

Halifax County Board of Commissioners

Vernon J. Bryant, Chairman
J. Rives Manning, Jr., Vice-Chairman
Carolyn C. Johnson
Linda A. Brewer
Marcelle O. Smith
T. Patrick W. Qualls



Tony N. Brown
County Manager
Andrea H. Wiggins
Clerk to the Board
M. Glynn Rollins, Jr.
County Attorney

Monday April 16, 2018 Regular Meeting 5:30 PM

Halifax County Historic Courthouse
10 North King Street, Post Office Box 38, Halifax, North Carolina 27839
252-583-1131/Fax: 252-583-9921
www.halifaxnc.com

The mission of the Halifax County Board of Commissioners is to provide leadership and support for an effective county government that seeks to enhance the quality of life for the people of Halifax County.

Call to Order

Chairman Vernon J. Bryant

Invocation and Pledge of Allegiance

Adoption of the Agenda

Conflict of Interest

Chairman Vernon J. Bryant

In accordance with the Halifax County Board of Commissioners Rules of Procedures and N. C. G. S. Sec.153A-44, it is the duty of every member present to vote on all matters coming before the Board, unless there is a conflict of interest as determined by the Board or by law. Does any Board member have any known conflict of interest with respect to any matters coming before the Board today? If so, please identify the conflict and the remaining Board members will vote to consider the requested excuse.

1. Agenda Items

- | | |
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| A. Halifax County Public Library Quiz Bowl Awards | Ginny Orvedahl, Library Director |
| B. Joseph Montfort Amphitheater Design/Engineering Contract | Ian M. Bungarner, Senior Management Analyst |
| C. Purchase of Voting Equipment Without Public Bidding | M. Glynn Rollins, Jr., County Attorney |
| D. FY 2018-2019 Budget Discussions | Mary W. Duncan, Finance Director |

2. Other Business

County Commissioners

3. Closed Session

County Commissioners

4. Adjourn

Accommodations for individuals with disabilities may be arranged by contacting the County Manager's office at 252-583-1131 at least 48 hours prior to the meeting.



AGENDA
Halifax County Board of Commissioners
Regular Meeting

TO: Halifax County Board of Commissioners

FROM: Ginny Orvedahl

PRESENTER: Ginny Orvedahl, Library Director

SUBJECT: Presentation of Cash Awards to Quiz Bowl teams. The award is to be used for the school libraries.

DATE: April 16, 2018 Regular Meeting

SUPPORTING INFORMATION:

Attached, please find the names of the 2018 Halifax County Public Library Quiz Bowl Teams, their ranking and award amount.

ATTACHMENTS:

Description

- ▢ 2018 Halifax County Public Library Quiz Bowl Rankings

TOTAL COST:\$1,000.00

COUNTY COST:\$1,000.00

REQUEST: The Halifax County Commissioners present the awards to the 2018 Halifax County Library Public Library Quiz Bowl teams.

2018 Halifax County Public Library Quiz Bowl Teams

1st. Place – Halifax Academy - \$450.00

2nd Place – Roanoke Rapids High School - \$250.00

3rd. Place – KIPP Pride High School - \$125.00

4th Place – Roanoke Valley Early College - \$100.00

5th Place – Southeast Collegiate Prep Academy



AGENDA
Halifax County Board of Commissioners
Regular Meeting

TO: Halifax County Board of Commissioners

FROM: Ian M. Bumgarner, Senior Management Analyst

PRESENTER: Ian M. Bumgarner, Senior Management Analyst

SUBJECT: Joseph Montfort Amphitheater Design/Engineering Contract

DATE: April 16, 2018 Regular Meeting

SUPPORTING INFORMATION:

The county went through an RFQ process to determine the most qualified design/engineering firm to draft plans for the Joseph Montfort Amphitheater. Skinner, Farlow, and Kirwan were selected based on their qualifications. We received the attached contract to have them design/engineer the amphitheater for \$129,900 which would be funded through the \$150,000 received from the State for the Amphitheater.

ATTACHMENTS:

Description

- ▢ Joseph Montfort Amphitheater Fee Schedule

TOTAL COST:\$129,900

COUNTY COST:\$0

REQUEST: Request the Board approve moving forward contracting with Skinner, Farlow, and Kirwan architecture for the design/engineering of the Joseph Montfort Amphitheater.

March 27, 2018

Mr. Ian Bumgarner
Senior Management Analyst
Halifax County Government
10 North King Street
Halifax, North Carolina 27839

RE: Fee Proposal for the Joseph Montfort Amphitheater

Dear Mr. Bumgarner,

Please find below a proposal for providing Design Services for the Joseph Montfort Amphitheater. The scope is based on the scope indicated in your request for proposal and our meeting March 6, 2018.

