



# Gaston County

Gaston County  
Board of Commissioners  
www.gastongov.com

## Elections Board Action

File #: 21-172

Commissioner Brown - Elections - To Approve Election Systems & Software (ES&S) as a Sole Source Provider for the Purchase of ADA-Compliant Ballot Marking Voting Equipment (**\$185,294**)

### STAFF CONTACT

Adam Ragan - Elections - 704-852-6015

### BUDGET IMPACT

No budget impact. Purchase will be made with 100% federal Help America Vote Act (HAVA) funds.

### BUDGET ORDINANCE IMPACT

N/A

### BACKGROUND

The Gaston County Board of Elections has received \$185,912.00 in federal HAVA funds in the federal Consolidated Appropriations Act of 2020 to improve the administration of federal elections and/or improve, acquire or replace voting systems and technology and methods for casting and counting votes.

These funds will be used to replace our ADA-required ballot marking devices (AutoMARKS) that have been used in Gaston County since 2005.

The voting machines to be purchased are manufactured by Election Systems & Software (ES&S). ES&S is a sole source vendor for the ExpressVote ADA-compliant voting machines and is the only ballot marking voting machine certified by the North Carolina State Board of Elections that is currently compatible with other voting machines used in Gaston County.

The acquisition of new voting machines by Gaston County has been approved by the Gaston County Board of Elections and the North Carolina State Board of Elections.

### POLICY IMPACT

N/A

### ATTACHMENTS

HAVA Noncompetitive Procurement Auth Request, HAVA Noncompetitive Procurement Authorization Letter (Sole Source Vendor), Numbered Memo 2021-01 - Voting Systems Purchases, ESS Sales Contract 3-25-2021, Final Recommendation Voting Equipment 4-20-2021

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	AFrale	BHovis	KJohnson	TKeigher	TPhilbeck	RWorley	Vote
2021-151	05/25/2021	CB	RW	A	A	A	A	A	AB	A	U

### DISTRIBUTION:

Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS

## Strange, Amy

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**From:** Adam Ragan <Adam.Ragan@gastongov.com>  
**Sent:** Monday, March 8, 2021 9:28 AM  
**To:** Strange, Amy  
**Cc:** Adams, Steve  
**Subject:** [External] FW: Purchase of Voting Machines - HAVA Funds

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Hi Amy –

I received this email from our Purchasing Department. Is there any provision in 2 CFR §200 that speaks to voting machines being exempt from procurement guidelines? If not, do you have a sole source letter or something to the effect I can give to my Finance folks that would allow me to bypass the procurement process as required in 2 CFR §200?

Let me know your thoughts.

Thanks,  
Adam

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Adam Ragan, CERA  
Director of Elections  
Gaston County Board of Elections  
PO Box 1396  
Gastonia, NC 28053

(704) 852-6015 phone  
(704) 852-6011 fax  
[www.gastoncountyelections.com](http://www.gastoncountyelections.com)

**From:** Beth (Lois) Griffiths <Beth.Griffiths@gastongov.com>  
**Sent:** Friday, March 5, 2021 1:56 PM  
**To:** Adam Ragan <Adam.Ragan@gastongov.com>  
**Subject:** RE: Purchase of Voting Machines

Hi Adam – thank you for the information.

I see **\$181,775 in 010-01-4170-0000-540001-21593** (F&E<5K: 2018 HAVA Election Grt).

- Will the entire amount be used for this purchase?
- Do you have a deadline to spend the funds?

**The UG threshold for purchases of \$90,000 or more begins on page 17 of the UG Policy &**

**Procedures.** [\\gc.nc\gc\\_data\Inter-Departmental Data\Purchasing - UNIFORM GUIDANCE\UNIFORM GUIDANCE attachment 4-25-19.pdf](#)

There are requirements elsewhere in the document that will apply, but these are the basics per this dollar threshold.  
*Grant would take precedence if grant requires anything more restrictive than UG.*

Among the requirements are advertisement, affirmative steps (posting on HUB site), public opening, must receive 2 sealed bids in order to open (if less than 2 are received, must re-advertise and then if only 1 received, can open), BOC approval of award, etc.

