

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: August 27, 2013
Re: Hennepin County/City of Tonka Bay Lease Agreement for
Election Equipment

Attached is a copy of the lease agreement between Hennepin County and the City of Tonka Bay. In 2014 we will begin using new election equipment that uses digital image technology. Information about the ballot machine is attached.

The annual cost to lease the machine has increased from \$128 to \$187.20 per year. The lease agreement is from September 1, 2013 through August 31, 2014 with automatic one-year renewals. This is similar to past lease agreements we have had with the County for election equipment.

ATTACHMENTS:

1. Lease agreement and Addendum A
2. Ballot machine information

Council Action Requested:

Authorize Mayor and City Administrator to enter into lease agreement with Hennepin County.

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**HENNEPIN COUNTY/CITY OF Tonka Bay
LEASE AGREEMENT**

THIS AGREEMENT, made by and between the COUNTY OF HENNEPIN and the CITY OF Tonka Bay, both political subdivisions of the State of Minnesota, hereinafter referred to as the "County" and the "City" respectively. For purposes of this Agreement, the address of the County is A2300 Government Center, Minneapolis, Minnesota 55487 and the address of the City is 4901 Manitou Road, Tonka Bay, MN 55331.

WITNESSETH

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 13-0134 authorized the purchase of election equipment for a countywide digital scan voting system, election hardware and services; and

WHEREAS, the Hennepin County Board of Commissioners in Resolution Number 05-564 authorized the purchase of Assisted Voting Technology equipment for a countywide optical scan voting system, election hardware and services through the State of Minnesota Cooperative Purchasing Agreement; and

WHEREAS, the County and the City of Tonka Bay are parties to a prior agreement numbered A-052278 relating to the lease of election equipment and the County and City desire to terminate that lease agreement and replace it with this agreement.

WHEREAS, the County desires to lease Election Equipment and AVT Equipment (as defined herein) to the City of Tonka Bay for use in all city elections.

NOW THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the County and the City agree as follows:

Section 1

SCOPE OF AGREEMENT

- 1.1 The County hereby leases to the City at the cost identified below and subject to the terms and conditions of this Agreement, and the City hereby agrees to lease from the County election equipment identified as: one (1) DS200 Digital Scan Precinct Count Units (including two (2) 4 GB Jump Drives), and one (1) DS200 Plastic Ballot Boxes (the "Election Equipment") for polling places contained within the City.

- 1.2 The County hereby leases to the City subject to the terms and conditions of this Agreement, and the City hereby agrees to lease from the County AVT Equipment identified as: two (2) AutoMARK Voter Assist Terminals, four (4) flashcards and two (2) ES&S AutoMARK Tables with adjustable legs for polling places ("AVT Equipment") contained within the City.
- 1.3 Subject to the terms and conditions of this Agreement, the parties may agree by written addendum executed by all the parties to increase or decrease the County Election Equipment and AVT Equipment included within the scope of this agreement. Hennepin County hereby delegates authority to execute such an addendum to the County Auditor. The City hereby delegates authority to execute such an addendum to the authorized City officer, or the City Council, as appropriate.
- 1.4 Upon the express written permission of County's Election Manager, or her/his designee, the City may lease Election Equipment and/or AVT Equipment to a school district. Said lease shall be made pursuant to a written agreement, between the City and the school district, which includes substantially the same terms as those contained herein.

Section 2

OWNERSHIP

- 2.1 The City acknowledges that the County owns the Election Equipment and AVT Equipment and that the City is authorized to use said Election Equipment and AVT Equipment for official election related purposes. Use of the Election Equipment and AVT Equipment for any other purpose is strictly prohibited absent express written consent of the County.
- 2.2 The City acknowledges and agrees that the Election Equipment and AVT Equipment may contain proprietary and trade secret information that is owned by a third party and is protected under state and federal copyright law or other laws, rules, regulations and decisions. The City shall protect and maintain the proprietary and trade secret status of the Election Equipment and AVT Equipment.

Section 3

HANDLING OF EQUIPMENT AND INDEMNIFICATION

- 3.1 The City shall be responsible for the Election Equipment and AVT Equipment while it is in the City's custody, possession or control. The City, either through insurance or a self-insurance program, shall be responsible for all costs, fees, damages and expenses including but not limited to personal injury, storage, damage, repair and/or replacement of the Election Equipment and AVT

Equipment while it's in the City's custody and this Agreement is in effect, consistent with the City's defense and indemnity obligations contained in Section 7.6 herein.