The goal of the project is to provide significant improvements to the amphitheater so that it may be utilized for performances and related activities such as outdoor education. The site is anticipated to be utilized during temperate and warm months, April – October. The existing site has not been in use as an outdoor event space for approximately 20 years.

Scope: Montfort Amphitheater

- Demo existing building structures as required for any new work based on evaluation of the structures and schematic design
- Seating for 400 – 500 persons max.
- Existing platform/stage area to remain where it is with new finish surface and repairs as necessary
- New concessions building, restrooms and two lighting towers with new lights on each
- Total of two new dressing rooms on either side of the stage, one male and one female
- New wall at the back of the stage (skene wall).
- New buildings need minimal conditioning, ventilation is the most important
- It is anticipated that buildings would be winterized and shuttered during the winter months
- All public buildings, stage and seating areas will be accessible
- Provide accessible parking and access to site amenities including restrooms, concessions, stage and seating
- Improve seating area to maximize seating, safety and long term durability
- Provide plumbing, mechanical and electrical support as required
- Provide appropriate connections to site electrical, sanitary and storm sewers and domestic water as necessary for the design

- Provide all necessary grading, site drainage and landscaping as necessary to accommodate new buildings, improved amphitheater and site improvements

Design Services Base Scope:

Schematic Design

- Includes 1 meeting with project owner representative and stakeholders for development of schematic design
- Includes 1 meeting with project owner regarding review of schematic design documents drawings
- Includes an initial meeting with SHPO regarding proposed design direction
- Plans and exterior elevations describing the intended building work
- Site plan and related documents as required for SCO review
- Preliminary cost estimate

Design Development:

- Includes 1 meeting with project owner representative for development of design
- Includes 1 meeting with project owner regarding review of design development documents drawings
- Includes 1 meeting with SHPO for any follow up or development of design
- Plans, elevations and sections describing the intended work
- Existing conditions site plan, site demolition plans, grading plans (no cut/fill calculations), layout plans, materials plans and details for review
- Landscape plans and details for review
- Site details for review
- Outline Specifications for review
- Updated preliminary cost estimate

Construction Documents:

- Preliminary permitting documents
- Building Code Summary and Life Safety Plans as required for construction for a maximum of three buildings/structures and the amphitheater.
- Dimensioned and noted Architectural plans for bidding and construction
- Dimensioned and noted Plumbing, Electrical and HVAC plans for bidding and construction
- Site – existing conditions plans, site demolition plans, grading plans, layout and materials plans and details as required for bidding and construction
- Landscape plans and details as required for bidding and construction
- Full specifications
- Cost estimate

Design Services Additional Scope:

There are some elements of the design that may be required depending on the determined design and regulatory requirements. These items are proposed as additional design services beyond the basic scope:

1. development of a parking lot
2. extension of the public sewer to provide a connection to the site

Consultants:

Architecture:

Skinner Farlow Kirwan Architecture
Contact: Alicia Kirwan
301 Glenwood Ave, Suite 270
Raleigh, NC 27603
office (984)222-0572
mobile (919)820-2404
akirwan@sfkarchitecture.com

Structural Engineering:

Lynch Mykins
Contact: Anna Lynch, PE
415 Hillsborough St., Suite #101
Raleigh, NC 27603
Office (919)782-1833
alynch@stroudpence.com

Plumbing Mechanical and Electrical:

Stanford White and Associates
Contact: Bill Smith, PE
1620 Midtown Place
Raleigh, NC 27609
Office (919)823-8118
wmsmith@stanfordwhite.com

Landscape Architecture:

Site Collaborative
Contact: Graham Smith, LA
727 West Hargett Street, Suite 101
Raleigh, NC 27603
Office (919)805-3586
gsmith@sitecollaborative.com

Civil Engineering:

Grounded Engineering
Contact: Sean Dolle, PE
PO Box 37312

Raleigh, NC 27627
Office (919)438-3694
sean@grounded-engineering.com

Geotechnical Engineering:

S&ME

Contact: J. Adam Browning, PE
3201 Spring Forest Road
Raleigh, NC 27616
Office: 919-872-2660 (Ext. 10245)
abrowning@smeinc.com

Project Cost:

Currently an overall project cost is not yet established. The design will help establish a budget for the project. Current funding of \$150,000 is provided for all aspects related to design through construction documents for permitting and bidding.

Fees:

The fees outlined below correspond with the scope outlined above, progress toward these phases will be billed monthly to the owner based on work completed.

