



Madison County, Mississippi Electronic Pollbook Sales Order Agreement - S198

Purchase Solution Includes:

Description	UOM	Qty	Unit Price	Total Price
ExpressPoll Tablet: ExpressPoll System including Tablet, Stand, Integrated Barcode Reader, Carrying Case, Mobile Device Management and ExpressPoll Software Application	Each	173	\$1,215.00	\$210,195.00
Other: ExpressVote Activation Card Printer	Each	4	\$725.00	\$2,900.00
Software: ExpressPoll Connect Software License and Hosting Fee	License	1	\$4,000.00	\$4,000.00
Implementation Services: Acceptance Testing	Event	1	\$14,705.00	\$14,705.00
Project Management	Day	1	\$1,700.00	\$1,700.00
Shipping & Handling		1	\$3,200.00	\$3,200.00
One-Year Hardware Warranty	N/A			Included
Trade-In Allowance: 220 - Toshiba Tablet Upgrade Allowance				(\$11,000.00)
Order Total				\$225,700.00

Payment Terms:

\$56,425.00 Due within thirty (30) calendar days of contract execution.
\$169,275.00 Due within thirty (30) calendar days of delivery of ExpressPoll Hardware and/or ExpressPoll Software.

Annual Post-Warranty Maintenance and Support Fees

(Fees are Based Upon a 1-Year Customer Commitment to Subscribe to the Following Services)

PollBook Software:				
ExpressPoll Software License and Maintenance and Support Fee - Year 1	Per Unit	173	\$125.00	\$21,625.00
Software: ExpressPoll Connect Software License Fee and Hosting Services - Year 1	License	1	\$4,000.00	\$4,000.00

Note: Annual Software License, Hosting, and Maintenance and Support fees of \$25,625.00 will be invoiced 90-days prior to beginning of the post-warranty period, 100% of invoice total due within 30 calendar days of invoice date.

The parties hereby agree that this Sales Order and the ExpressPoll Sales Order Agreement General Terms, attached hereto and fully incorporated herein by this reference, (collectively, the "Agreement") represents a binding agreement between ES&S and Customer for the purchase of ExpressPoll System products and services. Further, the undersigned Customer hereby agrees to purchase such ExpressPoll products and services from ES&S as set forth herein. The undersigned Customer hereby agrees to the ExpressPoll System Sales Order Agreement General Terms and acknowledges that he or she has read the entire Agreement, understands it and fully intends to be bound by it. The undersigned Customer hereby certifies that: 1) sufficient funds are available for any of this purchase that exceeds my allocation of state and/or federal funding; and 2) any amount not funded by state and/or federal funds has been authorized and appropriated for this purchase. As of the date of the signature below, the undersigned Customer has full power and authority to enter into and perform this Agreement, and has been properly authorized to execute and deliver this Agreement on behalf of the Customer as set forth above.

Richard J. Jablonski 05/18/2021
ES&S Signatory Date
Print Name
VP of Finance
Title

Anita Wray 5/17/21
Customer Signature
Print Name
Circuit Clerk Madison County
Title

Contact Person	Anita Wray - County Clerk
Address (no PO box)	128 W. North Street
City	Canton
State/Province	MS
Zip	39046
Phone Number	601-859-4365

ELECTRONIC POLLBOOK GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license to Customer and Customer agrees to purchase and/or license from ES&S, the Equipment, ES&S Firmware and ES&S Software described on the attached Electronic Pollbook Sales Order ("Sales Order"). The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The payment terms for the Equipment and ES&S Software are set forth on the attached Sales Order. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the Sales Order for the Equipment. The consideration for ES&S' grant of the license during the Initial Term for the ES&S Firmware is included in the cost of the Equipment.
2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time, part time and temporary employees to use the ES&S Software described on the Sales Order, and related Documentation in the Jurisdiction while Customer is using the Equipment and ES&S Software during the Initial License Term or any License Renewal Term as defined in Section 4 below. The ES&S Software described in this Section 2 are ES&S proprietary software products. The license allows Customer to use the ES&S Software (in object code only) and the Documentation, in the course of operating the Equipment and solely for the purposes of managing the electronic poll book voter lists and voter registration process at each polling location in Customer's 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; or
 - 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, 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 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. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except for finished ballot printers selected by Customer) in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent).
4. **Term of License.** The license granted in Section 2 shall commence upon the delivery of the ES&S

Software described in Section 2 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the license 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 the Sales Order. The license terms for any License Renewal Term shall be 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 or 3 with respect to, such license. Upon the termination of the license 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 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 solely defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install the Updates; (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 pay ES&S for any Update which is specific to Customer or required due to a change in state or local law.
6. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the Equipment and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date set forth on the Sales Order and, if required, will have been certified by the appropriate state authorities for use in the Customer's state. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for ES&S Software License, Maintenance and Support Services, the ES&S Software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the Software (but not Equipment) as are technologically feasible and commercially reasonable. Customer

shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by ES&S in order for such Equipment to remain compliant with applicable laws and regulations. Customer shall also be solely responsible for the cost of any third-party items that are required in order for the Equipment and/or Software to remain compliant with applicable laws and regulations.

7. **Delivery; Risk of Loss.** The Estimated Delivery Dates are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement because of delays in executing this Agreement, changes requested by Customer, product availability and other events outside of ES&S's control. ES&S will notify Customer of such revisions 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 and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement for ES&S Equipment and Software have been paid by Customer.

