changed, (iv) Products damaged as a result of accident, disaster, theft, vandalism, neglect, abuse, used for a purpose other than the purpose for which it is designed or used not in accordance with instructions furnished by ES&S, (v) Products which have been subjected to physical, mechanical or electrical design alteration or any conversion by persons other than those expressly pre-approved in writing by ES&S, or (vi) Products used by any person other than Customer's employees or persons under Customer's direct supervision.

7. Customer's Remedies - If ES&S defaults under the Agreement, Customer's sole and exclusive remedy shall be the adjustment, repair or maintenance of the Products, not previously excluded from the Maintenance Policy, until the Products are reasonably in good working condition. Customer acknowledges that it has sole control over the Products, and accordingly, ES&S shall not be liable to Customer for damages in any way related to or connected with results obtained from or otherwise contributed to by the Products. If this Agreement is terminated pursuant to Section 1, Customer shall be entitled to a pro rata refund of any prepaid fees.

8. Miscellaneous:

A. Force Majeure - ES&S or Customer shall be excused from performance hereunder for any period ES&S or Customer is prevented from performing their respective obligations hereunder in whole or in part as a result of an act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control. Additionally, such nonperformance shall not be grounds for termination or default of this Agreement.

B. Waiver - Any waiver by either party of any provision of this Agreement must be in writing, and shall not imply subsequent waiver of that, any other provision or of the non-defaulting parties rights and remedies available at law or in equity.

C. Notices - Except as otherwise provided herein, any notice, demand or request or other communication required to be given by either party to the other party pursuant to this Agreement, shall be in writing and mailed by first class, registered or certified mail, return receipt requested, or transmitted by hand delivery, telegram or telex, to the appropriate addresses first set forth above, or to such other address as either party may hereinafter substitute by written notice given in the manner prescribed in this Paragraph 9(D). Notice shall be deemed to be given three (3) days after mailed, or at such time as it is actually delivered to the addressee or such attempted delivery is refused by the addressee.

D. Complete Agreement - This Agreement is executed pursuant to the terms of a Contract to Purchase Goods and Services between the parties executed this same date. This Agreement shall be construed in accordance with that Contract, and in accordance with any License Agreements between the parties. This Agreement cannot be modified except by written agreement signed by all parties hereto.

E. Assignment - Neither party may, without the other party's prior written consent, assign or otherwise transfer this Agreement, or any of the party's rights or obligations under this Agreement, to a third party. ES&S shall have the right to subcontract the performance of all services specified in this Agreement only with the prior written consent of Customer.

F. Governing Law - THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF IOWA.

G. Severability and Reformation - (a) If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid, illegal or unenforceable and such provision or the application thereof may not be reformed, such illegality or unenforceability shall extend to that provision solely, and the remaining provisions of this Agreement shall not be in any way impaired and there shall be substituted for such invalid, illegal or unenforceable provision a provision as like in substance as shall be possible and be legal, valid and enforceable. (b) If any court of competent jurisdiction should hereinafter determine in the course of litigation that the provisions of this Agreement are unreasonable, then this Agreement shall be construed to operate as said court shall determine to be the maximum reasonable restraint in the circumstances, and the parties agree to submit such question or questions to such court in the event of any such determination of unreasonableness for reformation.

H. Headings - The section headings and other captions in this Agreement are inserted for convenience only, do not form a part of the Agreement, and in no way define, limit, extend or describe this scope, meaning, construction or effect of the Agreement or any provision hereof or the intent of the Parties.

I. Survival of Restriction and Representations - Paragraphs 7, 8 and 9(A), as well as each representation or warranty made by any party hereto shall survive the termination of this Agreement.

J. ES&S will cease to sell the Products covered in this Agreement to new customers December 31, 1999. However, ES&S shall continue to service and maintain the Products in good working condition throughout the useful life of the Optech III-P Eagle System, which is expected to be a minimum of twelve years.

K. This Agreement is binding upon the parties, their successors and assigns.

9. Renewals:

A. This agreement may be renewed by Customer annually for as long as Customer continues to use the Optech III-P Eagle Election System purchased under the Contract to Purchase Goods and Services. The cost will not increase by more than three percent (3%) of current market value of hardware and software covered by this agreement, or by more than three percent (3%) of the previous year's fee under this Agreement, whichever is less.

10. Additional On-Site Support:

A. If Customer requests on-site services in addition to those set forth in this Agreement and the Contract to Purchase Goods and Services, the parties will negotiate a reasonable fee therefor at the time such service is requested.

Each of the undersigned states that he or she has carefully read the foregoing Agreement and knows the contents thereof and has signed the same as his or her own free act and deed.

Election Systems & Software
 BY: KENNETH [Signature]
 TITLE: VP SALES
 DATE: 12/25/98

Polk County, IA
 X BY: Jack Bishop
 X TITLE: CHAIRPERSON
 X DATE: 12/29/98

TERM OF CONTRACT: From: _____ To: _____ (1 Year)

EXHIBIT "A" - Products-(Equipment, Hardware, Peripherals, etc.)

This is a "Parts Only" agreement for the Optech IIIP Eagle Voting machines. See Exhibit "B" for additional services for the Optech IVC, SPR's and Memory Packs.

Type	Number of Units	Serial Number(s)	Location	Maintenance Fee	Total
IIIP Eagle's	200	On File	Polk County, Iowa	\$106.00 Each	\$21,200.00
IVC*	1	On File	Polk County, Iowa	Included	\$-
Memory Packs	All	N/A	Polk County, Iowa	Included	\$-
SPR's	5	On File	Polk County, Iowa	Included	\$-
Memory Pack Reader	2	On File	Polk County, Iowa	Included	\$-
Totals					\$21,200.00

*See Exhibit "B" for Additional Services

Customer has chosen the "Parts Only" maintenance option. Customer will ship parts needing repair or replacement to ES&S. ES&S will ship the repaired or replacement parts to Customer within two weeks. Each party will pay its own shipping costs. Means of shipping and returning parts will be at the discretion of Customer. Customer shall bear risk of loss during shipping to ES&S, and ES&S shall bear risk of loss during return shipping to Customer.

EXHIBIT "B" - Additional Services

- Subject to Paragraphs 6 and 8 of this agreement, ES&S will provide full on-site parts and labor service for the County's Optech IVC.
- Subject to Paragraphs 6 and 8, full parts and service is also offered on the Memory Packs and SPR's to be serviced either on site or at an ES&S service center.

EXHIBIT "C" - Options Fees For Additional Services

EXHIBIT "E" - Parts Not Included

In addition to the items listed in Paragraphs 6, the following parts are excluded from this agreement:

- Add on parts or components that can be construed as an enhancement to the product.

Software License and Support Agreement



50309 ("Customer").

1. Definitions

A. "Licensed Programs" means each computer program listed on page 4 and each copy, update, or modification of all or any part of the Licensed Programs delivered to or made by the Licensee in accordance with the provisions of this License.

B. "Support Documentation" means any diagrams, manuals, instruction, and other similar materials, and any copies of any of the foregoing, related to the Licensed Programs and delivered to the Licensee in accordance with the provision of this License.

C. "Designated Machine" means the computer equipment controlled by Licensee or any substituted or backup equipment designated in writing by the Licensee and approved in writing by ES&S.

D. "Designated Site" means the location controlled by Licensee or any substituted location designated in writing by the Licensee and approved in writing by ES&S.

E. "Confidential Information" means all of the Licensed Programs and Support Documentation, except any part which:

(1) is or becomes publicly available through no act or failure to act of the Licensee or agents of the Licensee;

(2) was or is rightfully learned by the Licensee from a source other than ES&S, before being received from ES&S; or

(3) becomes independently available to the Licensee as a matter of right from a third party.

F. "Updates" means those corrections, changes, and improvements which ES&S shall market to the public: from time to time to correct deficiencies of, or to improve, the Licensed Programs or their operation and which are made a part of the License Programs by ES&S in future licensing.

G. "Enhancements" means additions to the Licensed Programs or their operation, which extend their capabilities and functions, and which are offered to Licensee for an additional fee.

2. License Grant

A. Scope of Rights - Subject to the restrictions set forth in this License, ES&S hereby grants to Licensee a perpetual and nonexclusive license to:

(1) use the Licensed Programs but only in machine-readable form on the Designated Machine, and at the Designated Site. (for purposes of this paragraph 2.A, "use" means load, execute, store, or display);

(2) use the Support Documentation, but only as required to exercise the License granted by 2.A(1); and

(3) have no more than (1) backup copy of the Licensed Programs, which shall be supplied to Licensee by ES&S.

B. No Modification or Merging - Licensee shall not translate, update or modify the Licensed Programs, or merge the Licensed Programs into other software, except as may be necessary to incorporate Updates delivered to Licensee by ES&S pursuant to Subsection 3.E below.

C. Title - Licensee acknowledges that title to all intellectual property rights, including patent, trademark, copyright and trade secret rights, in, and title to all ownership rights in all copies of and all media bearing the Licensed Programs and Support Documentation, shall be retained by ES&S.

D. Non-Assignment - Neither party may, without the other party's consent, assign the rights or obligations under the License.

3. Delivery

A. Materials, Form, Time - Subject to conditions beyond its reasonable control, ES&S shall deliver two (2) copies of the Licensed Programs in machine-readable object code and related Support Documentation to Licensee within thirty (30) days after execution by ES&S and Licensee of this License. ES&S shall bear the cost of such delivery.

B. Risk of Loss - ES&S will relieve Licensee of responsibility for all risk or loss or damage to the Licensed Programs and Support Documentation occurring during shipment. If the Licensed Programs or Support Documentation are lost or damaged after delivery to the Licensee, ES&S will replace the Licensed Programs or Support Documentation at ES&S's then applicable charges for such replacement.