BASE SCOPE DESIGN SERVICES	
Existing Conditions Documentation, Schematic Design	\$26,365
Design Development	\$31,754
Construction Documents (100%)	\$58,931
Base Scope Fee	\$117,050
ADDITIONAL DESIGN SERVICES	
Parking Lot Design	\$8,350
Extension of Sanitary Sewer	\$4,500
Total Fee with Additional Services	\$129,900

Reimbursable Expenses:

Reimbursable items will be billed monthly as incurred. All testing or professional services to be provided as a reimbursable expense will be provided at our cost plus 5%.

All outside reimbursable expenses for printing or copies, postage, or delivery will be billed at cost.

Those services or fees that are currently anticipated or may be necessary to complete construction documents and permitting are:

- Geotechnical testing (S&ME)
- Permitting fees

Exclusions:

Existing Conditions Drawings for use other than to generate Design Documents
Building Energy Modeling
Renderings or 3-Dimensional Imaging
Design, specification or selection of fixtures or furnishings
Design of deep foundations systems (those other than shallow slab and footing foundations)
Assisting in pre-qualification process for selection of contractors
Private Locator Services

To be provided by Owner:

Topographic survey information necessary for the production of the design, permitting and construction documents.

Schedule:

Schematic Design start upon receiving survey	6 weeks
SCO / Owner Review*	4 weeks
Design Development	6 weeks
SCO / Owner Review*	4 weeks
Construction Documents for Review and Permitting	8 weeks
SCO / Owner Review*	8 weeks
Final Documents for Approval	3 weeks
SCO/ Owner Review*	2 weeks

*The design team does not have control over review times. Times provided are those outlined in the NC State Construction Manual.

If this proposal is acceptable to the you, we will prepare a standard form of agreement utilizing the AIA B105-2017 form of contract for small commercial projects. Skinner Farlow Kirwan Architecture looks forward to providing these services to Halifax County. Please let me know if you have any questions.

Sincerely,



Alicia Lynn Kirwan, AIA
Skinner Farlow Kirwan Architecture, PA



AGENDA
Halifax County Board of Commissioners
Regular Meeting

TO: Halifax County Board of Commissioners

FROM: M. Glynn Rollins, Jr., County Attorney

PRESENTER: M. Glynn Rollins, Jr., County Attorney

SUBJECT: Purchase of Voting Equipment Without Public Bidding

DATE: April 16, 2018 Regular Meeting

SUPPORTING INFORMATION:

The Halifax County Board of Elections intends to purchase 30 new voting machines and related equipment from Election Systems & Software, LLC, ("ES&S") for a price of \$164,647.00. ES&S proposes to finance the purchase of the equipment by five annual installments of \$38,229.88 per year (which totals \$191,149.40). The additional cost of installment financing is \$26,502.40, or approximately 8% in interest during the financing period. If the full purchase price was paid up front, the county would incur a savings of \$26,502.40.

Hardware maintenance, software license and software support will cost an additional \$39,750.00, and will be invoiced directly to the Board of Elections as incurred.

Ordinarily, a purchase of equipment for this amount (exceeding \$90,000.00) would require a formal bidding process. However, ES&S is the only vendor that is currently certified by the State Board of Elections to sell voting equipment in North Carolina. Therefore, the purchase of this equipment is exempt from public bidding under G.S. 143-129(e)(6). However, that statute requires that the board of county commissioners approve the purchase pursuant to this exception. A copy of the proposed Sales Order Agreement, G.S. 143-129(e)(6) and "sole source" documentation is attached.

ATTACHMENTS:

Description

- ▢ Sales Order Agreement
- ▢ G.S. 143-129(e)(6)
- ▢ Sole Source Certification Letter

TOTAL COST: \$230,899.40 if Vendor financed; \$204,397.00 if not financed	COUNTY COST: Same
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REQUEST: Approve the purchase of the voting equipment identified in the attached Sales Order Agreement as "sole source" equipment available from only one source of supply, and consider whether to appropriate additional funding to save cost of financing the purchase of the equipment.



