

COUNTY CLERK

Agenda Item Number 10

*Brown County*

305 E. WALNUT STREET, ROOM 120  
P.O. BOX 23600  
GREEN BAY, WI 54305-3600

SANDRA L. JUNO  
COUNTY CLERK

PHONE (920) 448-4016 FAX (920) 448-4498

juno\_sl@co.brown.wi.us

January 8, 2014

Debbie Baenen  
Clerk  
Village of Allouez  
1900 Libal St.  
Green Bay WI 54301

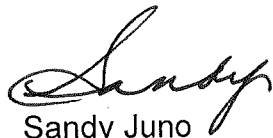
Dear Debbie:

Attached please find an "Intergovernmental Agreement Between Brown County and Participating Municipalities Thereof for Utilization of Election Tabulation Equipment" regarding the DS-200 election tabulation equipment, maintenance, and supplies.

7. Please sign the Agreement, retain a copy for your municipality, and return the **Original to the Brown County Clerk's Office** as soon as possible.
8. Likewise, in regard to Item 3(f) Municipal Insurance coverage of DS-200 tabulators, please list **Brown County Risk Manager, Barb West, as the loss payee and provide a copy of the insurance coverage to her.** Her address is PO Box 23600, Green Bay, WI 54305-3600.

Thank you for taking care of these requests promptly.

Sincerely,



Sandy Juno  
Brown County Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN BROWN COUNTY AND  
PARTICIPATING MUNICIPALITIES THEREOF FOR UTILIZATION OF ELECTION  
TABULATION EQUIPMENT**

This Intergovernmental Agreement ("Agreement") is being entered into on this sixth day of January, 2014, pursuant to Wis. Stat., §§ 66.0301 and 59.03, as amended from time to time, by and between Brown County, a body corporate organized and existing under the Laws of Wisconsin ("County"), and Village of Allouez, a County municipal unit of government participating in this Agreement, organized and existing under the Laws of Wisconsin ("Municipality"/"Municipalities"). The "County" and the "Municipality"/"Municipalities" will be collectively referred to herein as the "Parties").

**WHEREAS**, in 2010, an official meeting of the County Clerk and the clerks of the County Municipalities occurred whereby, in an effort to increase the efficiency and uniformity of the County's election voting system, they unanimously determined that replacing the aging election equipment and software ("Election System") being used throughout the County would benefit the public; and

**WHEREAS**, in furtherance thereof, a recommendation was made by the County's Director of Administration that the County purchase approximately One Hundred (100) DS200 Tabulators, along with all related hardware and software (collectively, "Tabulators"), from Election System & Software ("ES&S") to replace the aging Election System throughout the County to the benefit of the Municipalities participating herein; and

**WHEREAS**, on or around March 16, 2011, the Brown County Board of Supervisors, pursuant to among other enabling provisions, Wis. Stat., § 67.04, adopted "Initial Resolutions Authorizing The Issuance Of Not To Exceed \$10,440,001 Corporate Purpose General Obligation Bonds or Notes of Brown County, Wisconsin In One Or More Series At One Or More Times", authorizing the payment of costs for multiple projects deemed in the public purpose, including the acquisition of said Tabulators, the quoted cost of which equaled a sum of \$600,000.00; and

**WHEREAS**, following said authorization, the County's actual purchase of the Tabulators was initially delayed pending the necessary certification of ES&S from the Elections Administration Commission and the Wisconsin Government Accountability Board under Wis. Stat., § 5.91, the conditional certification of which was granted in August of 2013 and which shall become final contingent upon a successful audit of the Tabulators following the Spring, 2014 elections; and

**WHEREAS**, in October of 2013, the County entered into a contract with ES&S to purchase its Tabulators, the total purchase price of which was covered by the County, absent contribution from the Municipalities benefitting therefrom. A copy of said contract (hereinafter "Contract") is attached hereto as Exhibit "A" and incorporated herein by reference.

**NOW THEREFORE**, in consideration of the above premises and mutual covenants of the Parties hereto, the receipt and sufficiency of which is acknowledged by each of the Parties, the County and Municipalities agree as follows:

1. Purpose: The Parties hereto agree that it is in the interest of the public to operate one unified vote counting and reporting system throughout the County and, in being consistent therewith, the County purchased, through Contract with ES&S, Tabulators for all Municipalities to use at their polling precincts. The Parties also agree that it furthers the aforementioned public interest by entering into this Agreement to uniformly set forth the terms and conditions that will govern the Parties' responsibilities regarding their receipt, use and maintenance of the Tabulators. The term of this Agreement shall be for one (1) year, commencing upon execution by both Parties hereto, and shall automatically renew for one (1) year consecutive terms unless terminated by either Party upon forty-five (45) days advanced written notice to the other prior to expiration of the then existing term.

2. Responsibilities of the County: The County shall, at all times, be the sole owner of the Tabulators and its related hardware/software as more fully set forth in the Contract attached hereto, and, as said owner, shall be responsible for the following:

- a. Adhering to the applicable terms and conditions of the Contract, including but not limited to, submitting timely payments in accordance therewith, pursuing enforcement actions if needed, and determining disbursement, if necessary, of any awarded damages or penalties recovered in the event of an enforcement action. The County's timely payment hereunder does not constitute a waiver of its right to take action, including legal, to collect any monies owed it from the Municipalities pursuant to this Agreement, said right being expressly preserved by the County herein;
- b. Supplying the Municipalities, participating herein, with an adequate number of Tabulators, modems and ballot bins to be placed at each of their respective polling precincts, as well as providing each Municipality with two (2) USB thumb drives, a tabulator paper roll, an Automark replacement tray, and one (1) ink cartridge for Automark;
- c. Tracking the specific Tabulator(s) supplied to each Municipality by corresponding the Tabulator's assigned serial number(s) with the Municipality receiving it on the document attached hereto as Exhibit "B" and incorporated herein by reference; and

**EXHIBIT B**

<b>MUNICIPALITY</b>	<b>DS-200 SERIAL NUMBERS</b>
<b>VILLAGE OF ALLOUEZ</b>	<b>DS0113390290</b>
<b>VILLAGE OF ALLOUEZ</b>	<b>DS0113390275</b>
<b>VILLAGE OF ALLOUEZ</b>	<b>DS0113390300</b>
<b>VILLAGE OF ALLOUEZ</b>	<b>DS0113390161</b>
<b>VILLAGE OF ALLOUEZ</b>	<b>DS0113390172</b>

- d. Commencing January 1, 2016, invoicing the Municipalities for their share of the annual Tabulator maintenance fees set forth in the Contract, the total fees of which the County shall advance to ES&S in accordance therewith, irrespective of when or whether it collects from the Municipalities hereunder, but without waiving its right to take, among other steps afforded it under this Agreement, action to collect upon any outstanding invoices related hereto. All monies received hereunder shall be deposited into the County's election intergovernmental revenue account.