C. Installation and Training.

(1) After the installation and training to be provided under the Contract to Purchase Goods and Services, ES&S will provide additional training and installation if requested by Licensee at ES&S's then applicable charges for such training and installation.

(2) Licensee shall prepare the Designated Site in such a manner as to permit proper installation of the Licensed Programs, particularly with respect to electric power and ambient conditions. Licensee shall be responsible for the compatibility of the Designated Machine with the Licensed Programs, except and unless the Designated Machine was supplied to Licensee by ES&S or an affiliate or subsidiary of ES&S.

D. Modifications and Updates.

(1) In the event ES&S makes any Updates to the Licensed Programs during the term of this License, ES&S agrees to provide such Updates to Licensee, along with the related Support Documentation, free of charge.

(2) In the event ES&S makes any Enhancements to the Licensed Programs during the term of this License, ES&S agrees to offer such Enhancements to Licensee if such offer would not violate any agreement with other customers of ES&S. Additional license fees for each such Enhancement will be negotiated with the Licensee at the time the Enhancement is so offered.

(3) Licensee agrees to use the updated Licensed Programs delivered to Licensee by ES&S. If new copies of the Licensed Programs with Updates or Enhancements are delivered to Licensee by ES&S, Licensee shall return all old copies of the Licensed Programs to ES&S within ten (10) days of such delivery.

E. Source Code Escrow. ES&S agrees to maintain a current copy of the source code of the Licensed Programs in escrow with Granite City Records/Storage Service (GCRSS) during the term of this Agreement. Within ten (10) days from the date of any new release of the Licensed Programs to Licensee, ES&S agrees to place an updated copy of the source code with GCRSS, Sauk Rapids, MN. A copy of the source code in escrow shall be released to Licensee during the term of this Agreement within thirty (30) days of the occurrence of any one or more of the following events, if Licensee shall request a copy and such event shall not be cured within ten (10) days of such request:

(1) ES&S ceases doing business without assigning this License to an affiliated corporation;

(2) ES&S declares bankruptcy, seeks protection under the Bankruptcy Act, or is forced into bankruptcy by its creditors; or

(3) ES&S fails to dispense the maintenance obligations set forth in Subsection 3.E of this License.)

4. Price and Payment - In consideration for this License, Licensee shall pay ES&S:

A. The initial license fee is included in the purchase of the system.

B. Within thirty (30) days after each anniversary of the acceptance of the Licensed Programs until termination of this License, a subscription fee, shown on page 4, (the "Subscription Fee"), which shall extend the term of this Agreement for an additional 12 months and which entitles Licensee to receive Updates as provided in Subsection 3.E, provided that ES&S may increase the Subscription Fee by giving Licensee at least one month written notice before the due date for payment of the fee, and Licensee shall then have the right to terminate this Agreement and its obligation to pay the new subscription fee by giving ES&S ten (10) days written notice. This subscription fee shall not exceed three percent (3%) of the previous year's fee.

C. Interest at the highest lawful rate of interest in effect at such time and from time to time thereafter, on any payments due under this License if ES&S shall not have received payment from Licensee by the date such payment is due.

D. Annual subscription fees are non-refundable.

5. Term and Termination.

A. This License shall become effective upon execution by ES&S and Licensee and shall remain in effect as long as Licensee continues to use the Licensed Programs, unless terminated in accordance with the following:

(1) Immediately upon any attempt by Licensee to assign, delegate, sublicense or otherwise transfer this License, the Licensed Programs, the Support Documentation, or any of its rights or obligations under this License without ES&S's consent;

(2) By either party by giving the other party written notice of a breach of this License, and the failure of the notified party to cure such breach within ten (10) days of such notice; or

(3) Immediately upon Licensee's failure to pay when due the License Fee, the Subscription Fee or any other fees or payments due under this Agreement.

Notwithstanding the above, Vendor shall allow Licensee to use the Licensed Programs for a reasonable time (not to exceed six months) to enable Licensee can obtain a substitute system.

B. Upon termination of this License:

(1) Licensee's obligations under Subsections 6.A and 6.B shall survive the termination;

(2) Licensee's rights under Sections 2 and 3 shall immediately cease; and

(3) Licensee shall perform its obligations under Subsection 6.C.

(4) Vendor shall refund a pro rata share of any prepaid license fee.

C. Each party's right to terminate as expressed in this License shall be in addition to any other rights provided by law.

6. Protection.

A. Restrictions on Dissemination.

(1) Licensee acknowledges that the Confidential Information is the property and trade secret of ES&S and that any publication or disclosure to third

parties of the Confidential Information may cause immediate and irreparable harm to ES&S. Licensee will take all reasonable steps to maintain the confidentiality of the Confidential Information.

(2) The Licensee shall not, without ES&S's prior, written consent, disclose, provide, or make available any of the Confidential Information in any form to any person, except to employees or consultants of Licensee whose access is necessary to enable the Licensee to exercise its rights under this License.

(3) The Licensee shall require any employee or consultant having such access to agree to maintain the confidentiality of the Confidential Information.

(4) Subsections 6A (1), (2) and (3) are conditioned upon Licensee's compliance with Iowa's Public Records Law.

B. Copyright and Copying.

(1) Except as authorized in advance by ES&S, the Licensee shall not copy all or any part of the Confidential Information, except as may be required by Iowa's Public Record Law.

(2) The Licensee shall not permit any other person or organization to copy any of the Licensed Programs or Support Documentation; except as may be required by Iowa's Public Records Law.

(3) All Authorized Copies delivered to Licensee shall include the following legend:

Copyright by Election Systems & Software as an unpublished work. THIS COMPUTER PROGRAM AND/OR DOCUMENTATION IS CONFIDENTIAL, PROPRIETARY INFORMATION AND A TRADE SECRET WHICH IS THE PROPERTY OF ELECTION SYSTEMS & SOFTWARE. ALL USE, DISCLOSURE AND/OR REPRODUCTION NOT EXPRESSLY AUTHORIZED BY ELECTION SYSTEMS & SOFTWARE IS PROHIBITED. THIS COMPUTER PROGRAM AND/OR DOCUMENTATION MAY ALSO BE PROTECTED UNDER THE COPYRIGHT AND TRADE SECRET LAWS OF NON-U.S. COUNTRIES. ALL RIGHTS RESERVED.

(4) The Licensee shall not remove this legend from any Licensed Programs or Support Documentation.

(5) The Licensee shall maintain a log of the number and location of all originals and copies of the Licensed Programs and Support Documentation. All copies of the Licensed Programs and Support Documentation shall be kept only at the Designated Site, unless, after receipt of a written request from Licensee, ES&S provides written approval, at ES&S's discretion, to maintain such copies at a location other than the Designated Site.

C. Upon Termination.

(1) Upon termination of this License, Licensee shall delete the Licensed Programs from all other software, if any, into which it had been merged.

(2) Upon termination of this License, Licensee shall immediately deliver to ES&S or destroy all copies of the Licensed Programs and Support Documentation; provided, however, that, with ES&S's written consent, Licensee may retain one (1) copy of the Licensed Programs and Support Documentation for archive purposes only.

(3) Upon termination of this License, Licensee shall erase all Licensed Programs from any storage media before discarding the storage media.

(4) Within one (1) month after the termination of this License, Licensee shall certify in writing to ES&S that, to the best of Licensee's knowledge, all copies of the Licensed Programs and Support Documentation have been returned or destroyed, except for any archive copy permitted under paragraph 6.C(2).

7. Warranty.

A. Warranty - ES&S warrants that the media on which the Licensed Programs are delivered shall be free from defect, and shall be replaced if found defective.

B. Limitation of Liability - ES&S's liability for any losses or damages of any nature, except for personal injury, whether direct, indirect or incidental, arising from the installation, design or use of any of the Licensed Programs or Support Documentation shall be limited to the aggregate amount of the fees paid to ES&S under this License. ES&S shall not be liable for any incidental, special or consequential damages of any nature whatsoever, such as, but not limited to, loss of anticipated revenues or profits in connection with or arising out of any aspect of ES&S's performance under this License.

C. Licensee's Duty - Licensee shall be solely responsible for assuring:

(1) That the Designated Machine is compatible with the Licensed Programs, except that ES&S shall be responsible for assuring compatibility if the Designated Machine was supplied by Election Systems & Software or one of its affiliates;

(2) The existence of adequate back-up plans to accommodate any failure of the Designated Machine or the Licensed Programs;

(3) The accuracy of the input data; and

(4) Proper use of the Licensed Programs in accordance with instructions and training provided by ES&S.

8. Remedies.

A. Equitable Relief - If Licensee breaches any of its obligations set forth in Section 6, or if such breach is likely to occur, ES&S shall be entitled, in addition to all of the remedies at law or in equity it may have, to equitable relief including orders for specific performance and injunction. The rights and remedies of ES&S set forth in this License are not exclusive and are in addition to any other rights and remedies provided by law.

9. Miscellaneous.

A. Counterparts - This License may be executed in counterparts, all of which taken together shall constitute one single agreement between the parties.

B. Schedules, Headings and Interpretation - The section and paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. The schedules and attachments referred to herein and attached hereto, are incorporated herein to the same extent as if set forth in full herein, unless the context otherwise requires.

C. Force Majeure - ES&S or Licensee shall be excused from performance hereunder for any period ES&S or Licensee is prevented from performing a service pursuant hereto in whole or in part as a result of an act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control. In addition, such nonperformance shall not be a ground for termination or default.

