

WHATCOM COUNTY COUNCIL AGENDA BILL

2018-052

NO. _____

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	DK	1/18/18	RECEIVED JAN 23 2018 WHATCOM COUNTY COUNCIL	1/30/18	Finance/Council
Division Head:	DK	1/18/18			
Dept. Head:	DA	1/18/18			
Prosecutor:	rb	1/18/18			
Purchasing/Budget:	pb	1/18/18			
Executive:	PK	1/22/18			

TITLE OF DOCUMENT: Mail Ballot Verifier, Process and Services Agreement

ATTACHMENTS:
 1. Agreement

SEPA review required? () Yes (x) NO	Should Clerk schedule a hearing? (x) Yes () NO
SEPA review completed? () Yes () NO	Requested Date: 1/30/2018

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Acquisition, installation, training, and first year maintenance of ES&S Mail Ballot Verifier equipment.

COMMITTEE ACTION:	COUNCIL ACTION:

Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201801026

Originating Department:	Auditor
Contract or Grant Administrator:	Diana Bradrick
Contractor's / Agency Name:	Election Systems & Software LLC
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If No, include WCC: _____ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): <u>17-76</u> Cost Center: <u>10904 Elections</u>	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input checked="" type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>89,095</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Contracts that require Council Approval (incl. agenda bill & memo) <ul style="list-style-type: none"> • Professional Services Agreement above \$20,000. • Bid is more than \$50,000. • Amendments that have either an increase greater than 10% or provide a \$10,000 increase in amount (whichever is greater) RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.
Summary of Scope: Acquisition, installation, training, and first year maintenance of ES&S Mail Ballot Verifier equipment.	
Term of Contract: 1 year	Expiration Date: Automatically renew until terminated

Contract Routing:	1. Prepared by: <u>Diana Bradrick</u>	Date: <u>01/18/18</u>
	2. Attorney signoff: _____	Date: <u>1-18-18</u>
	3. AS Finance reviewed: _____	Date: <u>1/18/2018</u>
	4. IT reviewed (if IT related): _____	Date: <u>1/13/2018</u>
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>1-22-18</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

ELECTION SYSTEMS & SOFTWARE, LLC
MAIL BALLOT VERIFIER, PROCESSING AND SERVICES AGREEMENT

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

BETWEEN: ELECTION SYSTEMS & SOFTWARE, LLC, a Delaware Limited Liability Company ("ES&S")

AND: WHATCOM COUNTY, WASHINGTON ("Customer").

RECITALS:

A. ES&S is the owner of certain mail ballot verifier equipment and software as set forth herein and Customer has agreed to purchase and license the mail ballot verifier equipment and related software and services from ES&S for use in **Whatcom County, Washington** (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 and incorporated herein by reference.

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, ES&S Software, Third Party Items Description, Pricing and Fees)
- Exhibit C (ES&S Support Services)

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 Washington** 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 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, LLC
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291

Signature

Name (Printed or Typed)

Title

Date

WHATCOM COUNTY:
Recommended for Approval:

Debbie Adelstein 1/12/18
Debbie Adelstein, Whatcom County Auditor Date

Approved as to form:

[Signature] 1-18-18
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires _____.

**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 ES&S Equipment and ES&S Software.
- b. "ES&S Equipment" means ES&S' hardware or other ES&S proprietary equipment.
- c. "ES&S Software" means ES&S' proprietary mail ballot verifier software and all Updates delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.

**ARTICLE 2
SALE OF ES&S EQUIPMENT AND LICENSE OF ES&S SOFTWARE AND PAYMENT OF FEES**

2.1 **Purchase Terms: Use.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment described on Exhibit B. The payment terms for the ES&S Equipment 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.

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 B and related Documentation supplied by ES&S. The licenses allow Customer to use (but not copy) the ES&S Software and the Documentation in the course of operating the ES&S Equipment and solely for the purposes of managing the printing of ballots 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.

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, including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any ballot printing, coding, programming or ballot layout services) without ES&S'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. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2.3 **Term of Licenses**. The licenses granted in Section 2.2 shall commence upon the delivery of the ES&S Software described in Section 2.2 and shall continue for the Initial Term of the Agreement (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.5, 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.

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

2.5 **Fees**

a. **Equipment Sale and License Fees**. The fees for the purchase of ES&S' Equipment and License of ES&S Software during Term of the Agreement are set forth on Exhibit A

b. **Processing Fee**. In addition to the payment of the fees set forth above and in partial consideration for the use of the ES&S Equipment and ES&S Software in order to scan, sort and process ballots in the Jurisdiction, Customer shall pay ES&S the Processing Fees set forth on Exhibit A.

c. **Pricing Changes**. ES&S reserves the right to adjust the processing fee annually during the Term of the Agreement. ES&S shall notify Customer, in writing, of such price increase by providing Customer with ninety (90) days advanced written notice.