11208 JOHN GALT BLVD
OMAHA, NE 68137-2364
(402) 593-0101

Sales Order Agreement

Customer P.O. #: _____

1st Election Date: To be Agreed Upon by the Parties

Estimated Delivery Date: To be Agreed Upon by the Parties

Phone Number: (252) 583-4391

Fax Number: (252) 583-1068

Customer Contact, Title: Kristin Scott - Director of Elections

Customer Name: Halifax County, North Carolina

Type of Sale: ☒ **NEW**

Type of Equip: ☒ **NEW** ☐ **REFURBISHED**

Bill To: _____

Halifax County, North Carolina

Kristin Scott - Director of Elections

P.O. Box 101

Halifax, NC 27839

Ship To: _____

Halifax County, North Carolina

Kristin Scott - Director of Elections

10 N. King Street

Halifax, NC 27839

	<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>Price</u>	<u>Total</u>
1	DS200	Model DS200 Digital Image Scanner with Internal Backup Battery, Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, and 4GB Jump Drive	30	\$5,750.00	\$172,500.00
2	Other	Tote Bin	30	\$225.00	\$6,750.00
3	Other	4GB Jump Drive (Additional)	10	\$105.00	\$1,050.00
4	Equipment Installation	Model DS200 Scanners	30	\$115.00	\$3,450.00
5	Services	Project Management Day	2	\$1,650.00	\$3,300.00
6	Services	Equipment Operations Training Day	1	\$1,650.00	\$1,650.00
7	Services	Poll Worker Train-the-Trainer Day	1	\$1,650.00	\$1,650.00
8	Services	Election On-Site Support Event	1	\$4,525.00	\$4,525.00
9	Trade-In Allowance	Equipment Being Traded-In by Customer Includes: 38 - Model 100 Scanner 38 - Model 100 Ballot Box	1	(\$19,000.00)	(\$19,000.00)
10	Shipping	Shipping & Handling	1	\$4,155.00	\$4,155.00

Freight Billable: yes ☒ no ☐

Order Subtotal \$ **180,030.00**

Customer Discount **(\$15,383.00)**

Order Total \$ **164,647.00**

Mac Beeson

Regional Sales Manager

Customer Signature

Date

V.P. of Finance

Date

Title

Sales Order Agreement

Trade-In Equipment:

ES&S will coordinate and pay for the pickup and transportation of the trade-in equipment from Customer's site on a date to be mutually agreed upon by the parties. ES&S is responsible for preparing, packaging and palletizing the trade-in equipment for shipment.

Special Notes:**Payment Terms**

Order Total Payable as follows: (i) \$38,229.88 due upon Contract Execution, and (ii) \$38,229.88 due on each of the four (4) succeeding anniversaries of Contract Execution, for a total of five (5) Payments.

Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.

Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Warranty Period (Years):

One (1) Year From Equipment Delivery

Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)

The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.

SEE GENERAL TERMS AND CONDITIONS

GENERAL TERMS

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

2. **Grant of Licenses.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full time employees to use the ES&S Software and related Documentation in the Jurisdiction while Customer is using the ES&S Equipment and timely pays the applicable annual ES&S Software License, Maintenance and Support Fees set forth on Schedule A1. The licenses allow such bona fide employees to use and copy the ES&S Software (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 this Section 2 do not permit Customer to access or in any way use the source code for the ES&S Software.

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

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

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

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

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

4. **Term of Licenses.** The licenses granted in Section 2 shall commence upon the delivery of the ES&S Software described in Section 2 and shall continue for a **one (1) year period** (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by Customer of the annual software license and software maintenance and support fee as set forth on the reverse side. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

5. **Updates.** During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the ES&S Equipment which may be necessary in order 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) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals 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 state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any third party items that are required in order to operate the Updates;
- (ii) the total 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; and
- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (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 Equipment and/or Licensed Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

6. **Delivery: Risk of Loss.** The Estimated Delivery Dates set forth on the reverse side are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by Customer 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 ES&S Equipment and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software and shall name ES&S as an additional insured thereunder until all amounts payable to ES&S under this Agreement have been paid by Customer.

7. **Warranty.**

a. **ES&S Equipment/ES&S Software.** ES&S warrants that for a **one (1) year period** (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 Period will commence upon delivery. 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 ES&S Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. 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 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. The terms of post-warranty license, maintenance and support are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), 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. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' INSTALLATION AND ACCEPTANCE TESTING SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY ES&S OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH RESPECT TO THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.

8. **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the ES&S Equipment and ES&S Software to achieve Customer's intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S 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 ES&S Equipment or ES&S 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 provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the ES&S Software Maintenance and Support.

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

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 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. 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.

10. **Indemnification.** To the fullest extent permitted under applicable law, Customer shall indemnify and hold harmless ES&S from and against any and all claims, damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to the following:

a. Any claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's copyright, trademark or patent existing as of the date hereof (a "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, 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 10, 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.

11. **Termination.** This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

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 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 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 it. 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 per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

13. **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.

14. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment and ES&S Software sold and licensed under this Agreement will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in Customer's state.

15. **State Recertifications.** In the event that any future state certifications or recertifications 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, 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 recertification 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 and/or ES&S Software that may result from such future state certifications or recertifications.

