

**ELECTION SYSTEMS & SOFTWARE, LLC
BALLOT PROCESSING, PRINTING AND MAILING 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, LLC ("ES&S");

AND: Williamson County, Texas ("Customer").

RECITALS:

A. ES&S is a provider of ballot processing, printing and mailing services to government and other entities and Customer has agreed to engage the services of ES&S for the purpose of ES&S providing its ballot processing, printing and mailing services to the Customer in Williamson County, Texas (the "Jurisdiction"). The terms and conditions under which such 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):

 X Exhibit A (Pricing Summary)

 X Exhibit B (ES&S Ballot Processing 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 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, LLC
11128 John Galt Boulevard
Omaha, Nebraska 68137
Fax No.: (402) 970-1291
Email:

Signature

Name (Printed or Typed)

Title

Date

WILLIAMSON COUNTY, TEXAS
301 S.E. Inner Loop – Suite 104
Georgetown, Texas 78626
Fax No.:
Email:

Signature

Name (Printed or Typed)

Title

Date

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**GENERAL TERMS
ARTICLE 1**

BALLOT PROCESSING SERVICES AND FEES

1.1 **Ballot Processing, Printing and Mailing Services.** Subject to the terms and conditions of this Agreement, ES&S shall provide the Customer with ballot processing, printing and mailing services ("Ballot Processing Services") for all Customer elections occurring during the Term of the Agreement. The specific Ballot Processing Services provided by ES&S and each party's obligations with respect to such services are set forth on Exhibit B.

1.2 **Ballot Processing Services Fees.** In consideration for ES&S providing the Ballot Processing Services, Customer shall pay ES&S the fees set forth on Exhibit A for each election in which ES&S provides the Ballot Processing Services during the Term of the Agreement. ES&S reserves the right to adjust the Ballot Processing Services Fees annually during the term of the Agreement in the event ES&S experiences unforeseen increases in the cost of ballot paper, envelopes and/or ballot printer consumables. ES&S shall notify Customer, in writing, of such price increase by providing Customer with ninety (90) days advanced written notice.

1.3 **Standards.** ES&S shall perform the Ballot Processing Services in a prompt, efficient and workerlike manner, according to industry standards and the timelines agreed upon between ES&S and the Customer. The Customer acknowledges and agrees that the performances by ES&S of the Ballot Processing Services are contingent upon the Customer providing ES&S with accurate and timely information. The Customer further acknowledges and agrees that ES&S shall not be liable for any delays or inaccuracies which are directly or indirectly related to the acts, errors or omissions by the Customer. Each party shall comply with all applicable federal and state laws, regulations, rules and ordinances in performing their respective obligations hereunder.

1.4 **Disclaimer of Warranties.** 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.

**ARTICLE 2
MISCELLANEOUS**

2.1 **Term; Termination.** This Agreement shall be effective for a _____ year period beginning on the Effective Date (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 the following (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 ninety (90) calendar days prior to the expiration of the Initial Term or any Renewal Period, as applicable; (ii) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except a breach as provided in (iii) below which will require no notice); (iii) Customer's failure to make any payment due hereunder within thirty (30) days after it is due to ES&S under this Agreement per Exhibit A Invoicing and Payment terms. In the event of termination of this Agreement, Customer shall pay ES&S for all services performed and fees earned up through the date of termination.

2.2 **Limitation Of Liability.** To the extent authorized under Texas law, 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. To the extent permitted by applicable law, ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount actually 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 Ballot Processing Services to achieve Customer's intended results; (b) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S; or (c) Customer errors, included errors in Customer data provided to ES&S, user errors, voter errors or problems encountered by any individual in the election process that are not otherwise a result of the failure of ES&S to perform its obligations under this Agreement.

2.3 **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 2.3, 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.

2.4 **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.

2.5 **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.

2.6 **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 constitutes the entire agreement between the parties with respect to its subject matter and supersedes any and all prior and contemporaneous agreements and understandings, whether oral or written, regarding the subject matter hereof. Any provision of any such form or agreement that 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. The headings preceding the text of the Sections herein are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

2.7 **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), (d) sent by electronic mail communication with confirmation 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 fax numbers

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

2.8 **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 thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid.

2.9 **Other.** ES&S is providing the Ballot Processing 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. The provisions of section 1.4 and sections 2.2-2.10 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

2.10 **No Waiver of Sovereign Immunity or Powers.** Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of licensee, the Williamson County Commissioners Court, or the Williamson County Judge.

2.11 **Termination for Convenience.** This Agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving ninety (90) days written notice thereof. In the event of termination, the County will only be liable for its pro rata share of services rendered and goods actually received.