8. **Warranty.**

a. **Equipment/ Software.** ES&S warrants that for a 1-year period (the "Warranty Period"), it will repair or replace any component of the Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. Any repaired or replaced item of Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Equipment or ES&S Software will become the property of ES&S. ES&S shall not be responsible for the repair or replacement of (i) consumable parts, such as batteries or protective coatings that are designed to diminish over time, (ii) cosmetic damage, including, but not limited to, screen cracks, scratches, dents and broken plastic or (iii) defects caused by normal wear and tear. All Equipment warranty services shall be provided at ES&S' designated location. This warranty is effective provided that (i) Customer notifies ES&S within three (3) business days of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (iii) the Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact or use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders, epidemics, pandemics or outbreak of communicable disease; quarantines; national or

regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (iv) Customer has installed and is using the most recent Update provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product. Upon the expiration of the Warranty Period, the Customer shall be entitled to receive the Software Maintenance and Support Services described on Exhibit A, upon the payment of the applicable fees for such service.

b. **System.** ES&S warrants that the Equipment and ES&S Software will operate in conjunction with the third party items during the Warranty Period, provided that (i) Customer is using third party items which have been approved by ES&S in writing for use with the Equipment and ES&S Software, (ii) Customer has installed and is using the most recent Update provided to it by ES&S, and (iii) the third party items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, ES&S will repair or replace the item of Equipment or ES&S Software that is causing such breach to occur. Customer acknowledges that ES&S has merely purchased the third-party items for resale or rental to Customer, and that the proprietary and intellectual property rights to the third-party items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the third-party items, all of its rights and obligations with respect thereto flow from and to the Third Parties.

c. **Exclusive Remedies. IN THE EVENT OF A BREACH OF SUBSECTIONS 8(a) or 8(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTIONS, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

9. **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. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or ES&S Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment,

penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Software Maintenance and Support Services.

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

ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S. 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 not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Software. Further, 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 Equipment, the Software, the Documentation and training materials that are provided, and all permitted copies of the foregoing.

11. **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, floods, riots, acts of war, terrorism or insurrection, government acts or orders, epidemics, pandemics or outbreak of communicable disease, quarantines; national or regional emergencies, 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.

12. **Term; Termination.** This Agreement is made as of the date it is executed by the last of the parties named on the Sales Order (the "Effective Date"). The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 calendar days after it receives written notification thereof from the non-breaching party.

13. **Assignment.** Except in the case of a reorganization of the assets or operation 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 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.

14. **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.

15. **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 calendar days, ES&S may suspend performance under this Agreement until such amount is paid. Any 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.

16. **Additional Services; Changes.** Unless otherwise stated on the Sales Order, Customer shall be responsible for all costs related to services entered into in separate agreements such as, but not limited to, election coding, data conversion costs and network set up and communication. Further, Customer is responsible for equipment and setup, and the costs associated with setup, of the network infrastructure for data transfer and application communication unless specified in separate agreements. In addition, in the event the Customer changes, makes updates, enhances or otherwise modifies the Customer's currently existing voter registration system and such changes, updates, enhancements or modifications results in ES&S having to re-perform any services provided under this Agreement, the Customer shall be responsible for any such additional charges; which shall be invoiced at ES&S' then current rates. Likewise, any Customer requested enhancements, modifications or changes to the Equipment or ES&S Software which ES&S agrees to provide, in its sole discretion, shall be set forth in separate change orders to the Agreement. Customer shall be responsible for the payment of all fees associated with such enhancements, modifications or changes made by ES&S.

17. Other. ES&S is providing Equipment, Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Sections 1 - 6, 8(c), 9 - 11, 13, 14, 15(b) and this section 17 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

EXHIBIT A
ES&S SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT SERVICES

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A shall be in effect from the date on which the Initial License Term expires until the first anniversary thereof (the "License Renewal Term"). The License Renewal Term shall automatically renew for an unlimited number of successive one year periods until this Exhibit A is terminated by the first to occur of (a) either party's election to terminate it upon expiration of the License Renewal Term or any renewal thereof, written notice of which election shall be given to the other party at least sixty (60) calendar days prior to such annual expiration date, (b) the date that is thirty (30) calendar days after either party notifies the other that the other has materially breached this Exhibit A, 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 A. The termination of this Exhibit A 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 the ES&S Software License and Software Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Software License and Software Maintenance and Support Fees set forth on Electronic Pollbook Sales Order. The ES&S Software license and Software Maintenance and Support Fees for the License Renewal Term are due on the date of the expiration of the Initial License Term. ES&S may increase the ES&S Software License and Software Maintenance and Support Fees for any renewal period by not more than 5% of the amount of the most recent fees paid by the Customer. The ES&S Software license and Software Maintenance and Support Fees for any renewal period shall be due and payable no later than thirty (30) days prior to the beginning of such renewal period. The ES&S Software license and Software Maintenance and Support Fee shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A or the Agreement. If Customer elects to license and 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 license and Software Maintenance and Support Fee for such license and services.

ARTICLE II
License of ES&S Software

1. **Grant of License.** During the License Renewal Term or any renewal thereof, ES&S shall grant to Customer a nonexclusive, nontransferable license to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the Equipment and ES&S Software. The license allows Customer to use the ES&S Software (in object code only) and the Documentation, in the course of operating the Equipment and solely for the purposes of managing the electronic poll book voter lists and voter registration process at each polling location in Customer's jurisdiction. The license granted in this does not permit Customer to use or access the source code for the ES&S Software.

2. **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; or

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, 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 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. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent).

3. **Term of License.** The license granted in Article II, Section 1 shall commence upon the expiration of the Initial License Term and receipt of payment by ES&S in accordance with Article I, Section 2 of this Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 1 or 2 of this Article II with respect to, such license. Upon the termination of the license granted in Section 1 of Article II 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.

ARTICLE III
ES&S SOFTWARE MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide maintenance and support services for the ES&S Software ("Software Maintenance and Support"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship.

2. **Updates.** During the Software Maintenance Term and any renewals thereof, ES&S shall continue to provide updates in accordance with any update schedule determined by ES&S.

