



POLK COUNTY COMMISSIONERS COURT

August 9, 2005
10:00 A.M.

Polk County Courthouse, 3rd floor

Livingston, Texas

2005-075

NOTICE

Is hereby given that a regular meeting of the Polk County Commissioners Court will be held on the date stated above, at which time the following subjects will be discussed;

Agenda Topics

1. CALL TO ORDER.
 - Invocation
 - Pledges of Allegiance
2. PUBLIC COMMENTS.
3. INFORMATIONAL REPORTS.
4. CONSIDER APPROVAL OF MINUTES OF THE REGULAR MEETING OF JULY 26, 2005.
5. RECEIVE EFFECTIVE TAX RATE CALCULATION AND ANTICIPATED COLLECTION RATE FROM COUNTY TAX ASSESSOR COLLECTOR, MARION A. "BID" SMITH.
6. CONSIDER APPROVAL OF OFFERS TO PURCHASE TAX FORECLOSURE PROPERTY;
(PRECINCT 4) LOT 225, CRYSTAL LAKES #1, CAUSE #98-022, ACCT. #C2400008500.
7. CONSIDER APPROVAL OF AMENDMENT TO THE PRESCRIPTION DRUG PROGRAM AGREEMENT MANAGED BY SCRIPT CARE, INC. FOR THE COUNTY INDIGENT HEALTHCARE PROGRAM.
8. CONSIDER APPROVAL OF PRELIMINARY PLAT OF "NINE ACES ESTATES", A SUBDIVISION LOCATED IN PRECINCT 1, IN POLK COUNTY.
9. CONSIDER APPROVAL OF UPDATE TO THE MASTER STREET ADDRESS GUIDE (MSAG).
10. CONSIDER APPROVAL OF BUDGET REVISIONS, AS PRESENTED BY THE COUNTY AUDITOR.
11. CONSIDER APPROVAL OF BUDGET AMENDMENTS, AS SUBMITTED AND REVIEWED BY COURT APPOINTED COMMITTEE.
12. CONSIDER APPROVAL OF SCHEDULE OF BILLS.
13. CONSIDER APPROVAL OF PERSONNEL ACTION FORMS.

ADJOURN

By: John P. Thompson, County Judge

Posted: August 3, 2005

I hereby certify that the above Notice of Meeting of the Polk County Commissioners Court is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice in the Polk County Courthouse at a place readily accessible to the general public at all times on Wednesday, August 3, 2005 and that said Notice remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

BARBARA MIDDLETON, COUNTY CLERK

BY:

(Deputy)

FILED FOR RECORD

2005 AUG -3 A 9:27

BARBARA MIDDLETON
POLK COUNTY CLERK



August 9, 2005
10:00 a.m.

COMMISSIONERS COURT
of Polk County, Texas
County Courthouse, 3rd floor
Livingston, Texas

ADDENDUM to Posting # 2005-075

The following will serve to amend the Agenda of the Commissioners Court Meeting scheduled for August 9, 2005 at 10:00 A.M.

AMEND TO READ;

- 5. DISCUSSION OF EFFECTIVE TAX RATE CALCULATION AND ANTICIPATED COLLECTION RATE.

AMEND TO ADD;

- 14. CONSIDER APPROVAL OF RESOLUTION FOR "THE MOMENT" OF SILENCE IN POLK COUNTY, HONORING OUR VETERANS ON NOVEMBER 11, 2005 AT 11:00 A.M.
- 15. CONSIDER APPROVAL TO ADVERTISE FOR BIDS FOR CERTAIN ANNUAL COUNTY PURCHASES.
- 16. CONSIDER DESIGNATION OF VEHICLE REGISTRATION FEES FOR CALENDAR YEAR 2006.
- 17. CONSIDER SELECTION OF COUNTY VOTING SYSTEM TO BE PROCURED THROUGH HELP AMERICA VOTE ACT (HAVA) GRANT FUNDS AND AUTHORIZE COUNTY JUDGE TO EXECUTE CONTRACT PENDING LEGAL COUNSEL REVIEW.
- 18. RECEIVE AND TAKE ANY/ALL NECESSARY ACTION RELATING TO REQUEST OF SHERIFF'S DEPARTMENT FOR BUDGET AMENDMENT INCREASING FY2005 FUEL & OIL EXPENDITURE LINE ITEM.

Commissioners Court of Polk County, Texas

Dated: Friday, August 5, 2005

By: John P. Thompson, County Judge

I, the undersigned County Clerk, do hereby certify that the above Addendum to the Notice of Meeting of the Polk County Commissioners Court is a true and correct copy of said Addendum and that I posted a true and correct copy of said Addendum at the door of the Polk County Courthouse at a place readily accessible to the general public at all times on Friday, August 5, 2005 and that said Addendum remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

BARBARA MIDDLETON, COUNTY CLERK

BY Sarah Chance, Deputy

FILED FOR RECORD

2005 AUG -5 P 4:16

BARBARA MIDDLETON
POLK COUNTY CLERK

STATE OF TEXAS §

COUNTY OF POLK §

VOL 51 PAGE 879
DATE: AUGUST 9, 2005
REGULAR MEETING
Commissioner Smith - Absent
Commissioner Purvis - Absent

**COMMISSIONERS COURT
AGENDA POSTING #2005 - 075**

BE IT REMEMBERED ON THIS THE 9th DAY OF AUGUST, 2005
THE HONORABLE COMMISSIONERS COURT MET IN A "REGULAR" CALLED
MEETING WITH THE FOLLOWING OFFICERS AND MEMBERS PRESENT, TO WIT;
HONORABLE JUDGE JOHN P. THOMPSON, COUNTY JUDGE, PRESIDING.
BOB WILLIS-COMMISSIONER PCT#1, C.T. "TOMMY" OVERSTREET COMMISSIONER
PCT #4, BARBARA MIDDLETON - COUNTY CLERK & B.L. "BOB" DOCKENS - COUNTY
AUDITOR, THE FOLLOWING AGENDA ITEMS, ORDERS AND DECREES WERE DULY
MADE, CONSIDERED & PASSED.