- 3.2 The City shall be responsible for the transporting of the Election Equipment and AVT Equipment from and to the County. The City shall be responsible for all costs, including but not limited to shipping, related to the repair or replacement of lost, stolen, destroyed or damaged Election Equipment and AVT Equipment as well as the maintenance and repair costs described in Sections 5.1 and 5.2.

Section 4

TERM, TERMINATION

- 4.1 This Agreement commences September 1, 2013 and expires August 31, 2014. Thereafter, this Agreement shall automatically renew for additional one year periods unless either party notifies the other party, on or before June 1st of that year, of its intention not to renew. Termination of this Agreement by the City shall not relieve the City of any duties or obligations hereunder including but not limited to the obligation to pay amounts due and payable. Upon expiration or any termination of this Agreement, the City shall return the Election Equipment and/or AVT Equipment within a reasonable time and in good operating condition except for routine wear and tear.

Section 5

MAINTENANCE

- 5.1 **Maintenance Agreement (DS200)** The County has entered into an agreement with a third-party ("Maintenance Vendor") for maintenance and repair of the Election Equipment as more fully described in Addendum A ("Maintenance Services). The City will obtain Maintenance Services for the Election Equipment directly from the Maintenance Vendor including but not limited to scheduling and supervising the Maintenance Vendor. City shall pay County the per unit amount that County pays to the Maintenance Vendor plus any additional costs incurred by County as the same are directly related to maintenance and repair of the Election Equipment leased by the City which may include the cost of replacement parts.
- 5.2 **Maintenance Agreement (AVT Equipment).** The County has entered into an agreement with a third-party ("AVT Maintenance Vendor") for maintenance and repair of the AVT Election Equipment ("AVT Maintenance Services). The City will obtain AVT Maintenance Services for the AVT Election Equipment directly from the AVT Maintenance Vendor including but not limited to scheduling and supervising the AVT Maintenance Vendor. City shall pay County the per unit amount that County pays to the AVT Maintenance Vendor plus any additional

costs incurred by County as the same are directly related to maintenance and repair of the AVT Election Equipment leased by the City which may include the cost of replacement parts.

- 5.3 The City agrees not to make any repairs, changes, modifications or alterations to the Election Equipment or AVT Equipment that are not authorized by Hennepin County and said vendors.
- 5.4 After reasonable notice, the County shall have the right to enter into and upon the premises where the Election Equipment and AVT Equipment is located for the purposes of inspecting the same or observing its use. On an annual basis, during the term of this Agreement, the City shall comply with the County's request for verification of Election Equipment and AVT Equipment inventory.
- 5.5 The City agrees to provide notice to Maintenance Vendor and/or AVT Maintenance Vendor of any defects or malfunctions with the Election Equipment and/or AVT Equipment within twenty-four (24) hours. The City also agrees to provide the County with notice of such malfunctions or defects and the Maintenance Vendor and/or AVT Maintenance Vendor response within a reasonable time.

Section 6

PROGRAMMING AND ACCUMULATION

- 6.1 **Programming.** The County will be responsible for programming the DS200 Digital Scan Election Equipment at no charge to jurisdictions for all races in all elections.
- 6.2 **Programming Costs.** The City is responsible for paying to the County the programming costs of the AVT Equipment described in paragraph 1.2 at an amount prorated upon the number of columns devoted to the City's races on the ballot.
- 6.3 **Results Transmission and Accumulation.** The County has invested a significant amount of resources in equipment that allows the DS200 Digital Scan tabulators to electronically transmit election results via wireless technology from each polling place to a central location and for those results to be accumulated and posted on the County's website. There is also a significant operational cost associated with each use of this transmission and accumulation process.
- 6.4 For Cities with a primary and/or a general election, as described in Minn. Stat. §§ 205.065 and 205.07, in the even-numbered years, the County will provide results transmission and accumulation of results of City races in the primary and general election at no cost to the City.
- 6.5 For Cities with a primary and/or a general election, as described in Minn. Stat. §§ 205.065 and 205.07, in the odd-numbered years, upon written request by the

city, the County will perform the electronic transmission and accumulation of results of City races in the primary and general election, at a cost of \$100 per polling place for the primary, and \$100 per polling place for the general election. The County will not perform the electronic transmission and accumulation of votes cast in any other City elections, unless by mutual agreement with the City. The County may, in its sole discretion, elect to waive this fee.