D. Severability - Licensee agrees that each of the agreements set forth in Section 6 constitute separate agreements independently supported by good and adequate consideration and shall be severable from the other provisions of, and shall survive, this License. The existence of any claim or cause of action of Licensee against ES&S, whether predicated on this License or otherwise, shall not constitute a defense to the enforcement by ES&S of the covenants and agreements of Licensee contained in the disclosure and confidentiality agreements and other agreements set forth in Section 6. If any provision of this License is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this License shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or

by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this License, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

E. Waiver - Any waiver by the party of any provision of this License must be in writing, and shall not imply subsequent waiver of that or any other provision.

F. Notices - Any notice or demand required to be given herein shall be given to the parties in writing and by certified mail, return receipt requested, at the addresses first set forth above, or to such other address as either party may hereinafter substitute by written notice given in the manner prescribed in this Section. Notice shall be deemed as given three days after mailed.

G. Complete Agreement - This License is executed pursuant to the terms of a Contract to Purchase Goods and Services between the parties executed this same date. This License shall be construed in accordance with that Contract, and in accordance with any maintenance agreements between the parties. This License cannot be modified except by written agreement signed by all parties hereto.

H. Governing Law - This License shall be construed and enforced in accordance with the laws of the State of Iowa.

I. This License is binding on the parties, their successors and assigns.

10. Software Maintenance:

During the term of this License Agreement, ES&S shall provide Customer with unlimited off-site technical support (phone and remote communications) needed to maintain the Licensed Programs and any upgrades and enhancements. Support will be available twenty-four hours per day, and may be accessed by calling a toll-free number or numbers to be provided by ES&S. Phone response will be within three hours of initial contact for non-emergency support. Emergency support, for major system failures, will be available within one-half hour. On-site support with 24 hours notification is available at then applicable rates plus reasonable travel-related expenses (not to exceed lowest cost airfare and \$150.00 per day).

Each of the undersigned states that he or she has carefully read the foregoing Agreement and knows the contents thereof and has signed the same as his or her own free act and deed.

<u>ELECTION SYSTEMS & SOFTWARE</u>	<u>Polk County, Iowa</u>
BY: <u><i>Kevin Lambert</i></u>	X BY: <input checked="" type="checkbox"/> <u><i>Jack Bishop</i></u>
TITLE: <u><i>VP SALES</i></u>	X TITLE: <u><i>CHAIRPERSON</i></u>
DATE: <u><i>12/29/98</i></u>	X DATE: <u><i>12/29/98</i></u>

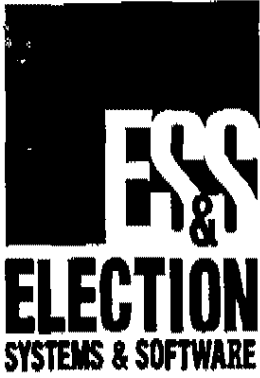
TERM OF CONTRACT: From: _____ To: _____ (1 year)

EXHIBIT A - LICENSED PROGRAMS, LICENSE FEES, SUBSCRIPTION FEES

Programs	Initial License Fee's	Annual Subscription Fees
Election Management Software (EMS)	N/A	\$ 2,000.00
Automatic Election Returns and Operations Software (AERO)	N/A	\$ 2,000.00
Modem/SPR Host Software	N/A	\$ 2,700.00
Ballot On Demand Software (BOD)	N/A	\$ 3,800.00
Voter Registration Software - Megalink	N/A	\$22,500.00
GIS/Map Software	N/A	Included with V/R Software
Totals		\$33,000.00

EXHIBIT B - PRODUCT OPTIONS

EXHIBIT C - OPTIONS



ELECTION SYSTEMS & SOFTWARE
601 28TH AVENUE SOUTH
WAITE PARK, MN 56387
320-252-9268

ELECTION SUPPORT AGREEMENT

Polk County
 (Client)

This AGREEMENT is between ELECTION SYSTEMS & SOFTWARE (ES&S), and the signatory CLIENT, and clearly states their mutual responsibilities and commitments.

The fee for this Agreement is included in the fee to be paid by Client under the Hardware Maintenance Agreement. It can be modified at any time if both parties agree to the change in writing.

Services:
 ES&S will provide the consulting and support services specified and defined by this agreement, the Contract to Purchase Goods and Services, the License Agreement and the Hardware Maintenance Agreement. These may include: consulting, training, telephone assistance, modification or maintenance of software.

Warranties and Liabilities:
 ES&S endeavors to provide high quality services. All services are provided by qualified staff, properly supervised, and will meet the specifications agreed to by both parties. Those services performed by ES&S and determined by ES&S to be of less than professional quality are corrected without charge to the CLIENT. Corrections may take the form of: 1) changed documentation; 2) changed software; 3) procedures to bypass the problem; or 4) additional support.

Understandings:
 ES&S retains all proprietary rights to software programs, documentation, and techniques that are prepared on behalf of the CLIENT, unless a specific exception is stated herein.
 ES&S will make its best effort to schedule and meet scheduled commitments in the order of priority most important to the CLIENT. ES&S takes into consideration the client's time schedule, the workload of its employees and disruption of CLIENTS' schedules.
 ES&S will provide any additional services as listed below for Election Support Agreement clients at special reduced rates.
 This agreement, governed by the laws of the State of Iowa. A waiver of any part of this agreement is limited to that specific event and shall not waiver the entire agreement. Any notices required shall be in writing and effective when deposited in the mail properly addressed with prepaid postage.
 ES&S will not initiate action on any item without the express consent of the CLIENT.
 ES&S will automatically renew this Support Agreement and continue services on its anniversary date, unless both parties agree not to renew prior to the anniversary date.

ELECTION SYSTEMS & SOFTWARE (ES&S) will provide the following support services (Covered Under the fee):

- | | |
|---|-----------------------------------|
| Unlimited Optical Scan training at a ES&S training facility at regularly scheduled classes. | Pre-Election Seminar. |
| Telephone Consultations. | Telephone Test Deck Consultation. |
| Hot Line Telephone Support during Election Day (6 a.m. Central Time until the last user reports). | Telephone Problem Analysis. |
| Priority Access to Election Management Staff. | Newsletter. |
| Diagnostic Testing Consultation. | Documentation Updates |

<u>Election System(s)</u>	<u>Number of Units</u>	<u>Fee</u>
Optech III P Eagle	200	Included in HMA

Total For This Agreement:

Additional Services (Charged at ES&S hourly rates, plus travel expenses)

- | | |
|---|-------------------------------|
| On Site Visits | On Site Pollworkers Training |
| On Site Public Test Support | On Site Election Day Support |
| Planning, Status Meetings And Feasibility Studies | On Site Optical Scan Training |

Dates of Coverage For This Agreement: To begin upon Commencement Date of Hardware Maintenance Agreement

<u>ELECTION SYSTEMS & SOFTWARE</u>	<u>Polk County, IA</u>
BY: <u>KEVIN LAFFERTY</u>	X BY: <u>John Burkhus</u>
TITLE: <u>VP SALES</u>	X TITLE: <u>CHAIRPERSON</u>
DATE: <u>12/29/98</u>	X DATE: <u>12/29/98</u>



ELECTION SYSTEMS & SOFTWARE, INC.

SALES / BILLING REQUEST

Prebill
 Regular Processing

Bill To:
 Polk County Elections
 Mr. Michael Mauro - Auditor
 120 Second Avenue
 Des Moines, IA 50309 -4757

Ship To:
 Same

Customer Contact:
 Mr. Michael Mauro

Phone #:
 515/286-3080

Date Issued:
 12/11/98

Sales Representative:
 Jay Perbix

PO #:

Date Rec'd:
 1/11/99

Qty	Item Number	Description	Unit Price	Extended Price	Cost
200	1.00	Optech III-P Eagle Precinct Counters	\$5,200	\$1,040,000	
		Includes:			
200		Optech III-P Eagle w/ Modems			
200		Steel Ballot Boxes			
200		RAM Data Memory Packs			
200		Licensed Software			
200		Additional RAM Data Memory Packs	\$145	\$29,000	
1	2.00	Optech IV-C 400 Ballot Reader	\$40,000	\$40,000	
		Includes:			
1		Optech IV-C 400 Ballot Reader			
1		Ballot Cart w/ Box			
1		Optech IV-C PC			
1		500 LPM CIE Printer			
1		10' Parallel Printer Cable			
1		Election Tabulation Program			
1		Internal 9600 Baud Modem			
1		Carbon Copy Plus Software			
2		Memory Pack Readers	\$4,500	\$9,000	

Ship Via:

Special Instructions: Please contact Jay Perbix with questions

Customer Signature:

Order Total	Continued Next Page
Freight	
Sales Tax	
Grand Total	

Prepared By: _____ **Macola Order #:** _____
Date Prepared: _____ **Ship Date:** _____



ELECTION SYSTEMS & SOFTWARE, INC.

SALES / BILLING REQUEST

<input type="checkbox"/> Prebid
<input type="checkbox"/> Regular Processing

Bill To:
 Polk County Elections
 Mr. Michael Mauro - Auditor
 120 Second Avenue
 Des Moines, IA 50309 -4757

Ship To:
 Same

Customer Contact:
 Mr. Michael Mauro

Phone #:
 515/286-3080

Date Issued:
 12/11/98

Sales Representative:
 Jay Perblx

PO #:

Date Rec'd:
 1/11/99

Qty	Item Number	Description	Unit Price	Extended Price	Cost
		Election Software			
1		EMS (With IFC Merge Capability)	\$15,000	\$15,000	
1		AERO/AERO-View	\$15,000	\$15,000	
1		Modem/SPR Host	Included	Included	
1		Ballot Data Manager/Ballot Typesetting Software	\$5,000	\$5,000	
1		Ballot On Demand Software	\$50,000	\$50,000	
		Election Hardware (See Hardware Config.)	\$307,176	\$307,176	
5		Upgrade Of Current SPR's To Read Optech III-P Eagle Packs	Included	Included	
12		Xante Printers For Ballot On Demand (See Hardware Configuration)			
1		Installation And Training And Project Management For Election Hardware And Software	\$40,000	\$40,000	

Ship Via:

Special Instructions: Please contact Jay Perblx with questions

Customer Signature:

Order Total	Continued Next Page
Freight	
Sales Tax	
Grand Total	

Prepared By:	Macola Order #:
Date Prepared:	Ship Date:



ELECTION
SYSTEMS & SOFTWARE

ELECTION SYSTEMS & SOFTWARE, INC.