ARTICLE 3 MISCELLANEOUS

3.1 **Delivery; Risk of Loss; Insurance**. ES&S anticipates shipping the ES&S Equipment and ES&S Software identified on Exhibit B 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, and other events outside of ES&S's control. ES&S will notify Customer of revisions to the Estimated Delivery Dates as soon as ES&S

becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement for ES&S Equipment and Software have been paid by Customer.

3.2 **Installation of ES&S Equipment and ES&S Software.** Customer acknowledges and agrees that the ES&S Equipment and ES&S Software provided by ES&S hereunder shall only be used by the Customer to perform the services contemplated under this Agreement and not for any other purpose. Customer will provide, at its own expense, a site adequate in space and design for installation, operation and storage of the ES&S Equipment, ES&S Software and consumable items. Customer shall be responsible for providing a site that is temperature and humidity controlled, has all necessary electric current outlets, circuits, and wiring for the ES&S Equipment. ES&S may, but shall not be required to, inspect the site and advise on its acceptability before any ES&S Equipment or ES&S Software is installed. ES&S shall have no liability for actual site preparation or for any costs, damages or claims arising out of the installation of any ES&S Equipment or ES&S Software at a site not meeting ES&S' specifications.

3.3 **Maintenance: Support**

a. **ES&S Equipment and ES&S Software.** ES&S agrees that during the Term of the Agreement, ES&S shall maintain the ES&S Equipment and ES&S Software in good working condition in order allow the Customer to use the ES&S Equipment and ES&S Software in accordance with its Documentation, wear and tear excepted ("Normal Working Condition"). If a defect or malfunction occurs in any ES&S Equipment and/or ES&S Software while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. ES&S shall repair or replace any item of ES&S Equipment and ES&S Software at ES&S' or the Customer's designated location as determined by ES&S in its sole discretion. If a defect or malfunction occurs in any ES&S Equipment and ES&S Software 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, rodent infestation, and utility or communication interruptions, Customer shall pay ES&S for any maintenance services at ES&S' then-current rates, as well as for the cost of all parts used in connection with the performance of such maintenance services.

b. **Technical Support.** In addition to providing those services set forth in Section 3.3 (a), ES&S shall provide the Customer with technical help desk support.

3.4 **Disclaimer of Warranties.** EXCEPT AS OTHERWISE SET FORTH HEREIN, 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.

3.5 **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 ES&S Equipment and ES&S Software to achieve Customer's intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S Software; (d) the selection of, use of and results obtained

from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; (e) errors that arise from mechanical or electronic component failures that are not covered under warranty or not subject to maintenance efforts or cure under this Agreement; or (f) 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 its obligations under this Agreement.

3.6 **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 3.6, 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.

3.7 **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 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.

3.8 **Intentionally Omitted.**

3.9 **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.

3.10 **Term: Termination.** This Agreement shall be effective beginning on the **March 1, 2018 through February 28, 2019** (the "Initial Term"). The Initial Term shall automatically renew for an unlimited number of successive one year period unless otherwise agreed to, in writing, by the parties (each a "Renewal Period"). The Initial Term and all Renewal Periods shall be collectively referred to herein as the "Term". The Term shall continue until this Agreement is terminated by the first to occur of (i) either party's election to terminate it upon the expiration of the Initial Term or any Renewal Period thereof, written notice of such election shall be given to the other party at least sixty (60) calendar days prior to the expiration of the Initial Term or any Renewal Period; (ii) the date that is thirty (30) days after either party notifies the other that the other has materially breached this Agreement, and the breaching party fails to

cure such breach within such thirty (30) day period, (except a breach as provided in (iii) below which will require no notice); or (iii) Customer's failure to make any payment due hereunder within thirty (30) days after it is due. In the event of early termination by ES&S due to (a) a breach of this Agreement by Customer, (b) Customer's failure to pay any amounts owed under this Agreement or (c) the failure of Customer to appropriate funds to make the payments due under this Agreement, Customer shall pay ES&S for all services performed and all processing fees earned up through the date of termination. Upon termination of this Agreement, Customer shall immediately return all ES&S Software and 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. In addition, Customer shall return all unused and unopened consumable items, including ballot paper, to ES&S within thirty (30) days following the termination of the Agreement. Customer shall provide ES&S with a written certification from an authorized representative of Customer stating that Customer has returned all items, in its possession, associated with this Agreement. Such written certification shall be included with the return of the aforementioned items.

3.11 **Non-Appropriation of Funds.** Customer represents, warrants, and covenants that it has appropriated, and will have appropriated, funds available necessary to pay the amounts due herein through the end of the Customer's current fiscal year, and that Customer shall use its best efforts to obtain and appropriate funds in order to pay all payments which shall be due in each year of this Agreement. In the event that funds are not appropriated or otherwise made available to support the continuation of performance by Customer hereunder in any subsequent fiscal period, this Agreement may be terminated by either party; provided, however, that this Section 3.11 shall not be construed so as to permit Customer to terminate this Agreement in order to acquire a ballot on demand system and/or related services from a third party. Either party may notify the other of the termination, which may occur no later than the beginning of the subsequent fiscal period. Upon termination, Customer shall pay ES&S for all services performed pursuant to this Agreement up to the date of termination and reasonable exit costs incurred by ES&S. The amount of such payment may be paid from any appropriations available for such purposes, and Customer's highest-ranking officer or official shall use his/her best efforts to timely and sufficiently request the appropriation necessary to pay such amount.

