

IN THE MATTER OF AUTHORIZING THE COUNTY AUDITOR TO DRAW WARRANTS FOR THEN AND NOW CERTIFICATE PAYMENTS.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 9th day of May, 2019.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, the practice of using "Then and Now Certificates" has been instituted by the County Auditor.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio, the taxing authority for Auglaize County, having thirty (30) days to approve payment by resolution from receipt of "Then and Now Certificates", does hereby approve the following:

<u>Check #</u>	<u>Amount</u>	<u>Vendor</u>
434043	\$74,768.09	ALS Auglazie Acres Operating INC.
434056	\$ 9,147.00	Total Service Center

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
9th day
May, 2019

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Don Regula, yes
Don Regula

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, yes
Douglas A. Spencer

cc: County Auditor

IN THE MATTER OF AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE THE DECREASE CONTRACT AMENDMENT WITH POGGEMEYER DESIGN GROUP, INC. FOR THE ADMINISTRATIVE SERVICES FOR THE FY 2017 CDBG CRITICAL INFRASTRUCTURE PROGRAM.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 9th day of May, 2019.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, in Resolution #17-4259 dated October 24, 2017 the fees for the CDBG Formula administration basic services are not to exceed a lump sum of \$17,000.00; and,

WHEREAS, both parties find that the final FY2017 Community Development Block Grant (CDBG) Critical Infrastructure Program funding award from the Ohio Development services Agency (ODSA) necessitates an adjustment in the contract previously executed as follows as no other local funding is available at the present time to supplement the administration monies associated with this contract and are broken down as follows not to exceed a lump sum of \$15,453.88:

Grant Application -	Not to exceed \$ 5,000.00
Environmental Review Record -	Not to exceed \$ 5,000.00
Technical Assistance -	Not to exceed \$ 5,453.88

and,

WHEREAS, Poggemeyer Design Group Inc. has prepared a contract amendment to decrease the grant application by (\$1,546.12) to the amount not to exceed \$15,453.88 for the Board's review and execution; and,

WHEREAS, the Board of County Commissioners has reviewed said contract and has found them to be satisfactory.

THEREFORE BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio does hereby approve the contract amendment for administrative services of Poggemeyer Design Group, Inc. for assistance in the application for FY 2017 CDBG Critical Infrastructure at the terms so specified in said contract; and,

BE IT FURTHER RESOLVED that said Board authorizes the President of the Board, Don Regula to execute said contract.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
9th day of
May, 2019

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Don Regula yes
Don Regula

John N. Bergman yes
John N. Bergman

Douglas A. Spencer yes
Douglas A. Spencer

cc: Poggemeyer Design Group, Inc.
County Administrator

- CLIENT
- ARCHITECT/ENGINEER



POGEMEYER
DESIGN GROUP

Contract Amendment

PROJECT: *(Name and Address)*
PY2017 CDBG Cridersville Critical Infrastructure
 Auglaize County Board of Commissioners
 209 South Blackhoof Street, Room 201
 Wapakoneta, Ohio 45895

CONTRACT AMENDMENT NUMBER: 1

DATE: 4/30/19

PDG PROJECT NUMBER: 351000-00091

TO CLIENT: *(Name and Address)*
 Auglaize County Board of Commissioners
 209 South Blackhoof Street, Room 201
 Wapakoneta, Ohio 45895

PROJECT MANAGER: PZT/GRF

CONTRACT DATE: 10/24/2017

The Contract is changed as follows:

Due to required "sharing" of savings when CDBG Critical Infrastructure final project costs are lower than anticipated with grant application, the administrative contract must be adjusted accordingly to adhere to the required 10% maximum allowed for administrative expenses. In this case, project costs totaled \$160,194 which allowed only \$16,019 for administration (and includes county costs of \$565.12 for advertisement). PDG contract adjusted accordingly.

The original Contract Sum: \$17,000

The net change by previously submitted Contract Amendments: \$0

The Contract Sum prior to this Contract Amendment: \$17,000

The Contract Sum will be increased/**decreased**/unchanged by this Amendment in the amount of \$1546.12

The new Contract Sum including this Contract Amendment: \$15,453.88

The Contract Time will be increased by: 0 days

NOT VALID UNTIL SIGNED BY THE ARCHITECT/ENGINEER AND CLIENT

Poggemeyer Design Group, Inc.