1. WELCOME & CALLED TO ORDER BY JUDGE JOHN P. THOMPSON AT 10:00 A.M.
INVOCATION BY REV. LARRY BYRD OF JONES PRAIRIE BAPTIST CHURCH.
PLEDGES TO THE U.S. AND TEXAS FLAGS WERE LED BY JOE ROEDER.
2. PUBLIC COMMENTS: NONE
3. INFORMATIONAL REPORTS:
 - A. JUDGE THOMPSON REPORTED THAT THE AIR FORCE 147th FIGHTER WING UNIT
FROM ELLINGTON FIELD HAS BEEN DEPLOYED TO IRAQ. THEY ARE THE PLANES
THAT HAVE FLOWN OVER OUR FOURTH OF JULY CELEBRATION AT THE LAKE
EVERY YEAR. HE ALSO REPORTED THAT COMMISSIONER SMITH IS IN AUSTIN
FOR THE TAC POST LEGISLATIVE CONFERENCE AND COMMISSIONER PURVIS IS
HAVING MEDICAL TREATMENTS DAILY.
4. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO APPROVE
THE MINUTES OF REGULAR MEETING ON JULY 26, 2005.
ALL VOTING YES.
5. RECEIVED INFORMATION FROM MARION "BID" SMITH RELATING TO THE EFFECTIVE
TAX RATE CALCULATION. DISCUSSION ONLY.
NO ACTION TAKEN BY THE COURT.
6. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO APPROVE
OFFER TO PURCHASE TAX FORECLOSURE PROPERTY; PRECINCT #4,
LOT 225, CRYSTAL LAKE ESTATES #1, CAUSE #98-022, ACCT #C2400008500.
ALL VOTING YES.
7. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO APPROVE
THE AMENDMENT TO THE PRESCRIPTION DRUG PROGRAM AGREEMENT MANAGED
BY SCRIPT CARE, INC. FOR THE COUNTY INDIGENT HEALTHCARE PROGRAM.
ALL VOTING YES. (SEE ATTACHED)

8. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO APPROVE THE PRELIMINARY PLAT OF "NINE ACES ESTATES" A SUBDIVISION LOCATED IN PRECINCT #1, IN POLK COUNTY.
ALL VOTING YES.
9. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO APPROVE THE UPDATE TO THE MASTER STREET ADDRESS GUIDE (MSAG).
ALL VOTING YES. (SEE ATTACHED)
10. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO APPROVE THE BUDGET REVISIONS #2005-20, AS PRESENTED BY THE COUNTY AUDITOR.
ALL VOTING YES. (SEE ATTACHED)
11. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO APPROVE THE BUDGET AMENDMENTS #2005-20 (a), AS SUBMITTED AND REVIEWED BY COUNTY APPOINTED COMMITTEE.
ALL VOTING YES. (SEE ATTACHED)
12. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, APPROVAL AND PAYMENT OF BILLS, BY SCHEDULE INCLUDING ADDENDUM.
ALL VOTING YES. (SEE ATTACHED)

DATE	AMOUNT	CHECK NUMBERS
7/20/05	\$10,399.21	193971 - 194003
7/26/05	\$149,883.32	ACH 578
7/26/05	\$3,358.07	194004 - 194008
7/26/05	\$42,222.78	194009 - 194010
7/26/05	\$892.63	194011
7/29/05	\$3,360.31	ACH 579
7/29/05	\$67,442.54	ACH 580
7/29/05	\$216,220.75	ACH 581
7/29/05	\$62.81	ACH 582
7/29/05	\$2,640.43	ACH 583
7/29/05	\$114,156.86	ACH 584
7/29/05	\$1,378.97	194012 - 194015
7/29/05	\$118,861.49	194016
7/29/05	\$267.17	194017 - 194018
7/29/05	\$3,848.24	194019 - 194028
8/1/05	\$15,155.15	194029 - 194037
8/2/05	\$131,460.24	194038 - 194161

DATE	AMOUNT	CHECK NUMBERS
8/2/05	\$5,570.51	194162 - 194173
8/9/05	\$3,433.01	Addendum (to appear on future schedule)
TOTAL	\$890,614.49	

13. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO APPROVE THE PERSONNEL ACTION FORMS, REVISED LIST.
ALL VOTING YES. (SEE ATTACHED)
14. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO APPROVE THE RESOLUTION FOR "THE MOMENT" OF SILENCE IN POLK COUNTY HONORING OUR VETERANS ON NOVEMBER 11, 2005 AT 11:00 AM.
ALL VOTING YES. (SEE ATTACHED)
15. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, APPROVAL TO ADVERTISE FOR BIDS FOR CERTAIN ANNUAL COUNTY PURCHASES.
ALL VOTING YES.
16. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO DESIGNATE VEHICLE REGISTRATION FEES FOR CALENDAR YEAR 2006, REMAINING THE SAME AS PREVIOUS YEAR, WITH NO CHANGES.
ALL VOTING YES.
17. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO SELECT THE PROPOSAL FROM ELECTION SYSTEMS & SOFTWARE, INC. FOR ELECTRONIC VOTING EQUIPMENT TO BE PROCURED THROUGH HELP AMERICA VOTE ACT (HAVA) GRANT FUNDS AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE CONTRACT PENDING LEGAL REVIEW.
ALL VOTING YES. (SEE ATTACHED)
18. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO APPROVE THE REQUEST OF SHERIFF KENNETH HAMMACK FOR BUDGET AMENDMENT INCREASING FY2005 FUEL & OIL EXPENDITURE LINE ITEM BY \$15,000.00 FROM THE GENERAL FUND BALANCE.
ALL VOTING YES.

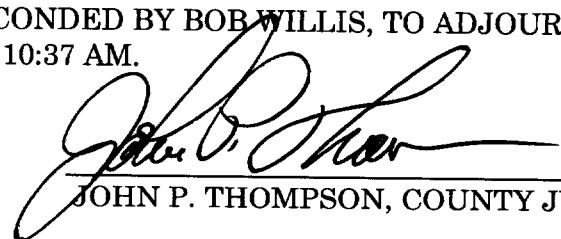
ADJOURN:

MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO ADJOURN COURT THIS 9th DAY OF AUGUST, 2005 AT 10:37 AM.
ALL VOTING YES.

ATTEST


BARBARA MIDDLETON, COUNTY CLERK

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JOHN P. THOMPSON, COUNTY JUDGE

COPY

Item #7

**Security Standards
Electronic Protected Health Information
Amendment to the HIPAA Business Associate Agreement**

This Amendment is entered into between Polk County (the "Subscriber"), group health plan(s) and Script Care, Ltd (SCL), (the "Business Associate"). The purpose of the amendment is to incorporate the final Security Standards in accordance with the federal regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

The Business Associate obligations set forth below are effective on the later of April 23, 2005 or April 23, 2006 for "small health plans" as defined under the Act.

The following new definitions were added to the Business Associate Agreement:

- Electronic Protected Health Information- means individually identifiable information that is transmitted by or maintained in electronic media as set forth in 45 C.F.R. 160.103.
- Security Incidents- means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an electronic information system.
- Termination on Breach of Security Standards- means a material breach or violation of the security obligations by SCL under the terms of the Business Associate Agreement.

The modified Business Associate Agreement will contain the following new section(s):

- SCL hereby agrees to implement policies and procedures to ensure the protection of electronic protected health information ("ePHI") that is created, received, maintained, or transmitted on behalf of the Covered Entity. These policies and procedures comply with all applicable administrative, physical, and technical safeguards, outlined within the Security Standards 45 CFR Part 164, to reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI.

SCL further agrees to ensure that its agents, subcontractors, and/or other parties who are allowed to access ePHI of the Covered Entity agree to comply with the applicable standards set forth by the Security Standards 45 CFR Part 164 to reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI.

SCL shall report to the Subscriber and Covered Entity any security incidents, as defined in 45 CFR Part 164.304 as the "attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interferences with system operations in an information system." Such incidents shall be reported to the Subscriber and Covered Entity as soon as practicable, but no later than ten (10) days from the date that the Business Associate becomes aware of the incident. A security incident may be considered a material breach under the Termination upon Breach of Security Standards provision of the Business Associate Agreement.