Since you indicate there are only 2 vendors and only has the compatible equipment, this seems to be a logical situation to request sole source. However, sole source (page 25 of UG document) requires written Grantor approval and BOC approval (you'd get Grantor written approval first and attach that to the BA for BOC consideration). **Is there a Grant contact you could work with for a written sole source approval?** If not, there's no choice but to go through the UG Procurement process (which would be a long process since you might not get 2 bids on the first bid effort).

Let me know. thx! Beth

**From:** Adam Ragan <[Adam.Ragan@gastongov.com](mailto:Adam.Ragan@gastongov.com)>

**Sent:** Friday, March 5, 2021 11:45 AM

**To:** Beth (Lois) Griffiths <[Beth.Griffiths@gastongov.com](mailto:Beth.Griffiths@gastongov.com)>

**Subject:** RE: Purchase of Voting Machines

Hi Beth –

I've attached our grant award notice. We will be using UG Procurement to the extent we can. Right now, there are only two vendors in the state of North Carolina that have certified voting equipment that we can choose from. Of those two vendors, only one has equipment that is compatible with the equipment and software we currently use. It's really a borderline sole source vendor situation.

Let me know your thoughts and how we should proceed. I'm in the early stages of getting approval from the State Board of Elections to switch out our ballot marking machines and I haven't even gotten to the bidding or contract stages yet.

Thanks,  
Adam

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Adam Ragan, CERA  
Director of Elections  
Gaston County Board of Elections  
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Gastonia, NC 28053

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**From:** Beth (Lois) Griffiths <[Beth.Griffiths@gastongov.com](mailto:Beth.Griffiths@gastongov.com)>

**Sent:** Friday, March 5, 2021 11:34 AM

**To:** Adam Ragan <[Adam.Ragan@gastongov.com](mailto:Adam.Ragan@gastongov.com)>

**Subject:** Purchase of Voting Machines

Hi Adam – I heard you on WFAE this morning! The piece mentioned using federal funds and hoping to purchase from the same company who originally provided the machines. Does your federal grant award/agreement include a specific exception to UG Procurement, or will you be following UG Procurement as typically required when any amount/type/source of federal funds is involved?

Thank you! Beth

Beth B. Griffiths

Purchasing and Contracts Manager

**GASTON COUNTY**

Finance Department

PO Box 1578 (128 W. Main Ave)

Gastonia NC 28053-1578

Phone 704-866-3112

[beth.griffiths@gastongov.com](mailto:beth.griffiths@gastongov.com)

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# NORTH CAROLINA

## STATE BOARD OF ELECTIONS

*Mailing Address:*  
P.O. Box 27255,  
Raleigh, NC 27611  
(919) 814-0700 or  
(866) 522-4723  
*Fax:* (919) 715-0135

April 7, 2021

Gaston County Board of Elections  
ATTN: Adam Ragan  
PO Box 1396  
Gastonia, NC 28053

Re: Authorization for Noncompetitive Procurement Under CFR § 200.320(c)

Dear Director Ragan:

The State Board of Elections received your request dated March 10, 2021 for written authorization for noncompetitive procurement under 2 CFR § 200.320(c) to purchase voting equipment.

Federal Help America Vote Act funds can only be used to purchase goods or services through a noncompetitive procurement if one or more of the circumstances set forth in 2 CFR § 200.320(c) apply, as shown below:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

This letter serves as authorization for noncompetitive procurement under 2 CFR § 200.320(c)(4).

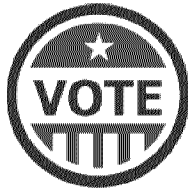
Numbered Memo 2021-01 outlines procedures that county boards of elections must follow when purchasing voting equipment. The authorization contained in this letter does not replace the requirements explained in that Memo.

Please be reminded that all contracts made under the Federal award must contain the provisions required under 2 CFR § 200.327.

Please feel free to contact me if you have any additional questions.