Section 7

OTHER TERMS AND CONDITIONS

- 7.1 **No Waiver.** No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof unless the same is consented to in writing. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be observed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.
- 7.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- 7.3 **Entire Agreement.** It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Pursuant to the foregoing, the parties acknowledge and agree that Agreement A-052278 between the parties is hereby terminated and replaced with this Agreement.

All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

- 7.4 **No Assignment.** Neither party shall assign, sublet or transfer this Agreement, either in whole or in part, without the prior written consent of the other party, and any attempt to do so shall be void and of no force and effect.
- 7.5 **Limited Warranty.** County warrants that it owns title to the Election Equipment and AVT Equipment, or to the extent it does not own title, that it has all rights necessary to grant the licenses herein.

7.6 **No Warranty.** COUNTY IS PROVIDING THE ELECTION EQUIPMENT AND AVT EQUIPMENT ON AN AS-IS BASIS WITH NO SUPPORT WHATSOEVER. THERE IS NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR PARTICULAR USE, NO WARRANTY OF NON-INFRINGEMENT, NO WARRANTY REGARDING THE USE OF THE INFORMATION OR THE RESULTS THEREOF AND NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

Pursuant to the foregoing, the City agrees that the County is furnishing the Election and AVT Equipment on an "as is" basis, without representation or any express or implied warranties, other than those provided by the Maintenance Vendor and/or AVT Maintenance Vendor, including but not limited to, fitness for particular purpose, merchantability or the accuracy and completeness of the Election Equipment or AVT Equipment. The County does not warrant that the Election Equipment and/or AVT Equipment will be error free. The County disclaims any other warranties, express or implied, respecting this agreement or the Election or AVT Equipment.

The City's exclusive remedy and the County's sole liability for any substantial defect which impairs the use of the Election Equipment and/or AVT Equipment for the purposes stated herein shall be the right to terminate this Agreement.

7.7 IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ACTUAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES (EVEN IF THE COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE) OR LOSS OF PROFIT, LOSS OF BUSINESS OR ANY OTHER FINANCIAL LOSS OR ANY OTHER DAMAGE ARISING OUT OF PERFORMANCE OR FAILURE OF PERFORMANCE OF THIS AGREEMENT BY THE COUNTY.

The County and the City agree each will be responsible for their own acts and omissions under this Agreement and the results thereof including but not limited to the acts or omissions of the party's subcontractors, employees and other personnel and shall to the extent authorized by law defend, indemnify and hold harmless the other party from any liability, claims, causes of action, costs or expenses resulting directly or indirectly from such acts and/or omissions. Each party shall not be responsible for the acts, errors or omissions of the other party under the Agreement and the results thereof. The parties' respective liabilities shall be governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. The statutory limits of liability for some or all of the parties may not be added together or stacked to increase the maximum amount of liability for any party. This paragraph shall not be construed to bar legal remedies one party may have for the other party's failure to fulfill its obligations under this Agreement. Nothing in this Agreement constitutes a waiver by the City or County of any statutory or common law defenses, immunities, or limits on liability.

7.8 **Notice.** Any notice or demand shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

To the City: City of Tonka Bay
4901 Manitou Road, Tonka Bay, MN 55331

To the County: Hennepin County Administrator
A-2300 Government Center (233)
Minneapolis, MN 55487-0233

Copy to: Mark Chapin
Director, Taxpayer Services Department
A-600 Government Center (060)
Minneapolis, MN 55487-0060

7.9 **Audit Provision.** Both parties agree that either party, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the other party and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the contract and for six (6) years after its termination or cancellation.

7.10 **Whereas Clauses.** The matters set forth in the "Whereas" clauses on page one of this Agreement are incorporated into and made a part hereof by this reference.

7.11 **Survival of Provisions.** It is expressly understood and agreed that the obligations and warranties of the City and County hereof shall survive the completion of performance and termination or cancellation of this Agreement.

7.12 **Authority.** The person or persons executing this Lease Agreement on behalf of the City and County represent that they are duly authorized to execute this Lease Agreement on behalf of the City and the County and represent and warrant that this Lease Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

7.13 The parties shall comply with applicable law including but not limited to the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA).