3. **Reinstatement of ES&S License and Software Maintenance and Support Services.** If the License Renewal Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving ES&S' license and Software Maintenance and Support Services upon (a) notification to ES&S, and (b) payment of all fees which would have been due to ES&S had the ES&S' License Renewal Term not expired, plus a reinstatement charge.

4. **Conditions.** ES&S shall provide Software Maintenance and Support Services for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent Update provided to it by ES&S, (e) Customer's failure to notify ES&S within 24 hours after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. However, such Software Maintenance and Support Services shall not be provided at the Software Maintenance and Support Services Fees outlined in the Sales Order, but shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises.

5. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all ES&S License and Software Maintenance and Services Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered.

Anita Wray

From: Lowe, William <william.lowe@essvote.com>
Sent: Wednesday, May 19, 2021 3:01 PM
To: Anita Wray
Subject: RE: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

CAUTION! External Content. Please use caution when opening attachments and links. Do not provide your username and password if requested.

The contract does not require you to trade in the pollbooks and I confirmed this with our contract department.

I had the language changed on the contract to reflect upgrade allowance so you could still get the allowance and keep your Toshiba tablets.

Sincerely,
Bill Lowe
Election Systems & Software
State of Mississippi
Office (601) 922-2476
Cell (601) 497-4769
Fax (601) 922-8475

From: Anita Wray <Anita.Wray@madison-co.com>
Sent: Wednesday, May 19, 2021 2:48 PM
To: Lowe, William <william.lowe@essvote.com>
Subject: RE: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

Does it state anywhere in the contract that we will receive the trade-in allowance by maintain possession of the old tablets?

Anita Wray
Madison County Circuit Clerk
P. O. Drawer 1626
Canton, MS 39046
601-859-4365 Office
601-859-8555 Fax
anita.wray@madison-co.com

From: Lowe, William <william.lowe@essvote.com>
Sent: Friday, May 14, 2021 10:16 AM
To: Anita Wray <Anita.Wray@madison-co.com>; Helen Carney <helen.carney@madison-co.com>; Pat Truesdale

<Pat.Truesdale@madison-co.com>

Subject: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

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Hey, see attached for upgrading the pollbook units. I did confirm with ES&S that this contract allows for the upgrade discount without having to trade-in the pollbook units. I will call to discuss.

Sincerely,
Bill Lowe
Election Systems & Software
State of Mississippi
Office (601) 922-2476
Cell (601) 497-4769
Fax (601) 922-8475

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From: Mike Espy <mikesmike@mikespy.com>
Sent: Wednesday, May 19, 2021 8:04 PM
To: Anita Wray
Subject: Re: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

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Ok I will look

Sent from my iPhone

On May 19, 2021, at 4:23 PM, Anita Wray <anita.wray@madison-co.com> wrote:

Attached is the contract for the new poll books that I am purchasing with the Grant Money that the Circuit Clerk received. The below statement from Bill Lowe reflects in the contract that Madison County can maintain possession of the old poll books but we can still have the "upgrade allowance". Pat Truesdale and I would like to get on the agenda for the next board meeting so if there are any questions then we can answer them. Thank you for reviewing the contract. Please let me know if there is anything else that I should do before the board meeting as I am in a little time crunch in order to put these monies to good use before the deadline of June 30, 2021.

Anita Wray
Madison County Circuit Clerk
P. O. Drawer 1626
Canton, MS 39046
601-859-4365 Office
601-859-8555 Fax
anita.wray@madison-co.com

From: Lowe, William <william.lowe@essvote.com>
Sent: Wednesday, May 19, 2021 3:01 PM
To: Anita Wray <Anita.Wray@madison-co.com>
Subject: RE: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

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The contract does not require you to trade in the pollbooks and I confirmed this with our contract department.

I had the language changed on the contract to reflect upgrade allowance so you could still get the allowance and keep your Toshiba tablets.

Sincerely,
Bill Lowe
Election Systems & Software
State of Mississippi
Office (601) 922-2476
Cell (601) 497-4769
Fax (601) 922-8475

From: Anita Wray <Anita.Wray@madison-co.com>
Sent: Wednesday, May 19, 2021 2:48 PM
To: Lowe, William <william.lowe@essvote.com>
Subject: RE: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

Does it state anywhere in the contract that we will receive the trade-in allowance by maintain possession of the old tablets?

Anita Wray
Madison County Circuit Clerk
P. O. Drawer 1626
Canton, MS 39046
601-859-4365 Office
601-859-8555 Fax
anita.wray@madison-co.com

From: Lowe, William <william.lowe@essvote.com>
Sent: Friday, May 14, 2021 10:16 AM
To: Anita Wray <Anita.Wray@madison-co.com>; Helen Carney <helen.carney@madison-co.com>; Pat Truesdale <Pat.Truesdale@madison-co.com>
Subject: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

CAUTION! External Content. Please use caution when opening attachments and links. Do not provide your username and password if requested.

Hey, see attached for upgrading the pollbook units. I did confirm with ES&S that this contract allows for the upgrade discount without having to trade-in the pollbook units. I will call to discuss.