Sincerely,

Amy E. Strange  
Chief Operating Officer



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### Numbered Memo 2021-01

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director  
**RE:** Procedures for Purchasing Voting Equipment  
**DATE:** March 1, 2021

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This Numbered Memo updates [Numbered Memo 2019-04](#) and details the procedures a county board of elections is required to follow when seeking to purchase certified voting systems and components.

On August 23, 2019, the State Board of Elections voted to certify several new voting systems for use in North Carolina's elections. When seeking to use a new voting system, a county board of elections must follow the same procedures in the county regardless of when the voting system was certified.

Only voting systems certified by the State Board may be used in North Carolina. North Carolina law and the Elections Systems Certification Program adopted by the State Board establish the role of the county board of elections in selecting a new voting system for that county and impose procedures during and after the adoption and acquisition of a certified voting system for use in the county.

Vendors must also meet certain requirements during the certification process itself and must continue to meet these requirements for as long as the voting system is certified. A copy of those instructions is attached to [Numbered Memo 2019-04](#) and should be reviewed by the county board of elections.

For detailed information on the certification process and the role of the State Board and vendors, please see the [Elections Systems Certification Program](#).

### Voting Systems Certified by the State Board

The following voting systems are certified for use in North Carolina:

- ES&S EVS 5.2.4.0
  - DS200 precinct tabulator
  - DS450 central tabulator
  - DS850 central tabulator
  - ExpressVote ballot marking device
  - AutoMARK ballot marking device

- Hart InterCivic Verity Voting 2.2
  - Verity Scan precinct tabulator
  - Verity Touch Writer ballot marking device
  - Verity Central Workstation central tabulator
  - Verity Print ballot on demand
- ES&S Unity 3.4.1.1
  - M100 precinct tabulator
  - DS200 precinct tabulator
  - M650 central tabulator
  - DS850 central tabulator
  - AutoMARK ballot marking device
- ES&S Unity 3.0.1.1
  - M100 precinct tabulator
  - M650 central tabulator
  - AutoMARK ballot marking device
- Clear Ballot ClearVote 1.4<sup>1</sup>
  - ClearCast precinct tabulator
  - ClearAccess ballot marking device
  - ClearCount central tabulator
  - ClearAudit election audit system

## Requirements for Adopting and Acquiring a Certified Voting System

Ultimately, the county board of commissioners (with the recommendation and approval of the county board of elections) must adopt and acquire a voting system that is certified by the State Board for use in the county. Before the board of county commissioners approves the adoption and acquisition of a voting system, the county board of elections must do the following:<sup>2</sup>

Step 1: Witness a demonstration of the recommended voting system plus at least one other certified voting system not currently used in your county. The demonstration can take place in the county or at a site designated by the State Board.

- The demonstration should be organized as part of a public meeting with invitations sent to the county board of commissioners, the county manager, the county attorney, and the political parties in the county.
- The county board should give public notice of the demonstration and meeting, as it does for all other board meetings.

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<sup>1</sup> Clear Ballot is not currently used in any county in North Carolina.

<sup>2</sup> See G.S. § 163-165.9 and Section 3.3.2 of the Certification Program.

- A majority of county board members must meet the demonstration requirement. All board members of the county board of elections should witness a demonstration if possible.

Step 2: Make a preliminary recommendation to the board of county commissioners as to which voting system should be acquired by the county.

- Official action to preliminarily recommend to the board of commissioners can be taken as soon as the same meeting during which the demonstration is conducted, provided the meeting is properly noticed. Alternatively, the meeting to preliminarily recommend a voting system may be noticed prior to the demonstration as long as the meeting is held after the demonstration.
- The Board can document its recommendation by resolution, letter, presentation, or other official action.

Step 3: The county board must either: (1) test the proposed voting system in at least one precinct where the voting system would be used if adopted, or (2) test the proposed voting system in a simulated election.

#### Option 1: Testing in a Precinct in an Election

- County board staff must notify State Board voting systems staff of its intent to test the recommended voting system.
- The voting systems election management system and the components of the system must undergo Logic & Accuracy testing prior to use in the test election.
- After completing canvass, the county board must determine that the recommended voting system has met the requirements for voting in that county.