3. Responsibilities of the Municipalities: The Municipalities understand and agree that their entry into this Agreement is voluntary, but a prerequisite to receiving, at no initial cost to them, the requisite amount of County-owned Tabulator(s) and related equipment described in Section 2(b), above. The Municipalities further understand and agree that by entering into this Agreement, they are responsible for the following:

- a. Properly storing and securing their assigned Tabulator(s) in a manner consistent with Article II, Section 1 of the Contract, as well as any other applicable provision within Schedule A1 of the Contract and/or the User Manuals referenced therein, copies of which the County shall supply to the Municipalities upon its receipt thereof;
- b. Participating in all necessary training associated with the use, operation, and maintenance of the Tabulators, whether required under the Contract or by directive of the County, including reviewing all User Manuals and documentation supplied, whether through printout or electronic means, to the Municipalities by the County and/or ES&S;

- c. Upon receipt, adhering to all of the Contract's operating, maintenance and technical obligations that apply to the Tabulators to the same extent as is required of the County, including but not limited to: (i) not permitting any individual, other than an ES&S representative, to provide the maintenance and support services set forth in Articles II and III of the Contract; (ii) cooperating with the County in its decision to install any modifications, upgrades and/or updates to the Tabulators, the decision and cost of which rests solely with the County; and (iii) refraining from making any updates, upgrades, modifications, alterations and/or changes of any kind to the Tabulators without first obtaining written permission from the County;
- d. Adhering to any additional requirements established by the County regarding the Municipalities' use, maintenance and/or operation of the Tabulators assigned to them hereunder;
- e. Replacing and/or repairing, at the Municipality's sole cost and expense, any Tabulator(s) assigned to said Municipality that become(s) lost, stolen and/or damaged due to weather conditions or as a result of the negligence and/or carelessness of the Municipality, its employees, agents, assigns and/or representatives, the replacement and/or repair of which shall be fulfilled in accordance with Articles II and III of the Contract, as well as any other applicable provisions set forth therein;
- f. Procuring, in an amount deemed adequate by the County, insurance coverage for each of the Municipality's assigned Tabulator(s), with evidence of coverage documented by a Certificate of Insurance. The Certificate(s) of Insurance along with an endorsement shall be issued by a company or companies authorized to do business in the State of Wisconsin and shall be satisfactory to the County. Such insurance should be primary. The Certificate(s) shall reference the Agreement and have an endorsement attached naming the County as Loss Payee and provide for thirty (30) days advance notice of any change, cancellation or non-renewal during the term of this Agreement.
- g. To the same extent as required of the County, in, among other capacities, as grantee of the nonexclusive, nontransferable license referenced therein, adhering to the Contract's provisions governing the ES&S Software, ES&S Firmware and/or ES&S Documentation, the terms of which are more fully defined therein, which shall include, but not be limited to, Sections 2-4 & 8 of the Contract's General Terms; and
- h. Beginning January 1, 2016, the date in which the Contract's warranties expire, and from that point forward, reimbursing the County for their share of the annual maintenance fees, as established by the Contract, that the County has to advance, in accordance therewith, to ES&S for all

Tabulators subject to this Agreement, the reimbursement of which shall be due within thirty (30) days of the Municipality's receipt of the invoice relating thereto.

4. Duty to Cooperate: Each Party hereto shall commence, carry on and complete its obligations under this Agreement with all deliberate speed and in a sound, economical and efficient manner, as well as in accordance with any governing federal and/or state laws, including but not limited to, Wisconsin's Open Records Law.

5. Authority/Compliance: Each Municipality hereto certifies that it is eligible to receive the benefits of and has obtained authority to enter into this Agreement. It further certifies that the individual executing this Agreement on behalf of the Municipality is authorized to do so. In addition, each Municipality understands that it maintains full responsibility to adhere to all applicable election laws, including the Help America Vote Act of 2002 ("HAVA"), as well as any other provisions regarding, among other mandates, the accessibility of polling places, privacy and independence. And, further understands that, during the term of this Agreement, shall not discriminate against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, membership in the National Guard, state defense force or any reserve component of the military forces of the United States or this state, and will adhere to the Wis. Stat., § 111.335 when addressing conviction and arrest records.

6. Default by Municipality: In the event that a Municipality defaults in its payment obligations under this Agreement, the County shall have the right to order the Municipality's assigned Tabulator(s) to be returned, at the Municipality's sole cost and expense, to a location chosen by the County until said Municipality remits payment to the County of the outstanding amount in full. In the event that the Municipality fails to remit payment within thirty (30) days of said return, the County shall have the right, in its sole discretion, to do what it deems most reasonable with the Tabulator(s) and to take whatever action necessary to collect upon the outstanding debt.

7. Waiver: Any waiver by the County under this Agreement shall not imply a subsequent waiver of that or any other provision thereof.

8. Severability: The various provisions of this Agreement are declared to be severable and the findings of any court that any particular clause or clauses is or are unlawful or unenforceable shall not operate to invalidate the remainder of this Agreement and the same shall continue in effect unless modified in writing by the Parties hereto.

9. Supplies: But for those items specifically referenced within Section 2 of this Agreement, all additional supplies associated with the appropriate use, operation and maintenance of the Tabulators shall be solely the expense and responsibility of the Municipalities.

10. Liability/Indemnification: The Parties agree to fully indemnify and hold one another harmless from and against all claims, actions, judgments, costs, and expenses arising out of damages or injuries to third persons or their property caused by the fault or negligence of the said Party, its agents or employees in the performance of this Agreement. The Parties shall give to each other prompt and reasonable notice of any such claims or actions and the other Party shall have the right to investigate, compromise, and defend the same.

11. Governing Law: This Agreement shall be governed under the laws of the State of Wisconsin and is drafted/entered into in Brown County, Wisconsin, thereby causing Brown County to be the venue for any legal action to enforce the terms of this Agreement.