SALES / BILLING REQUEST

<input type="checkbox"/> Prebill
<input type="checkbox"/> Regular Processing

Bill To:
 Polk County Elections
 Mr. Michael Mauro - Auditor
 120 Second Avenue
 Des Moines, IA 50309 -4757

Ship To:
 Same

Customer Contact:
 Mr. Michael Mauro

Phone #:
 515/286-3080

Date Issued:
 12/11/98

Sales Representative:
 Jay Perblx

PO #:

Date Req'd:
 1/11/99

Qty	Item Number	Description	Unit Price	Extended Price	Cost
1		Voter Registration Software	\$125,000	\$125,000	
1		GIS/Mapping Software	\$15,000	\$15,000	
1		Conversion Of Polk County's Database	\$15,000	\$15,000	
		Voter Registration Training And Project Mangement	\$10,000	\$10,000	
		Election Voter Registration Hardware (Please Refer To Attached Configuration For Complete Details)			
		All Proposed Hardware Comes With A Standard 3 Year OEM Warranty.			
		The Xante Printers Have A Standard 1 Year Warranty.			
		All Optech III-P Eagles, Memory Packs, Optech IV-C And Software Is Warranted For One Year Past Date Of Acceptance. (Acceptance Date Is September 99' Election)			
		See Attached Agreements For Future Coverage			

Ship Via:

Special Instructions: Please contact Jay Perblx with questions

Customer Signature:

Order Total	Continued Next Page
Freight	
Sales Tax	
Grand Total	

Prepared By:	Macola Order #:
Date Prepared:	Ship Date:



ELECTION SYSTEMS & SOFTWARE, INC.

SALES / BILLING REQUEST

Prebill
 Regular Processing

Bill To:
 Polk County Elections
 Mr. Michael Mauro - Auditor
 120 Second Avenue
 Des Moines, IA 50309 -4757

Ship To:
 Same

Customer Contact:
 Mr. Michael Mauro

Phone #:
 515/286-3080

Date Issued:
 12/11/98

Sales Representative:
 Jay Perbix

PO #:

Date Req'd:
 1/11/99

Qty	Item Number	Description	Unit Price	Extended Price	Cost
		Trade-In Of Existing Optech Equipment	(\$289,000)	(\$289,000)	
		ES&S Will Be Responsible For Removing All Optech Equipment Being Traded In.			
		All Prices F.O.B. Point Of Origin			
		Please Reference RFP #052-9798 And RFP #053-9798 Following The Sales Order For Additional Information.			
		ES&S Assumes Polk County Will Provide The Network Cabling And A Designated System Administrator To Oversee Operation Of The Network.			
		Payment Terms: 50% Upon Delivery Of The Equipment. Remaining 50% Upon County Defined Date Of Acceptance After 1999 September County-Wide Election. (Please Refer To Polk County Contract For Purchase Of Goods And Services For Additional Information Regarding Payment.)			

Ship Via:

Special Instructions: Please contact Jay Perbix with questions

Customer Signature:

Order Total	\$1,426,176
Freight	
Sales Tax	
Grand Total	

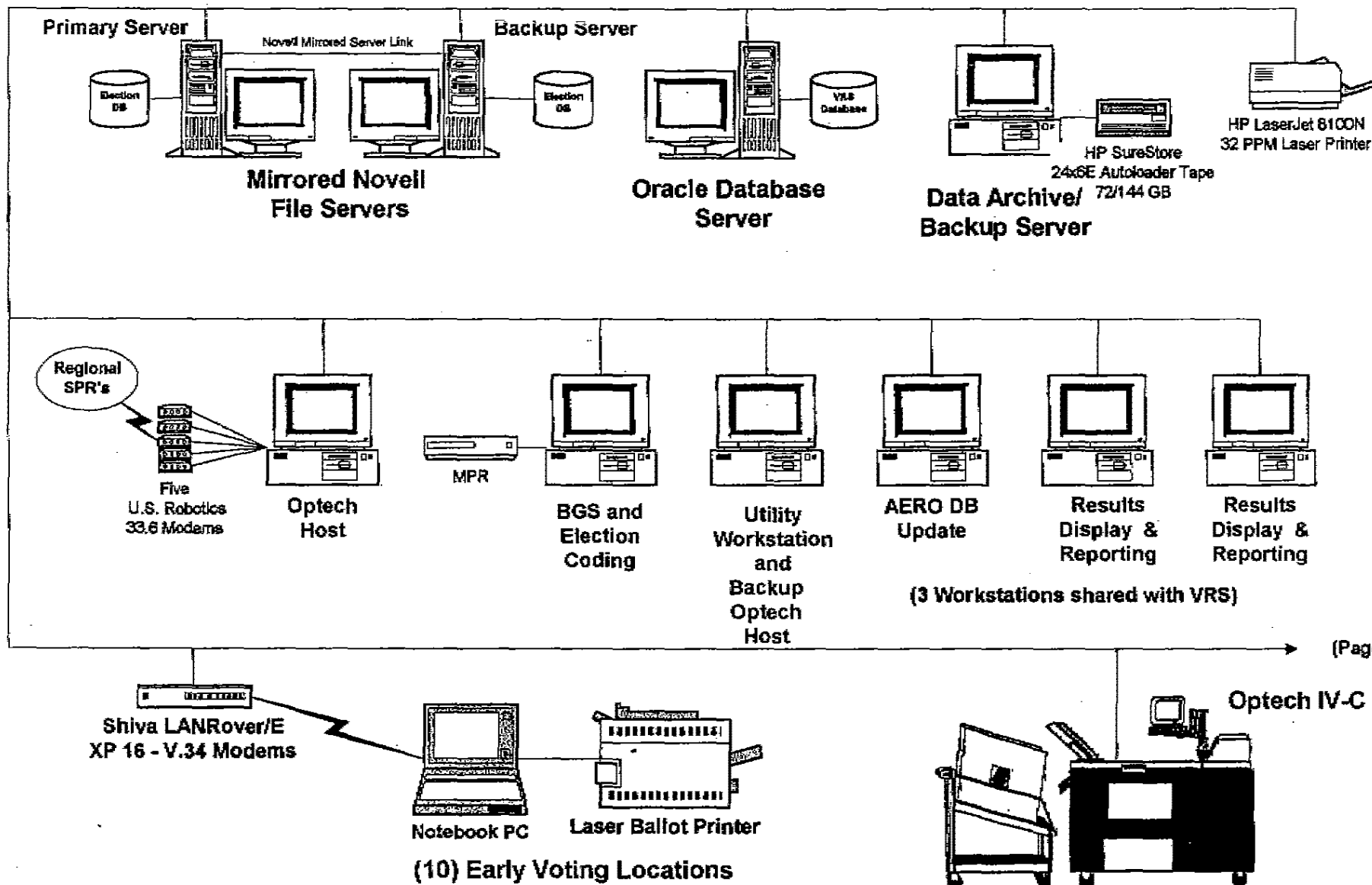
Prepared By:	Macola Order #:
Date Prepared:	Ship Date:



ELECTION
SYSTEMS & SOFTWARE

Polk County, IA Election Management System

Created By:
Election Systems & Software
December 9, 1998
File: POLK3PE1.VSD
Copyright (C) 1998