#### Option 2: Testing in a Simulated Election

- County boards can now test proposed voting equipment in a simulated election, in accordance with standards established by the State Board.<sup>3</sup>
- Please refer to the *Standards for Simulated Election* policy, adopted by the State Board on July 31, 2020, for more information on how to test the proposed equipment in a simulated election. The policy is attached to this memo and available [here](#).
- State Board staff must be notified of any plans to conduct a simulated election prior to scheduling.

Step 4: Seek State Board approval to replace the current voting system.

- The county board of elections cannot replace any voting system, or any portion thereof, without approval of the State Board.<sup>4</sup>

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<sup>3</sup> G.S. § 163-165.9(a)(3)(b), as amended by Part IV of Session Law 2019-239.

<sup>4</sup> See G.S. § 163-165.9(b)(3).



- The form to request approval is attached to this memo and can be found [here](#).

Step 5: Make a final recommendation to the board of county commissioners.

- The board of commissioners can decline to adopt or acquire any voting system recommended by the county board of elections, but it cannot adopt and acquire a voting system that has not been approved by the county board of elections.<sup>5</sup>
- The public contracting and procurement statutes do not apply to the purchase of a certified voting system.
- Along with the final recommendation, the CBE must submit the proposed vendor contract to the State Board of Elections for review and approval.

## Requirements After the County Has Adopted and Acquired a Certified Voting System

The county board of elections must comply with any requirements of the State Board regarding training and support of the voting system by completing all of the following:<sup>6</sup>

- The CBE must comply with all of the vendor's specifications for ballot printers. The CBE can contract with noncertified ballot printer vendors as long as that vendor meets all of the specifications and the State Board's quality assurance requirements.
- The CBE must maintain annual software license agreements.
- The CBE must uphold annual maintenance agreements necessary to maintain the warranty of the voting system or employ qualified personnel to maintain a voting system in lieu of entering into maintenance agreements.
- Before entering into any maintenance agreement, the CBE shall ensure the vendor agrees to operate a training program for qualified personnel hired by the CBE.
- The CBE must notify the State Board at the time of every repair, according to State Board guidelines.
- The CBE must continue to comply with the [Voting Systems Vendor Code of Ethics](#).

## Frequently Asked Questions

Q: The county board currently uses ES&S EVS 5.2.4.0 and wants to purchase a DS450. Is the board required to witness a demonstration and is the county board of commissioners required to adopt and acquire the equipment? Do we need to conduct a simulated election after purchasing the DS450?

A: The county board does not need to witness a demonstration or seek approval of the county commissioners to adopt and acquire a new component of the county's currently used voting system. The county is not adopting a new voting system but rather is purchasing an additional piece

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<sup>5</sup> See G.S. § 163-165.8.

<sup>6</sup> See G.S. § 163-165.9A(a).

of equipment within its currently existing system. The county board will need to satisfy the testing requirement, as the Certification Program requires the vendor to provide the testing county with all voting system equipment, including all components to be used as part of the system in that county. Further, the county board is required to test all functionality of the system that is proposed to be purchased.

Q: The county board wants to upgrade from ES&S Unity 3.0.1.1 to Unity 3.4.1.1. Is this considered “adopting and acquiring” a new voting system under the statute?

A: A county board is not considered to have adopted and acquired a new voting system if it is upgrading to the most recent certified version of the software, and that software upgrade is included in annual maintenance agreements between the vendor and the county. Upgrading from ES&S Unity Version 3.0.1.1 to Version 3.4.1.1 would not be considered adopting and acquiring a new voting system and a county board would therefore not be required to witness a demonstration and seek approval from the county board of commissioners. The county is still required to meet the testing requirement detailed in Step 3 of this memo.

Q: The county board currently uses ES&S Unity 3.4.1.1 and wants to purchase the ExpressVote as part of the ES&S EVS 5.2.4.0 system. Our DS200s and AutoMARK machines will continue to work with EVS 5.2.4.0. Is this considered a new voting system?