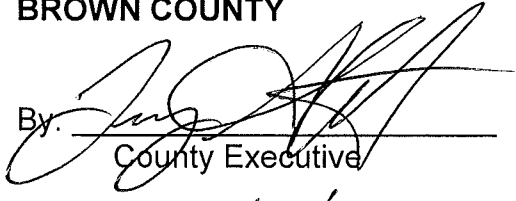
12. Entire Agreement/Amendments: The entire Agreement of the Parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the Parties relating to the subject matter hereof. The Parties expressly agree that this Agreement shall not be amended except in writing, executed by the Parties.

13. No Third Party Rights/Independent Contractor Status: This is an Agreement between the Parties hereto and nothing herein creates any rights in any third persons. Further, this Agreement does not in any way create the relationship of joint venture, partnership, principal, or employer/employee between the Parties, their agents, employees, subcontractors, officers and/or representatives. The Municipalities, their employees, agents, subcontractors, and/or representatives shall not act or attempt to act, or represent themselves, directly or by implication, as an agent for the County or in any manner assume any obligation on behalf of or in the name of the County.

14. Appropriation of Funds: This Agreement is contingent upon annual authorization of funding by the County governing body as well as the Tabulators' final and continued certification under applicable law, as may be amended from time to time. In the event funding is not approved, funding is terminated or said certification is denied, the County may terminate this Agreement upon forty-five (45) days written notice to the Municipalities.

15. Notices: Any and all notices shall be in writing and deemed served upon depositing the same with the United States Postal Service as "Certified Mail, Return Receipt Requested", addressed to the County Clerk, for notice to the County, and the Municipal Clerk, for notice to the Municipality unless otherwise designated in writing to the other.

**BROWN COUNTY**

By:   
County Executive

Dated: 1/8/14

**MUNICIPALITY - VILLAGE OF ALLOUEZ**

By: \_\_\_\_\_

Dated: \_\_\_\_\_



**EXHIBIT A**  
**HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES ("POST-WARRANTY SERVICES")**

**ARTICLE I**  
**GENERAL**

1. **Term; Termination.** This Exhibit A for Hardware Maintenance and Software License, Maintenance and Support Services ("Post-Warranty Services") shall be in effect from the date on which the Warranty Period expires under the Sales Order Agreement ("Sales Agreement") until the first anniversary thereof (the "Initial Term") (Collectively this Exhibit A, the Sales Agreement, as well as Schedule A1 referenced below, shall be the "Agreement."). Upon expiration of the Initial Term, this Exhibit A shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit A is terminated by the first to occur of: (a) either Election Systems & Software ("ES&S") or Brown County ("Customer") (Collectively "Party" or "Parties") gives notice to the other under Section 12 of the Sales Agreement ("Notice"), of its decision not to renew at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable; (b) the date which is thirty (30) days after either Party gives Notice to the other that it has materially breached this Exhibit A, contrary to Section 10 of the Sales Agreement, if the breaching Party fails to cure such breach in a manner consistent therewith (except for a breach under subsection (e) of this Section 1, which shall be governed by Section 11 of the Agreement); (c) the date which is thirty (30) days after ES&S gives Notice to Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated in the Agreement; (d) the date on which the ES&S Equipment or ES&S Firmware is no longer certified by federal and/or state authorities for use in Customer's jurisdiction; or (e) subject to Section 11 of the Sales Agreement, the date which is thirty (30) days after Customer receives Notice from ES&S of its failure to pay an amount due ES&S under this Exhibit A. Upon termination, Customer shall return the ES&S Software and Documentation (including any and all known copies thereof) to ES&S within thirty (30) days or, if requested by ES&S no later than five (5) business days of said termination, destroy, within thirty (30) days thereafter, the ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred. Unless stated elsewhere in the Agreement, the termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this is Exhibit A is terminated pursuant to subsection 1(c) or 1(d) of this Section 1.

2. **Fees.** In consideration for providing Post-Warranty Services under this Exhibit A, Customer shall pay ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees ("Support Fees") set forth on Schedule A1, a copy of which is attached hereto and incorporated herein by reference, for the Initial Term and any Renewal Period, with the Support Fees for any Renewal Period being set at an amount agreed to by the Parties, in writing and in advance of the Renewal Period's commencement, that is not to exceed ES&S' list prices, as published at the time of said commencement. The Support Fees for each Renewal Period are due and payable no later than fifteen (15) days prior to the commencement of such Renewal Period. The Support Fees shall include the following: (i) the Software License, Maintenance and Support of the ES&S Firmware; and (ii) the Software License, Maintenance and Support for all other ES&S Software, and shall be in addition to any other fees or charges separately referred to by express language in this Exhibit A. If Customer elects to receive Hardware Maintenance or Software License, Maintenance and Support for an add-on license or new product, which shall be defined as any equipment and/or software not otherwise set forth under this Agreement, during the Initial Term or any Renewal Period, ES&S will charge an incremental fee for such services. And, unless otherwise agreed to in writing by the Parties, if Customer terminates this Exhibit A through no fault of ES&S and later desires to subscribe to an ES&S Hardware Maintenance or Software License, Maintenance and Support Plan, or otherwise changes, through no cause of ES&S, its Hardware Maintenance or Software License, Maintenance and Support Plan with ES&S during the Initial Term or any Renewal Period, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, the Hardware Maintenance or Software License, Maintenance and Support Plan.

**ARTICLE II**  
**HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer for the ES&S Equipment listed on Schedule A1 is set forth on Schedule A1 (the "Hardware") and shall be subject to the applicable provisions of the Sales Agreement, as well as the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide routine maintenance services ("Routine Maintenance") as may be necessary to keep the Hardware in Normal Working Condition, the term of which is defined in subsection (f) of this Section 1, once during the Initial Term and once during each Renewal Period thereafter. Generally, Routine Maintenance includes cleaning, lubrication, diagnostic check, and calibration services. Routine Maintenance does not include the repair or replacement of any Hardware components that are consumed in the normal course of operation, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges or marking devices. Customer may request that Routine Maintenance be performed more than once