SCL agrees to comply with all other applicable requirements of the HIPAA Security Rule. Except as amended hereby, the original terms and conditions of the underlying Business Associate Agreement remain in full force and effect.

- Termination upon Breach of Security Standards

If the Subscriber in its sole discretion determines that SCL has engaged in an activity or practice that constitutes a material breach or violation of the security obligations under the Agreement, SCL shall take reasonable steps to cure the breach or end the violation, as applicable. If such steps are unsuccessful, Subscriber may terminate the Agreement.

IN WITNESS WHEREOF, the Subscriber, Covered Entity, and Script Care, Ltd. have executed this Amendment as of April 23, 2005.

SCRIPT CARE, LTD

By: Dustin Brown

Title: VP of Managed Care

Date: 6/7/2005

Polk County
SUBSCRIBER

By: John P. Thompson

Title: Polk County Judge

Date: August 9, 2005

Item #4

POLK COUNTY
 COMMISSIONERS COURT
 MSAG CHANGES
 08/09/2005

COMMISSIONERS COURT			
REQUEST APPROVAL OF THE FOLLOWING CHANGES TO THE MSAG.			
STREET	PCT	CITY ROAD	LOW HIGH MILEAGE
PINEY POINT	3	NO	100 233 0.1338
		CHANGE STREET NAME FROM MATADOR	COMMENTS

Approved by Commissioners Court
 August 9, 2005

Revision
AMENDMENT CHANGES BY FUND

FUND DESCRIPTION	INCREASE/DECREASE
010 GENERAL FUND	.00
015 ROAD & BRIDGE ADM	.00

#2005-20

THE PRECEDING LIST OF AMENDMENTS WAS REVIEWED AND APPROVED.

B. L. DOCKENS

COUNTY AUDITOR

JOHN P. THOMPSON

COUNTY JUDGE

B. L. Dockens

John P. Thompson

07/25/2005 09:12:19

REPORT OF GENERAL LEDGER **REVISIONS**
~~AMENDMENTS~~

GEL122 PAGE 1

ACCOUNT NUMBER	ACCOUNT NAME	DATE	AMDMT NUMBER	OLD BUDGET AMOUNT	AMENDED BUDGET AMOUNT	AMOUNT OF CHANGE	DESCRIPTION	CLK
2005 010-342-900	MISCELLANEOUS REVE	07/21/2005	2KSR20	18,593.83-	19,093.83-	500.00-	RECORD CK LIV.VOL.FIRE DEPT K	K
			TOTAL AMENDMENTS	1	TOTAL CHANGES	500.00-		
2005 010-456-315	OFFICE SUPPLIES	07/21/2005	2KSR20	1,000.00	1,487.44	487.44	MOVE FUNDS FROM TRAVEL;D.JO K	K
2005 010-456-427	TRAVEL/TRAINING	07/21/2005	2KSR20	875.00	387.56	487.44-	MOVE FUNDS TO OFC.SUPPLIES; K	K
	EXPENSE SUMMARY - JP #2		TOTAL AMENDMENTS	2	TOTAL CHANGES	.00		
2005 010-512-333	GROCERIES	07/25/2005	2KSR20	80,000.00	85,000.00	5,000.00	MOVE FUNDS FROM TRANSPORT/T K	K
2005 010-512-426	TRANSPORT	07/25/2005	2KSR20	20,000.00	15,000.00	5,000.00-	MOVE FUNDS TO GROCERIES;JUD K	K
	EXPENSE SUMMARY - JAIL		TOTAL AMENDMENTS	2	TOTAL CHANGES	.00		
2005 010-697-456	EQUIPMENT/PARTS/RE	07/21/2005	2KSR20	3,725.00	2,225.00	1,500.00-	MOVE FUNDS TO FEMA GRANT;MA K	K
2005 010-697-574	FEMA GRANT-EQUIPME	07/21/2005	2KSR20	18,000.00	19,500.00	1,500.00	MOVE FUNDS FROM PARTS/RPRS; K	K
2005 010-697-574	FEMA GRANT-EQUIPME	07/21/2005	2KSR20	19,500.00	20,000.00	500.00	RECORD CK LIV.VOL.FIRE DEPT K	K
			TOTAL AMENDMENTS	3	TOTAL CHANGES	500.00		

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REPORT OF GENERAL LEDGER AMENDMENTS

REVISIONS

GEL122 PAGE

2

ACCOUNT NUMBER	ACCOUNT NAME	DATE	AMDT NUMBER	OLD BUDGET AMOUNT	AMENDED BUDGET AMOUNT	AMOUNT OF CHANGE	DESCRIPTION	CLK
2005 010-402-400	DEB-OPERATING	07/27/2005	2K5R20	5,000.00	4,990.00	10.00-	MOVE FUNDS TO GAME WARDEN,N K	
2005 010-402-410	GAME WARDEN-OPERAT	07/27/2005	2K5R20	1,200.00	1,210.00	10.00	MOVE FUNDS FROM DPG,N.BOWEN K	
	EXPENSE SUMMARY - STATE LAW ENF			TOTAL AMENDMENTS 2	TOTAL CHANGES	.00		
2005 010-512-391	MEDICAL SERVICES	07/28/2005	2K5R20	91,800.00	91,500.00	300.00-	MOVE FUNDS TO MEDICAL SUPPL K	
2005 010-512-392	MEDICAL-SUPPLIES	07/28/2005	2K5R20	7,200.00	7,500.00	300.00	MOVE FUNDS FROM MEDICAL SER K	
	EXPENSE SUMMARY - JAIL			TOTAL AMENDMENTS 2	TOTAL CHANGES	.00		
2005 010-560-300	UNIFORMS	07/28/2005	2K5R20	15,355.32	15,555.32	200.00	MOVE FUNDS FROM FINGERPRINT K	
2005 010-560-336	FINGERPRINT SUPPLI	07/28/2005	2K5R20	2,500.00	2,200.00	300.00-	MOVE FUNDS TO OTHER LINE,SH K	
2005 010-560-336	FINGERPRINT SUPPLI	07/28/2005	2K5R20	2,200.00	1,200.00	1,000.00-	MOVE FUNDS TO TIRRES,SHERIFF K	
2005 010-560-354	TIRE/TUBES	07/28/2005	2K5R20	7,500.00	8,500.00	1,000.00	MOVE FUNDS FROM FINGERPRINT K	
2005 010-560-392	ANIMAL SHELTER	07/28/2005	2K5R20	5,600.00	5,700.00	100.00	MOVE FUNDS FROM FINGERPRINT K	
	EXPENSE SUMMARY - SHERIFF DEPT			TOTAL AMENDMENTS 5	TOTAL CHANGES	.00		
2005 015-369-400	CULVERT/MATERIAL R	08/02/2005	2K5R20	192,943.56-	197,943.56-	5,000.00-	RECORD CK LAKESIDE VILLAGE; K	
				TOTAL AMENDMENTS 1	TOTAL CHANGES	5,000.00-		
2005 015-613-000	PRECINCT #3-PERM R	07/27/2005	2K5R20	87,958.87	86,458.87	1,500.00-	MOVE FUNDS TO PCT 3 CONST M K	
	PRECINCT#3-PERM RD EXP SUMMARY			TOTAL AMENDMENTS 1	TOTAL CHANGES	1,500.00-		
2005 015-620-624	PRECINCT #4 PERMAN	08/02/2005	2K5R20	367,787.10	372,787.10	5,000.00	RECORD CK LAKESIDE VILLAGE; K	
	PERMANENT ROAD EXPENDITURES			TOTAL AMENDMENTS 1	TOTAL CHANGES	5,000.00		
2005 015-622-105	SALARIES	08/01/2005	2K5R20	210,151.84	208,151.84	2,000.00-	MOVE FUNDS TO P/T SALARY,B. K	
2005 015-622-108	SALARY - PART TIME	08/01/2005	2K5R20	744.33	2,744.33	2,000.00	MOVE FUNDS FROM SALARY,B.SM K	
	PRECINCT #2 - ROAD & BRIDGE			TOTAL AMENDMENTS 2	TOTAL CHANGES	.00		
2005 015-623-315	OFFICE SUPPLIES	08/01/2005	2K5R20	1,100.00	1,450.00	350.00	MOVE FUNDS FROM SUPPLIES,B. K	
2005 015-623-337	MATERIAL/SUPPLIES	08/01/2005	2K5R20	10,271.69	9,931.69	350.00-	MOVE FUNDS TO OFC SUPPLIES; K	
2005 015-623-339	CONSTRUCTION CONTR	07/27/2005	2K5R20	24,992.45	26,492.45	1,500.00	MOVE FUNDS FROM PCT 3 PERM K	
2005 015-623-339	CONSTRUCTION CONTR	07/27/2005	2K5R20	26,492.45	24,992.45	1,500.00-	MOVE FUNDS TO TIRRES,B.PURVI K	
2005 015-623-354	TIRRES/TUBES	07/27/2005	2K5R20	13,300.00	14,800.00	1,500.00	MOVE FUNDS FROM CONST MATER K	
				TOTAL AMENDMENTS 5	TOTAL CHANGES	1,500.00		