A: Changing from Unity to EVS is considered adopting and acquiring a new voting system, even though some equipment remains the same, and your county board needs to complete all required steps for adopting and acquiring a new voting system. A “voting system” is the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, hardware, and documentation required to program, control, and support the equipment) that is used to define ballots; to cast or tabulate votes; to read election media; to report or display election results; and to maintain and produce any audit trail information.<sup>7</sup> Although some hardware, (i.e., the DS200, DS850, and AutoMARK) can be configured to work with either system, Unity 3.4.1.1 and EVS 5.2.4.0 are distinct voting systems that underwent separate federal and State certifications. DS200s and AutoMARKs that have been configured to operate as part of the Unity 3.4.1.1 system would not be compatible with an ExpressVote operated as a component of the EVS 5.2.4.0 system.

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<sup>7</sup> NCSBE Voting Systems Certification Program at page 3-4 (emphasis added).

Q: The county board currently uses ES&S Unity 3.0.1.1 and wishes to adopt and acquire Hart InterCivic Verity Voting 2.2. Three members of the current board witnessed demonstrations of Verity Voting 2.2 and EVS 5.2.2.0 in the fall of 2019. Is the board required to witness demonstrations again?

A: A majority of county board members voting on the recommendation must have witnessed a demonstration, so if a majority of the board has already witnessed a demonstration of the recommended voting system and at least one other certified voting system not currently used in the county, the board is not required to repeat the demonstration. However, all board members of the county board of elections should witness a demonstration if possible. Board members are not required to attend demonstrations on the same day.

Q: Can my county board conduct a simulated election prior to witnessing demonstrations?

A: No. The simulated election must take place after witnessing the demonstration of the proposed voting system and one other certified system not currently in use in the county and after making a preliminary recommendation to the county commissioners as to which system the county should adopt and acquire.

Q: Can the demonstration required in Step 1 be conducted virtually?

A: Yes. If a quorum of board members is present, the demonstration must be publicly noticed as a meeting of the board and the county board of commissioners, county manager, county attorney, and the political parties in the county must be notified of the demonstration. Any virtual demonstration must be conducted live to give the board members an opportunity to interact with the vendors and ask questions.

## Accessibility Requirement

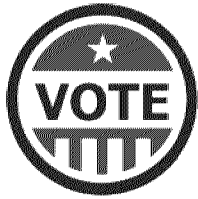
The Help America Vote Act mandates that a voting system provide the same opportunity for access and participation to voters with disabilities as it does to voters without disabilities. Federal law requires that each voting place have an accessible voting option for voters with disabilities to vote independently. A county board may choose to use any of the certified ballot marking devices to meet this requirement, but due to limitations in tabulation software, a county may not acquire voting systems from more than one vendor.

In selecting the voting system that will be used, county boards should be mindful of the requirement that they must make available at each voting place “an adequate quantity of official ballots or equipment.” Similarly, county commissioners shall provide “for each of those voting places

sufficient equipment of the approved voting system.”<sup>8</sup> County boards should consider the expected turnout in their county and each voting place, including One-Stop early voting, central transfer location, and Election Day, future elections, and the need to reduce long lines whenever possible.

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<sup>8</sup> G.S. § 163-165.10.



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### Request for Replacement of County Voting System

The \_\_\_\_\_ County Board of Elections ("Board"), having met on \_\_\_\_\_ hereby seeks the approval of the State Board of Elections to replace its voting system, or a portion thereof. Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

#### STEP 1: DEMONSTRATION

Witness a demonstration of the recommended voting system plus at least one other certified voting system not currently used in the county. The demonstration can take place in the county, at a site designated by the State Board, or by virtual means.

- The demonstration should be organized as part of a public meeting with invitations sent to the county board of commissioners, the county manager, the county attorney, and the political parties in the county.
- The county board should give public notice of the demonstration and meeting, as it does for all other board meetings.
- A majority of county board members voting on the recommendation must have witnessed a demonstration. All five members of the county board of elections should attend a demonstration if possible.