2.12 **Texas Prompt Payment Act Compliance.** Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date licensee receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by licensee in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of licensee's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

2.13 **Mediation.** The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Agreement.

2.14 **Venue and Governing Law.** Venue of this contract shall be Williamson County, Texas, and the law of the State of Texas shall govern.

2.15 **Right to Audit.** ES&S agrees that licensee or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of ES&S which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. ES&S agrees that licensee shall have access during normal working hours to all necessary ES&S facilities and shall be provided adequate and appropriate work

space in order to conduct audits in compliance with the provisions of this section. Licensee shall give ES&S reasonable advance notice of intended audits.

[END OF GENERAL TERMS]

**EXHIBIT A
FEE SCHEDULE**

Description	Fee
"Per Packet" Mailing fee / ballot processed as set forth on Exhibit B - Processing of 1 page ballot, black and white, up to 18 inches in length - Outgoing envelope - Return/Carrier envelope - Secrecy envelope - Up to 2 inserts (B&W) - Any additional inserts or use of color are subject to additional fees.	\$1.75 per ballot packet processed
"Unaddressed VBM Packet" fee / packet processed as set forth on Exhibit B - An assembled packet without addressing on the outgoing envelope. Packets are boxed & shipped to the Customer. Shipping fees are charged to Customer - Processing of 1 page ballot, black and white, up to 18 inches in length - Outgoing envelope - Return/Carrier envelope - Secrecy envelope - Up to 2 inserts (B&W) - Any additional inserts or use of color are subject to additional fees.	\$0.65 per each additional unaddressed packed (printed, folded, and inserted) + Shipping Fees
"Additional Ballots" flat, in increments of 10, includes printing, folding and insertion into the VBM Packet.	\$0.35 per ballot, plus delivery
Additional Envelopes (black and white only)	\$0.18 per envelope, plus delivery
Additional Inserts or instruction sheets folded and inserted (black & white only)	\$0.10 per 8 ½ X 11" sheet
Additional Inserts or instruction sheets folded and inserted (2 color)	\$0.15 per 8 ½ X 11" sheet
A \$350.00 "Election Setup Fee" if less than 2,000 ballot packets are mailed over the course of a single election	
A \$250.00 "Artwork or Ballot Revision Fee" will be charged for changes to previously approved mail packet artwork or ballot PDF's.	
- There is no charge for initial envelope artwork.	
- Changes or edits after initial setup will be charged the above rate per material type being altered (i.e. ballot, envelopes, secrecy sleeves or inserts).	
- No charge for statutory required envelope changes unless the change occurs on or following the 70 days before the Election Date ("E minus 70").	
"Shipping Fees" – Fees associated with the transportation of mail packets to facility other than the ES&S default postal insertion drop point, per selection by the Customer.	Shipping to be charged based on shipping rate from courier service.
Additional Mailing Services	
VBM Mailing Notice – Includes standard envelope plus letter.	\$0.25 per letter*, plus postage
Voter Certificate File – Post card mailing	\$0.12 per certificate*, plus postage
* There is a minimum order fee of \$100.00. Any additional mailing types are subject to quote.	
Terms & Conditions:	
Note 1: A total of 5 components can be inserted per packet. Any materials requiring color will need to be quoted.	
Note 2: If an election date or expiration date is used on envelopes, secrecy sleeves, or inserts, Customer is responsible for placing an order for a set amount and will purchase unused envelopes or inserts.	
Note 3: Except as specifically set forth on Exhibit B, any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 2.3. Premium or rush transportation services incurred in connection with the Ballot Processing Services are additive and will be billed as incurred.	
Invoicing and Payment Terms are as follows:	
100% of Total Invoice Amount due within thirty (30) calendar days in accordance with TX Government Code CH2251.	
Postage will be billed at the end of the election and will be a separate line item on the invoice.	

EXHIBIT B

BALLOT PROCESSING SERVICES AND OBLIGATIONS

The Ballot Processing Services to be provided by ES&S during the Term are described below. Customer acknowledges that ES&S's fees for support services are based on the descriptions listed below, and that a change in the descriptions may require ES&S to change the fees charged to Customer.

Ballot Mailing Services

ES&S will provide the following services and functions related to the printing and mailing of absentee ballots:

Mail File Preparation

- Please note that UOCAVA files or ID Required ballot packets are not within the scope of the mailing service.
- ES&S will process absentee request files through CASS certified software in order to obtain valid Delivery Point Barcode data. Any records that fail Delivery Point verification will still be processed, but without a barcode and postal tracking.
- ES&S will use DPBC data to create an Intelligent Mail Barcode in order to facilitate postal discounts and tracking of ballots during USPS transit.
- All files provided to ES&S will be uploaded through the ES&S website.