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AUTHORIZATION

Reviewed by the County
Attorney's Office

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
Assistant/Deputy/County Administrator
Department Director of _____

Date: _____

CITY OF Tonka Bay

By: _____

Its: _____

And: _____

Its: _____

City organized under:

Statutory _____ Option A _____ Option B _____ Charter _____

Addendum A
Post Warranty Maintenance and Support Services

1. Term; Termination. This Addendum A for Hardware Maintenance and Software Maintenance and Support Services shall be in effect for the coverage period as described in Schedule 5-1 (the "Initial Term"). Upon expiration of the Initial Term, this Addendum A shall automatically renew for an unlimited number of successive Two Year Periods (each a "Renewal Period") until this Agreement 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 Agreement, 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 CONTRACTOR notifies COUNTY 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 COUNTY's jurisdiction, or (e) the date which is thirty (30) days after COUNTY fails to pay any amount due to CONTRACTOR under this Agreement. Upon the termination of the license, COUNTY shall immediately return the Software and Documentation (including any and all copies thereof) to CONTRACTOR, or (if requested by CONTRACTOR) destroy the Software and Documentation and certify in writing to CONTRACTOR that such destruction has occurred. The termination of this Agreement shall not relieve COUNTY of its liability to pay any amounts due to CONTRACTOR hereunder and shall only entitle COUNTY to a prorated refund of any fees already paid to CONTRACTOR in the event that this is Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. Fees. In consideration for CONTRACTOR's agreement to provide Hardware Maintenance and Software Maintenance and Support Services under this Agreement, COUNTY shall pay to CONTRACTOR the Hardware Maintenance and Software Maintenance and Support Fees set forth on Schedule 5-1 for the Initial Term. The Hardware Maintenance and Software Maintenance and Support Fees for any Renewal Period shall be as agreed to by the parties and such fees will not exceed CONTRACTOR's list prices which are in effect at the time of commencement of such Renewal Period. The Renewal Period fees are due and payable no later than thirty (30) days prior to the beginning of such renewal period. The Software Maintenance and Support Fees shall be comprised of (I) a fee for the Software Maintenance and Support of the CONTRACTOR Firmware, and (II) a fee for the Software Maintenance and Support for all other CONTRACTOR Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If COUNTY elects to receive Hardware Maintenance or Software Maintenance and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, CONTRACTOR will charge an incremental fee for such services. In the event. COUNTY terminates this Agreement through no fault of CONTRACTOR and later desires to subscribe to a Hardware Maintenance or Software Maintenance and Support Plan, or otherwise changes its Hardware Maintenance or Software Maintenance and Support Plan with CONTRACTOR during the Initial Term or any renewal thereof, CONTRACTOR will charge the COUNTY its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance or Software Maintenance and Support Coverage.

ARTICLE II

HARDWARE

1. Maintenance Services. The Hardware Maintenance Services to be provided to COUNTY under this Agreement for the CONTRACTOR equipment listed on Schedule 5-1 is set forth on Schedule 5-1 (the "Products") and shall be subject to the following terms and conditions:

a. Routine Maintenance Services. A CONTRACTOR Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each Twenty-Four (24) Months during the Initial Term or any renewal 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 CONTRACTOR Equipment components that are consumed in the normal course of operating the

Equipment, including, but not limited to, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges or marking devices. COUNTY 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 5-1 and shall be due within thirty (30) days after invoice date. At the request of COUNTY, CONTRACTOR shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. CONTRACTOR will schedule the Routine Maintenance Services with COUNTY. The Routine Maintenance Services will be provided at COUNTY's Designated Location. COUNTY's "Designated Location" shall mean COUNTY's owned or leased facility at which COUNTY desires CONTRACTOR to perform the Hardware Maintenance Services, such locations may not be COUNTY owned or leased facilities and may include city halls. COUNTY acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on Schedule 5-1 as "depot repair only" shall only be provided pursuant to Section 1(b) below.

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, COUNTY shall promptly notify CONTRACTOR, and CONTRACTOR shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by CONTRACTOR pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". CONTRACTOR will perform Repair Services in conjunction with a preventative maintenance event as follows: Repair Services for Products covered under this Agreement will be performed at COUNTY's Designated Location.