Auglaize County Board of Commissioners

ARCHITECT/ENGINEER

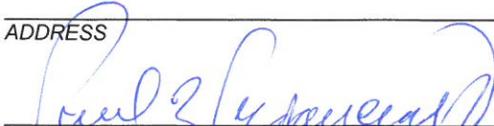
CLIENT

1168 North Main Street
 Bowling Green, Ohio 43402

209 South Blackhoof Street, Room 201
 Wapakoneta, Ohio 45895

ADDRESS

ADDRESS

BY  *Paul Z. Tecpanecatl, AICP, Principal Owner*

BY  *Don Regula, President, Board of County Commissioners*

DATE

DATE

May 1, 2019

May 9, 2019

IN THE MATTER OF APPROVING THE ACQUISITION OF CENTRAL TABULATORS, SCANNERS, EXPRESS VOTE BALLOT MARKING DEVICE (BMD) WITH ES & S ELECTION SYSTEMS & SOFTWARE, INC; AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE SAID AGREEMENT.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 9th day of May, 2019.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, the Advisory 2019-01 from the Ohio Secretary of State Frank Larose for acquiring additional equipment for the Auglaize County Board of Elections stated that the deadline for the executed contract is May 13, 2019; and

WHEREAS, the Auglaize County balance for acquiring equipment is \$323,887.60; and,

WHEREAS, Election Systems & Software (ES&S) is an approved vendor through the State of Ohio's contract #OT902619-3; and,

WHEREAS, ES & S Election Systems & Software has submitted a sales order for the following list of equipment; and,

WHEREAS, Board of Elections Director, Michelle Wilcox, presented a letter of recommendation from the Auglaize County Board of Elections and a sales order agreement to the Auglaize County Board of Commissioners from ES & S Election Systems & Software to purchase for the following equipment including software, installation and shipping and the total amount of \$329,537.60.

- 1 – DS450 Central Tabulator
- 6 – DS200 Precinct Scanner
- 22 – Express Vote Ballot Marking Device (BMD)
- 2 – Ballot Printer

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby approve said sales order agreement and authorizes the President of the Board to execute said sales order agreement in the amount of \$329,537.60 for the equipment, software, installation and shipping for the acquisition of additional equipment for the Auglaize County Board of Elections and the balance due beyond the amount available from the state funds (of \$5,650.00) will be allocated from the General Fund – Board of Elections Fund.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
9th day of
May, 2019

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Don Regula . yes
Don Regula

John N. Bergman . yes
John N. Bergman

Douglas A. Spencer . yes
Douglas A. Spencer

cc: ES & S Election Systems & Software
 Board of Elections



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

**Sales Order Form for use by the Counties in the State of Ohio that
 have elected to acquire an ES&S voting system under Contract
 #OT902619-3**

Customer P.O. #: _____

1st Election Date: November 5, 2019

Estimated Delivery Date: July 2019

Phone Number: (419) 739-6720

Fax Number: N/A

Customer Contact, Title: Michelle Wilcox - Director of Elections

County Name: Auglaize County, Ohio

Bill To: _____
Auglaize County, Ohio
Michelle Wilcox - Director of Elections
209 S. Blackhoof - Room 205
Wapakoneta, OH 45895

Ship To: _____
Auglaize County, Ohio
Michelle Wilcox - Director of Elections
209 S. Blackhoof - Room 205
Wapakoneta, OH 45895

Item	Description	Qty	Unit Price with Discount	Total
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Table A: State-Funded Items
HARDWARE:
Note: Warranty on Any and All Hardware – Years 1-5 is included in all hardware costs below and in all Tabulation hardware costs listed in State-Funded Items - Other.

