

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: Woodbury 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 Woodbury 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

WOODBURY COUNTY, IOWA
620 Douglas Street, Room 103
Sioux City, IA 51101-1248
Fax No.: (712) 279-6629

Signature


Thomas F. O'Brien

Name (Printed or Typed)

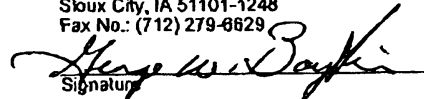
Chief Financial Officer

Title

April 18, 2005

Date

Signature


George W. Boykin

Name (Printed or Typed)

Board of Supervisors Chairperson

Title

April 19, 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) install the Updates or (ii) 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**

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

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.** 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,

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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.

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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	\$488,727
ES&S Software License Fees	Exhibit C	\$32,500
Third Party Items	Exhibit D	\$4,970
Election Support Services	Exhibit E	\$31,750
Shipping and Handling	Note 1	\$2,375
Discount		(\$10,322)
Total Net Sale		\$550,000

Terms & Conditions:

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.

Note 2: Payment terms are as follows:

- (a) \$330,147 due 45 days after the earlier of (i) delivery of Model 100 Equipment or (ii) Customer's receipt of HAVA funds.
- (b) \$219,853 due 45 days after the earlier of (i) delivery of ES&S AutoMARK Equipment or (ii) Customer's receipt of HAVA funds.

Note 3: Services in excess of those set forth in Exhibit E shall be charged at \$1,500 per day, including expenses.

Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:

Equipment/Software	Estimated Delivery Date
ES&S Equipment	July 2005
ES&S AutoMARK	After State Certification
ES&S Software	July 2005
ES&S AIMS Software	After State Certification
Third Party Items	July 2005

Note 5: In the event another county in the State of Iowa purchases a voting system from ES&S that is similar in size and configuration that reflects a lower per unit price for ES&S Equipment than that offered to Customer, ES&S will provide a credit equal to the difference in the per unit cost multiplied by the number of voting units purchased by Customer under this Agreement.

Warranty:

ES&S Equipment and ES&S Software – Warranty Period:	1 year
Anticipated Warranty Period: August 2005 to July 2006	

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	\$22,350
Services commence in August 2006. 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	\$2,850
- All Other ES&S Software	Exhibit F	\$5,850
Services commence in August 2006. Fees reflect a one-year term. Payment is due at the start of the maintenance period.		

**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	1
Ballot Image Manager	1
Ballot on Demand	1
Hardware Programming Manager	N/A
Data Acquisition Manager	1
Reporting Manager	N/A
AutoMARK Image Manager Software	1
ES&S Firmware (see Notes 1 and 2 below)	1
Total License Fees (including all applicable Documentation)	\$32,500

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**

DESCRIPTION	QTY
OmniDrive (for reading/burning PCMCIA's)	1
PRINTERS:	
Okidata C9300-DXN 30 PPM Laser Ballot Printer and Cable	1
Ballot Registration Guide (#6034)	1
TOTAL THIRD PARTY ITEMS:	\$4,970

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"):

August 2005 Special

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
Project Management	A project manager appointed by ES&S shall be responsible for the overall planning, communication, management and coordination of ES&S Services. This person shall be the liaison for Customer with ES&S as it pertains to all products, services and obligations set forth in the contract.	ES&S	\$ 1,500.00
Shipping Material	Dispose of shipping materials (boxes, packaging, etc.)	Customer	
Third-Party Hardware & Network Delivery	Deliver and install third party hardware and software, including Unity software. Review with Customer staff and deliver written documentation of system requirements and configurations.	ES&S	\$1,500.00
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	ES&S will provide classroom-style training with hands-on practice with the ES&S AutoMARK system. General operations and general maintenance procedures will be covered. Course participant manuals are included. Class size limited to 20.	ES&S	\$1,500.00

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Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Training - Model 100 Scanner	ES&S will provide classroom-style training with hands-on practice using the Model 100 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 hardware and software accumulation assistance on Election Day/Night of each contracted election.	ES&S	\$1,500.00
	Total Election Support Service Days: 22		
	Total Fees: \$24,200		

Role/Function	Area of Work or Description	Primary Responsibility
Installation - ES&S AutoMARK	ES&S will inspect the AutoMARK Voter Assist Terminal at the Customers delivery location to make sure it is operating properly and is within specifications for marking election day ballots.	ES&S
Installation - Precinct Scanner	ES&S will inspect the Model 100 Precinct Scanner at the Customers delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S
	Total Installation Fees: \$7,550	

[END OF EXHIBIT E]

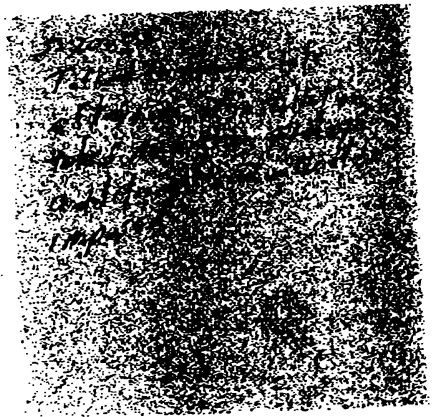


EXHIBIT F
MAINTENANCE SERVICES
(POST-WARRANTY PERIOD)

ARTICLE I
GENERAL

1. **Term; Termination.** 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.

2. **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 E, "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.

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.

3. **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 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. However, such Software Maintenance and Support shall not be provided at the Software Maintenance Fees outlined in Section 5(b), but 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 Maintenance Fee Per Unit	Initial Maintenance Fee In Total
50	Model 100 Scanner	\$195	\$9,750
45	ES&S AutoMARK Voter Assist Terminal	\$280	\$12,600
	Total Hardware Maintenance Fees Due for the Initial Hardware Maintenance Term		\$22,350

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: Sioux City, Iowa

Location of Services

- Customer's Designated Location
- Depot

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
2006	August	\$2,850	\$5,850