Defects Due to COUNTY 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 CONTRACTOR, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by CONTRACTOR or (3) causes beyond the reasonable control of CONTRACTOR or COUNTY, 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 COUNTY does not notify CONTRACTOR within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, COUNTY shall pay CONTRACTOR for the Repair Services at CONTRACTOR'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 CONTRACTOR and COUNTY. If COUNTY requires CONTRACTOR to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided within 48 hours after COUNTY notifies CONTRACTOR of the need therefor), and such emergency Repair Services are not needed as a result of an action, error or omission by CONTRACTOR, COUNTY shall pay a surcharge, as set forth on Schedule 5-1.

iv. Loaner Unit. At COUNTY's request and if such product is available, CONTRACTOR shall use reasonable efforts to promptly make available to COUNTY 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(4)(1.1) above, COUNTY shall pay CONTRACTOR for the use of the Loaner Unit at CONTRACTOR's then-current rates including the cost of shipping.

c. Exclusions. CONTRACTOR 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, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, CONTRACTOR 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, CONTRACTOR shall no longer be required to provide Hardware Maintenance Services for such Product. CONTRACTOR shall also refund to COUNTY 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. COUNTY shall not permit any individual other than an CONTRACTOR 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. COUNTY shall provide CONTRACTOR Representatives with all information necessary to enable them to provide Hardware Maintenance Services. COUNTY 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 thereof expires without being renewed, COUNTY may thereafter resume receiving Hardware Maintenance Services upon (a) notification to CONTRACTOR and (b) the granting to CONTRACTOR of access to the Products. CONTRACTOR requires COUNTY 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 fit for the ordinary purpose for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published CONTRACTOR Technician labor rate and shall be due from COUNTY within thirty (30) days of its receipt of CONTRACTOR's invoice therefore. If any of the Products is not in Normal Working Condition, CONTRACTOR, at the option of COUNTY, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at COUNTY's expense with respect to the cost of any labor (charged at the current published CONTRACTOR Technician labor rate) 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 MAINTENANCE AND SUPPORT SERVICES

1. Services Provided. CONTRACTOR shall provide maintenance and support services ("Software Maintenance and Support") for the CONTRACTOR Software and CONTRACTOR Firmware (collectively, "CONTRACTOR Software"), 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 Maintenance and Support services provided by CONTRACTOR and each party's obligations with respect to such services are set forth on Schedule 5-1.

2. Updates. During the Initial Term and any Renewal Period thereof, CONTRACTOR may provide new releases, upgrades or maintenance patches to the CONTRACTOR Software, along with appropriate documentation ("Updates"), on a schedule defined by CONTRACTOR. COUNTY is responsible for obtaining and

Installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be "Software", and shall be subject to all the terms and conditions of CONTRACTOR's license of the Software, upon delivery. COUNTY shall install Updates in accordance with CONTRACTOR's recommended instructions or may request that CONTRACTOR install the Updates. In the event COUNTY requests CONTRACTOR to install an CONTRACTOR Firmware Update, CONTRACTOR shall install such Update only in connection with the Routine Maintenance Services provided herein. CONTRACTOR may charge COUNTY at its then-current rates to (a) ship the Updates, (b) install the Updates (c) provide maintenance and support on the Software which is required as a result of COUNTY's failure to timely install an Update or (d) train the COUNTY on the Updates. COUNTY shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by COUNTY's failure to install and use the most recent Update provided to it by CONTRACTOR. If COUNTY proposes changes in the Software to CONTRACTOR, such proposals will become CONTRACTOR'S property. CONTRACTOR may, in its sole discretion, elect to make or not to make such changes without reference or compensation to COUNTY or any third party. CONTRACTOR represents to COUNTY that the Updates will comply with all applicable state law requirements at the time of delivery. COUNTY shall be responsible to ensure that it has Installed and is using only certified versions of Software in accordance with applicable law. COUNTY shall pay CONTRACTOR for any Update which is required due to a change in federal or state law.

3. Conditions. CONTRACTOR shall not provide Software Maintenance and Support for any item of CONTRACTOR Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by CONTRACTOR, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by CONTRACTOR, (c) causes beyond the reasonable control of CONTRACTOR or COUNTY, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) COUNTY's failure to timely and properly install and use the most recent update provided to it by CONTRACTOR, (e) COUNTY'S failure to notify CONTRACTOR within 24 hours after COUNTY knows of the need for such services, or (f) if COUNTY is otherwise not in compliance with its obligations under this Agreement. Any such Software Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises. Replacement versions of Software requested by COUNTY as a result of items set forth in this Section 3 or as a result of COUNTY'S actions or inactions shall be billable to COUNTY at CONTRACTOR's then current rates.