Ballot File Preparation

- Customer will provide ES&S a PDF for each ballot style to be used in an election. This will be the same PDF used for Election Day and Ballot On Demand ballots and ES&S can offer alternate overlays as needed by customer. One PDF will suffice for all ballot services.
- Customer will provide ES&S with a relationship table that identifies all active ballot styles for each election and the ballot PDF that corresponds with that style. The relational table should comprehensively assign each ballot style (as indicated by PDF page numbers) to the ballot style identifier as referenced in the Voter Registration data.
- ES&S will crop and electronically prepare ballots for printing.
- ES&S will produce a test deck of each ballot style for purposes of customer proofing and verification at no charge. No ballots will be mailed until said test deck has been run and tabulation verified. ES&S can provide additional test decks or L&A test decks at the prices listed in Exhibit A.

Mail Processing

- ES&S will provide the 3 envelopes, ballot, and one insert. Additional materials are subject to additional fees.
- ES&S will print a ballot(s) for each voter in the absentee request file that corresponds to that voter's ballot style in the relational table.
- ES&S will insert the return/carrier envelope, secrecy envelope, inserts, and the ballot into the mailing envelope.
- ES&S will print the outbound voter's address onto the mailing envelope along with the intelligent mail barcode for tracking purposes.
- ES&S will print voter's return information, including voter unique barcode, onto the return/carrier envelope.
- ES&S will measure the thickness of each mail piece to verify the accuracy of contents in each envelope.
- ES&S will scan and capture an image of each outbound mail envelope to verify completion of each ballot package.

Postal Processing

- ES&S will process and prepare all outbound mail pieces for submission to the USPS at the lowest appropriate automation rate.
- Mail volumes of greater than 200 pieces of CASS certified, non forwarded pieces will be sorted and submitted at the qualifying Non Profit, Standard Class rate.
- Mail volumes of less than 200 pieces of mail will be submitted at the appropriate 1st class mail rate.
- If using First Class rates mail volumes of greater than 500 pieces of CASS certified pieces will be sorted and submitted at the lowest qualifying First Class Pre-sort rate.
- Regular Outgoing Domestic Envelopes will carry the endorsement of "Return Service Requested". Undeliverable mail pieces will be returned to the Customer with the reason for non-delivery. The USPS will charge the balance of first class postage for these pieces if sent at non-profit

- Outgoing envelopes will carry an Indicia which bears the customers indicia or the ES&S indicia, no location or mail drop post mark will be visible to the voter.
- ES&S will produce all necessary postal documentation for mail submission and tracking.
- Mail pieces will be dropped at the production locations business mail entry unit as agreed upon with Customer.

Postage and Postal Permitting

- Customer must request and obtain a nonprofit authorization (PS Form 3624) through the USPS if they wish to mail at non-profit rates. ES&S will assist.
- Customer will be invoiced for packets and postage funds immediately after the election. Packets and Postage will be a separate line item on the invoice.

Service Level Standards

ES&S agrees to complete ballot printing and mail processing for customer submitted files, as follows:

- Initial Large File Run for Domestic Civilians – Complete all processes and deliver mail to the USPS within ten (10) business days after Voter Registration ("VR") request file has been approved by ES&S as a compliant file format, on a date to be designated by ES&S.
- Daily File Run - Complete all processes and deliver mail to the USPS the following business day after VR request file is approved by ES&S as a compliant file format. The VR request file is to be sent to ES&S by no later than 3:00 PM eastern time to guarantee next business day fulfillment.

Mail Ballot Tracking and Reporting

ES&S will provide a license of the Ballottracker system to Customer as a means to monitor and track the status of mail ballots.

- Customer will be responsible for providing network connectivity if access to Ballottracker data is desired from network workstations.
- Use of the Ballottracker is an extension of ES&S' mailing service, and any software installed is made available and licensed for this use only.

BallotTracker Functionality

The BallotTracker will provide access to the following mailing processing information for any individual voter whose request has been received in an absentee request file:

- Date and Time VR Request file was received.
- Date and Time Ballot was Printed.
- Description of ballot, including ballot style, number of pages and access to image of ballot PDF for that style.
- Date and Time Ballot Package was mailed.
- Description of ballot package, verification of ballot style inserted into envelope and image of outbound envelope processed.
- Confirm Tracking data regarding delivery status and details of mail piece delivery during USPS transit.