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<Madison County, MS - ExpressPoll Tablet Sales Order Agreement 05.18.2021 - S198.pdf>

Anita Wray

From: Anita Wray <aewray1@gmail.com>
Sent: Friday, May 21, 2021 1:31 PM
To: Anita Wray
Subject: Fwd: 5/13/22 70/100ppl ND contract attached
Attachments: may13anitawray.pdf

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Sent from my iPhone

Begin forwarded message:

From: D Delano <ddelano@thegrandmarlin.com>
Date: May 21, 2021 at 12:08:09 PM CDT
To: aewray1@gmail.com
Subject: 5/13/22 70/100ppl ND contract attached

Danne' Delano
General Manager

From: Mike Espy - External
Sent: Thursday, May 20, 2021 6:13 PM
To: Anita Wray; Spence Flatgard; Shelton Vance
Cc: latoya.thompson@espylawpllc.com; Nason White
Subject: Re: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198
Attachments: Madison County, MS - ExpressPoll Tablet Sales Order Agreement 05.18.2021 - S198.pdf

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1. ESS Contract-

Anita- I read the ESS contract last evening. Since the funds are yours alone, didn't originate from the county, and you chose to use them to purchase the new digital voting tablets- this is not a BOS matter- in the sense that you need BOS approval or signature to the contract by Karl Banks.

At most, you could inform the BOS about what you are doing and they could acknowledge the matter in the official minutes.

if the BOS becomes involved there might be the need for bids- and I know you want to work with ESS on this as a sole source vendor. I already had to approach the Circuit Judge to Order the county to pay ESS in a previous matter so I want to steer clear of the county approving an election vendor contract when it isn't a party to the contract, obligated to pay the amounts, or serves as source of the funds.

On the issue of "upgrades and trade-ins" I see that you were able to receive the upgrade discount while also keeping the old poll books. Great.

I note that this decision was confirmed *by email* from the ESS representative, but doesn't necessarily appear in the contract itself. I think it would be wise to add the ESS emails as exhibits to the contract that you have already signed so it doesn't come back to bite you.

Good luck. We will help in any way we can. If you want to come before the board just get on the agenda by alerting Shelton.

2. Church Polling Place Compensation-

On the St. Joe polling place issue remain concerned. I am aware that it is lawful for the county to agree to repair a parking lot in consideration for the use of a church as a polling location, but- as you know- the cost of repair of this

parking lot is almost 80k. This can't be done and I know you agree. I have learned that the church built a larger facility since the contract was first entered into and therefore the parking area has also grown much larger than first imagined. At \$100 per day for use of the church as an infrequent polling location this in-lieu arrangement would never work.

Regarding how much the church can receive now in consideration of the parking lot denial, I looked at AG Opinions on non-payment of bills, invoices, accounts payable, and statute of limitations, etc.

A true story: When I first represented the county some years ago there was a vexing issue involving the county engineer and whether the county could pay several large bills that were over 3 years old. Even though it was acknowledged that the engineer had performed the work and there was a valid contract in place- the answer I gave was no, that the county could not pay his invoices. The county could only pay the the ones that were timely, or within the 3 year time frame.

When asked why he didn't invoice the county for the work- he said that he did- but that a supervisor had asked him not to submit them to the claims docket.

Because the amounts were substantial I went personally to the AG's Office and discussed the matter with them. I was told (and AG Opinions will confirm) that MC could not pay any bills that were more than 3 years old. This rule can't be waived and in any lawsuit the 3 year rule can be raised as an affirmative defense. It doesn't even matter if the fault is the county's and not the vendor's. The engineer retained a lawyer to represent him on this and the county prevailed. The engineer was never was paid, even though he performed the work under a valid contract. It was a sad situation for all involved but lessons were learned.

So- even though the amounts involved with this St. Joe precinct location are relatively small, I still concerned that the county can't waive the 3 year statute of limitations issue.

In this matter, there was a contract in place to use the church as a polling location that expired- at expiration the contractual relationship bn the church and the county continued on the basis of automatic annual renewals (year to year). All of that is fine. But, my knowledge is that no payments from the county were ever given to the church. The issue of cash payments have arisen now only because the church will not be receiving the \$80k improvements to the parking lot, as first imagined.

Clearly the county can compensate the church for all uses of its building as a polling location within the last 3 years- and can do it on a lump sum basis. However, I can't authorize or recommend that the BOS make any further payments to the church unless ordered to do so by a Circuit Judge.

I personally do not wish to take this matter before a MC Circuit Judge, but would have no objection to counsel for the MC Election Commission doing so. Also there should be a new contract executed with the church.

Lastly, I am aware that the church's location is convenient to the voting public and that we would hate to lose it as an eligible voting precinct. I would hope that leadership of the church will understand the restrictive situation that the county is in pursuant to the law and would continue to delegate its location as a polling facility- out of civic and community responsibility.

Mike Espy
Mike Espy, PLLC
4450 Old Canton Rd., Ste. 205
Jackson, MS. 39211
Phone: 601-355-9101
Fax: 601-510-9124
mike@mikespy.com

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On May 19, 2021, at 4:22 PM, Anita Wray <anita.wray@madison-co.com> wrote:

Attached is the contract for the new poll books that I am purchasing with the Grant Money that the Circuit Clerk received. The below statement from Bill Lowe reflects in the contract that Madison County can maintain possession of the old poll books but we can still have the "upgrade allowance". Pat Truesdale and I would like to get on the agenda for the next board meeting so if there are any questions then we can answer them. Thank you for reviewing the contract. Please let me know if there is anything else that I should do before the board meeting as I am in a little time crunch in order to put these monies to good use before the deadline of June 30, 2021.

Anita Wray
Madison County Circuit Clerk
P. O. Drawer 1626
Canton, MS 39046
601-859-4365 Office
601-859-8555 Fax
anita.wray@madison-co.com

From: Lowe, William <william.lowe@essvote.com>
Sent: Wednesday, May 19, 2021 3:01 PM
To: Anita Wray <Anita.Wray@madison-co.com>
Subject: RE: Madison County, MS - ExpressPoll Tablet Sales Order Agreement - S198

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The contract does not require you to trade in the pollbooks and I confirmed this with our contract department.

I had the language changed on the contract to reflect upgrade allowance so you could still get the allowance and keep your Toshiba tablets.