during the Initial Term or any Renewal Period ("Additional Maintenance"). Any such request shall be made at least forty-five (45) days before Additional Maintenance is desired. The per-unit fee for Additional Maintenance is set forth on Schedule A1 and shall be due within thirty (30) days after Customer's receipt of ES&S' invoice. Annually, or as requested by Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance and Additional Maintenance performed on the Hardware. ES&S shall schedule Routine Maintenance and any Additional Maintenance with Customer at a date and time to be mutually agreed upon by the parties. Routine Maintenance shall be provided at Customer's Designated Locations, the term of which shall mean the Customer owned or leased facility/facilities, as set forth in Note 3 of Schedule A1, at which it desires ES&S to perform the same.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in the Hardware while it is being used in a manner consistent with the Agreement, Customer shall promptly provide Notice to ES&S of the same, and ES&S shall use reasonable efforts, as dictated by industry standards, to restore the Hardware to Normal Working Condition as soon as practicable, but no later than twenty-four (24) hours before an election, and without any additional cost or expense to Customer unless such services are as a result of an act or omission of the Customer as set forth in Article II, Section 1(b)(ii). The services provided by ES&S pursuant to this subsection 1(b)(i) are hereinafter referred to as "Repair Services". Repair Services for Hardware covered under this Exhibit A will be performed at Customer's Designated Locations as set forth in Note 3 of Schedule A1.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in the Hardware as a result of: (1) repairs, changes, modifications or alterations to the Hardware that were not authorized or approved by ES&S, its agents, employees and/or representatives, and so long as ES&S, its agents, employees and/or representatives, did not participate in the repairs, changes, modifications or alterations; (2) accident, theft, vandalism, neglect, abuse or use of the Hardware that is not in accordance with the User Manuals, so long as they were supplied to Customer by ES&S in advance thereof, and provided that the actions of ES&S, its agents, employees and/or representatives, did not contribute to the accident, theft, vandalism, neglect, abuse or improper use; or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God; fire; flooding; riots; acts of war, terrorism or insurrection; labor disputes; governmental regulations; and utility or communication interruptions not caused or contributed to by either party, its agents, employees and/or representatives; rodent infestation; or if Customer does not notify ES&S within seventy-two (72) hours after discovering the defect or malfunction, Customer shall pay ES&S for any of the Repair Services related thereto at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services; provided, that the cost of said parts is competitive with industry standards.

iii. **Timing.** ES&S shall schedule the aforementioned Repair Services at a date and time to be mutually agreed upon by the parties, but no later than twenty-four (24) hours before an election. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided within 48 hours after Customer notifies ES&S of the need therefor, or in the event of an election, within twenty-four (24) hours in advance thereof), and such emergency Repair Services are not needed, in whole or in part, as a result of an action, error or omission by ES&S, its agents, employees and/or representatives, Customer shall pay a surcharge, as set forth on Schedule A1.

iv. **Loaner Unit.** Provided such Hardware is available, ES&S shall use reasonable efforts to promptly, but no later than twenty-four (24) hours before an election, make available to Customer hardware that is the same as, or substantially similar to, the Hardware for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including, when necessary, the cost of shipping.

c. **Exclusions.** Unless provided elsewhere in the Agreement, ES&S has no obligation under this Exhibit A to: (i) assume the obligations under any existing or expired warranty for a third party item; (ii) repair or replace Hardware components that are consumed in the normal course of operation, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges or marking devices; or (iii) repair any Hardware from which the serial number has been removed or altered so long as ES&S, its agents, employees and/or representatives, did not furnish it in such condition and provided that ES&S, its agents, employees and/or representatives, did not participate, whether in whole or in part, in said removal or alteration. In addition, ES&S may, at any time in its discretion, but only upon advance Notice to Customer no later than fifteen (15) days before discontinuing services thereon, determine that any Hardware 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 Hardware. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for said Hardware, but shall refund to Customer an amount equal to: (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to the Hardware; (2) multiplied by a fraction, the numerator of

which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period, as made evident by an itemized statement provided by ES&S to Customer expressing the same.

d. **Sole Provider; Access.** Unless necessary to mitigate damages related to a material breach of the Agreement by ES&S, its agents, employees and/or authorized representatives (collectively, "ES&S Representative") which is not able to be cured by ES&S in accordance with the terms of this Agreement, Customer shall not permit any individual other than an ES&S Representative") to provide maintenance or repairs on the Hardware for so long as the Initial Term or any Renewal Period is in effect. Upon request, but only if within Customer's possession or knowledge and not contrary to any third-party contractual provisions or privacy laws, whether federal, state or local, Customer shall provide ES&S Representatives with all information necessary to assist them in furnishing Hardware Maintenance Services hereunder. Upon request and so long as within Customer's reasonable control, Customer shall likewise provide ES&S Representatives with full access to the Hardware and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. **Storage.** When not in use, Hardware should be stored in a clean, secure environment. During operation of the Hardware, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 60% relative humidity.

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period expires without subsequent renewal, Customer may resume receiving Hardware Maintenance Services by: (a) providing Notice to ES&S; and (b) granting ES&S access to the Hardware. Upon said expiration, ES&S requires Customer to allow it to inspect the Hardware before it provides any Hardware Maintenance Services so as to determine whether or not the Hardware is still fit for the ordinary purpose that it was meant to be used, based on industry standards, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current ES&S Technician labor rate and shall be due from Customer within thirty (30) days of its receipt of ES&S' Notice with invoice therefor. If any of the Hardware is not in Normal Working Condition, ES&S, at the written election of Customer: (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such Hardware to its Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at the current published ES&S Technician labor rate) and parts used in such repairs or replacements; or (ii) shall not provide any Hardware Maintenance Services with respect to such Hardware.

### **ARTICLE III**

#### **SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**

1. **License and Services Provided.** ES&S shall provide Customer with Software License, Maintenance and Support Services ("Software Services") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), as well as any materials or information related thereto, sufficient to allow Customer to use and operate the ES&S Software in accordance with its Documentation and the terms of the Agreement, as well as perform any of its obligations thereunder. The specific Software Services provided by ES&S and each Party's obligations with respect to the same are set forth on Schedule A1, as well as herein.