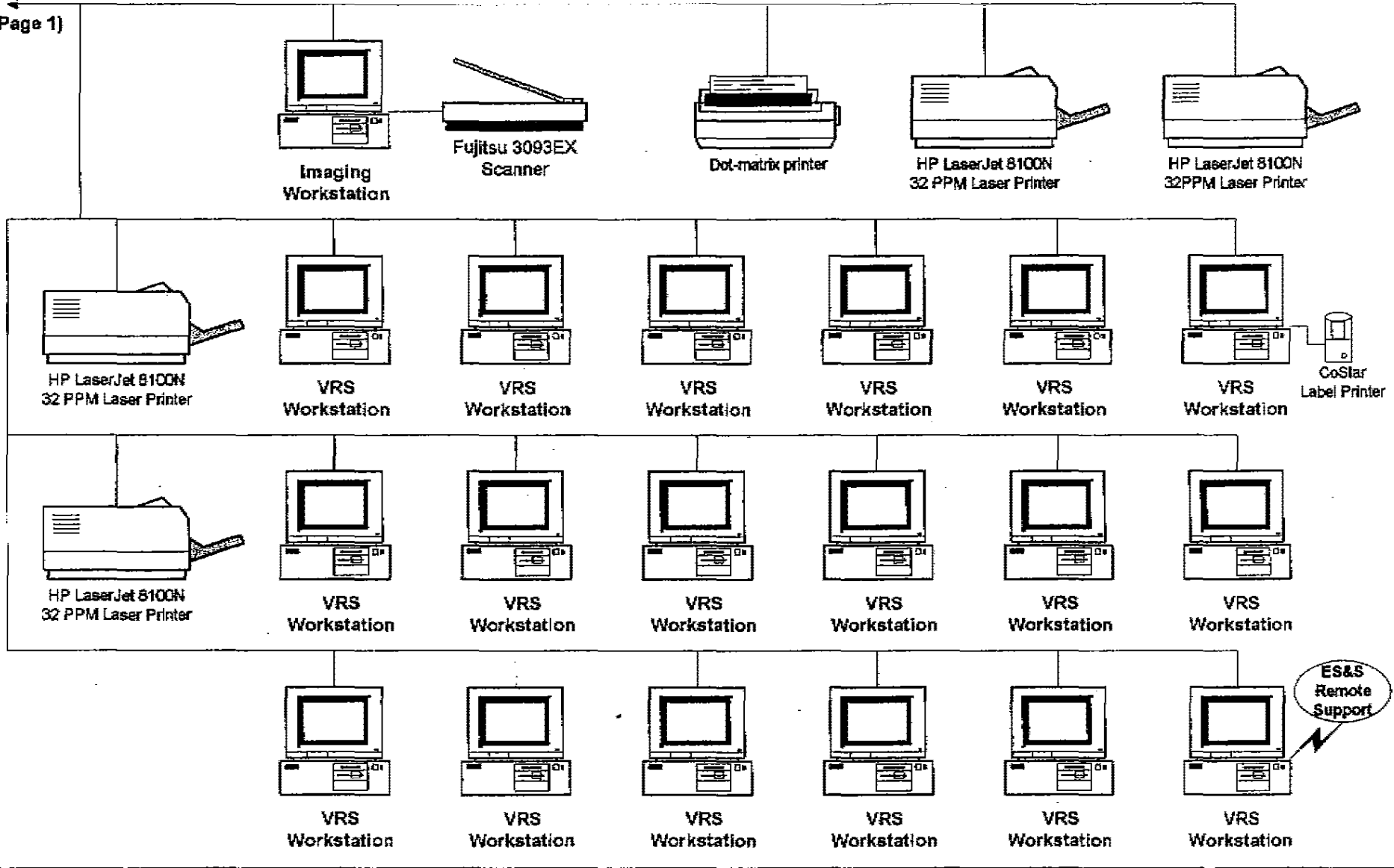


ELECTION
SYSTEMS & SOFTWARE

Polk County, IA Election Management System

Created By:
Election Systems & Software
December 9, 1998
File:POLK3PE1.VSD
Copyright (C) 1998

(Page 1)



**ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM**

10-Dec-98

185 Precincts

<u>DESCRIPTION</u>	<u>QTY</u>	<u>PER UNIT</u>	<u>RETAIL TOTAL</u>
<u>OPTECH COUNTERS</u>			
Optech IIIP-E Eagle w/Modems, Pack & Box	200	5,200	1,040,000
Retrofit SPR's from Optech II to IIIP-E	5	Inc	Inc
Additional Memory Packs	200	145	29,000
Optech IV-C	1	40,000	40,000
Memory Pack Programmer (MPR)	2	4,500	9,000
			1,118,000
<u>APPLICATION SOFTWARE</u>			
Ballot Data Manager (BDM)	1	5,000	5,000
Ballot-on-Request (EOR)	1	50,000	50,000
Voter Registration System	1	125,000	125,000
Absentee Module	1	inc	0
Address Module	1	inc	0
Election Workers Module	1	inc	0
Petition Module	1	inc	0
Security Module	1	inc	0
Reports Module	1	inc	0
Candidate Module	1	inc	0
Image Module	1	inc	0
ReportSmith v3.0 for Win95 (32 Bit version)	1	inc	0
GIS / Mapping Software	1	15,000	15,000
EMS Upgrade	1	15,000	15,000
AERO Upgrade	1	15,000	15,000
AEROVIEW Upgrade	1	inc	inc
ETP OIV-C	1	inc	inc
SPR Software Upgrade	1	inc	inc
			225,000

**ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM**

10-Dec-98

185 Precincts

<u>DESCRIPTION</u>	<u>QTY</u>	<u>PER UNIT</u>	<u>RETAIL TOTAL</u>
<u>INSTALLATION, TRAINING & SUPPORT</u>			
VRS Training - Labor (9 days)	1	10,000	10,000
VRS Support - 1 Year	1	inc	0
VRS File Conversion	1	15,000	15,000
Project Management - Optechs	15	1,000	15,000
Project Management - Travel	12	inc	0
BGS Training - Labor	5	750	3,750
BGS Training - Travel	2	1,000	2,000
Eagle Installation & Training Days	9	750	6,750
Election Support Days	15	500	7,500
Employee Trips	5	1000	5,000
Freight - FOB Fractory	1	TBD	TBD
			65,000

PRICING SUMMARY

Optech Eagles	1,118,000
Application Software	225,000
Network and Operating Software	307,176
Installation, Training & Support	65,000
Total	1,715,176
Trade-in allowance for Optech II's	(\$289,000)
FINAL COST	\$1,426,176

ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM

10-Dec-98

185 Precincts

<u>DESCRIPTION</u>	<u>QTY</u>	<u>PER UNIT</u>	<u>RETAIL TOTAL</u>
--------------------	------------	-----------------	---------------------

DETAIL EQUIPMENT LISTING

MIRRORED NOVELL FILE SERVERS:

SERVER 1

Compaq Proliant 1600 w/Intel P2-450 MHz	1	3,161	3,161
64MB RAM	1	Inc	Inc
Integrated 1024x768 PCI Graphics Adapter	1	Inc	Inc
24X CD-ROM	1	Inc	Inc
Ethernet 100BaseT Adapter	1	Inc	Inc
Memory Upgrade Kit - 128MB (192MB Total)	1	519	519
Compaq 9.1 GB Hot-Swappable Hard Drive	3	931	2,793
Compaq Smart-2SL SCSI RAID Controller	1	752	752
Compaq Mdl# V55 - 15" SVGA Monitor (1280 x 10	1	273	273
Compaq Warranty - 8 X 5, 4 Hr. Response	1	3,310	3,310
APC SmartUPS 1400 UPS w/ Powerchute	1	680	680
			11,488

SERVER 2

Compaq Proliant 1600 w/Intel P2-450 MHz	1	3,161	3,161
64MB RAM	1	Inc	Inc
Integrated 1024x768 PCI Graphics Adapter	1	Inc	Inc
24X CD-ROM	1	Inc	Inc
Ethernet 100BaseT Adapter	1	Inc	Inc
Memory Upgrade Kit - 128MB (192MB Total)	1	519	519
Compaq 9.1 GB Hot-Swappable Hard Drive	3	931	2,793
Compaq Smart-2SL SCSI RAID Controller	1	752	752
Compaq Mdl# V55 - 15" SVGA Monitor (1280 x 10	1	273	273
Compaq Warranty - 8 X 5, 4 Hr. Response	1	3,310	3,310
Novell Netware 4.11 (50 Users)	1	4,394	4,394
Novell Netware SFT III v4.11 (Up to 100 Users)	1	1,434	1,434
Novell Mirrored Server Link with Fiber Optic Cable)	1	1,554	1,554
APC SmartUPS 1400 UPS w/ Powerchute	1	680	680
			18,870

ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM

10-Dec-98

185 Precincts

<u>DESCRIPTION</u>	<u>QTY</u>	<u>PER UNIT</u>	<u>RETAIL TOTAL</u>
ORACLE DATABASE SERVER:			
Compaq Proliant 3000 w/Intel P2-450 MHz	1	5,171	5,171
128MB RAM	1	Inc	Inc
Integrated 1024x768 PCI Graphics Adapter	1	Inc	Inc
24X CD-ROM	1	Inc	Inc
Ethernet 100BaseT Adapter	1	Inc	Inc
Memory Upgrade Kit - 128MB	1	519	519
Memory Upgrade Kit - 256MB (512MB Total)	1	1,727	1,727
Proliant Redundant Power Supply	1	958	958
Compaq 9.1 GB Hot-Swappable Hard Drive	4	931	3,724
Compaq Smart-2DH SCSI RAID Controller	1	1,926	1,926
Compaq Mdl# V55 - 15" SVGA Monitor (1280 x 10	1	273	273
Compaq Warranty - 8 X 5, 4 Hr. Response	1	3,310	3,310
Novell Netware 4.11 (50 Users)	1	4,394	4,394
Oracle Server License (1 User)	30	300	9,000
APC SmartUPS 1400 UPS w/ Powerchute	1	680	680
			31,682

DATA ARCHIVE / BACKUP:

Compaq DeskPro EP PII-350MHz	1	1,639	1,639
64MB RAM	1	Inc	Inc
10GB Hard Drive	1	Inc	Inc
32X CD-ROM	1	Inc	Inc
Compaq 10/100BaseT Ethernet Adapter	1	92	92
Compaq Mdl# V55 - 15" SVGA Monitor (1280 x 10	1	273	273
Compaq 3 Year On-Site Parts and Labor Warranty	1	264	264
HP SureStore 24x6E Autoloader - 72/144 GB Capaci	1	3,712	3,712
Adaptec AHA-2940 SCSI Controller	1	362	362
Tandem DDS2 4mm DAT Tape - 5 Pack	1	86	86
ARCServe v6.6 for Netware Enterprise Edition	1	1,220	1,220
ARCServe v6.6 for Netware - Auto Changer Option	1	577	577
ARCServe Agent v6.6 for Netware	1	319	319
Novell Netware 4.11 (5 Users)	1	963	963
APC SmartUPS 1400 UPS w/ Powerchute	1	680	680
			10,187

ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM

10-Dec-98

185 Precincts

DESCRIPTION	QTY	PER UNIT	RETAIL TOTAL
VRS WORKSTATIONS:			
Compaq DeskPro EP w/ PII-350MHz	21	1,639	34,419
64MB RAM	21	Inc	Inc
10GB Hard Drive / 1.44MB Floppy Drive	21	Inc	Inc
24X CD-ROM	21	Inc	Inc
MS Windows 98, Mouse, Keyboard	21	Inc	Inc
Compaq 10/100BaseT Ethernet Adapter	21	92	1,932
Compaq Mdl# V75 - 17" SVGA Monitor (1280 x 10	21	485	10,185
Compaq 3 Year On-Site Parts and Labor Warranty	21	264	5,544
APC Back-UPS 420VA	21	247	5,187
American Barcode Scanners 2.3" CCD	21	474	9,954
Code 39 Bar Code Software	21	150	3,150
McAfee Viruscan v4.0 for Win98 (Single user)	21	51	1,071
			71,442

IMAGING/SCANNING WORKSTATION:

Compaq DeskPro EP w/ PII-350MHz	1	1,639	1,639
64MB RAM	1	Inc	Inc
10GB Hard Drive / 1.44MB Floppy Drive	1	Inc	Inc
24X CD-ROM	1	Inc	Inc
MS Windows 98, Mouse, Keyboard	1	Inc	Inc
Compaq 32MB Ram Upgrade (96MB Total)	1	89	89
Compaq 8MB VRam Upgrade (16MB VRAM Total)	1	98	98
Compaq 10/100BaseT Ethernet Adapter	1	92	92
Compaq Mdl# V1000 - 21" SVGA Monitor (1600x1	1	1,141	1,141
Compaq 3 Year On-Site Parts and Labor Warranty	1	264	264
APC Back-UPS 420VA	1	247	247
Fujitsu Scanner 3093EX	1	3,727	3,727
Kofax Image Adpater Card	1	1,347	1,347
American Barcode Scanners 2.3" CCD	1	474	474
Code 39 Bar Code Software	1	150	150
Scanner Cable	1	116	116
McAfee Viruscan v4.0 for Win98 (Single user)	1	51	51
			9,435

ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM

10-Dec-98

185 Precincts

<u>DESCRIPTION</u>	<u>QTY</u>	<u>PER UNIT</u>	<u>RETAIL TOTAL</u>
<u>ACCUMULATION WORKSTATIONS:</u>			
Compaq DeskPro EP w/ PII-350MHz	3	1,639	4,917
64MB RAM	3	Inc	Inc
10GB Hard Drive / 1.44MB Floppy Drive	3	Inc	Inc
24X CD-ROM	3	Inc	Inc
MS Windows 98, Mouse, Keyboard	3	Inc	Inc
Compaq 10/100BaseT Ethernet Adapter	3	92	276
Compaq Mdl# V75 - 17" SVGA Monitor (1280 x 10	3	485	1,455
Compaq 3 Year On-Site Parts and Labor Warranty	3	264	792
APC Back-UPS 420VA	3	247	741
4 Port Mux Communication Card (1 Spare)	2	450	900
U.S. Robotics 56K External Modem w/cable	5	150	750
IOmega External ZIP Drive - 100MB	1	123	123
Microsoft Office 97 Professional (For BGS)	1	563	563
McAfee Viruscan v4.0 for Win98 (Single user)	3	51	153
			10,670

EARLY VOTING LOCATIONS:

Dell Inspiron 3500 - 266 MHz, 1.44 MB Drive	10	2,846	28,460
14.1" Active Matrix Color Display	10	INC	INC
64MB RAM	10	INC	INC
3.2 GB EIDE Hard Drive	10	INC	INC
3.5" Diskette Drive	10	INC	INC
3COM 10/100 + 56K Modem Combo Card	10	INC	INC
Windows 98	10	INC	INC
Dell 3 Year On-site Warranty	10	INC	INC
24X max/ 10X min Variable CD-ROM Drive	10	INC	INC
Nylon Carrying Case	10	INC	INC
Microsoft Office '97 CD (Small Business Ed.)	10	INC	INC
McAfee Viruscan v4.0 for Win98 (Single user)	10	51	510
Xante Ballot Laser Printer	10	5,529	55,290
Xante Ballot Laser Printer (Spares)	2	5,529	11,058
Xante Laser Printer Toner Cartridge	10	150	1,500
10" Parallel Printer Cables	10	25	250
Total Cost of Early Voting Sites			97,068

**ELECTION SYSTEMS & SOFTWARE
POLK COUNTY, IA
COMPLETE ELECTION MANAGEMENT SYSTEM**

10-Dec-98

185 Precincts

DESCRIPTION	QTY	PER UNIT	RETAIL TOTAL
COMMUNICATIONS COMPONENTS:			
Shiva LANRover/E XP-16 (V.34 Modems)	2	6,538	13,076
APC Back-UPS 420VA	2	247	494
US Robotics Sportster 56K External Modem	2	150	300
pcAnywhere for Win95 - v8.0	2	178	<u>356</u>
			14,226
NETWORK COMPONENTS:			
CISCO catalyst 2924 Switch 10/100 TX (24 port)	2	2,442	4,884
CISCO 3-year Repair/Replacement Warranty	2	328	656
APC Back-UPS 420VA	1	247	<u>247</u>
			5,787
NETWORK PRINTERS:			
HP LaserJet 8100N - 32PPM Laser Printer	5	3,377	16,885
HP JetDirect 10/100 TX Internal Ethernet Card	5	INC	INC
HP 16MB Memory Module	5	INC	INC
HP 16MB Memory Add-on Module (32MB Total)	5	146	730
HP LaserJet 8100N Toner Cartridge	5	180	900
HP LaserJet Warranty - 8 x 5, 4-hr response	5	793	3,965
Okidata Microline ML395 Printer	1	1,157	1,157
APC Back-UPS 420VA	7	247	1,729
HP JetDirect 500X External Print Server (3 Port)	1	355	355
CoStar Barcode Printer	1	420	420
Serial to Parallel Printer Cable	1	180	<u>180</u>
			26,321
TOTAL HARDWARE COST			<u>307,176</u>

FILE

RESOLUTION

Moved by Giovannetti Seconded by Mauro

That the following resolution be adopted:

WHEREAS, the Federal Help America Vote Act (HAVA) of 2002 mandated that election jurisdictions replace outdated election equipment and purchase a minimum of one voting device per precinct to accommodate disabled voters, and

WHEREAS, as discussed with the Board of Supervisors on August 11, 2004 Federal funding for the equipment purchase was estimated to cover approximately 73% of the cost leaving the County share of the cost at an estimate of \$771,050, and

WHEREAS, as a result of an RFP process, the County Auditor has selected an equipment proposal that is the best match to the needs of Polk County, and

WHEREAS, the County will receive Federal funding of \$1,737,530 to offset the \$1,934,425 cost of new equipment and related accessories, resulting in a net County cost of \$196,895.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors hereby approves the voting equipment purchase contract with Elections Systems & Software, Inc. in the amount of \$1,884,425 (as on file in the Auditor's Office) and authorizes the Board chairperson to sign the contract on behalf of the County.

BE IT FURTHER RESOLVED that the County Auditor is hereby authorized to also expend up to \$50,000 for voting equipment accessories to facilitate the transition to the new equipment.

POLK COUNTY BOARD OF SUPERVISORS

Tom Hockensmith
Chairperson

Submitted By:

Michael A. Mauro
Michael A. Mauro
County Auditor

Contract Approved as to Form:

Candy Morgan
County Attorney's Office

ROLL CALL FOR ALLOWANCE	
DEC 13 '05	
E.J. Giovannetti	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Robert Brownell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
John F. Mauro	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Angela Connolly	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Tom Hockensmith	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Yea	5 Nay 0
Above tabulation made by <u>SD</u>	
ALLOWED BY ABOVE VOTE OF BOARD	
CHAIRPERSON	

Tom Hockensmith
CHAIRPERSON

#22

**ELECTION SYSTEMS & SOFTWARE, INC.
VOTER TABULATION SYSTEM AND SERVICES AGREEMENT**

This Agreement is made as of the date it is executed by the last of the parties named below (the "Effective Date"),

BETWEEN: Election Systems & Software, Inc., a Delaware corporation ("ES&S");

AND: Polk County, Iowa ("Customer").

RECITALS:

A. Customer has agreed to purchase/license voter tabulation equipment and related software and services from ES&S for use in Polk County, Iowa (the "Jurisdiction"). The terms and conditions under which such equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

Exhibit A (Pricing Summary)

Exhibit B (ES&S Equipment Description and Pricing)

Exhibit C (ES&S Software Description and Pricing)

Exhibit D (Third Party Items)


Exhibit E (Election Support Services)

Exhibit F (Hardware and Software Maintenance and Support Services (Post-Warranty Period))

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Iowa**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

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



Signature

Thomas F. O'Brien

Name (Printed or Typed)

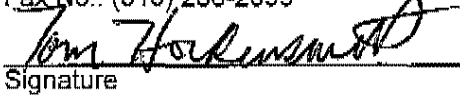
CFO

Title

12.09.05

Date

POLK COUNTY, IOWA
120 Second Avenue, 1st Floor
Des Moines, IA 50309
Fax No.: (515) 286-2099



Signature

Tom Hockensmith

Name (Printed or Typed)

Chairperson, Board of Supervisors

Title

December 13, 2005

Date

**GENERAL TERMS
ARTICLE 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 the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment and Third Party hardware or equipment.
- c. "ES&S Equipment" means ES&S' proprietary hardware or other equipment.
- d. "ES&S Hardware Maintenance Services" and "ES&S Software Maintenance and Support" means those services described on Exhibit F.
- e. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.
- f. "Software" means ES&S Software and Third Party software.