Sincerely,
Bill Lowe
Election Systems & Software
State of Mississippi
Office (601) 922-2476
Cell (601) 497-4769
Fax (601) 922-8475

From: Anita Wray <Anita.Wray@madison-co.com>
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Election Systems & Software
 6055 Paysphere Circle
 Chicago, IL 60674
 (877) 377-8683



Invoice

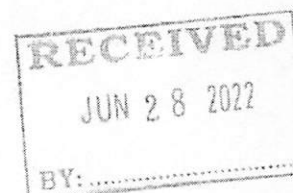
Invoice Date 6/10/22
 Order Date 6/10/22
 Customer Number 36780
 Customer's PO No
 Terms of Payment 30 Days Net
 Order Number 130189

ORIGINAL

Invoice Number CD2031958
 Election Date
 Page 1 (1)

Invoice Address
 MADISON COUNTY, MISSISSIPPI
 ACCOUNTS PAYABLE
 PO BOX 608
 CANTON MS 39046-0608

Delivery Address
 Madison County, Mississippi
 128 W North St
 Canton, MS 39046
 US - UNITED STATES



Invoice for Service Contract: 4124, Tablet-173, Connect SW

Sales

Pos	Description	Sales Qty	Unit	Price	Disc %	Tax %	Net Amount USD
1	ExpressPoll Software License and Maintenance and Support Fee 01-JUL-22 to 30-JUN-23	173.00	EA	125.000	0.00	0.00	21,625.00
2	ExpressPoll Connect Software License: 51-250 Pollbooks - Renewal License Fee 01-JUL-22 to 30-JUN-23 Tracking #:	1.00	EA	4,000.000	0.00	0.00	4,000.00
Sub Total Amount							25,625.00
Total Exclusive Tax							25,625.00
Total Tax							0.00
Invoice Amount							25,625.00

Customer Number	Invoice Number	INVOICE AMOUNT	Election Systems & Software
36780	CD2031958	25,625.00	ABA Routing No: 071000039
			Account No: 5800923558

MS: Mississippi
 PLEASE DETACH AND RETURN THIS STUB WITH YOUR PAYMENT. THANK YOU.



Election Systems & Software
 6055 Paysphere Circle
 Chicago, IL 60674
 (877) 377-8683



Invoice

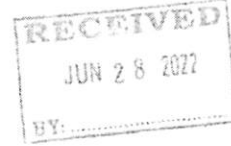
Invoice Date 6/10/22
 Order Date 6/10/22
 Customer Number 35760
 Customer's PO No
 Terms of Payment 30 Days Net
 Order Number 130189

ORIGINAL

Invoice Number CD2031958
 Election Date
 Page 1 (1)

Invoice Address
 MADISON COUNTY, MISSISSIPPI
 ACCOUNTS PAYABLE
 PO BOX 608
 CANTON MS 39046-0608

Delivery Address
 Madison County, Mississippi
 128 W North St
 Canton, MS 39046
 US - UNITED STATES



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2	ExpressPoll Connect Software License: 51-250 Pollbooks - Renewal License Fee 01-JUL-22 to 30-JUN-23	1.00	EA	4,000.000	0.00	0.00	4,000.00

Tracking #:

Sub Total Amount 25,625.00

APPROVED

By Anita Wray at 12:43 pm, Jun 30, 2022

Total Exclusive Tax 25,625.00

Total Tax 0.00
 Invoice Amount 25,625.00

Customer Number	Invoice Number	INVOICE AMOUNT	Election Systems & Software
36780	CD2031958	25,625.00	ABA Routing No: 071000039
			Account No: 5800923558

MS, Mississippi

PLEASE DETACH AND RETURN THIS STUB WITH YOUR PAYMENT. THANK YOU.



ExpressPoll System

Madison County, Mississippi Electronic Pollbook Sales Order Agreement - S198

Purchase Solution Includes:

Description	UOM	Qty	Unit Price	Total Price
ExpressPoll Tablets: ExpressPoll System including Tablet, Stand, Integrated Barcode Reader, Carrying Case, Mobile Device Management and ExpressPoll Software Application	Each	173	\$1,215.00	\$210,195.00
Other: ExpressVote Activation Card Printer	Each	4	\$725.00	\$2,900.00
Software: ExpressPoll Connect Software License and Hosting Fee	License	1	\$4,000.00	\$4,000.00
Implementation Services: Acceptance Testing	Event	1	\$14,705.00	\$14,705.00
Project Management	Day	1	\$1,700.00	\$1,700.00
Shipping & Handling		1	\$3,200.00	\$3,200.00
One-Year Hardware Warranty	N/A			Included
Trade-In Allowance: 220 - Toshiba Tablet Upgrade Allowance				(\$11,800.00)
Order Total				\$225,700.00

Payment Terms:

\$56,425.00 Due within thirty (30) calendar days of contract execution.
 \$169,275.00 Due within thirty (30) calendar days of delivery of ExpressPoll Hardware and/or ExpressPoll Software.

Annual Post-Warranty Maintenance and Support Fees

(Fees are Based Upon a 1-Year Customer Commitment to Subscribe to the Following Services)

Item	UOM	Qty	Unit Price	Total Price
PollBook Software: ExpressPoll Software License and Maintenance and Support Fee - Year 1	Per Unit	173	\$125.00	\$21,625.00
Software: ExpressPoll Connect Software License Fee and Hosting Services - Year 1	License	1	\$4,000.00	\$4,000.00

Note: Annual Software License, Hosting, and Maintenance and Support fees of \$25,625.00 will be invoiced 90-days prior to beginning of the post-warranty period, 100% of invoice total due within 30 calendar days of invoice date.