2. **Updates.** During the Initial Term and any Renewal Period, ES&S may provide any new releases, upgrades and/or maintenance patches to the ES&S Software, along with appropriate Documentation, to the extent necessary to maintain the ES&S Software's federal and/or state certification for use within Customer's jurisdiction ("Necessary Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software that are required to operate the Necessary Updates. During the Initial Term and any Renewal Period, ES&S may further provide any other new releases, upgrades and/or maintenance patches to the ES&S Software, along with appropriate Documentation, provided, it obtains written permission from Customer in advance thereof ("Additional Updates"). If approved, Customer is responsible for obtaining and installing any upgrades or purchases of third-party hardware or software that are required to operate the Additional Updates. All Updates, whether Necessary or Additional (collectively "Updates"), shall be deemed to be ES&S Software, and shall be subject to all applicable terms and conditions of the Agreement, upon delivery thereof. Provided ES&S provides the Customer with all User Manuals, training materials and installation instructions, Customer shall be responsible for installing all Updates provided under this Agreement. In addition, Customer may request that ES&S install the Updates to be provided under this Agreement on a date and time to be mutually agreed upon by the parties. In the event Customer requests ES&S to install an ES&S Firmware Update, ES&S shall install such Update only in connection with the Routine Maintenance Services provided herein. ES&S may charge Customer at its then-current rates to: (a) ship the Updates; (b) install the Updates; (c) provide the maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely install an Update; or (d) train the Customer on the Updates. If Customer proposes changes in the ES&S Software to ES&S and ES&S incorporates said changes into its ES&S Software, such changes will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable federal and/or state law requirements at the time of delivery. Customer shall pay for any Update that is required due to a change in state or

local law.

3. **Conditions.** Unless stated otherwise in the Agreement, ES&S shall not provide Software Services for any item of ES&S Software if such item requires Software Services as a result of: (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, its agents, employees and/or representatives, and so long as ES&S, its agents, employees and/or representatives, did not participate in the repairs, changes, modifications or alterations; (b) accident, theft, vandalism, neglect, abuse or use of the item that is not in accordance with applicable instructions or specifications supplied to Customer, so long as furnished by ES&S in advance thereof, and provided that the actions of ES&S, its agents, employees and/or representatives, did not contribute to said accident, theft, vandalism, neglect, abuse or improper use; (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; governmental regulations; and utility or communication interruptions not caused or contributed to by ES&S, its agents, employees and/or representatives; (d) Customer's failure to timely and properly install and use the most recent Update provided to it by ES&S and (e) Customer's failure to notify ES&S within seventy-two (72) hours after discovering an item in need of Software Services, provided that it is within Customer's reasonable knowledge and/or experience. Any Software Services required as a result the actions or inactions set forth herein, shall be provided at a fee to be agreed upon by the Parties in advance thereof. Likewise, replacement versions of any ES&S Software requested by Customer as a result of the actions or inactions set forth herein, shall be billable to Customer at ES&S' then current rates.

4. **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 Software License, Maintenance and Support Fees set forth in the Agreement, 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 thereto. All licensed items shall be deemed to be ES&S Software for purposes of this Exhibit A. 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 Exhibit A.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Term or any Renewal Period expires without further renewal, Customer may thereafter receive a new Software License and receive Software Services by: (a) providing Notice to ES&S; (b) agreeing to pay all fees, including a reinstatement charge, which would have been due to ES&S had the Initial Term or any Renewal Period not expired; and (c) granting ES&S access to the ES&S Software so that ES&S may analyze it and perform such maintenance as may be necessary before resuming its Software Services.

**Schedule A1**

**ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES**  
(Expiration of Warranty Period through the first anniversary thereof)

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
92	Model DS200 Digital Image Scanner	January 1, 2016 to December 31, 2016	\$175.00	\$16,100.00
<b>Total Hardware Maintenance Fees for the Initial Term</b>				<b>\$16,100.00</b>
<p><b>Note 1:</b> The per-unit fee if Customer requests Additional Maintenance under the Agreement shall be 55% of the then current maintenance fee per unit.</p> <p><b>Note 2:</b> Surcharge for emergency Repair Services, as defined in Article II, Section 1 of <u>Exhibit A</u> and being subject thereto, shall be 150% of the then current maintenance fee per unit, so long the emergency Repair Services are not needed, in whole or in part, because of an action, error or omission by ES&amp;S, its agents, employees and/or representatives.</p> <p><b>Note 3:</b> Customer's Designated Location: Brown County, Wisconsin Site and Green Bay, Wisconsin Site.</p> <p><b>Note 4:</b> The per-unit surcharge for performance of Routine Maintenance Services at more than two Customer Designated Locations in a 12-month period shall be \$25.00 per unit for all units located at a third or more Designated Location.</p> <p><b>Note 5:</b> Upon expiration of the Initial Term, this <u>Exhibit A</u> shall automatically renew for an unlimited number of successive one-year periods, subject to the terms and conditions set forth in Article I, Section 1 of this <u>Exhibit A</u> (each a "Renewal Term") until terminated in accordance therewith.</p>				

Along with any other applicable provisions within the Agreement, Hardware Maintenance Services to be provided by ES&S in accordance with this Exhibit A are as follows:

1. Telephone Support/Issue Resolution.
  - ES&S shall provide issue resolution and technical support on the ES&S Equipment and ES&S Firmware (collectively, "Hardware") through its Help Desk Monday through Friday from 7:00 a.m. CST to 7:00 p.m. (excluding Federal Holidays).
2. ES&S posts Technical Bulletins available through Customer's ES&S Web-based portal ([www.essvote.com](http://www.essvote.com)).
3. Routine Maintenance Services.
  - ES&S shall provide onsite Routine Maintenance Services as set forth in Article 2, Section 1 of Exhibit A and as follows:
    - Routine Maintenance Services shall be performed by an ES&S trained and certified technician and in a workmanlike manner, the Services of which shall include.
    - Performance of factory approved diagnostics on the Hardware unit, identifying and making adjustments where necessary as indicated by the testing.
    - Replacement of worn or defective Hardware with new or remanufactured federally and state certified parts.
    - Conducting a final test to verify that the Hardware unit is working according to manufacturer's specifications.

- Using a detailed checklist of the Routine-Maintenance Services to be provided which have been tailored for each piece of Hardware to determine if the ES&S Equipment is operating in accordance with its documentation, providing a copy to Customer upon request.
- Updating ES&S' maintenance records which are kept by serial number and available to Customer through the ES&S Web-based portal.

4. Repair Services.

- In a workmanlike manner, ES&S shall provide Repair Services to Customer pursuant to Exhibit A and shall further provide Customer with coverage for the following:
- Customer shall receive coverage for Interim repair calls, the calls of which may be scheduled during a regular Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity of Customer's Designated Location if they are not election critical.

