

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: Hidalgo County, Texas ("Customer").

IF THE FOLLOWING TERMS AND CONDITIONS CONFLICT WITH THE TEXAS BUILDING AND PROCUREMENT COMMISSION'S TERMS AND CONDITIONS, THE TBPC'S TERMS AND CONDITIONS WILL TAKE PRECEDENCE

RECITALS:

- A. Customer has agreed to purchase/license voter tabulation equipment and related software and services from ES&S for use in Hidalgo County, Texas (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 (Election Support Services)
 - Exhibit E (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 Texas**, 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

HIDALGO COUNTY, TEXAS
101 South 10th Street
Edinburg, TX 78540
Fax No.: (956) 318-2569

Richard Jablonski
Signature
Richard JABLONSKI
Name (Printed or Typed)
VP of Finance
Title
6/17/05
Date

Ramon Garcia
Signature
Ramon GARCIA
Name (Printed or Typed)
County Judge
Title
6-27-05
Date

Approved by Commissioners' Court
on 5-24-05 *ak*

**EXHIBIT E
MAINTENANCE SERVICES
(POST-WARRANTY PERIOD)**

**ARTICLE I
GENERAL**

1. **Term; Termination.** This Exhibit E 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 E 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 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 E, and the breaching party fails to cure such breach within such 30-day period, or (c) the date that is 30 days after Customer fails to pay any amount due ES&S under this Exhibit E. The termination of this Exhibit E 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 E, Customer shall pay to ES&S the Hardware Maintenance and Software Maintenance Fees set forth on Schedule E1 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 E 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 E for the ES&S Equipment listed on Schedule E1 (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 E for a period of 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

EXHIBIT E
ISSUE RESPONSE TIMEFRAME

The following Issue Response Timeframe is the guideline ES&S will follow to acknowledge the receipt of an issue with the site (application software or hardware) initiated by the Customer.

The response time frames are as follows:

NOTE: Hours listed are Central Time Zone.

Hour issue reported	Customer Notification Response Timeframe
Between 8:00 am and 5:00 pm Monday – Friday (Central Time)	4 hours from time when issue received
Between 5:01 pm and 11:59 pm Monday – Friday (Central Time)	Call back after 8:00 am (Central Time) following business day
Between 12:00 am and 7:59 am Monday – Friday (Central Time)	Call back after 8:00 am (Central Time) of business day issue received
Saturday, Sunday and Holidays (Central Time)	Call back after 8:00 am (Central Time) next business day

The timeframe above is not a resolution commitment and Customer should not assume that the issue will be resolved within the timeframe stated above.

ELECTION SYSTEM AND SOFTWARE

Hidalgo County ELECTIONS Department

Alarm Monitoring Service Agreement

Approved in cc on October 11, 2005

ATTEST:

Eddy Trevino (M)