AMENDMENT CHANGES BY FUND

#2005-20(A)

FUND DESCRIPTION	INCREASE/DECREASE
010 GENERAL FUND	25,745.21
011 HOTEL OCCUPANCY TAX FUND	3,320.87
015 ROAD & BRIDGE ADM	201,055.00
090 DEED FORESTORY FUND	8,723.14

THE PRECEDING LIST OF AMENDMENTS WAS REVIEWED AND APPROVED.

B. L. DOCKENS

COUNTY AUDITOR

JOHN P. THOMPSON

COUNTY JUDGE

John P. Thompson

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08/09/2005 11:43:05

REPORT OF GENERAL LEDGER AMENDMENTS

GH1122 PAGE 1

ACCOUNT NUMBER	ACCOUNT NAME	DATE	AMOUNT NUMBER	OLD BUDGET AMOUNT	AMENDED BUDGET AMOUNT	AMOUNT OF CHANGE	DESCRIPTION	CLX
2005 010-401-475	CAPITAL TRIAL COST	08/09/2005	2K5A20	.00	3,085.23	5,085.23	AMEND FOR ATTY FEES FOR PEN K	K
	EXPENSE SUMMARY - COMM COURT							
	TOTAL AMENDMENTS			1	3,085.23	5,085.23		
2005 010-512-315	OFFICE SUPPLIES	08/09/2005	2K5A20	4,000.00	3,200.00	1,200.00	AMEND FOR UNBUDGETED EXPEND K	K
2005 010-512-314	PAPER/STANDARD SUPPLY	08/09/2005	2K5A20	18,700.00	21,700.00	3,000.00	AMEND FOR UNBUDGETED EXPEND K	K
2005 010-512-453	RODIPMENT REPAIRS	08/09/2005	2K5A20	5,000.00	5,500.00	1,500.00	AMEND FOR UNBUDGETED EXPEND K	K
	EXPENSE SUMMARY - JAIL							
	TOTAL AMENDMENTS			3	5,700.00	5,700.00		
2005 010-560-330	TUEL & OIL	08/09/2005	2K5A20	85,000.00	100,000.00	15,000.00	AMEND FOR SHERIFF REQUEST P K	K
	EXPENSE SUMMARY - SHERIFF DEPT							
	TOTAL AMENDMENTS			1	15,000.00	15,000.00		
2005 011-401-489	PRO-RATA HOTEL TAX	08/09/2005	2K5A20	6,300.00	3,620.87	3,320.87	AMEND FOR JULY 4TH EXPENSES K	K
	TOTAL AMENDMENTS			1	3,620.87	3,320.87		
2005 015-423-571	ROAD MAINTENANCE/ROD	08/09/2005	2K5A20	595,224.95	774,374.85	179,150.00	AMEND FOR NET PURCHASE 2 MO K	K
2005 015-623-575	CAPITAL OUTFLAY-SRI	08/09/2005	2K5A20	47,181.00	63,086.00	21,905.00	AMEND FOR PORK ROAD CURBENT K	K
	PRRINCT #3 EXPENSE SUMMARY							
	TOTAL AMENDMENTS			2	241,055.00	241,055.00		
2005 090-476-439	DISTRICT ATTY ACCT	08/09/2005	2K5A20	13,977.80	22,760.94	8,783.14	AMEND FOR LEGAL FEES	K
	TOTAL AMENDMENTS			1	8,783.14	8,783.14		

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	8,937.45
015	ROAD & BRIDGE ADM	548.56
049	DISTRICT ATTY HOT CHECK FUND	171.48
051	AGING	30.52
088	JUDICIARY FUND	711.20
TOTAL OF ALL FUNDS		10,399.21

193971-194003

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS

COUNTY AUDITOR

B. L. Dockens

JOHN P. THOMPSON

COUNTY JUDGE

John P. Thompson

SCHEDULE OF BILLS BY FUND

ACH 578

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	15,490.00
088	JUDICIARY FUND	134,393.32
	TOTAL OF ALL FUNDS	149,883.32

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS

COUNTY AUDITOR

B. L. Dockens

JOHN P. THOMPSON

COUNTY JUDGE

John P. Thompson

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	2,792.20
011	HOTEL OCCUPANCY TAX FUND	30.94
015	ROAD & BRIDGE ADM	67.73
051	AGING	467.20
	TOTAL OF ALL FUNDS	3,358.07

194004-194008

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS

COUNTY AUDITOR

B. L. Dockens

JOHN P. THOMPSON

COUNTY JUDGE

John P. Thompson

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	19,991.50
088	JUDICIARY FUND	22,231.28
	TOTAL OF ALL FUNDS	42,222.78

194009-194010

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS

COUNTY AUDITOR

B. L. Dockens

JOHN P. THOMPSON

COUNTY JUDGE

John P. Thompson

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	892.63

TOTAL OF ALL FUNDS	892.63

CK # 194011

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS B. L. Dockens

COUNTY AUDITOR _____

JOHN P. THOMPSON John P. Thompson

COUNTY JUDGE _____

Part of Addendum

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	73.27-
101	ADULT SUPERVISION	3,433.58