The parties hereby agree that this Sales Order and the ExpressPoll Sales Order Agreement General Terms, attached hereto and fully incorporated herein by this reference, (collectively, the "Agreement") represents a binding agreement between ESSS and Customer for the purchase of ExpressPoll System products and services. Further, the undersigned Customer hereby agrees to purchase such ExpressPoll products and services from ESSS as set forth herein. The undersigned Customer hereby agrees to be bound by it. The undersigned Customer hereby certifies that: 1) sufficient funds are available for any of this purchase that exceeds my allocation of state and/or federal funding; and 2) any amount not funded by state and/or federal funds has been authorized and appropriated for this purchase. As of the date of the signature below, the undersigned Customer has full power and authority to enter into and perform this Agreement, and has been properly authorized to execute and deliver this Agreement on behalf of the Customer as set forth above.

Richard J. Jablonski 05/18/2021
 ESSS Signature Date

Richard J. Jablonski
 Print Name
 VP of Finance
 Title

Anita Wray 5/17/21
 Customer Signature

Anita Wray
 Print Name
 Circuit Clerk Madison County
 Title

Contact Person	Anita Wray - County Clerk
Address (no PO box)	128 W. North Street
City	Canton
State/Province	MS
Zip	39046
Phone Number	601-859-4365

ELECTRONIC POLLBOOK GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell and/or license to Customer and Customer agrees to purchase and/or license from ES&S, the Equipment, ES&S Firmware and ES&S Software described on the attached Electronic Pollbook Sales Order ("Sales Order"). The ES&S Firmware and ES&S Software are collectively referred to hereinafter as the "ES&S Software." The payment terms for the Equipment and ES&S Software are set forth on the attached Sales Order. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the Sales Order for the Equipment. The consideration for ES&S' grant of the license during the Initial Term for the ES&S Firmware is included in the cost of the Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time, part time and temporary employees to use the ES&S Software described on the Sales Order, and related Documentation in the Jurisdiction while Customer is using the Equipment and ES&S Software during the Initial License Term or any License Renewal Term as defined in Section 4 below. The ES&S Software described in this Section 2 are ES&S proprietary software products. The license allows Customer to use the ES&S Software (in object code only) and the Documentation, in the course of operating the Equipment and solely for the purposes of managing the electronic poll book voter lists and voter registration process at each polling location in Customer's 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; or

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, 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 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. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except for finished ballot printers selected by Customer) in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent).

4. **Term of License.** The license granted in Section 2 shall commence upon the delivery of the ES&S

Software described in Section 2 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the license 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 the Sales Order. The license terms for any License Renewal Term shall be 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 or 3 with respect to, such license. Upon the termination of the license 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 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 solely defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install the Updates; (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 pay ES&S for any Update which is specific to Customer or required due to a change in state or local law.

6. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the Equipment and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date set forth on the Sales Order and, if required, will have been certified by the appropriate state authorities for use in the Customer's state. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for ES&S Software License, Maintenance and Support Services, the ES&S Software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations. "Maintained or upgraded" shall mean only such changes to individual items of the Software (but not Equipment) as are technologically feasible and commercially reasonable. Customer

shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by ES&S in order for such Equipment to remain compliant with applicable laws and regulations. Customer shall also be solely responsible for the cost of any third-party items that are required in order for the Equipment and/or Software to remain compliant with applicable laws and regulations.

7. **Delivery; Risk of Loss.** The Estimated Delivery Dates are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Agreement because of delays in executing this Agreement, changes requested by Customer, product availability and other events outside of ES&S's control. ES&S will notify Customer of such revisions 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 and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement for ES&S Equipment and Software have been paid by Customer.

8. **Warranty.**

a. **Equipment/ Software.** ES&S warrants that for a 1-year period (the "Warranty Period"), it will repair or replace any component of the Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. Any repaired or replaced item of Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Equipment or ES&S Software will become the property of ES&S. ES&S shall not be responsible for the repair or replacement of (i) consumable parts, such as batteries or protective coatings that are designed to diminish over time, (ii) cosmetic damage, including, but not limited to, screen cracks, scratches, dents and broken plastic or (iii) defects caused by normal wear and tear. All Equipment warranty services shall be provided at ES&S' designated location. This warranty is effective provided that (i) Customer notifies ES&S within three (3) business days of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (iii) the Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact or use which is not in accordance with instructions or specifications furnished by ES&S or causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders, epidemics, pandemics or outbreak of communicable disease, quarantines, national or

regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (iv) Customer has installed and is using the most recent Update provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product. Upon the expiration of the Warranty Period, the Customer shall be entitled to receive the Software Maintenance and Support Services described on Exhibit A, upon the payment of the applicable fees for such service.

b. **System.** ES&S warrants that the Equipment and ES&S Software will operate in conjunction with the third party items during the Warranty Period, provided that (i) Customer is using third party items which have been approved by ES&S in writing for use with the Equipment and ES&S Software, (ii) Customer has installed and is using the most recent Update provided to it by ES&S, and (iii) the third party items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, ES&S will repair or replace the item of Equipment or ES&S Software that is causing such breach to occur. Customer acknowledges that ES&S has merely purchased the third-party items for resale or rental to Customer, and that the proprietary and intellectual property rights to the third-party items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the third-party items, all of its rights and obligations with respect thereto flow from and to the Third Parties.

c. **Exclusive Remedies, IN THE EVENT OF A BREACH OF SUBSECTIONS 8(a) or 8(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTIONS, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

9. **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. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or ES&S Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment,

penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent Update provided to it, by ES&S or (z) Customer's election not to receive, or to terminate, the Software Maintenance and Support Services.

10. Proprietary Rights. Customer acknowledges and agrees as follows:

ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S. 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 not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Software. Further, 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 Equipment, the Software, the Documentation and training materials that are provided, and all permitted copies of the foregoing.

11. 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, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, 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.