Customer's pro-rata share of the costs included under subsections 15(ii) and 15(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 and/or ES&S Software purchased and licensed by Customer under this Agreement.

16. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing equipment, software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the equipment, software or services, but shall remain fully responsible for such performance. The provisions of Sections 1-5, 7(b), 8-10, 12(b), 13-16 these General Terms shall survive the termination of this Agreement, to the extent applicable.

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

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Term"). 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 party's written election not to renew, which shall be delivered to the other party 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 notifies the other that it has materially breached this Exhibit A, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. 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) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule A1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by Customer. All 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 License, Maintenance and Support Fee shall be comprised of (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software License, 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 A. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Exhibit A through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance and Software License, Maintenance and Support plan coverage.

ARTICLE II
HARDWARE

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment set forth on Schedule A1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their

Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each **Twelve (12) Months** during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services 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, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal 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 A1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services.

b. **Repair 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 item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

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, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 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 Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided by ES&S within 48 hours after Customer notifies ES&S of the need therefore), and such emergency Repair 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 A1.

iv. **Loaner Unit.** At Customer's request and if such product is available, 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 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 the cost of shipping.

c. **Exclusions.** ES&S has no obligation under this Agreement 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, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, 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 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.

d. **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 the Initial Term or any Renewal Period 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.

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

f. **Reinstatement of Hardware Maintenance Services; Inspection.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates 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 it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

ARTICLE III

SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

1. **License and Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to allow Customer to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material

or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 5 of the General Terms.

3. **Conditions.** ES&S shall not provide Software License, 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 provided to it by ES&S, (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Exhibit A. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions 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, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this 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 thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of 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) 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 License, Maintenance and Support services.

Schedule A1
Pricing Summary

<u>Summary:</u>		
Description	Refer To	Amount
ES&S Hardware Maintenance Fees	ES&S Hardware Maintenance Description and Fees Below	\$27,750.00
ES&S Firmware License, Maintenance and Support Fees	ES&S Firmware License, Maintenance and Support Description and Fees Below	\$12,000.00
Total Maintenance Fees for the Initial Term:		\$39,750.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer.		
Note 2: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Initial Term: Expiration of the Warranty Period through the fifth anniversary thereof

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
30	Model DS200 Scanner	Year 1	\$185.00	\$5,550.00
30	Model DS200 Scanner	Year 2	\$185.00	\$5,550.00
30	Model DS200 Scanner	Year 3	\$185.00	\$5,550.00
30	Model DS200 Scanner	Year 4	\$185.00	\$5,550.00
30	Model DS200 Scanner	Year 5	\$185.00	\$5,550.00
Total Hardware Maintenance Fees for the Initial Term				\$27,750.00

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period shall be 55% of the then current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be the daily maintenance service rate in effect at the time such service is requested.

Note 3: Customer's Designated Location: Halifax County, North Carolina

Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.

Note 5: Upon expiration of the Initial Term, this Schedule A1 shall automatically renew as set forth in Article I, Section 1.

Hardware Maintenance Services Provided by ES&S Under this Schedule A1

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
 - Onsite scheduled maintenance inspection per Article II, Section 1(a). The Inspection includes:
 - Service performed by an ES&S trained and certified technician.
 - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - Replacement of worn or defective parts with new or remanufactured federally and state certified parts.

- Conducting a final test to verify that the unit is working according to manufacturer's specifications.
- Use of a checklist tailored for each piece of ES&S Equipment.
- Update of maintenance records which are kept by serial number and available to the Customer through the Customer's ES&S Web-based portal.

5. Repair Services.

- Customer will receive coverage for interim repair calls.
 - Interim repair calls may be provided during a scheduled Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity to Customer's location if such repairs are not election critical.
 - A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.

6. Priority Services.

- Customer has access to the ES&S Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified ES&S parts inventory.

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

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES
FIRMWARE**

Initial Term: Expiration of the Warranty Period through the fifth anniversary thereof

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
30	Model DS200 Scanner	Year 1	\$80.00	\$2,400.00
30	Model DS200 Scanner	Year 2	\$80.00	\$2,400.00
30	Model DS200 Scanner	Year 3	\$80.00	\$2,400.00
30	Model DS200 Scanner	Year 4	\$80.00	\$2,400.00
30	Model DS200 Scanner	Year 5	\$80.00	\$2,400.00
Total Firmware License, Maintenance and Support Fees for the Initial Term				\$12,000.00

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

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

1. Customer shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
 - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
 - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
 - Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.