	TOTAL OF ALL FUNDS	3,360.31

ACT 579

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*

COUNTY AUDITOR _____

JOHN P. THOMPSON *John P. Thompson*

COUNTY JUDGE _____

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	42,838.73
015	ROAD & BRIDGE ADM	10,208.13
027	SECURITY	310.79
049	DISTRICT ATTY HOT CHECK FUND	538.70
051	AGING	979.91
083	MUSEUM OPERATING FUND	82.13
101	ADULT SUPERVISION	9,086.43
185	CCAP - JUVENILE PROBATION	3,397.72
TOTAL OF ALL FUNDS		67,442.54

Acct 580

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*
COUNTY AUDITOR _____
JOHN P. THOMPSON _____
COUNTY JUDGE *John P. Thompson*

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	134,648.38
015	ROAD & BRIDGE ADM	36,107.79
027	SECURITY	1,267.86
049	DISTRICT ATTY HOT CHECK FUND	1,481.73
051	AGING	4,126.27
083	MUSEUM OPERATING FUND	345.92
101	ADULT SUPERVISION	26,958.41
185	CCAP - JUVENILE PROBATION	11,284.39
TOTAL OF ALL FUNDS		216,220.75

ACH 581

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*
COUNTY AUDITOR _____
JOHN P. THOMPSON _____
COUNTY JUDGE *John P. Thompson*

SCHEDULE OF BILLS BY FUND

ACH 582

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	62.81

TOTAL OF ALL FUNDS	62.81

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*

COUNTY AUDITOR _____

JOHN P. THOMPSON _____

COUNTY JUDGE *John P. Thompson*

SCHEDULE OF BILLS BY FUND

Acct 583

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	2,124.59
015	ROAD & BRIDGE ADM	515.84
TOTAL OF ALL FUNDS		2,640.43

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*

COUNTY AUDITOR _____

JOHN P. THOMPSON *John P. Thompson*

COUNTY JUDGE _____

SCHEDULE OF BILLS BY FUND

ACH 584

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	72,312.90
015	ROAD & BRIDGE ADM	18,356.20
027	SECURITY	553.24
049	DISTRICT ATTY HOT CHECK FUND	842.52
051	AGING	1,984.21
083	MUSEUM OPERATING FUND	178.50
101	ADULT SUPERVISION	13,807.01
185	CCAP - JUVENILE PROBATION	6,122.28
TOTAL OF ALL FUNDS		114,156.86

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*
 COUNTY AUDITOR _____
 JOHN P. THOMPSON *John P. Thompson*
 COUNTY JUDGE _____

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	1,078.97
015	ROAD & BRIDGE ADM	270.00
027	SECURITY	30.00
TOTAL OF ALL FUNDS		1,378.97

194012-194015

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*

COUNTY AUDITOR _____

JOHN P. THOMPSON *John P. Thompson*

COUNTY JUDGE

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	89,295.46
015	ROAD & BRIDGE ADM	21,353.05
027	SECURITY	494.32
049	DISTRICT ATTY HOT CHECK FUND	494.32
051	AGING	988.64
101	ADULT SUPERVISION	494.32
185	CCAP - JUVENILE PROBATION	5,741.38
TOTAL OF ALL FUNDS		118,861.49

CK# 194016

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS B. L. Dockens
COUNTY AUDITOR _____
JOHN P. THOMPSON _____
COUNTY JUDGE John P. Thompson

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	109.20
015	ROAD & BRIDGE ADM	84.70
101	ADULT SUPERVISION	73.27
TOTAL OF ALL FUNDS		267.17

194017-194018

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*

COUNTY AUDITOR _____

JOHN P. THOMPSON *John P. Thompson*

COUNTY JUDGE _____

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	2,314.90
015 ROAD & BRIDGE ADM	855.77
051 AGING	677.57

TOTAL OF ALL FUNDS	3,848.24

194019-194028

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*
COUNTY AUDITOR _____
JOHN P. THOMPSON _____
COUNTY JUDGE *John P. Thompson*

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	15,155.15

TOTAL OF ALL FUNDS	15,155.15

194029-194037

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*

COUNTY AUDITOR _____

JOHN P. THOMPSON _____

COUNTY JUDGE *John P. Thompson*

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	61,698.85
015	ROAD & BRIDGE ADM	56,455.34
027	SECURITY	34.18
040	LAW LIBRARY FUND	1,466.57
049	DISTRICT ATTY HOT CHECK FUND	520.81
051	AGING	1,701.35
090	DRUG FORFEITURE FUND	8,783.14
093	CO CLERK RECORDS MGMT FUND	800.00
TOTAL OF ALL FUNDS		131,460.24

194038-194161

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS *B. L. Dockens*
COUNTY AUDITOR _____
JOHN P. THOMPSON *John P. Thompson*
COUNTY JUDGE _____

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	5,570.51

TOTAL OF ALL FUNDS	5,570.51

194162 - 194173

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

B. L. DOCKENS

B. L. Dockens

COUNTY AUDITOR

JOHN P. THOMPSON

COUNTY JUDGE

John P. Thompson

ADDENDUM

VOL 51 PAGE 909

SCHEDULE OF BILLS FOR
AUG 09, 2005
FY2005

BARBEE, JAY	\$	476.15	FIRE MARSHALL
GENERAL FUND	\$	146.20	FIRE MARSHALL
GENERAL FUND	\$	226.83	MAINT CUSTODIAL
GENERAL FUND	\$	47.30	EMERG. MGMT.
GENERAL FUND	\$	524.82	DISTRICT ATTY.
GENERAL FUND	\$	95.03	TAX OFFICE
HAMMACK, KENNETH	\$	388.47	SHERIFF DEPT
INTERATIONAL PAPER CO	\$	686.00	R&B#4
STATE BAR OF TEXAS	\$	235.00	COUNTY COURT @ LAW
WARD, CLINT	\$	99.99	REFUND CHILD SUPPORT
ZEIGLER, BOB	\$	507.22	COMMISSIONERS COURT
TOTAL	\$	<u>3,433.01</u>	



COPY

Item #13

DATE: JULY 27 THROUGH AUGUST 9, 2005

NO.	EMPLOYEE	DEPT	JOB DESCRIPTION	TYPE OF EMPLOYMENT	GROUP STEP & WAGE	ACTION TAKEN
(2)	MARIO G. FISCAL	ROAD & BRIDGE PRECINCT # 3	108 - HEAVY EQUIPMENT OPERATOR	REGULAR FULL-TIME	16/01 \$23,603.51	NEW HIRE EFFECTIVE 08/15/2005
(3)	DAVID E. BUTCHER	JAIL	1055 - CORRECTIONS OFFICER	LABOR POOL (-900)	13/(01) \$9.79/Hr	RECLASSIFY TO JAIL, REG FT, 1055 - CORRECTIONS OFFICER, (1301) (20,353.23) EFFECTIVE 08/10/2005
(4)	JOSEPH LYNN FOXWORTH	SHERIFF	1037 - DEPUTY SHERIFF (PATROL)	REGULAR FULL-TIME	17/01 \$24,798.44	NEW HIRE EFFECTIVE 08/15/2005
(5)						
(6)						
(7)						
(8)						
(9)						
(10)						
(11)						
(12)						
(13)						
(14)						
(15)						
(16)						
(17)						
(18)						
(19)						
(20)						
(21)						
(22)						
(23)						

Add

Item #14



RESOLUTION

Supporting "The Moment" of Silence in Polk County
On November 11, 2005 at 11:00 a.m.