DS450 Central Tabulator	High-Speed Scanner (for Central Count of Absentee Ballots) DS450 Central Scanner - Hardware Version 1.0/Firmware Version 3.1.0.0 Includes Scanner, Steel Table/Cart, Start-up Kit, Dust Cover, Reports Printer, Audit Printer, Battery Backup, Two (2) USB Cables, Two (2) Standard 8GB Memory Devices and Five (5) Year Hardware Warranty with Biennial Maintenance * See "TABLE A: State-Funded Items - Other" below for DS850 Central Scanner costs *	1	\$44,925.00	\$44,925.00
DS450 Central Tabulator	Software for High-Speed Scanner	1	Initial license fee included in High-Speed Scanner cost above	Included
DS450 Central Tabulator	Licensing and Support for Software for High-Speed Scanner – Years 1-5 and billed with hardware DS450 Firmware License	1	Initial license fee included in High-Speed Scanner cost above. \$6,300.00 total for years 2-5.	\$6,300.00
DS450 Central Tabulator	Memory Device or Drives for Use of High-Speed Scanner (itemized by storage capacity)– device must have 5 year (or greater) useful life and a specialized device for voting machines (e.g., not a common flash drive)	1	Two (2) Standard 8GB Memory Devices included in High-Speed Scanner cost above	Included
DS450 Central Tabulator	Security Devices (e.g., keys, locks, etc.) for High-Speed Scanner – lock must have 5 year (or greater) useful life and a specialized device for voting machines (e.g., not a common lock)	1	Included in High-Speed Scanner cost above	Included
DS200 Precinct Scanner	Precinct-Based Voting Equipment (i.e., Precinct-Count Optical Scanners, Marking Devices/Touchscreen Interfaces for Hybrid Units, Direct Recording Electronic Units [DREs]) DS200 Precinct Scanner with Plastic Ballot Box - Hardware Version 1.3/Firmware Version 2.17.0.0 Includes Scanner, Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, One (1) Standard 4GB Memory Device, and Five (5) Year Hardware Warranty * See "TABLE A: State-Funded Items - Other" below for DS200 Precinct Scanner with Collapsible Ballot Box costs *	6	\$4,670.00	\$28,020.00
DS200 Precinct Scanner	Software for Precinct-Based Equipment	6	Initial license fee included in Precinct-Based Voting Equipment cost above	Included
DS200 Precinct Scanner	Licensing and Support for Software for Precinct-Based Equipment – Years 1-5 and billed with hardware DS200 Firmware License	6	Initial license fee included in Precinct-Based Voting Equipment cost above. \$320.00 total for years 2-5.	\$1,920.00
DS200 Precinct Scanner	Memory Device or Drives for Precinct-Based Voting Equipment (itemized by storage capacity) – device must have 5 year (or greater) useful life and a specialized device for voting machines (e.g., not a common flash drive)	6	One (1) Standard 4GB Memory Device included in Precinct-Based Voting Equipment cost above. Additional Standard 4GB Memory Devices listed under Other Items below	Included



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Customer P.O. #: _____

1st Election Date: November 5, 2019

Estimated Delivery Date: July 2019

Phone Number: (419) 739-6720

Fax Number: N/A

Customer Contact, Title: Michelle Wilcox - Director of Elections

County Name: Auglaize County, Ohio

DS200 Precinct Scanner	Security Devices (e.g., keys, locks, etc.) for Precinct-Based Voting Equipment – lock must have 5 year (or greater) useful life and a specialized device for voting machines (e.g., not a common lock)	6	Included in Precinct-Based Equipment cost above	Included
DS200 Precinct Scanner	Batteries, Chargers, Power Strips, Cords, Cables, Routers (Necessary for the Configuration and Operation of Precinct-Based Voting Equipment, High-Speed Scanner, ADA-Accessible Voting Equipment, or Workstations) – only the amount necessary for initial set-up and operation.	6	Batteries, Cords and Cables included in Precinct-Based Voting Equipment cost above. Power Strips not included. Chargers and Routers are not applicable.	Included
ExpressVote Ballot Marking Device (BMD)	Accessible Ballot Marking Device - ADA ExpressVote Ballot Marking Device - Hardware Version 2.1/Firmware Version 2.4.0.0 Includes Terminal, Soft-Sided Case, Internal Backup Battery, ADA Keypad, Headphones, One (1) Standard 4GB Memory Device, and Five (5) Year Hardware Warranty * See "TABLE A: State-Funded Items - Other" below for ExpressVote BMD with Kiosk costs *	22	\$2,864.00	\$63,008.00
ExpressVote BMD	Printer - Accessible Ballot Marking Device - ADA	22	Included in Accessible Ballot Marking Device cost above	Included
ExpressVote BMD	Accessibility Aids - ADA (e.g., jelly switches, headphones, microphone, keyboards, etc.) – if 5-year (or greater) useful life.	22	Headphones and ADA Keypad included in Accessible Ballot Marking Device cost above	Included
ExpressVote BMD	Software for Accessible Ballot Marking Device - ADA	22	Initial license fee included in Accessible Ballot Marking Device cost above	Included
ExpressVote BMD	Licensing and Support for Software for Accessible Ballot Marking Device – ADA – Years 1-5 and billed with hardware ExpressVote Ballot Marking Device Firmware License	22	Initial license fee included in Accessible Ballot Marking Device cost above. \$220.00 total for years 2-5.	\$4,840.00
ExpressVote BMD	Memory Devices or Drives for Use of Accessible Ballot Marking Device – ADA (itemized by storage capacity)	22	One (1) Standard 4GB Memory Device included in Accessible Ballot Marking Device cost above. Additional Standard 4GB Memory Devices listed under Other Items below.	Included
ExpressVote BMD	Security Devices (e.g., keys, locks, etc.) for Accessible Ballot Marking Device – ADA	22	Included in Accessible Ballot Marking Device cost above	Included