4. Customer shall be responsible for the installation and 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 system.
6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Equipment and ES&S Software.
7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
9. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the User Guides as part of ES&S' Equipment and Software.
10. 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.
11. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

(e) Exceptions. – The requirements of this Article do not apply to:

- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

April 9, 2018

Ms. Kristin Scott
Board of Elections Director
Halifax County, North Carolina
10 N. King Street
Halifax, North Carolina 27839

**RE: Election Systems & Software, LLC ("ES&S") Equipment, Software
and Support Services**

Dear Ms. Scott:

This letter is in response to Halifax County, North Carolina's ("County") request for information regarding ES&S' proprietary election equipment, proprietary election software and election support services. This letter provides the County with information on ES&S' proprietary Model DS200 precinct count scanner (the "ES&S Equipment") as well as ES&S' proprietary ES&S Equipment firmware (the "ES&S Software").

Please be advised that ES&S owns all patents, copyrights and trademarks ("Intellectual Property") associated with the ES&S Equipment. Further, ES&S is the sole and exclusive developer and manufacturer of the ES&S Equipment and only ES&S may sell such equipment in the marketplace. In addition, certain component parts of the ES&S Equipment are proprietary to ES&S and may only be obtained directly from ES&S. As certain component (maintenance) parts of the ES&S Equipment may only be obtained directly from ES&S, only ES&S and ES&S' trained technicians can ensure that such ES&S proprietary component parts are installed in the ES&S Equipment. This is important to note as the ES&S Equipment is certified both at the Federal and State level and require the replacement of the same certified component parts which were included in the ES&S Equipment at the time such ES&S Equipment was certified. By purchasing the ES&S Equipment from ES&S as well as utilizing ES&S for the performance of preventative and repair maintenance and support services, the County will be assured that all component parts installed in the ES&S Equipment will be in compliance with both the federal and state certified equipment configuration.

With respect to the ES&S Software, please be advised that ES&S is the sole and exclusive developer and licensor of the ES&S Software. As such, ES&S owns all Intellectual Property in its proprietary ES&S Software. Further only ES&S can provide help desk support services for the ES&S Software as well as provide any and all upgrades, enhancements, maintenance patches and other changes to the ES&S Software as may be required by ES&S or its customers. No other vendor in

Ms. Kristin Scott

April 9, 2018

Page: 2

the marketplace today is authorized to license or provide maintenance and support services for the ES&S Software.

Finally, with respect to certified voting systems in the State of North Carolina, as of the date of this letter and to the best of our knowledge, only ES&S' voting systems have been certified for use in the State of North Carolina and no other voting system provider or their voting systems have been fully certified for use in the State of North Carolina.

Please let me know if you have any questions or need any additional information.

Sincerely,



Timothy J. Hallett
Associate General Counsel

cc: Heather Scott, ES&S
Mac Beeson, ES&S
Tammy Malone, PrintElect



AGENDA
Halifax County Board of Commissioners
Regular Meeting

TO: Halifax County Board of Commissioners

FROM: Mary W. Duncan, Finance Director

PRESENTER: Mary W. Duncan, Finance Director

SUBJECT: FY 2018-2019 Budget Discussions

DATE: April 16, 2018 Regular Meeting

SUPPORTING INFORMATION:

The attached spreadsheets present the History of Fund Balance, current year Working Fund Balance, FY 18-19 Debt Payment Schedule, Fire Department Tax Rates and school Current/Capital Expense values.

ATTACHMENTS:

Description

 Budget Documents

TOTAL COST:0

COUNTY COST:0

REQUEST: The Board approve the FY 18 - 19 Budget Updates

HISTORY OF FUND BALANCE

YEAR	TOTAL FUND BALANCE Designated/Undesignated	FUND BALANCE Undesignated	FUND BALANCE Unassigned	FUND BALANCE Other Restricted/Non-Spendable	FUND BALANCE Committed	FUND BALANCE Assigned	TOTAL EXPENDITURES	FUND BALANCE % Total FB	FUND BALANCE % Unassigned FB
2003	11,903,256	11,453,673					76,544,491	15.55%	14.96%
2004	17,054,721	15,757,265					57,657,710	29.57%	27.33%
2005	23,404,753	17,161,395					55,607,458	40.59%	30.86%
2006	32,262,832	26,288,682					55,475,892	58.16%	47.39%
2007	32,579,481	25,854,498					59,642,252	54.62%	43.35%
2008	31,066,571	23,887,587					61,267,917	50.71%	38.99%
2009	30,032,177	22,939,596					58,473,329	51.36%	39.23%
2010	31,852,211	24,021,981					52,375,200	60.82%	45.87%
2011	32,574,663		17,589,602	10,056,147	987,513	3,941,401	52,768,583	61.73%	33.33%
2012	33,291,780		13,226,413	14,524,034	1,010,972	4,530,361	54,722,005	60.84%	24.17%
2013	29,748,050		10,528,955	14,658,077	1,063,800	3,497,218	57,478,840	51.75%	18.32%
2014	27,111,500		11,643,265	12,696,926	888,375	1,882,934	54,854,593	49.42%	21.23%
2015	26,713,384		8,329,303	13,725,830	747,339	3,910,912	54,683,068	48.85%	15.23%
2016	25,690,994		2,271,623	19,682,193	646,014	3,361,164	56,100,983	45.79%	4.05%
2017	27,214,345		4,707,922	18,827,181	545,114	3,134,128	62,741,061	43.38%	7.50%