WHEREAS, the freedom and liberties enjoyed by the citizens of this great Nation were won by the Veterans of our Armed Forces and continue to be protected by those currently serving in our military; and

WHEREAS, we must honor and never forget the sacrifices of these veterans and military personnel who fought then and fight today with full measure of their valor and loyalty to protect our country; and

WHEREAS, the eleventh hour of the eleventh day in the eleventh month symbolizes the moment in history when World War I ended and has hence forth been recognized as the time when freedom and peace was returned and has served as a time to honor those responsible for preserving that freedom and peace; and

WHEREAS, Polk County supports and will participate in "The Moment" of Silence in Polk County, Texas on November 11, 2005 at 11:00 a.m. to express our admiration, gratitude and respect for our Veterans and those presently serving our Country in every branch of the Armed Forces by pausing in silence at that historical moment.

NOW, THEREFORE, we, The Commissioners Court of Polk County, Texas do hereby recognize November 11, 2005 at 11:00 a.m. as

"THE MOMENT" of Silence in Polk County, Texas

FURTHER, we urge our officials, employees and all citizens to be a part of this memorable event.

SIGNED AND RESOLVED, this 9th day of August, 2005.

COPIED

John P. Thompson, County Judge
Polk County, Texas

Attest:

Barbara Middleton, County Clerk

(seal)

Item #17

**ELECTION SYSTEMS & SOFTWARE, INC.
VOTER TABULATION SYSTEM AND SERVICES AGREEMENT**

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

BETWEEN: Election Systems & Software, Inc., a Delaware corporation ("ES&S");

AND: Polk County, Texas

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

RECITALS:

A. Customer has agreed to purchase/license voter tabulation equipment and related software and services from ES&S for use in Polk County, TX (the "Jurisdiction"). The terms and conditions under which such equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

Exhibit A (Pricing Summary)

Exhibit B (ES&S Equipment Description and Pricing)

Exhibit C (ES&S Software Description and Pricing)

Exhibit D (Election Support Services)

Exhibit E (Hardware and Software Maintenance and Support Services (Post-Warranty Period))

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Texas**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, INC.
11208 John Galt Boulevard
Omaha, NE 68137
Fax No.: (402) 970-1291

[Signature]
Signature

VP of Finance
Name (Printed or Typed)

Ronald J. Jablonski
Title

8/16/05
Date

POLK COUNTY, TEXAS
101 W Church Street - P.O. Drawer 2119
Livingston, TX 77351
Fax No.: (936) 327-6874

[Signature]
Signature

John P. Thompson
Name (Printed or Typed)

County Judge
Title

11/30/05
Date

(approved by Commissioners Court 8/9/05)

**GENERAL TERMS
ARTICLE 1
DEFINITIONS**

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.
- b. "Equipment" means ES&S Equipment.
- c. "ES&S Equipment" means ES&S' proprietary hardware or other equipment.
- d. "ES&S Hardware Maintenance Services" and "ES&S Software Maintenance and Support" means those services described on Exhibit E.
- e. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Customer under this Agreement, unless licensed pursuant to a separate written agreement.
- f. "Software" means ES&S Software.

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

2.1 **Purchase Terms.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment described on Exhibit B. The payment terms for the ES&S Equipment are set forth on Exhibit A. Title to the Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on Exhibit A for the ES&S Equipment, ES&S Software.

2.2 a. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses to use the ES&S Software, described on Exhibit C, and ES&S' firmware, which is delivered as part of the ES&S Equipment ("ES&S Firmware"), and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment. The licenses allow Customer to use and copy the ES&S Software and ES&S Firmware (in object code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction. The licenses granted in this Section 2.2 do not permit Customer to use the source code for the ES&S Software or ES&S Firmware.

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

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

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

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

iv. 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 registered or common law proprietary intellectual property rights (e.g., copyright, trademark or patent), including, but not limited to, any ballot shells or ballot code stock.

2.3 **License Fees.** In consideration for ES&S' grant of the license for the ES&S Software described in Section 2.2(a), Customer shall pay ES&S the ES&S Software License Fees set forth on Exhibit A. The consideration for ES&S' grant of the license for the ES&S Firmware is included in the cost of the ES&S Equipment.

2.4 **Term of Licenses.** The licenses granted in Section 2.2(a) shall commence upon the delivery of the ES&S Software described in Section 2.2(a). The licenses shall survive the termination of all other obligations of the parties under this Agreement and the termination of all Exhibits; provided, however, that ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2.2(b), 2.3, or 3.6 with respect to, such license. Upon the termination of either of the licenses granted in Section 2.2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.5 **Updates.** During the Warranty Period (as defined in Section 3.2(a) below), ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install the Updates or (ii) 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. Upon termination of the Warranty Period, Customer shall be entitled to receive the Software Maintenance and Support described on Exhibit E if it has so elected in Section B of the signature page to this Agreement.

ARTICLE 3 MISCELLANEOUS

3.1 **Delivery; Risk of Loss.** ES&S anticipates shipping the Equipment and Software identified on Exhibits B-C to Customer on or before the "Estimated Delivery Dates" listed on Exhibit A. The Estimated Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer, delays in certification, and other events. ES&S will notify Customer of revisions to the Estimated Delivery

Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the Equipment and 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 Equipment and Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer.

3.2 **Warranties.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a 3-year period with respect to the ES&S Equipment, and for a 1-year period with respect to the ES&S Software (the "Warranty Period"), it will repair or replace any component of the ES&S 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 shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, paper rolls, batteries, removable memory packs, PCMCIA cards, cancellation stamps, ink pads or red stripe pens. The Warranty Period will commence upon delivery. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of ES&S. This warranty is effective provided that (I) Customer promptly notifies ES&S of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S 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 ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, 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, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) Customer has installed and is using the most recent Update, or the second 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.

b. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF SUBSECTIONS 3.2(a) or 3.2(b), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, 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.

3.3 **Maintenance For ES&S Equipment During Warranty Period.** During the Warranty Period, subject to Customer's payment of the fees set forth on Schedule E-1, Customer is entitled to the Maintenance Services in accordance with Article II, Subsection 1(b) of Exhibit E. Upon the termination of the Warranty Period, Customer shall be entitled to receive the Hardware Maintenance Services described on Exhibit E.

3.4 **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) 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, or the second most recent Update, provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support.