3.12 **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.

3.13 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) 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, email address 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.

3.14 **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 during normal business hours where the ES&S Equipment and third party items are located and remove them.

3.15 **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. 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 3.5-3.15 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 and Software	Exhibit B	\$79,095.00
Support Services	Exhibit C	Included
Software and Hardware Maintenance (Initial Term)		\$15,000.00
Shipping and Handling		Included
Total Sales before Discount:		\$94,095.00
Less: Customer Discount		(\$5,000.00)
Total Net Sale:		\$89,095.00
Processing Fees are not included in Total Net Sale. Please see Note 2 below for payment terms and Exhibit B for Processing Fees and payment terms.		
Terms & Conditions:		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.6. 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: <u>Invoicing and Payment Terms are as Follows:</u>		
<u>ES&S Equipment Purchase and ES&S Software License Fees</u>		
\$89,095.00 due Thirty (30) Calendar Days after the later of (a) Delivery of the Mail Ballot Verifier System, or (b) Receipt of Corresponding ES&S Invoice.		
Note 3: Services in excess of those set forth in <u>Exhibit C</u> shall be charged at the rate of \$1,650.00 per day, including expenses.		
Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:		
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	
Mail Ballot Verifier System	January 2018	
Ongoing Services:		Renewal Period Annual Fee
ES&S Equipment Maintenance and Support and Software License, Maintenance and Support Services for ES&S Equipment and Mail Ballot Verifier Software		Rate not to exceed more than 5% of the then expiring fee

**EXHIBIT B
EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS DESCRIPTION,
PRICING AND FEES**

QUANTITY	DESCRIPTION	TOTAL PRICE
Mail Ballot Verifier System Includes the Following:		
1	MBV 1000 Chassis with Feeder, Transport, MBV Computer, Single Divert, and Output Tray	Included
1	Thickness Detector	Included
1	Dymo Label Printer	Included
1	MBV Cart	Included
1	Starter Package	Included
1	Cover	Included
1	VR Integration	Included
1	MBV Image Capture SW	Included
2	Support Days	Included
X	Shipping and Handling	Included
TOTAL EQUIPMENT, SOFTWARE LICENSE, AND THIRD PARTY ITEMS FOR THE INITIAL TERM:		\$79,095.00

ENVELOPE PROCESSING FEES

Description	Initial Term
Base Fee	Included
Base Processing Volume per year 100,000+	\$0.10

*Subject to annual increase after Initial Term

The Base Processing Fee is due within 30 days of receipt of vendor invoice, and will be billed at the start of the Initial Term and each Renewal Period. Processing Volumes in excess of the Base Processing Volume will be calculated and invoiced following the applicable election.

**EXHIBIT C
SUPPORT SERVICES**

The support services to be provided by ES&S during the Initial Term, a description of such services and total fees are described below. Customer acknowledges that ES&S's fees for 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's provision of Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon 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 four hour portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of 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	Fee
Training	<p>Training will be provided on a pre-scheduled basis. Number and length of training sessions will be mutually agreed upon in advanced. Customer agrees to provide a facility to hold training sessions. Levels of training include:</p> <p>1st level (operator) training</p> <ul style="list-style-type: none"> - Provides sufficient skills to operate the system, replace consumables, clear jams. <p>2nd level (lead) training</p> <ul style="list-style-type: none"> - Involves more in depth troubleshooting knowledge including aligning feeder, understanding communication issues with VR systems, and production of reports. <p>Technical training to IT or operations staff</p> <ul style="list-style-type: none"> - Involves a complete understanding of system architecture and operations. <p>Refresher training can be provided in advance of each election on a mutually agreeable timeframe at the then current rate per day (currently \$1,650.00 per day).</p>	ES&S	Included
Hardware and Software Maintenance	<p>Software Maintenance</p> <ul style="list-style-type: none"> • Technical software support hotline • Installation of any new Updates • Testing and validation of all Updates <p>Hardware Maintenance</p> <ul style="list-style-type: none"> • Technical support and repair of all hardware components • Break/Fix maintenance on the Mail Ballot Verifier system • All labor 	ES&S	Included
	Total Support Service Fees		Included

Role/Function	Area of Work or Description	Primary Responsibility
Installation – Mail Ballot Verifier System	ES&S will inspect and install the Mail Ballot Verifier System at Customer's designated location to ensure it is operating properly and within specifications.	ES&S
	Total Installation Fees: Included	