**2003 - 2017 reflect actual audited figures for Fund Balance percentages. The audited figures include 18 departmental funds considered General Fund by GAAP (Generally Accepted Auditing Principals).

Non-spendable: Not in Cash form - prepaid, inventories...
Restricted: External restrictions such as laws or grants
Committed: Internal constraints at Board level; require Board action to reallocate
Assigned: Internal constraints at lower level than Committed
Unassigned: No external or internal constraints

APPROPRIATED FUND BALANCE HISTORY

FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18	Grand Total
2,018,210	1,593,595	2,072,596	1,956,117	1,937,007	1,242,140	779,922	2,901,558	2,502,546	1,851,219	18,854,910
6¢	5¢	6¢	6¢	6¢	4¢	2¢	10¢	8¢	6¢	59¢

\$330,000 = .01 Tax Increase for FY 15 and earlier

\$300,000 = .01 Tax Increase for FY 16 & FY 17

**LGC AUDITED FUND BALANCE 6-30-17
CONSOLIDATED GENERAL FUND**

CATEGORIES

PREPAID ITEMS	34,500.00
STABILIZATION BY STATE STATUTE	10,292,174.00
HUMAN SERVICES (unspent grants)	8,500,507.00
ASSIGNED (budgeted for Public Safety & FY 18 use)	3,679,242.00
UNASSIGNED	4,707,922.00
	<u>\$ 27,214,345.00</u>

DEPARTMENTAL

GENERAL FUND	16,340,701.00
PUBLIC HEALTH	4,907,154.00
SOCIAL SERVICES	3,593,353.00
EMERGENCY MEDICAL SERVICES	1,828,023.00
REASSESSMENT	545,114.00
	<u>\$ 27,214,345.00</u>

TOTAL EXPENDITURES \$ 59,341,415.00

LGC FUND BALANCE PERCENTAGE 45.86%

COMMISSIONER'S DESIGNATED RESERVE - INTERNAL GOAL

18%	\$ 4,898,582.10	
22%	\$ 5,987,155.90	
8%	\$ 2,177,147.60	\$ 25,037,197.40

Assigned/Committed Fund Balance

Public Safety	1,828,023
FY 18 Appropriation	1,306,105
Reassessment	545,114
	<u>3,679,242</u>

Working Fund Balance (checking account)

FUND BALANCE	15,795,799.00
RESERVED BY STATE STATUTE	(10,292,174.00)
PREPAID ITEMS	(34,500.00)
AVAILABLE FUND BALANCE	5,469,125.00

APPROPRIATIONS:

MISCELLANEOUS	1,150.00
CARRY FORWARDS	1,234,568.24
ADJUST BUDGET TO ACTUAL (GRANTS, ETC)	149,069.00
APPROPRIATE FUNDS (EMPLOYEE BONUSES)	60,849.14
RESERVED FOR SCHOOL CAPITAL OUTLAY	936,000.00
TOTAL APPROPRIATIONS	2,381,636.38

ESTIMATED CURRENT FUND BALANCE 3,087,488.62

TOTAL FUND 110 EXPENDITURES \$ 30,674,911.00

FUND BALANCE PERCENTAGE 10.07%

COMMISSIONER'S DESIGNATED RESERVE - INTERNAL GOAL

8%	\$ 2,453,992.88	\$ 633,495.74
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A. ENSURE CASH FLOW FROM JULY-OCTOBER