3.5 **Taxes; Interest.** Customer shall provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, Customer shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.5, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

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

a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.

b. Customer shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.

c. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

3.7 **Indemnification.** Customer shall to the extent allowed by law indemnify and hold harmless ES&S from and against any and all Adverse Consequences arising out of or relating to the following:

a. Any Third Party Infringement Claim resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S;

b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any third party items;

c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer's Representatives; and

d. Customer's election not to receive, or to terminate, ES&S Hardware Maintenance Services or ES&S Software Maintenance and Support.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 3.7, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

3.8 **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.9 **Term; Termination.** This Agreement shall be effective on 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 thirty (30) days after it receives written notification thereof from the non-breaching party.

3.10 **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly

delayed. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.

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

3.12 **Disputes.**

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

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may declare the total amount remaining due under this Agreement to be immediately due and payable, enter the premises where the ES&S Equipment is located and remove them.

3.13 **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 Article 2 and Sections 3.2(b), 3.4-3.9, 3.11 and 3.12(b) of these General Terms shall survive the termination of this Agreement, to the extent applicable.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING SUMMARY**

Sale Summary:								
Description	Refer to	Amount						
ES&S Equipment	Exhibit B	\$237,375						
ES&S Software License Fees	Exhibit C	\$17,280						
Election Support Services	Exhibit D	\$30,715						
Shipping and Handling	Note 1	\$2,025						
Discount		(\$14,376)						
Total Net Sale		\$273,019						
Terms & Conditions:								
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.5. The cost of Shipping and Handling is included. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.</p>								
<p>Note 2: <u>Payment terms are as follows:</u> 75% of Total Net Sale Due Thirty (30) Calendar Days after Equipment Delivery 25% of Total Net Sale Due on the earlier of (a) Sixty (60) Calendar Days after Equipment Delivery, or (b) Customer's receipt of HAVA Funds</p>								
<p>Note 3: Services in excess of those set forth in <u>Exhibit D</u> shall be charged at the then current rates per day, including expenses.</p>								
<p>Note 4: ES&S anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:</p> <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: center;"><u>Equipment/Software</u></th> <th style="text-align: center;"><u>Estimated Delivery Date</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">ES&S Equipment</td> <td style="text-align: center;">September 2005</td> </tr> <tr> <td style="text-align: center;">ES&S Software</td> <td style="text-align: center;">September 2005</td> </tr> </tbody> </table>			<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	ES&S Equipment	September 2005	ES&S Software	September 2005
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>							
ES&S Equipment	September 2005							
ES&S Software	September 2005							
Warranty:								
ES&S Equipment – Warranty Period: October 2005 thru September 2008 <i>See Section 3.2 for Warranty terms and conditions</i>	3 years							
Ongoing Services:								
Description	Refer to	Annual Fee						
Maintenance Services during Warranty Period; Payment is due 30 days after invoice.	Section 3.3	See Schedule E-1 for Fees						
Post Warranty Hardware Maintenance Services Services commence in October 2008. Fees reflect a one-year term. Payment is due at the start of the maintenance period.	Exhibit E	\$5,612						
Post Warranty Software Maintenance & Support Services								
- ES&S Firmware	Exhibit E	\$2,125						
- All Other ES&S Software	Exhibit E	\$2,600						
Services commence in October 2006. Fees reflect a one-year term. Payment is due at the start of the maintenance period.								

**EXHIBIT B
ES&S EQUIPMENT DESCRIPTION AND PRICING**

QUANTITY	DESCRIPTION	TOTAL PRICE
60	15" iVotronic ADA Terminal with Booth, 128mb Flashcard, Supervisor PEB (Version 1.7), and Headset (Version 8.0.1.0)	\$179,700
1	15" iVotronic Supervisor Terminal with 128mb Flashcard, Supervisor PEB (Version 1.7), Power Supply, Power Cord, and Null Modem Cable (Version 8.0.1.0)	\$2,200
2	PEB Reader	\$700
30	Additional PEB (Version 1.7)	\$2,250
21	Printer Pack	\$13,650
2	Compact Flash Reader/Writer	Included
4	iVotronic Operations Manual	Included
1	Model 650 Scanner with Table, Start-up Kit, Dust Cover and Operations Manual (Version 1.2.0.0)	\$38,500
1	Okidata Printer	\$375
	TOTAL	\$237,375

**EXHIBIT C
ES&S SOFTWARE DESCRIPTION AND PRICING**

DESCRIPTION	NUMBER OF LICENSES
Unity Election System licensed pursuant to Section 2.2(a) of the General Terms:	
Data Manager (Version 7.2.1.0)	N/A
Ballot Image Manager (Version 7.2.0.0)	N/A
iVotronic Image Manager (Version 1.2.3.0)	N/A
Ballot on Demand with Okidata 9300DXN Ballot on Demand Printer	\$9,280
Hardware Programming Manager (Version 5.0.3.0)	N/A
Data Acquisition Manager (Version 5.0.3.1)	N/A
Reporting Manager (Version 6.4.3.3)	\$8,000
ES&S Firmware (see Notes 1 and 2 below)	1
Total License Fees (including all applicable Documentation)	\$17,280

Note 1: ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates.

Note 2: ES&S Firmware license fee included in the total cost of the ES&S Equipment.

**EXHIBIT D
ELECTION SUPPORT SERVICES**

1. **Term.** The services described herein shall be provided for the following elections (the "Elections"):

November 2005

2. **Services.** The election support services to be provided by ES&S, a description of such services and total fees are described below. Customer acknowledges that ES&S' fees for election support services are based on the descriptions listed in the table below, and that a change in the descriptions may require ES&S to change the fees charged to Customer. For purposes of ES&S' provision of Election Support Services under this Agreement, a "Service Day" shall mean the performance of any agreed upon Election Support Services on or off of Customer's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or portion thereof. By way of example, "ten Service Days" could be used by Customer through the provision of Election Support Services by one (1) ES&S employee, contractor or agent on each of ten (10) different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

Role/Function	Area of Work or Description	Primary Responsibility
Shipping Material	Dispose of shipping materials (boxes, packaging, etc.)	Customer
Training – DRE	ES&S will provide classroom-style training with hands-on practice with the DRE system. General operations, ballot tabulation procedures, log audit capability, reporting, backups and general maintenance procedures will be covered. Course participant manuals are included. Class size limited to 20.	ES&S
Training – Model 650 Scanner	ES&S will provide classroom-style training with hands-on practice using the Model 650 Scanner. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	ES&S
Training – Poll Worker Train – The-Trainer	ES&S agrees to conduct Poll Worker "Train the Trainer" classes. Class size is limited to 20. Manuals are provided (up to 20), and a master template for duplication for Poll Workers is included.	ES&S
Election Day Support	ES&S will provide software accumulation assistance on Election Day/Night of each contracted election.	ES&S
Project Management	A project manager appointed by ES&S shall be responsible for the overall planning, communication, management and coordination of ES&S Services. This person shall be the liaison for Customer with ES&S as it pertains to all products, services and obligations set forth in the contract.	ES&S
Training – Unity	A system overview that covers the modules licensed by Customer. Class size is limited to 10 and course participant manuals are included. (Customer will ensure participants have an appropriate level of technical experience – including intermediate skills in relational database administration).	ES&S
	Total Election Support Service Days: 20 Total Fees: \$26,000	