12. Term; Termination. This Agreement is made as of the date it is executed by the last of the parties named on the Sales Order (the "Effective Date"). The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 calendar days after it receives written notification thereof from the non-breaching party.

13. Assignment. Except in the case of a reorganization of the assets or operation 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 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.

14. 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.

15. 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 calendar days, ES&S may suspend performance under this Agreement until such amount is paid. Any 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.

16. Additional Services; Changes. Unless otherwise stated on the Sales Order, Customer shall be responsible for all costs related to services entered into in separate agreements such as, but not limited to, election coding, data conversion costs and network set up and communication. Further, Customer is responsible for equipment and setup, and the costs associated with setup, of the network infrastructure for data transfer and application communication unless specified in separate agreements. In addition, in the event the Customer changes, makes updates, enhances or otherwise modifies the Customer's currently existing voter registration system and such changes, updates, enhancements or modifications results in ES&S having to re-perform any services provided under this Agreement, the Customer shall be responsible for any such additional charges; which shall be invoiced at ES&S' then current rates. Likewise, any Customer requested enhancements, modifications or changes to the Equipment or ES&S Software which ES&S agrees to provide, in its sole discretion, shall be set forth in separate change orders to the Agreement. Customer shall be responsible for the payment of all fees associated with such enhancements, modifications or changes made by ES&S.

17. Other. ES&S is providing Equipment, Software and services to Customer as an independent contractor, and shall not be deemed to be a state actor for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the Equipment, Software or services, but shall remain fully responsible for such performance. The provisions of Sections 1 - 6, 8(c), 9 - 11, 13, 14, 15(b) and the section 17 of these General Terms shall survive the termination of this Agreement, to the extent applicable.

EXHIBIT A
ES&S SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT SERVICES

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A shall be in effect from the date on which the Initial License Term expires until the first anniversary thereof (the "License Renewal Term"). The License Renewal Term shall automatically renew for an unlimited number of successive one year periods until this Exhibit A is terminated by the first to occur of (a) either party's election to terminate it upon expiration of the License Renewal Term or any renewal thereof, written notice of which election shall be given to the other party at least sixty (60) calendar days prior to such annual expiration date, (b) the date that is thirty (30) calendar days after either party notifies the other that the other has materially breached this Exhibit A, 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 A. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due ES&S hereunder.

2. **Fee.** In consideration for ES&S' agreement to provide the ES&S Software License and Software Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Software License and Software Maintenance and Support Fees set forth on Electronic Pollbook Sales Order. The ES&S Software license and Software Maintenance and Support Fees for the License Renewal Term are due on the date of the expiration of the Initial License Term. ES&S may increase the ES&S Software License and Software Maintenance and Support Fees for any renewal period by not more than 5% of the amount of the most recent fees paid by the Customer. The ES&S Software license and Software Maintenance and Support Fees for any renewal period shall be due and payable no later than thirty (30) days prior to the beginning of such renewal period. The ES&S Software license and Software Maintenance and Support Fee shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A or the Agreement. If Customer elects to license and 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 license and Software Maintenance and Support Fee for such license and services.

ARTICLE II
License of ES&S Software

1. **Grant of License.** During the License Renewal Term or any renewal thereof, ES&S shall grant to Customer a nonexclusive, nontransferable license to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the Equipment and ES&S Software. The license allows Customer to use the ES&S Software (in object code only) and the Documentation, in the course of operating the Equipment and solely for the purposes of managing the electronic poll book voter lists and voter registration process at each polling location in Customer's jurisdiction. The license granted in this does not permit Customer to use or access the source code for the ES&S Software.

2. **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; or
- 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, 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 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. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent).

3. **Term of License.** The license granted in Article II, Section 1 shall commence upon the expiration of the Initial License Term and receipt of payment by ES&S in accordance with Article I, Section 2 of this Exhibit A. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 1 or 2 of this Article II with respect to, such license. Upon the termination of the license granted in Section 1 of Article II 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.

ARTICLE III
ES&S SOFTWARE MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide maintenance and support services for the ES&S Software ("Software Maintenance and Support"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship.

2. **Updates.** During the Software Maintenance Term and any renewals thereof, ES&S shall continue to provide updates in accordance with any update schedule determined by ES&S.

3. **Reinstatement of ES&S License and Software Maintenance and Support Services.** If the License Renewal Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving ES&S' license and Software Maintenance and Support Services upon (a) notification to ES&S, and (b) payment of all fees which would have been due to ES&S had the ES&S' License Renewal Term not expired, plus a reinstatement charge.

4. **Conditions.** ES&S shall provide Software Maintenance and Support Services for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent Update provided to it by ES&S, (e) Customer's failure to notify ES&S within 24 hours after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. However, such Software Maintenance and Support Services shall not be provided at the Software Maintenance and Support Services Fees outlined in the Sales Order, but shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises.

5. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all ES&S License and Software Maintenance and Services Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered.

From: Cynthia Parker
Sent: Monday, August 8, 2022 12:45 PM
To: Anita Wray
Subject: RE: Grant Funds

In re: Authorization to Donate Equipment

At the request of Circuit Clerk Anita Wray, Mr. Banks did offer and Ms. Jones did second a motion to authorize Circuit Clerk Anita Wray to donate poll books to the county to be added to county inventory. The vote on the matter being as follows:

Supervisor Sheila Jones	Aye
Supervisor Trey Baxter	Aye
Supervisor Gerald Steen	Absent
Supervisor Karl Banks	Aye
Supervisor Paul Griffin	Aye

the matter carried by the unanimous vote of those present and the Circuit Clerk was and is hereby authorized.

SO ORDERED this the 3rd day of January, 2022.