**ARTICLE 2
SALE OF ES&S EQUIPMENT AND THIRD PARTY ITEMS/LICENSE OF ES&S SOFTWARE**

2.1 **Purchase Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment and the Third Party Items described on Exhibits B and D. The payment terms for the ES&S Equipment and Third Party Items are set forth on Exhibit A. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the ES&S Equipment, ES&S Software and Third Party Items.

2.2 a. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses to use the ES&S Software, described on Exhibit C, and ES&S' firmware, which is delivered as part of the ES&S Equipment ("ES&S Firmware"), and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment. The licenses allow Customer to use and copy the ES&S Software and ES&S Firmware (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction. The licenses granted in this Section 2.2 do not permit Customer to use the source code for the ES&S Software or ES&S Firmware.

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

i. 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;

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

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

iv. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any registered or common law proprietary intellectual property rights (e.g., copyright, trademark, patent or patent pending), including, but not limited to, any ballot shells or ballot code stock.

2.3 **License Fees.** In consideration for ES&S' grant of the license for the ES&S Software described in Section 2.2(a), Customer shall pay ES&S the ES&S Software License Fees set forth on Exhibit A. The consideration for ES&S' grant of the license for the ES&S Firmware is included in the cost of the ES&S Equipment.

2.4 **Term of Licenses.** The licenses granted in Section 2.2(a) shall commence upon the delivery of the ES&S Software described in Section 2.2(a). The licenses shall survive the termination of all other obligations of the parties under this Agreement and the termination of all Exhibits; provided, however, that ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2.2(b), 2.3, or 3.6 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.5 **Updates.** During the Warranty Period (as defined in Section 3.2(a) below), ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) train Customer on Updates, if such training is requested by Customer; (ii) install the Updates or (iii) 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. Upon termination of the Warranty Period, Customer shall be entitled to receive the Software Maintenance and Support described on Exhibit F if it has so elected in Section B of the signature page to this Agreement.

**ARTICLE 3
MISCELLANEOUS**

3.1 **Delivery; Risk of Loss.** ES&S anticipates shipping the Equipment and Software identified on Exhibits B-D to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer, delays in certification, and other events. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and 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 Equipment and Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer.

3.2 **Warranties.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a period commencing upon delivery and continuing through April 30, 2007 (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads or red stripe pens. The Warranty Period will commence upon delivery. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer promptly notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

b. **System.** ES&S warrants that the ES&S Equipment and ES&S Software will operate in conjunction with the Third Party Items during the Warranty Period, provided that (i) Customer has installed and is using the most recent Update, or the second most recent Update, provided to it by ES&S, and (ii) the Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of

this warranty, ES&S will repair or replace the item of ES&S Equipment or ES&S Software that is causing such breach to occur. Customer acknowledges that ES&S has merely purchased the Third Party Items for resale or rental to Customer, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the 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. ES&S shall provide Customer with copies of all documentation and warranties for the Third Party Items which are provided to ES&S.

c. Exclusive Remedies. IN THE EVENT OF A BREACH OF SUBSECTIONS 3.2(a) or 3.2(b), 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.

3.3 Maintenance For ES&S Equipment During Warranty Period. During the Warranty Period, Customer is entitled to the Maintenance Services in accordance with Article II, Subsections 1(b) through (f) of Exhibit F. Upon the termination of the Warranty Period, Customer shall be entitled to receive the Hardware Maintenance Services described on Exhibit E.

3.4 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. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support.

3.5 Taxes; Interest. Customer shall provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, Customer shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.5, it shall pay the tax and may thereafter seek a refund. 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 (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

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

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.7 **Indemnification.** To the extent allowed by the Constitution and laws of the State of Iowa, Customer shall indemnify and hold harmless ES&S from and against any and all Adverse Consequences arising out of or relating to the following:

a. Any Third Party Infringement Claim resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S;

b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any Third Party Items;

c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer's Representatives; and

d. Customer's election not to receive, or to terminate, ES&S Hardware Maintenance Services or ES&S Software Maintenance and Support.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 3.7, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

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

3.9 **Term: Termination.** This Agreement shall be effective on the Effective Date. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. 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 thirty (30) days after it receives written notification thereof from the non-breaching party.

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

3.11 **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 fax, (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 fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

3.12 **Disputes.**

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

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable, enter

the premises where the ES&S Equipment and Third Party Items are located and remove them.

3.13 **Other.** 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 Article 2 and Sections 3.2(c), 3.4-3.9, 3.11 and 3.12(b) of these General Terms shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING SUMMARY**

Sale Summary:														
Description	Refer to	Amount												
ES&S Equipment	Exhibit B	\$2,129,700												
ES&S Software License Fees	Exhibit C	\$3,450												
Third Party Items	Exhibit D	\$4,625												
Election Support Services	Exhibit E	\$16,650												
Shipping and Handling	Note 1	Included												
Discounts		(\$270,000)												
Total Net Sale		\$1,884,425												
Terms & Conditions:														
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.5. The cost of Shipping and Handling is included. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.</p>														
<p>Note 2: Payment terms are as follows:</p> <p>\$868,944 Due Thirty (30) Days After the Earlier of (i) Model 100 Equipment Delivery or (ii) Customer's Receipt of HAVA Funds.</p> <p>\$70,455 Due Thirty (30) Days After the Earlier of (i) the December 2005 Delivery of Fifteen (15) ES&S AutoMARK Terminals or (ii) Customer's Receipt of HAVA Funds.</p> <p>\$76,070 Due Thirty (30) Days After the Earlier of (i) Model 650 Equipment Delivery or (ii) Customer's Receipt of HAVA Funds.</p> <p>\$868,956 Due Thirty (30) Days After the Earlier of (i) Delivery of 185 ES&S AutoMARK Terminals or (ii) Customer's Receipt of HAVA Funds.</p>														
<p>Note 3: Services in excess of those set forth in <u>Exhibit E</u> shall be charged at the rate of \$1,500 per day, including expenses.</p>														
<p>Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:</p> <table border="0"> <thead> <tr> <th><u>Equipment/Software</u></th> <th><u>Estimated Delivery Date</u></th> </tr> </thead> <tbody> <tr> <td>Model 100 Precinct Scanners</td> <td>December 29, 2005</td> </tr> <tr> <td>Model 650 Absentee Scanner</td> <td>To be agreed to by the parties</td> </tr> <tr> <td>ES&S AutoMARK Voter Assist Terminal</td> <td>15 Units on December 29, 2005, Remaining unit delivery to be agreed to by the parties</td> </tr> <tr> <td>Unity Software</td> <td>To be agreed to by the parties</td> </tr> <tr> <td>3rd Party Items</td> <td>To be agreed to by the parties</td> </tr> </tbody> </table>			<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	Model 100 Precinct Scanners	December 29, 2005	Model 650 Absentee Scanner	To be agreed to by the parties	ES&S AutoMARK Voter Assist Terminal	15 Units on December 29, 2005, Remaining unit delivery to be agreed to by the parties	Unity Software	To be agreed to by the parties	3 rd Party Items	To be agreed to by the parties
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>													
Model 100 Precinct Scanners	December 29, 2005													
Model 650 Absentee Scanner	To be agreed to by the parties													
ES&S AutoMARK Voter Assist Terminal	15 Units on December 29, 2005, Remaining unit delivery to be agreed to by the parties													
Unity Software	To be agreed to by the parties													
3 rd Party Items	To be agreed to by the parties													
<p>Note 5: Customer shall have available for return at the time of initial equipment delivery; two hundred (200) Optech IIP Eagle Precinct Scanners and one (1) Optech IVC Central Scanner. Equipment shall be accessible for removal using standard warehouse equipment and be in the Eagle storage and transport case to allow for minimal risk of damage during transportation to ES&S's warehouse in Omaha, Nebraska.</p>														
Warranty:														
ES&S Equipment and ES&S Software – Warranty Period:														
Anticipated Warranty Period: Upon delivery through April 2007														
Ongoing Services:														
Description	Refer to	Annual Fee												
Routine Maintenance Services during Warranty Period; Payment is due 30 days after invoice.	Section 3.3	N/A												
Post Warranty Hardware Maintenance Services	Exhibit F	\$54,200												

Services commence in 2007.
 Fees reflect a one-year term.
 Payment is due at the start of the maintenance period.

Post Warranty Software Maintenance & Support Services		
- ES&S Firmware	Exhibit F	\$12,590
- All Other ES&S Software	Exhibit F	\$500

Services commence in 2007.
 Fees reflect a one-year term.
 Payment is due at the start of the maintenance period.

**EXHIBIT B
ES&S EQUIPMENT DESCRIPTION AND PRICING**

QUANTITY	DESCRIPTION	TOTAL PRICE
	Absentee Ballot System	
2	Model 650 High Speed Central Scanner (Includes Steel Table/Cart, Dust Cover, Manuals, Start-Up Kit, Firmware, and two (2) days of Election Official Training.)	\$87,300
2	Ballot Juggers	\$1,000
	Optical Scan – Precinct Count System	
200	Model 100 Precinct Scanner (Includes Steel Double Bin Ballot Box, PCMCIA Card, Manuals, Start-Up Kit, Firmware, and two (2) days of Election Official Training.)	\$902,900
200	Internal Modem (Landline)	\$40,000
200	Security Lids	\$11,400
200	PCMCIA Card	\$18,000
2	Omni Drive	\$1,200
	ES&S AutoMARK	
200	Voter Assist Terminal with Transport Case (Includes 256mb Flashcard, Manuals, Ink Cartridge, Headset, Firmware, and two (2) days of Election Official Training.)	\$1,002,900
200	ES&S AutoMARK Table with Standard Legs	\$65,000
	TOTAL	\$2,129,700

**EXHIBIT C
ES&S SOFTWARE DESCRIPTION AND PRICING**

DESCRIPTION	NUMBER OF LICENSES
Unity Election System licensed pursuant to Section 2.2(a) of the General Terms (check modules being licensed):	
Data Manager	N/A
Ballot Image Manager	N/A
Ballot on Demand	N/A
Hardware Programming Manager	N/A
Data Acquisition Manager	N/A
Reporting Manager	N/A
AutoMARK Information Management Software (AIMS) including One Day of Election Official Training	1
ES&S Firmware (see Notes 1 and 2 below)	1
Total License Fees (including all applicable Documentation)	\$3,450

Note 1: ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates.