5. Priority Services.

- Customer shall have access to the ES&S Help Desk for assistance.
- Customer shall receive priority on service calls.
- Customer shall receive priority on response time.
- Customer shall receive priority on certified ES&S parts inventory.

**Note:** Except for those Hardware Maintenance Services specifically set forth in the Agreement and subject thereto, ES&S is under no obligation and shall not provide other Hardware Maintenance Services to Customer unless agreed upon in writing by the Parties.

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES**  
(Expiration of Warranty Period through the first anniversary thereof)

- Listed below are the Hardware Products and Fees for which Software License, Maintenance and Support Services ("Software Services") will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
92	Model DS200 Digital Image Scanner	January 1, 2016 to December 31, 2016	\$75.00	\$6,900.00
<b>Total Firmware License, Maintenance and Support Fees for the Initial Term</b>				<b>\$6,900.00</b>

Subject to the Agreement, Software Services to be provided by ES&S in accordance with this Exhibit A are as follows:

- Telephone Support.
  - ES&S shall provide issue resolution and technical support on the ES&S Software through its Help Desk Monday through Friday from 7:00 a.m. CST to 7:00 p.m. (excluding Federal Holidays);
- Technical Bulletins
  - ES&S shall provide Technical Bulletins available on the ES&S Customer Portal (accessed through [www.essvote.com](http://www.essvote.com)) on a schedule to be determined by ES&S regarding specific issues the Customer may be experiencing.

**Note:** Except for those Software Services specifically set forth the Agreement, ES&S is under no obligation and shall not provide other Software Services to Customer unless agreed upon by the Parties in writing.

**Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities**

- Required Training Course. Customer's current software and hardware operator or its designee shall have completed a full software training session, to be offered, set-up and provided through ES&S at dates and time convenient for Customer, for each product selected.
  - Contingent upon ES&S providing it with the same and in accordance herewith, Customer shall have completed training at a proficiency level to successfully use ES&S Hardware and ES&S Software for General and Primary elections.
  - Contingent upon ES&S providing it with the same and in accordance herewith, Customer shall have the ability to install ES&S Firmware and application ES&S Software and make changes to date and time settings.
  - Customer shall have the ability to store ES&S Hardware in accordance with the ES&S requirements provided to Customer during the Training Course and/or ES&S Equipment User Manuals.
- Contingent on ES&S supplying it with the same at time of delivery or within five (5) business days thereafter, unless otherwise agreed to in writing by the Parties, Customer shall have reviewed the ES&S Equipment User Manuals and ES&S Software User Manuals (collectively, "User Manuals").
- Contingent on ES&S supplying it with the same at time of delivery or within five (5) business days thereafter, unless otherwise agreed to in writing by the Parties, Customer shall have reviewed the Training Checklists.
- Customer shall be responsible for integration of any third party hardware or software application or system purchased by the Customer, unless otherwise agreed upon, in writing, by the Parties.

5. Customer shall be responsible for data extraction from Customer Voter Registration (VR) system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise.
7. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity for all network equipment and software not otherwise provided by ES&S hereunder.
8. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots, unless such problems are directly related to the ES&S Equipment.



## GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Sales Order Agreement, which includes the Sales Order Agreement cover page that sets forth the ES&S Equipment, ES&S Software, pricing and payment terms which is attached hereto and incorporated herein by this reference ("Sales Agreement"), Election Systems and Software ("ES&S") agrees to sell and/or license, and Brown County, Wisconsin ("Customer") (collectively "Party" or "Parties") agrees to purchase and/or license, the ES&S Equipment and ES&S Software described in this Sales Agreement, as well as in the Exhibit A & Schedule A1 attached hereto and incorporated herein by reference (collectively, "Agreement"). Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount as, and in the manner, set forth in the Agreement for the ES&S Equipment. The consideration for ES&S' grant of the license during the Initial Term, which is defined in Section 4 of this Sales Agreement, for the ES&S Firmware is included in the cost of the ES&S Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of the Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide employees, and/or officials to use the ES&S Software, as well as the ES&S Firmware, which is delivered as part of the ES&S Equipment ("ES&S Firmware"), and operating instructions, user manuals and training materials supplied by ES&S (collectively the "Documentation") in the jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable annual Software and Firmware License and Maintenance Fees as, and in the manner, set forth in, among other applicable provisions of the Agreement, Schedule A1. The licenses allow such bona fide employees, and/or officials 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 Customer's jurisdiction. The licenses granted in Section 2 of this Sales Agreement do not permit Customer to access or in any way use the source code for the ES&S Software or ES&S Firmware.

3. **Prohibited Uses.** Unless Customer shall not knowingly take any of the following actions with respect to the ES&S Software, ES&S Firmware 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 ES&S Firmware;

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

c. Cause or permit any change to be made to the ES&S Software or ES&S Firmware 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 or ES&S Firmware in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark or patent), including, but not limited to, any ballots, ballot shells or code stock.

4. **Term of Licenses.** The licenses granted in Section 2 of this Sales Agreement ("Licenses") shall commence upon the delivery of the ES&S Software and ES&S Firmware, in a manner consistent with Section 2, as well as any other applicable provision, of the Agreement, and expire one year thereafter (the "Initial Term"). The Licenses shall automatically renew for successive one-year periods upon Customer's timely payment of the annual Software and Firmware License and Maintenance Fees governed by, among other provisions of the Agreement, Schedule A1 (each, a "Renewal Period"). The Initial Term and each Renewal Period are collectively referred to herein as the "Term". Unless provided otherwise in the Agreement, the Parties may terminate the Licenses, in accordance with Section 10, below, and/or Article I, Section 1 of Exhibit A. Upon said termination or Customer's discontinued use of the ES&S Software and/or ES&S Firmware, Customer shall return such ES&S Software and/or ES&S Firmware, as well as any related Documentation (including any and all known copies thereof), to ES&S within thirty (30) days thereof, or, if requested by ES&S within five (5) business days of termination/discontinuance, destroy the same, certifying, in writing, per the Notice requirements set forth in Section 12 of this Sales Order Agreement, to ES&S, within thirty (30) days thereafter, that such destruction has occurred.