4. Proprietary Rights. CONTRACTOR 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 COUNTY or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance and Support Fees, CONTRACTOR hereby grants to COUNTY a non-exclusive license to use that portion of such corrections, programs, information and work product that CONTRACTOR actually delivers to COUNTY pursuant to this Agreement. All licensed items shall be deemed to be CONTRACTOR Software for purposes of this Agreement. Except and to the extent expressly provided herein, CONTRACTOR does not grant to COUNTY any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

5. Reinstatement of Software Maintenance and Support. if the Initial Term or any Renewal Period thereof expires without being renewed, COUNTY may thereafter resume receiving Software Maintenance and Support upon (a) notification to CONTRACTOR, (b) payment of all fees, including a reinstatement charge, which would have been due to CONTRACTOR had the Initial Term or any Renewal Period not expired, and (c) the granting to CONTRACTOR of access to the CONTRACTOR Software, so that CONTRACTOR may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support.

S c h e d u l e 5 - 1

CONTRACTOR HARDWARE MAINTENANCE FEES

Initial Maintenance Term: Five (5) Years Beginning Upon Expiration of the Warranty Period

Qty	Description	Annual Maintenance Fee Per Unit	Annual Maintenance Fee in Total
550	DS200 Scanner	\$187.20	\$102,960.00
4	DS850 Scanner	\$3,465.90	\$13,863.60
Total Annual Hardware Maintenance Fees for the Initial Term			\$116,823.60

Note 1: The Per-Unit Fees If **COUNTY requests more than one Routine Maintenance visit in a 24-month period shall be 55% of the then** current maintenance fee per unit.

Note 2: Surcharge for Emergency Repair Services shall be 150% of the then current maintenance fee **per unit**.

Note 3: COUNTY's Designated Locations: To be provided by the COUNTY

Note 4: Upon expiration of the Initial Maintenance Term, this Agreement shall automatically renew for an unlimited number of successive two-year periods (each a "Renewal Period") until this Agreement is terminated **according to Article I, Section 1.**

Hardware Maintenance Services Provided by CONTRACTOR Under the Agreement

1. Telephone support.

- CONTRACTOR will provide Hardware support on procedural questions of a specific nature not covered in CONTRACTOR's Hardware User Manuals;
- CONTRACTOR will verify the appropriate steps to take to resolve Issues identified by the COUNTY.

2. Issue Resolution. (to be provided on a limited basis)

- CONTRACTOR will provide Hardware issue resolution on a limited basis once the COUNTY has followed all issue resolution procedures as set forth in the Equipment User Manuals and as directed in the required training course. If it becomes apparent that the COUNTY has not followed the appropriate Equipment User Manual and/or training directives, COUNTY will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing CONTRACTOR Election Services. The COUNTY may also be advised that additional training may be necessary to ensure the COUNTY has the appropriate level of issue resolution training.

3. CONTRACTOR posts Technical Bulletins available through COUNTY's CONTRACTOR Web-based portal.

4. Routine Maintenance Services.

- Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:
 - Service performed by an CONTRACTOR 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 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 equipment.
 - Update of maintenance records which are kept by serial number and available to you through your CONTRACTOR Web-based portal.

5. Repair Services.

- COUNTY receives coverage for interim repair calls.
 - Interim calls may be scheduled during the regular Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity of COUNTY's location if they are not election critical.
 - A Product may be sent to CONTRACTOR's Depot location for repairs at a time to be mutually agreed upon by CONTRACTOR and COUNTY.

6. Priority Services.

- COUNTY has access to the CONTRACTOR Help Desk for assistance.
- The customer receives priority on service calls.
- The customer receives priority on response time.
- The customer receives priority on certified CONTRACTOR parts inventory.