Cynthia Parker
Chief Deputy Chancery Clerk/Board Secretary
Madison County Chancery Clerk
P O Box 404
Canton, MS 39046
(601) 855-5535
Fax: (601)855-5759
www.madison-co.com

From: Anita Wray <anita.wray@madison-co.com>
Sent: Friday, August 5, 2022 4:36 PM
To: Cynthia Parker <Cynthia.Parker@madison-co.com>
Subject: FW: Grant Funds

This is what I had replied to Shelton.

From: Anita Wray <anita.wray@madison-co.com>
Sent: Tuesday, December 21, 2021 11:02 AM
To: Shelton Vance <Shelton.Vance@madison-co.com>; Nason White <nason.white@madison-co.com>
Cc: Mike Espy - External <mike@mikespy.com>; Jay Hilliard <jay.hilliard@madison-co.com>
Subject: RE: Grant Funds

Thank you. Will have that to you by next board meeting.

Anita Wray
Madison County Circuit Clerk
P. O. Drawer 1626
Canton, MS 39046
601-859-4365 Office
601-859-8555 Fax
anita.wray@madison-co.com

From: Shelton Vance <Shelton.Vance@madison-co.com>
Sent: Tuesday, December 21, 2021 10:44 AM
To: Anita Wray <Anita.Wray@madison-co.com>; Na'Son White <Nason.White@madison-co.com>
Cc: Mike Espy <mike@mikespy.com>; Jay Hilliard <jay.hilliard@madison-co.com>
Subject: RE: Grant Funds

Anita,

This property will be accepted as donated property.

To do, a listing of equipment and its associated value should be presented to the Board.

Upon acceptance by the Board, the Inventory Clerk will determine the appropriate marking to be placed on the equipment.

SV

From: Anita Wray <Anita.Wray@madison-co.com>
Sent: Thursday, December 16, 2021 3:22 PM
To: Shelton Vance <Shelton.Vance@madison-co.com>; Na'Son White <Nason.White@madison-co.com>
Cc: Mike Espy <mike@mikespy.com>; Jay Hilliard <jay.hilliard@madison-co.com>
Subject: FW: Grant Funds

In light of this email from the State Auditor's office and the Opinions that are attached, I am requesting that you place county numbers on the new election poll books that have been purchased. Thanking you in advance.

Anita Wray
Madison County Circuit Clerk
P. O. Drawer 1626
Canton, MS 39046
601-859-4365 Office
601-859-8555 Fax
anita.wray@madison-co.com

From: Mark W. Johnson <Mark.Johnson@osa.ms.gov>
Sent: Wednesday, December 15, 2021 4:25 PM
To: Anita Wray <Anita.Wray@madison-co.com>
Subject: RE: Grant Funds

CAUTION! External Content. Please use caution when opening attachments and links. Do not provide your username and password if requested.

Section 23-15-135 provides, "The registration books of the several voting precincts of each county and the pollbooks heretofore in use shall be delivered to the registrar of the county, and they, together with the registration books and pollbooks hereafter made, shall be records of his office, and he shall carefully preserve the same as such; and after each election the pollbooks shall be speedily returned to the office of the registrar."

In an opinion to Pryor (December 23, 1992), the AG said, "The above quoted statutes clearly provide that the registration books and pollbooks are to be records of the county registrar and that they are to be kept in the registrar's office. Therefore, we know of no authority that would allow the registration books and pollbooks to be kept and maintained in a place that has not been lawfully designated as a part of the office of the circuit clerk/registrar. Therefore, it is the opinion of this office that the registration books and pollbooks are to remain in the office of the circuit clerk/registrar except when the pollbooks are being used in the conduct of an election."

Based on these authorities, I would have to say that the poll books, whether paper or electronic, are records of the county, to be maintained by the circuit clerk in her capacity as registrar.

In addition, your grant was, I believe, to the circuit clerk, not to you in your individual capacity. Note that the attached opinion's (Dyson, 10/25/95) last paragraph states, "It is our opinion that if the amount spent for supplies and equipment plus non-exempt fees exceeds the statutory cap then such supplies and equipment are public property and belong to the county." If your office exceeds the salary cap for the year, equipment purchased for your office from sources outside the county treasury would become county property.

I hope this is helpful,

Mark

Mark W. Johnson, CGFM, JD
Technical Assistance Division
Office of the Mississippi State Auditor
601-576-2656
1-800-321-1275

This is to be considered routine technical advice and not an opinion of law or an official advisory opinion of this office.

From: Anita Wray <Anita.Wray@madison-co.com>
Sent: Tuesday, December 14, 2021 5:09 PM
To: Mark W. Johnson <Mark.Johnson@osa.ms.gov>
Subject: Grant Funds

During the presidential election of 2020, I applied for and received the tech and civic life COVID-19 Response Grant. I had initially applied for the Grant to pay the salaries of the additional help I knew I would need during absentee voting in the Circuit Clerk's office. Once the election was over, I still had funds left over in the Grant that allowed me to purchase election equipment to assist and enhance future elections. I opted, along with the help of a few of my election commissioners, to purchase a high speed scanner and upgrade the poll books that Madison County had. I inventoried the old poll books and turned the list over to the inventory clerk so that the county could take them off the inventory

and do with them as they saw fit. I made an appointment with the inventory clerk to place new county inventory control numbers on the new election equipment. The day of the appointment, I received word that that would not happen due to the fact that the poll books belonged to the Circuit Clerk and not the county since the Circuit Clerk had purchased them from Grant funds. It has always been my understanding, according to statute, that election equipment belongs to the county and the Circuit Clerk is only custodian of the election equipment. Would you please clarify this as I have election equipment that needs to have county numbers placed on them. Thank you for your assistance.

Anita Wray

Madison County Circuit Clerk

P. O. Drawer 1626

Canton, MS 39046

601-859-4365 Office

601-859-8555 Fax

anita.wray@madison-co.com