SOFTWARE and EMS HARDWARE:

ElectionWare Software	Election Management and Ballot Definition Software ElectionWare PYO Standard (Base Package with English Language Synthesized Voice Files) - EVS 6000	1	\$15,395.00	\$15,395.00
ElectionWare Software	Licensing and Support for Election Management and Ballot Definition Software – Years 1-5 and billed with hardware	1	Initial annual fee included in Election Management and Ballot Definition Software cost above. \$61,580.00 for years 2-5.	\$61,580.00
Workstation/Server for Election Management and Ballot Definition Software - Hardware Configurations below are applicable to ES&S Software Version EVS 6000				
	Uninterruptible Power Supply (UPS) Battery Backup 850VA	2	\$147.00	\$294.00
	Symantec Endpoint Protection 14.0.1	2	\$27.00	\$54.00
	Symantec 14.0.1 Maintenance/Support	2	\$60.00	\$120.00



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 #OT902619-3**

Customer P.O. #: _____

1st Election Date: November 5, 2019

Estimated Delivery Date: July 2019

Phone Number: (419) 739-6720

Fax Number: N/A

Customer Contact, Title: Michelle Wilcox - Director of Elections

County Name: Auglaize County, Ohio

	Adobe Acrobat Standard XI	2	\$412.00	\$824.00
	OKI B432DN Mono Laser Duplex Printer	2	\$416.00	\$832.00
	LD 6' USB 2.0 A-B Cable	2	\$4.00	\$8.00
ElectionWare Software	Tabulation Software	1	Tabulation results software module included in Election Management and Ballot Definition Software cost above	Included
ElectionWare Software	Licensing and Support for Tabulation Software – Years 1-5 and billed with hardware	1	Tabulation results software module included in Licensing and Support for Election Management and Ballot Definition Software – Years 1-5 cost above	Included
Ballot Printer	Ballot Printer C711 OkiData Compact Printer with Five (5) Year Hardware Warranty	2	\$3,795.00	\$7,590.00
Ballot Printer Software	Software for Ballot Printer Balotar Software with MRS and SRS Capability (One (1) License Required Per Laptop)	2	\$2,845.00	\$5,690.00
Ballot Printer Software Workstation	Workstation for Ballot Printer Software (i.e., laptop/desktop, monitor, etc.) Ballot On Demand Laptop	2	\$1,320.00	\$2,640.00
Ballot Printer Software	Licensing and Support for Software for Ballot Printer – Years 1-5 and billed with hardware	2	Initial license fee included in Software for Ballot Printer cost above. \$7,380.00 total for years 2-5.	\$14,760.00
Ballot Printer	Starter Cartridges for Ballot Printer – for initial use	2	Included in Ballot Printer cost above	Included

Voting System Deployment (e.g., software installation and configuration, acceptance testing, etc.)

DS450	DS450 (1st unit purchased)	1	\$1,925.00	\$1,925.00
DS200	DS200 (Per Unit)	6	\$115.00	\$690.00
ExpressVote BMD	ExpressVote BMD (Per Unit)	22	\$105.00	\$2,310.00
Ballot Printer	Ballot Printer (C711 Okidata Compact Printer)	2	\$400.00	\$800.00
Installation	Pre-Delivery Workstation and/or Server Installation (Per Day)	1	\$1,300.00	\$1,300.00
Shipping (Truckload Quantities)		1	\$4,350.00	\$4,350.00

Services:

Logic & Accuracy Testing	Logic and Accuracy Testing Prior to First Election	3	\$1,700.00	\$5,100.00
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Table A: State-Funded Items - Other

Privacy Screens	Voter Privacy Screens Tabletop ExpressVote Privacy Screens (6 per case)	6	\$99.95	\$599.70
Privacy Screens	Voter Privacy Screens ExpressVote Privacy Canopy	22	\$39.95	\$878.90
Other	Additional Standard 4GB Memory Devices	40	\$105.00	\$4,200.00
Other	Additional Standard 8GB Memory Devices	10	\$210.00	\$2,100.00
Other	DS200 Plastic Ballot Box Bottom with Steel Door and e-Bin	40	\$443.00	\$17,720.00
Other	DS200 Plastic Rolling Carrying Case	46	\$534.00	\$24,564.00
Other	Dell Optiplex 5050 Mini (Desktop) with 32" Monitor	2	\$2,100.00	\$4,200.00