B. ALLOW FOR DISASTER EXPENSE

GENERAL FUND DEBT PAYMENT SCHEDULE 2018-2019

\$.01 = aprox. \$309,000

LONG TERM DEBT	ORIGINAL	LIFE OF	FINAL	INTEREST	PRIN AND INT		6/30/2019	Payment in Cents
	LOAN	LOAN	PAY DATE	RATE	PAYMENT '18-19	PRINCIPAL	BALANCE DUE	of Tax Dollar
RRHS (QZAB Sinking Fund)	1,642,400.00	16 yrs.	Dec . 2020	0.00%	89,500.00	89,500.00	1,642,400.00	0.29
Economic Dev. Bldg (1/3 GF)	387,000.00	7 yrs.	March 2025	0.00%	55,285.56	55,285.56	317,892.62	County Share 0.06
DSS /Inborden Elem Refinancing	12,005,000.00	10 yrs	June., 2026	2.35%	1,527,404.00	1,305,000.00	9,137,347.00	4.94
QSCB - Weldon & Roanoke Rapids	2,552,967.00	15 yrs.	Sept, 2026	5.00%	290,383.01	165,933.15	1,327,465.22	0.94
Manning Elementary	18,100,000.00	15 yrs.	April, 2031	3.10%	1,683,601.66	1,206,666.66	15,686,666.68	5.45

TOTAL 34,687,367.00 3,646,174.23 2,822,385.37 28,111,771.52

Transfer Station (Enterprise Debt)	1,700,000.00	11 yrs	June, 2022	2.15%	189,837.98	176,825.13	472,393.91
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TOTAL ENTERPRISE 1,700,000.00 189,837.98 176,825.13 472,393.91

FY18-19

FIRE DEPARTMENT RATES	FY17-18	REQUESTED FY18-19
Arcola	0.0677	0.0677
Darlington	0.0890	0.0890
Davie	0.0945	0.0945
Enfield	0.0690	0.0690
Halifax	0.0728	0.0728
Hobgood	0.0685	0.0685
Littleton	0.0534	0.0534
Rheasville	0.0705	0.0705
Scotland Neck	0.0690	0.0690
Tillery	0.0475	0.0475
Weldon	0.0894	0.0845
Our Community Hospital	0.1200	

**Halifax County School Units
Estimates for Fiscal Year 2018-19**

Current Expense

Student - Per Capita (7,642* total population including Charter School population estimate) To be certified by NCDPI	Revenue	Halifax County	Roanoke Rapids	Weldon
		44.87%	39.98%	15.15%
		ADM 2,472 (+ 957 Charter)	ADM 2,871 (+184 Charter)	ADM 899 (+259 Charter)
Local Current Expense Appropriation (includes \$150,000 Art. 44 LOST)	\$5,352,231	\$ 2,401,546	\$ 2,139,822	\$ 810,863
ABC Profits	\$85,000	\$ 38,139	\$ 33,983	\$ 12,878
Fines/Forfeitures	\$150,000	\$ 67,305	\$ 59,970	\$ 22,725
Total Current Expense Appropriations	\$5,587,231	\$ 2,506,990	\$ 2,233,775	\$ 846,466
Budget Requests	\$8,504,947	\$ 2,444,814	\$ 4,188,113	\$ 1,872,020
Difference	(\$2,917,716)	\$ 62,176	\$ (1,954,338)	\$ (1,025,554)

Capital Outlay

		Halifax County	Roanoke Rapids City*	Weldon City**
Capital Outlay Appropriation	\$ 755,830	\$ 339,141	\$ 302,181	\$ 114,508
Capital Outlay (Article 44)	\$ 600,000	\$ 200,000	\$ 200,000	\$ 200,000
Total Capital Outlay Appropriations	\$ 1,355,830	\$ 539,141	\$ 502,181	\$ 314,508
Budget Requests	\$ 29,095,314	\$ 11,745,134	\$ 3,037,000	\$ 14,313,180
Difference	\$ (27,739,484)	\$ (11,205,993)	\$ (2,534,819)	\$ (13,998,672)
Enfield School Debt Service	\$ 1,084,457			
Manning Elementary School Debt Service	\$ 1,683,602			
RRGSD-QSCB Debt Service* (to be deducted from capital outlay total)	\$ 113,246			
Weldon City Schools-QSCB Debt Service** (to be deducted from Capital Outlay total)	\$ 60,978			
RRGSD-QZAB Debt Service* (to be deducted from Capital Outlay total)	\$ 89,500			
Total Debt Service	\$ 3,031,783			

1)FY 14-15 CURRENT EXPENSE PER CAPITA = \$632.87

2)FY 15-16 CURRENT EXPENSE PER CAPITA = \$652.89

3)FY 16-17 CURRENT EXPENSE PER CAPITA = \$666.10

4)FY 17-18 CURRENT EXPENSE PER CAPITA = \$677.37

5)FY 18-19 CURRENT EXPENSE PER CAPITA = \$700.37

**Per capita amounts exclude ABC Profits and Fines & Forfeitures*