5. **Delivery Risk of Loss.** The Estimated Delivery Dates set forth in the Agreement are merely estimates and may be revised by ES&S for delays that are caused: (1) in executing the Agreement; (2) changes requested by Customer, and/or (3) any other unanticipated event. ES&S shall give Notice to Customer of any proposed revisions to the Estimated Delivery Dates as soon as ES&S becomes aware of them. Subject to any provision contrary hereto, risk of loss for the ES&S Equipment, ES&S Firmware and ES&S Software shall pass to Customer when such items are delivered; provided, they are delivered in a workmanlike manner and free of defects, to Customer's Designated Location(s), the term of which is defined in Schedule A1 of the Agreement. Upon transfer of risk of loss to Customer and until Customer has fully paid for the ES&S Equipment, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software licensed hereunder and shall name ES&S as a loss payee thereunder until all amounts payable to ES&S under the Agreement have been paid by Customer.

### 6. **Warranty.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that from the delivery of the ES&S Equipment/ES&S Software until December 31, 2015 ("Warranty Period"), it will repair or replace any component of the ES&S Equipment, including ES&S Firmware, or ES&S Software which, while used and serviced consistent with the Agreement: (1) fails to perform in accordance with its Documentation in all material respects, or (2) is defective in material or workmanship. Any repaired or replaced item of ES&S Equipment or ES&S Software, provided that it is repaired or replaced in a workmanlike manner and free of defects, 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. Unless otherwise provided elsewhere in the Agreement, this warranty is effective so long as: (1) Customer promptly notifies ES&S of the failure of performance or defect upon its discovery thereof; (2) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered by Customer except as authorized or approved by ES&S, its agents, employees and/or representatives and provided that neither ES&S, nor its agents, employees and/or representatives, participated in the unapproved repair, change, modification or alteration; (3) 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 the ES&S Equipment User Manuals and ES&S Software User Manuals (collectively "Manuals"), so long as furnished by ES&S in advance thereof, caused by Customer, and provided that the actions or omissions of ES&S, its agents, employees and/or representatives, did not contribute to said accident, theft, vandalism, neglect, abuse or improper use; (4) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, governmental regulations and utility or communication interruptions not caused or contributed to by ES&S, its agents, employees and/or representatives; and (5) Customer has installed and is using the most recent update, or the second most recent update offered by ES&S. This warranty is void for any units of ES&S Equipment which: (i) have not been stored or operated in accordance with Article II, Section 1(e) of Exhibit A; or (ii) have been operated or handled in a manner inconsistent with the Agreement.

b. **Exclusive Remedies.** IN THE EVENT OF A BREACH OF THE AFORESAID WARRANTY, ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION AND SUBJECT TO THE AGREEMENT, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY

### IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. **Limitation Of Liability.** Neither Party shall be liable to the other for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to the 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 the Agreement and so long as ES&S performs its obligations thereunder, Customer agrees to accept responsibility for:

(a) using the ES&S Equipment and ES&S Software in accordance with the User Manuals furnished by ES&S pursuant to the Agreement; (b) the selection of, use of and results obtained from any equipment, software or services not provided or authorized by ES&S, its employees, agents and/or representatives, for use with the ES&S Equipment or ES&S Software; or (c) user errors, voter errors or problems encountered by any individual while voting that are not caused, in whole or in part, by an act or omission of ES&S, its agents, employees and/or representatives, or as a result of its failure to perform in accordance with the Agreement. ES&S shall not be liable under the Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is directly caused by: (1) 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 (2) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support set forth in Exhibit A.

8. **Proprietary Rights.** ES&S represents and Customer acknowledges said representation as to the following:

ES&S owns the ES&S Software, all Documentation, the design and configuration of the ES&S Equipment and the ES&S-owned format, layout, measurements, design and 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 ES&S-owned items to the extent of the Agreement. ES&S further represents: (1) that it owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned ES&S-owned items; and (2) that the aforementioned ES&S-owned 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 agrees, to the extent of the governing federal, state and/or local law, to 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 provided to Customer by ES&S pursuant to the Agreement, and all Customer's permitted copies of the foregoing.

9. **Indemnification.** Subject to the limitations expressed in the Agreement, Customer shall 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) subject to Article III, Section 1 of Exhibit A, Customer's failure to timely or properly install, per the Documentation, provided, Customer did not elect to have ES&S install the same, 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, unless authorized or approved by ES&S, its agents, employees and/or representatives and so long as neither ES&S, nor its agents, employees and/or representatives participated in installation or use thereof; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior authorization of ES&S, its employees, agents and/or representatives; provided, neither ES&S, nor its agents, employees and/or representatives, participated in the unapproved modification or alteration;

b. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of Customer, its agents, employees and/or officers, occurring in connection with the Agreement; and

c. Unless otherwise agreed to by the Parties, Customer's election not to receive, or to terminate, the Hardware Maintenance Services or Software Maintenance and Support set forth in Schedule A1.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 9. In the event it is entitled to indemnification hereunder, ES&S gives Customer full and complete authority over said claim, 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.

ES&S shall defend, indemnify and hold harmless Customer from and against any and all adverse consequences arising out of or relating to the following:

a. Any Third-Party Infringement Claim arising out of ES&S's representations under Section 8 of this Sales Agreement, as well as any other provision of the Agreement relating to ES&S' proprietary rights/ownership, including but not limited to, ES&S' failure to provide ES&S Equipment, ES&S Software and Documentation that does not infringe on another party's patent, trademark, copyright or other proprietary rights/ownership. If Customer is prevented by a Third Party Infringement Claim from using any of the ES&S Equipment or ES&S Software in substantially the manner contemplated by this Agreement, ES&S, at its sole option and expense, shall procure for Customer the right to continue such use or shall replace or modify the infringing item. If neither option is commercially reasonable, ES&S may direct Customer to cease use of the infringing item, and shall refund the depreciated cost for the infringing item (as determined in accordance with GAAP) to Customer, and Customer shall cease and desist from any further use thereof and return the infringing item to ES&S; or

b. Claims, actions, suits, judgments, damages, fines, fees and other proceedings, whether civil, criminal, administrative, investigative, or otherwise, together with all costs, expenses and other amounts arising or alleged to have arisen out of any negligent or willful act, error or omission by ES&S, its agents, employees and/or representatives, occurring in connection with the Agreement;

Customer shall notify ES&S immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 9, and hereby gives ES&S full and complete authority, and shall provide such information and assistance as is necessary (at ES&S's expense with respect to reasonable out-of-pocket costs), to enable ES&S to defend, compromise or settle any such claim.

10. **Termination.** In addition to Article 1, Section 1 of Exhibit A, the 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 days after it receives Notice thereof from the non-breaching Party.