Total Table A: State-Funded Items due from the State of Ohio				\$329,537.60
Funds Allocated to the County by the Secretary of State's Office				\$573,321.64
Remaining Balance of Table A: State Funded Items to be Paid by County				\$0.00

Table B: Non-State-Funded Items



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 OMAHA, NE 68137-2364
 (402) 593-0101

**Sales Order Form for use by the Counties in the State of Ohio that
 have elected to acquire an ES&S voting system under Contract
 #OT902619-3**

Customer P.O. #: _____

1st Election Date: November 5, 2019

Estimated Delivery Date: July 2019

Phone Number: (419) 739-6720

Fax Number: N/A

Customer Contact, Title: Michelle Wilcox - Director of Elections

County Name: Auglaize County, Ohio

Services:					
Training	Training of Board of Elections' Staff	5	\$1,700.00 per day, per class. Class size limited to 10 participants for software training and 20 people for equipment training.		\$8,500.00
Creation of Test Deck	Creation of Test Desk (for pre-election testing)	1	Automated Test Deck included in Election Management and Ballot Definition Software cost		Included
Printing of Test Deck	Cost of Printing Test Deck (per sheet using ballot printer system)	TBD	\$350.00 per election set-up; \$0.10 per blank ballot stock sheet plus shipping & handling; \$0.35 per ballot sheet processed by the ballot printer for Black & White ballots.		TBD
Pre-Election Ballot Printer System Setup	Pre-Election Setup for Ballot Printer System If Off-Site setup is chosen by customer: - \$350.00 per election set-up + \$1.00 per unique PDF (up to 4 computers) plus - \$40.00 per computer over 4 computers Rework of set up due to customer changes after initial set up is complete: - \$175.00 per change event - \$40.00 per computer over 4 units If Off-Site setup is not chosen by Customer, there will be an On-Site setup fee charged of \$1,850.00 per person per day.	TBD	See Description		TBD
Ballot Printer System Processing Fees	Ballot Processing Fees (per sheet or per ballot style) for Ballot Printer System \$0.35 for black and white ballot \$0.45 for color ballot \$0.10 per sheet for blank ballot stock, plus shipping & handling	TBD	See Description		TBD
Table B: Non-State-Funded Items					\$8,500.00
Total Amount Due From the County (Not Including Preventative Maintenance Fees)					\$8,500.00

Preventative Maintenance on Hardware (e.g., cleaning, lubrication, replacement of parts, labor, etc.) unless specified in Table A - Years 1-5					
Extended Warranty with Biennial Maintenance Years 1-5 - Additional Fee					
DS450	DS450 Extended Warranty With Biennial Maintenance - Total Per Unit for Years 1-5	1	Included in equipment price listed in Table A		Included in equipment price listed in Table A
ExpressVote BMD	ExpressVote BMD Extended Warranty with Biennial Maintenance - Total Per Unit for Years 1-5	22	\$310.00		\$6,820.00
DS200	DS200 Extended Warranty with Annual Maintenance - Total Per Unit for Years 1-5	6	\$640.00		\$3,840.00
Total Extended Warranties, Hardware Maintenance Programs, and Ongoing License and Support Fees (Years 1-5)					\$10,660.00
Annual Payment for Extended Warranties, Hardware Maintenance Programs, and Ongoing License and Support Fees (Years 1-5)					\$2,665.00
Note: The first Annual Payment is due 90-days prior to the beginning of year two (2) and annually thereafter.					

Payment Terms:	Table A: State Funded Items: The total cost due to the vendor for any and all "State-Funded" items is payable by the State upon receipt of the system by the county board of elections, successful acceptance testing of all parts of the system, and confirmation of the vendor's compliance with the Escrow and Warranty requirements set forth herein. Unless otherwise stated in this Contract, and in accordance with Section 126.30 of the Ohio Revised Code, payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.
	Table B: Non-State-Funded Items: 100% of the Non-State-Funded Items, and the cost of "State-Funded" items that exceed the amount allocated to a County Board of Elections are due upon equipment delivery. Note: The county is liable for the cost of "State-Funded" items that exceed the county's allocated funding amount by 2018 Am. Sub, S.B. 135 (132rd Ohio General Assembly).
Special Notes:	