Role/Function	Area of Work or Description	Primary Responsibility
Installation – Model 650 Scanner	ES&S will inspect the Model 650 Scanner at the customer's delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S
Installation – DRE Terminal	ES&S will inspect the iVotronic Terminal at the customer's delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	ES&S
	Total Installation Fees: \$4,715	

[END OF EXHIBIT D]

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

**ARTICLE I
GENERAL**

1. **Term; Termination.** This Exhibit E shall be in effect from the date on which the Warranty Period expires until the first anniversary thereof (the "Hardware Maintenance Term"). The Hardware Maintenance Term shall automatically renew for an unlimited number of successive one year periods until this Exhibit E is terminated by the first to occur of (a) Customer's election to terminate it at any time, notice of which election shall be given to ES&S at least sixty (60) days prior to the termination date, (b) the date that is thirty (30) days after either party notifies the other that the other has materially breached this Exhibit E, and the breaching party fails to cure such breach within such 30-day period, or (c) the date that is thirty (30) days after Customer fails to pay any amount due ES&S under this Exhibit E. The termination of this Exhibit E shall not relieve Customer of its liability to pay any amounts due ES&S hereunder.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software Maintenance and Support under this Exhibit E, Customer shall pay to ES&S the Hardware Maintenance and Software Maintenance Fees set forth on Schedule E1 for the initial Term and each renewal period. The Hardware Maintenance and Software Maintenance Fees for the initial Term are due on the date of the expiration of the Warranty Period. ES&S may increase the Hardware Maintenance and Software Maintenance Fees for a renewal period by not more than 5% of the amount of the most recent Fees paid by Customer. The Hardware Maintenance and Software Maintenance Fees for any renewal period shall be due and payable no later than thirty (30) days prior to the beginning of such renewal period. The Software Maintenance Fee shall be comprised of (i) a fee for the Software Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit E or the Agreement. If Customer elects to receive Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, ES&S will charge an incremental Software Maintenance Fee for such services.

**ARTICLE II
HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Exhibit E for the ES&S Equipment listed on Schedule E1 (the "Products") shall be subject to the following terms and conditions:

a. **Inspection.** If Customer has elected not to receive Hardware Maintenance Services under this Exhibit E for a period of twelve (12) months or more, ES&S may require Customer to allow it to inspect the Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are fit for the ordinary purposes for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published ES&S rate plus ES&S' Out-of-Pocket Expenses, and shall be due from Customer within thirty (30) days of its receipt of ES&S'

invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as ES&S deems reasonable and necessary to restore such Product(s) to Normal Working Condition, at Customer's expense with respect to the cost of any parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s). For purposes of this Exhibit E, "Out-Of-Pocket Expenses" shall mean all travel, meal and lodging expenses incurred by ES&S employees or authorized representatives ("ES&S Representatives") who are required to travel to Customer's Designated Location to provide services. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services. Customer's Designated Location is specified on Schedule E1.

b. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each twelve (12) months during the Hardware Maintenance Term or any renewal thereof. Customer may request that Routine Maintenance Services be performed more than once during any such 12-month period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule E1 and shall be due within thirty (30) days after invoice. Routine Maintenance Services shall include cleaning, lubrication and calibration services. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to one or more Products. The Routine Maintenance Services will be provided either at Customer's Designated Location or at an ES&S-designated depot facility ("Depot"), as elected by Customer on Schedule E1. Customer shall pay all costs associated with shipping Product(s) to a Depot, including insurance.

c. **Remedial Maintenance Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the Product to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(c)(i) are referred to herein as "Remedial Maintenance Services". ES&S shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial Maintenance Services are required for ten (10) or more Products at any given time, Customer may elect to have them provided at its Designated Location; provided, further, that all Remedial Maintenance Services provided for central count equipment shall be provided at Customer's Designated Location. Customer acknowledges that Product(s) identified on Schedule E1 as "depot repair only" may only be repaired at a Depot. Customer shall pay all costs associated with shipping Product(s) to a Depot, including insurance.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control

of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, or if Customer does not notify ES&S within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Remedial Maintenance Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Remedial Maintenance Services.

iii. **Timing.** The date(s) on which any Remedial Maintenance Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services that are provided within 48 hours after Customer notifies ES&S of the need therefor), and such emergency Remedial Maintenance Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Schedule E1.

iv. **Loaner Unit.** At Customer's request, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 1(c)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

d. **Exclusions.** ES&S has no obligation under this Exhibit E to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including printer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads or red stripe pens, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the Hardware Maintenance Term or renewal period for which such fee was paid and the denominator of which is the total number of days in such Hardware Maintenance Term.

e. **Sole Provider; Access.** Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as a Hardware Maintenance Term is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

f. **Storage.** When not in use, Customer shall properly store the Products in accordance with the storage requirements established in the Documentation.

ARTICLE III **SOFTWARE**

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 Software Maintenance and Support.** If the Software Maintenance Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees which would have been due to ES&S had the Software Maintenance Term not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support.

4. **Conditions.** ES&S shall not provide Software Maintenance and Support 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, riots, acts of war, terrorism or insurrection, 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, or the second 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. Any such Software Maintenance and Support 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 E, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance 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 E. 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 by this Agreement.

**Schedule E1
DESCRIPTION OF PRODUCTS**

HARDWARE

Year	Qty	Description (Note: *** indicates Depot Repair Only Products)	Maintenance Fee Per Unit, Per Year	Maintenance Fee In Total
Optional Preventative Maintenance During Warranty Period				
Warranty Period – Yr 1	61	iVotronic Terminal	\$85	\$5,185
	1	Model 650 Scanner	\$2,600	\$2,600
Warranty Period – Yr 2	61	iVotronic Terminal	\$85	\$5,185
	1	Model 650 Scanner	\$2,600	\$2,600
Warranty Period – Yr 3	61	iVotronic Terminal	\$88	\$5,368
	1	Model 650 Scanner	\$2,704	\$2,704
Post-Warranty Preventative Maintenance				
First Post-Warranty Year	61	iVotronic Terminal	\$92	\$5,612
First Post-Warranty Year	1	Model 650 Scanner	\$2,812	\$2,812
Second Post-Warranty Year	61	iVotronic Terminal	\$96	\$5,856
Second Post-Warranty Year	1	Model 650 Scanner	\$2,924	\$2,924

Note 1: The Per Unit Fees for more than one Maintenance event in a 12-month period, shall be 90% of the then current maintenance fee per unit.

Note 2: The surcharge for Emergency Remedial Maintenance Services shall be 150% of the then current maintenance fee per unit.

Note 3: Location of Services

- Customer's Designated Location (for Preventative Maintenance)
- Depot (For Warranty Period Remedial Maintenance)

SOFTWARE

Year	First Month Applicable	Fee –ES&S Firmware	Fee- All Other ES&S Software
2006	October	\$2,125	\$2,600
2007	October	\$2,198	\$2,730
2008	October	\$2,271	\$2,860
2009	October	\$2,345	\$2,990