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

CONTRACTOR SOFTWARE MAINTENANCE AND SUPPORT FEES

Initial Maintenance Term: Five (5) Years Beginning Upon Expiration of the Warranty Period

Listed below are the Unity Software Modules and Fees for which Software Maintenance and Support will be provided:

Qty	Description	Annual Software Maintenance and Support
1	ElectionWare PYO Standard Software includes ElectionWare Reporting, Rank Choice Voting, Automated Test Deck, Synthesized	\$41,998.00
Total Annual Software Maintenance and Support Fees for the Initial Term		\$41,998.00

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

Qty	Description	Annual Firmware Maintenance and Support Fee Per Unit	Annual Firmware Maintenance and Support Fee In Total
550	DS200 Scanner	Included in Hardware Maintenance Fee	Included in Hardware Maintenance Fee
4	DS850 Scanner	Included in Hardware Maintenance Fee	Included in Hardware Maintenance Fee
Total Annual Firmware Maintenance and Support Fees for the Initial Term			Included In Hardware Maintenance Fee

Software Maintenance and Support Services Provided by CONTRACTOR Under the Agreement

1. Telephone support.

- CONTRACTOR will provide Software support on procedural questions of a specific nature not covered in CONTRACTOR'S Software User Manuals;
- CONTRACTOR will verify the appropriate steps to take to resolve issues identified by the COUNTY.

2. Issue Resolution. (to be provided on a limited basis)

- CONTRACTOR will provide Software issue resolution on a limited basis once the COUNTY has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the COUNTY has not followed the appropriate Software User Manual and/or training directives, COUNTY will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing CONTRACTOR Election Services, The COUNTY may also be advised that additional training may be necessary to ensure the COUNTY has the appropriate level of issue resolution training.

3. CONTRACTOR will provide Technical Bulletins available on the CONTRACTOR COUNTY Portal on a schedule to be determined by CONTRACTOR regarding specific issues the COUNTY may be experiencing.

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

Software Maintenance and Support and Hardware Maintenance and Support Services — COUNTY Responsibilities

1. COUNTY's current software and hardware operator shall have completed a full software training session for each product selected.
 - COUNTY shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
 - COUNTY shall have the ability to install firmware and application software and make changes to date and time settings.
 - COUNTY shall have the ability to store equipment in accordance with CONTRACTOR requirements.
2. COUNTY shall have reviewed a complete set of User Manuals.
3. COUNTY shall have reviewed Training Checklists.
4. COUNTY 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. COUNTY shall be responsible for data extraction from COUNTY VR system.
6. COUNTY shall be responsible for implementation of any security protocols physical, network or otherwise.
7. COUNTY shall be responsible for COUNTY Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
8. COUNTY shall be responsible for any error or exception handling not identified in the User Guides as part of CONTRACTOR software or hardware.
9. COUNTY shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.
10. COUNTY shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-CONTRACTOR Ballot Partner Printers ballots.



DS200[®]

Minnesota's Next Generation Precinct Tabulator & Scanner

The Next Generation

ES&S' experience combined with customer feedback and industry's best practices take traditional optical scanning to a new level. The DS200[®] is an intelligent, advanced, integrated solution. It features the latest digital image technology available on the market.

Top 5 Reasons DS200[®] is the Best

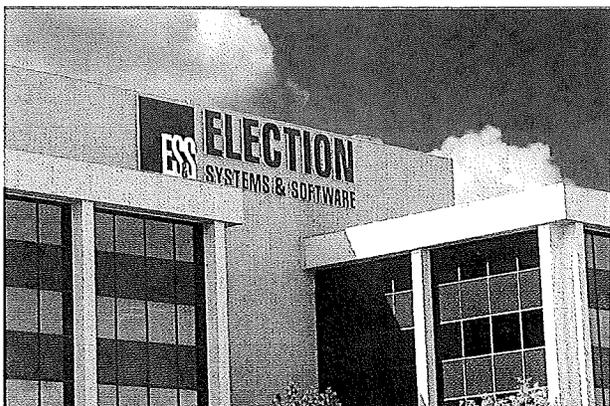
Wireless: Accumulates and transmits votes directly from the polling place via wireless connection

Flexible: Processes a variety of ballot sizes and designs, from 11" to 19", including the Expressvote Ballot Activation Card

Convenient: Lightweight, compact, and easy to set up and use in the polling place

Progressive: Includes extra USB ports and expandable memory to accommodate future EAC standards

Smart: Uses Intelligent Mark Recognition technology to remove the guesswork of determining what dictates a mark for a candidate



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