ELECTION SYSTEMS AND SOFTWARE, LLC

COUNTY



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

**Sales Order Form for use by the Counties in the State of Ohio that
have elected to acquire an ES&S voting system under Contract
#OT902619-3**

Customer P.O. #: _____

1st Election Date: November 5, 2019

Estimated Delivery Date: July 2019

Phone Number: (419) 739-6720

Fax Number: N/A

Customer Contact, Title: Michelle Wilcox - Director of Elections

County Name: Auglaize County, Ohio

Authorized Signature

Richard J. Jablonski

Printed Name

Vice President - Finance

Title

April 25, 2019

Date

Authorized Signature

Don Regula

Printed Name

President, Auglaize County Board of

Title Commissioners

May 9, 2019

Date

This Sales Order is submitted by the County pursuant to that certain Contract #OT902619-3. The Deliverables ordered under this Sales Order and all rights and obligations of ES&S and the County shall be governed by the terms and conditions of Contract #OT902619-3.

GENERAL TERMS

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

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time, part time or temporary employees to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable ES&S Software License, Maintenance and Support Fees for the Initial License Term and the License Renewal Term as defined in Section 4 below. The licenses allow such bona fide employees to use and copy the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction.

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

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

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

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

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

4. **Term of Licenses.** The licenses granted in Section 2 shall commence upon the delivery of the ES&S Software described in Section 2 and shall continue for a **five (5) year period** (the "Initial License Term"). Upon expiration of the Initial License Term, Customer may renew the licenses for up to five (5) years (the "License Renewal Term") upon the payment by Customer of the software license and software maintenance and support fee applicable to the License Renewal Term. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2, 3, or 6 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

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

(i) the total cost of any third-party items that are required in order to comply with such changes in law and/or otherwise operate the Updates;

(ii) the total cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S Equipment to remain compliant with applicable laws and regulations; and

(iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates, corresponding replacements, retrofits or modifications to the ES&S Equipment and third-party items.

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

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

ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also

contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

7. **Warranty Procedures.** If a defect or malfunction occurs with the ES&S Equipment and such ES&S Equipment is subject to the warranty provision set forth in the State of Ohio Contract No. OT902619, ES&S will perform such warranty services at ES&S' designated depot location and Customer shall be responsible for the payment of shipping costs both to and from ES&S' designated depot location. In addition, Customer shall be responsible for packaging and readying ES&S Equipment for return to ES&S by utilizing the original boxes and packing materials to return the ES&S Equipment to ES&S. In the event the Customer requires ES&S to provide new boxes and packing material for return of the ES&S Equipment, such items will be invoiced to Customer separately and shall be due and payable upon receipt of ES&S' invoice by Customer.

8. **Disputes.**

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

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

9. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of federal and state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in Customer's state. The ES&S Equipment and ES&S Software, including all components will be provided to Customer with a hardened network for the election management software ("EMS"), in accordance with the guidelines of the United States Election Assistance Commission. During the Term of this Agreement, in the event Customer fails to maintain EMS in the hardened network or allows any internal or external access to the hardened network, Customer agrees to indemnify and hold harmless ES&S from and against any and all claims, damages, losses, liens, obligations, liabilities, judgments, assessed damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to the Customer's breach of its obligations hereunder.

10. **Consumable Items.** Customer may purchase consumable items including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards and marking devices which are consumed in the normal course of operating the ES&S Equipment. Customer shall be responsible for the purchase costs of all consumable items necessary to operate the ES&S Equipment hereunder.

11. **Voting System Reviews.** In the event that the Jurisdiction or the State require any future reviews or examinations ("Reviews") of current or previous versions of state-certified ES&S voting systems or components thereof that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the ES&S Software and/or ES&S Equipment licensed and sold hereunder, Customer shall be responsible for:

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

(ii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the ES&S Equipment and/or ES&S Software that may result from such Reviews; and

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

Customer's pro-rata share of the costs included under subsections 12(ii) and 12(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Equipment and/or ES&S Software purchased and licensed by Customer under this Agreement.

12. **Consent.** The parties acknowledge and agree that the reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets to a successor who has asserted its intent to continue the business of ES&S shall not be considered an assignment under this Agreement and shall not require the consent of the Customer.

13. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto and State of Ohio Contract No. OT902619, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. ES&S is providing equipment, software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the equipment, software or services, but shall remain fully responsible for such performance. The provisions of Sections 1-6, 8(b), 9 and 11-13 of these General Terms shall survive the termination of this Agreement, to the extent applicable.