### 11. **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 pursuant to the Agreement; (2) the amount due ES&S for any product or service provided to Customer pursuant to the Agreement; or (3) the due date of any payment owed ES&S under the Agreement, 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 under the Agreement.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment owed ES&S under the Agreement is past due more than 30 days from the due date, upon Notice to Customer in advance thereof, ES&S may suspend performance under the Agreement until such amount is paid in

accordance therewith. If any undisputed payment owed ES&S under the Agreement is past due for more than 60 days from the due date, upon Notice to Customer in advance thereof, ES&S may declare the total amount remaining due under the Agreement to be immediately due and payable, enter the premises, during normal business hours or after hours upon agreement of the Parties, where the ES&S Equipment is located and remove it. Any wrongly disputed or undisputed payment not paid by Customer to ES&S when due under the Agreement 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.

12. **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 Sales Agreement and at the addresses or fax numbers set forth thereon, unless other names, addresses or fax numbers are provided by either or both Parties in accordance herewith ("Notice"). When the word "notice", "notify" and/or "notification" appears in the Agreement in an un-capitalized format, it may be provided via telephone or email communication unless either Party has a reasonable objection thereto.

13. **Compliance with Laws.** In performing its obligations or enjoying its rights under the Agreement, each Party shall comply with all applicable laws and regulations. In addition, ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment, including ES&S Firmware, and ES&S Software sold and/or licensed under the Agreement will comply with all applicable requirements of state and federal election laws and regulations that are mandatory and effective as of the Delivery Dates and will have been certified by the appropriate federal and/or state authorities for use in Customer's jurisdiction. ES&S further warrants that during the Warranty Period and thereafter so long as Customer is subscribing and paying for Maintenance and Support Services set forth in Exhibit A and Schedule A1, the ES&S Firmware and ES&S Software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable federal and/or state election laws and regulations. For purposes of the ES&S Software and ES&S Firmware, "Maintained or upgraded" shall mean only such changes to individual items of the ES&S Software and ES&S Firmware (but not ES&S Equipment) as are technologically feasible and commercially reasonable. Customer shall be solely responsible for the cost of any replacements, retrofits or modifications to the ES&S Equipment contracted for herein that may be developed and offered by ES&S in order for such ES&S 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 ES&S Equipment and/or ES&S Software/ES&S Firmware to remain compliant with applicable laws and regulations.

14. **State Re-certifications.** In the event that any future state certifications or re-certifications are required that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the ES&S Software and/or ES&S Equipment licensed and sold hereunder, unless stated elsewhere in the Agreement, Customer shall be responsible for:

- (i) the total cost of any third-party items that are required in order for the ES&S Equipment and/or ES&S Software to remain certified;
- (ii) Customer's pro-rata share of such future state certification or re-certification costs; and
- (iii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the ES&S Equipment, including ES&S Firmware and/or ES&S Software that may result from such future state certifications or re-certifications.

Customer's pro-rata share of the costs included under subsections 14(ii) and 14(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Equipment, including ES&S Firmware and/or ES&S Software purchased and licensed by Customer under the Agreement.

15. **Venue and Applicable Law.** Any lawsuits related to or arising out of disputes under the Agreement shall be commenced and tried in the Circuit Court of Brown County, Wisconsin and the Customer and ES&S shall submit to the jurisdiction of the Circuit Court for such lawsuits. In all respects, the Agreement and any disputes arising under it shall be governed by the laws of the State of Wisconsin.

16. **Amendments.** This Agreement is the entire agreement between the undersigned Parties and shall only be modified, changed or amended in writing and signed by duly authorized representatives of each Party, which amendment shall expressly state that it is the intention of the Parties to amend the Agreement.

17. **Severability.** The provisions of the Agreement are severable and if any provision is found to be invalid, unenforceable, or void by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated unless the effect of holding the provision invalid, unenforceable or void defeats the entire purpose of the Agreement.

18. **Construction.** The Agreement, including Exhibit A and Schedule A1 shall constitute the full and complete understanding of the Parties and shall supersede all prior agreements or understandings, whether oral or written, between the Parties with respect to the subject matter herein. Both Parties have contributed to the drafting of the Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of the Agreement or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any Party by virtue of that Party having drafted the Agreement or any portion thereof. In the event that there is an inconsistency between this Sales Agreement, Exhibit A and/or Schedule A1, Schedule A1 shall govern.

19. **Independent Contractor Status.** In the performance of its obligations under the Agreement, ES&S understands and agrees that it is at all times acting and performing as an independent contractor and not as an employee of Customer. ES&S shall be solely responsible for the payment or withholding of any sums for income tax, unemployment insurance, social security or other withholding taxes or obligations for any of its services hereunder, pursuant to any laws or requirements of any governmental agency, and Customer shall have no responsibility for the same.

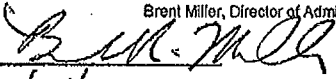
20. **Standards.** ES&S shall perform its duties under the Agreement in accordance with the professional standards and generally accepted practices then in effect for the industry in which it operates.

21. **Signature Authority.** The persons signing the Agreement warrant that they have been authorized to enter into the Agreement by and on behalf of their respective Parties and that they have full and complete authority to bind their respective Parties by executing the same.

**BROWN COUNTY TECHNICAL SERVICES**

Brent Miller, Director of Administration

Signature:



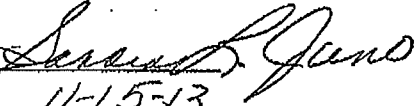
Date:

11/18/13

**BROWN COUNTY CLERK**

Sandy Juno, County Clerk

Signature:



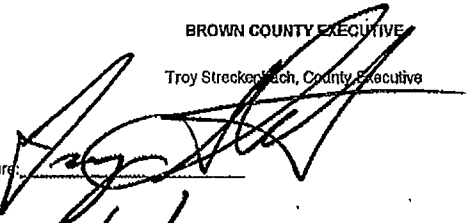
Date:

11-15-13

**BROWN COUNTY EXECUTIVE**

Troy Streckenbach, County Executive

Signature:



Date:

11/18/13

**ES&S (To be signed by the person**

Authorized to legally bind your firm to this Agreement.)

Vendor Name & Address

Vendor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signed Name: \_\_\_\_\_

(Required)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:

Original - Purchasing

Copy - Contractor(s)

Copy - Responsible Department(s)