Note 2: ES&S Firmware license fee included in the total cost of the ES&S Equipment.

**EXHIBIT D
THIRD PARTY ITEMS**

<u>DESCRIPTION:</u>	<u>QUANTITY</u>
Compact Flash Reader/Writer	1
OkiData C9600HDN Ballot on Demand Printer	1
TOTAL 3RD PARTY ITEMS	\$4,625

Note 1:

The configuration and specification of Third Party Items as per this Exhibit D are subject to change by ES&S and/or the manufacturer. Should the actual configuration and specifications differ from those set forth herein, ES&S agrees to provide, and Customer agrees to accept, Third Party Items that are comparable to those described above.

**EXHIBIT E
ELECTION SUPPORT SERVICES**

1. **Term.** The services described herein shall be provided for the following elections (the "Elections"):

Training and Installation Services Only

2. **Services.** The election support services to be provided by ES&S, a description of such services and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the descriptions listed in the table below, and that a change in the descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S' provision of Election Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Election Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Training – Unity	A system overview that covers the modules licensed by Customer. Class size is limited to 10 and course participant manuals are included. (Customer will ensure participants have an appropriate level of technical experience – including intermediate skills in relational database administration).	ES&S	\$1,500.00
Training – ES&S AutoMARK Voter Assist Terminal	ES&S will provide classroom-style training with hands-on practice with the ES&S AutoMARK Voter Assist Terminal. General operations and general maintenance procedures will be covered. Course participant manuals are included. Class size limited to 20.	ES&S	\$1,500.00
Training – Model 100 Precinct Scanner	ES&S will provide classroom-style training with hands-on practice using the Model 100 Precinct Scanner. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	ES&S	\$1,500.00
Training – Model 650 Absentee Scanner	ES&S will provide classroom-style training with hands-on practice using the Model 650 Absentee Scanner. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	ES&S	\$1,500.00
Training – Poll Worker Train – The-Trainer	ES&S agrees to conduct Poll Worker "Train the Trainer" classes. Class size is limited to 20. Manuals are provided (up to 20), and a master template for duplication for Poll Workers is included.	ES&S	\$1,500.00

Election Day Support	ES&S will provide software accumulation assistance on Election Day/Night of each contracted election.	ES&S	\$1,500.00
	Total Training Days Included in Equipment and Software Pricing: 7 Total Election Support Service Days Included: 4		

Role/Function	Area of Work or Description	Primary Responsibility
Installation – Precinct Scanner	ES&S will inspect the Precinct Scanner at the customer's delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S
Installation – Absentee Scanner	ES&S will inspect the Absentee Scanner at the customer's delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S
Installation – ES&S AutoMARK Voter Assist Terminal	ES&S will inspect the Voter Assist Terminal at the customer's delivery location to make sure it is operating properly and is within specifications for marking election day ballots.	ES&S
	Total Installation Fees: \$16,650	

[END OF EXHIBIT E]

**EXHIBIT F
MAINTENANCE SERVICES
(OPTIONAL POST-WARRANTY PERIOD)**

**ARTICLE I
GENERAL**

1. **Term; Termination.** At Customer's option, this Exhibit F shall be in effect from the date on which the Warranty Period expires until the first anniversary thereof (the "Hardware Maintenance Term"). The Hardware Maintenance Term shall automatically renew for an unlimited number of successive one year periods until this Exhibit F is terminated by the first to occur of (a) Customer's election to terminate it at any time, notice of which election shall be given to ES&S at least sixty (60) days prior to the termination date, (b) the date that is 30 days after either party notifies the other that the other has materially breached this Exhibit F, and the breaching party fails to cure such breach within such 30-day period, or (c) the date that is thirty (30) days after Customer fails to pay any amount due ES&S under this Exhibit F. The termination of this Exhibit F shall not relieve Customer of its liability to pay any amounts due ES&S hereunder.

3. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software Maintenance and Support under this Exhibit F, Customer shall pay to ES&S the Hardware Maintenance and Software Maintenance Fees set forth on Schedule F1 for the initial Term and each renewal period. The Hardware Maintenance and Software Maintenance Fees for the initial Term are due on the date of the expiration of the Warranty Period. ES&S may increase the Hardware Maintenance and Software Maintenance Fees for a renewal period by not more than 5% of the amount of the most recent Fees paid by Customer. The Hardware Maintenance and Software Maintenance Fees for any renewal period shall be due and payable no later than 30 days prior to the beginning of such renewal period. The Software Maintenance Fee shall be comprised of (i) a fee for the Software Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software 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 F or the Agreement. If Customer elects to receive Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, ES&S will charge an incremental Software Maintenance Fee for such services.

**ARTICLE II
HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Exhibit F for the ES&S Equipment listed on Schedule F1 (the "Products") shall be subject to the following terms and conditions:

a. **Inspection.** If Customer has elected not to receive Hardware Maintenance Services under this Exhibit F for a period of twelve (12) months or more, ES&S may require Customer to allow it to inspect the Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are fit for the ordinary purposes for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published ES&S rate plus ES&S' Out-of-Pocket Expenses, and shall be due from Customer within 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 ES&S deems reasonable and necessary to restore such Product(s) to Normal Working Condition, at Customer's expense with respect to the cost of any parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s). For purposes of this Exhibit F, "Out-Of-Pocket Expenses" shall mean all travel, meal and lodging expenses incurred by ES&S employees or authorized representatives ("ES&S Representatives") who are required to travel to Customer's Designated Location to provide services. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer's Designated Location is specified on Schedule F1.

b. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each twelve (12) months during the Hardware Maintenance Term or any renewal thereof. Customer may request that Routine Maintenance Services be performed more than once during any such 12-month 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 F1 and shall be due within thirty (30) days after invoice. Routine Maintenance Services shall include cleaning, lubrication and calibration services. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to one or more Products. The Routine Maintenance Services will be provided either at Customer's Designated Location or at an ES&S-designated depot facility ("Depot"), as elected by Customer on Schedule F1. Customer shall pay all costs associated with shipping Product(s) to a Depot, including insurance. ES&S shall pay all costs associated with returning Product to Customer, including insurance.

c. **Remedial Maintenance 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 Product to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(c)(i) are referred to herein as "Remedial Maintenance Services". ES&S shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial Maintenance Services are required for ten (10) or more Products at any given time, Customer may elect to have them provided at its Designated Location; provided, further, that all Remedial Maintenance Services provided for central count equipment shall be provided at Customer's Designated Location. Customer acknowledges that Product(s) identified on Schedule F1 as "depot repair only" may only be repaired at a Depot.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control

of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, or if Customer does not notify ES&S within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Remedial Maintenance Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Remedial Maintenance Services.

iii. **Timing.** The date(s) on which any Remedial Maintenance Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services that are provided within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Remedial Maintenance 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 F1.

iv. **Loaner Unit.** At Customer's request, 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 Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 2(c)(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.

d. **Exclusions.** ES&S has no obligation under this Exhibit F 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 printer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads or red stripe pens, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the Hardware Maintenance Term or renewal period for which such fee was paid and the denominator of which is the total number of days in such Hardware Maintenance Term.

e. **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 a Hardware Maintenance Term is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

f. **Storage.** When not in use, Customer shall properly store the Products in accordance with the storage requirements established in the Documentation.

ARTICLE III **SOFTWARE**

1. **Services Provided.** ES&S shall provide maintenance and support services for the ES&S Software ("Software Maintenance and Support"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship.

2. **Updates.** During the Software Maintenance Term and any renewals thereof, ES&S shall continue to provide updates in accordance with any update schedule determined by ES&S.

4. **Reinstatement of Software Maintenance and Support.** If the Software Maintenance Term or any renewal thereof expires without being renewed, Customer may thereafter 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 Software Maintenance Term 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 Maintenance and Support.

4. **Conditions.** ES&S shall not provide Software Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent Update, or the second most recent Update, provided to it by ES&S, (e) Customer's failure to notify ES&S within 24 hours after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. Any such Software Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises.

5. **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 F, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance 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 F. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. 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 Agreement.

Schedule F1

DESCRIPTION OF PRODUCTS

HARDWARE

Quantity	Description (Note: *** indicates Depot Repair Only Products)	Initial Break/Fix Maintenance Fee Per Unit	Initial Preventative Maintenance Fee Per Unit	Initial Maintenance Fee In Total
200	Model 100 Precinct Scanner	\$100	N/A	\$20,000
200	ES&S AutoMARK Voter Assist Terminal	\$145	N/A	\$29,000
2	Model 650 Absentee Scanner	N/A	\$2,600	\$5,200
	Total Hardware Maintenance Fees Due for the Initial Hardware Maintenance Term			\$54,200

Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period, Customer shall pay 90% of the then current maintenance fee per unit.

Surcharge for Emergency Remedial Maintenance Services: 150% of the then current maintenance fee per unit.

Customer's Designated Location: Des Moines, Iowa

Location of Services

- Customer's Designated Location (Preventative Maintenance)
- Depot (Break/Fix Maintenance)

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

SOFTWARE

Year	First Month Applicable	Fee -ES&S Firmware	Fee- All Other ES&S Software
2007	TBD	\$12,590	\$500