County Board member 1: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Unity 3.4.1.1 <input type="checkbox"/> ES&S Voting System 5.2.4.0
County Board member 2: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Unity 3.4.1.1 <input type="checkbox"/> ES&S Voting System 5.2.4.0
County Board member 3: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Unity 3.4.1.1 <input type="checkbox"/> ES&S Voting System 5.2.4.0
County Board member 4: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Unity 3.4.1.1 <input type="checkbox"/> ES&S Voting System 5.2.4.0
County Board member 5: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Unity 3.4.1.1 <input type="checkbox"/> ES&S Voting System 5.2.4.0

## STEP 2: PRELIMINARY RECOMMENDATION

Make a preliminary recommendation to the board of county commissioners as to which voting system should be acquired by the county.

- Official action to preliminarily recommend can be taken as soon as the same meeting during which the demonstration is conducted, provided the meeting is properly noticed. Alternatively, the meeting to preliminarily recommend a voting system may be noticed prior to the demonstration as long as the meeting is held after the demonstration.
- The Board can recommend by resolution, letter, presentation, or other official action.

Following the demonstration, the Board recommended:

- ☐ by resolution dated \_\_\_\_\_
- ☐ by letter dated \_\_\_\_\_ signed by \_\_\_\_\_
- ☐ by presentation given on \_\_\_\_\_
- ☐ by nature of an official action taken on \_\_\_\_\_

that \_\_\_\_\_ County adopt and acquire the:

- ☐ ES&S Voting System 5.2.4.0 Voting System
- ☐ ES&S Unity 3.4.1.1 Voting System
- ☐ Hart InterCivic Verity 2.2 Voting System

## STEP 3: TEST THE PROPOSED VOTING SYSTEM

The county board must either: (1) test the proposed voting system in at least one precinct where the voting system would be used if adopted, or (2) test the proposed voting system in a simulated election.

- County board staff must notify State Board voting systems staff via email ([votingsystems.sboe@ncsbe.gov](mailto:votingsystems.sboe@ncsbe.gov)) of its intent to test the recommended voting system.
- The voting systems election management system and the components of the system must undergo Logic & Accuracy testing prior to use in the test election.
- After completing the test election, the county board must determine that the recommended voting system has met the requirements for voting in that county.

<input type="checkbox"/>	On _____, the county board staff notified the State Board of Elections voting systems staff of its intent to test the recommended voting system.
<input type="checkbox"/>	The recommended voting system was tested on _____. The voting systems election management system and all of the components of the system were subject to Logic & Accuracy testing prior to use in the test election.
<input type="checkbox"/>	If tested during a real election, the recommended voting system was tested in _____ one-stop absentee voting site(s) and/or _____ Election Day precinct(s).
<input type="checkbox"/>	The Board, having completed its election (real or simulated) in which the recommended voting system was tested, has determined that the recommended system meets the requirements for voting in the county.

#### STEP 4: SBE APPROVAL

The county board of elections cannot replace any voting system, or any portion thereof, without approval of the State Board.

The Board seeks the approval of the State Board of Elections to replace its current voting system, or a portion thereof with the following voting system:

☐ Hart InterCivic Verity 2.2 Voting System

☐ ES&S Unity 3.4.1.1 Voting System

☐ ES&S Voting System 5.2.4.0 Voting System

The Board proposes to adopt and acquire the voting system's election management system (EMS) and the following components of the system:

<b>Component Type</b>	<b>Model</b>	<b>Quantity</b>
<i>Precinct Ballot Tabulator (PBT)</i>		
<i>Central Ballot Tabulator (CBT)</i>		
<i>Ballot Marking Device (BMD)</i>		
<i>BMD Printer</i>		
<i>Ballot on Demand (BOD) Printers</i>		

The Board proposes to use the \_\_\_\_\_ ballot marking device and its accessible peripherals to meet ADA requirements to allow for accessible voting.

# STEP 5: ADOPTION AND ACQUISITION OF NEW VOTING SYSTEM BY BOARD OF COUNTY COMMISSIONERS

The board of county commissioners, with the approval of the county board of elections, may adopt and acquire only a voting system of a type, make, and model certified by the State Board for use in some or all voting places in the county at some or all elections. The board of county commissioners may decline to adopt and acquire any voting system recommended by the county board of elections but may not adopt and acquire any voting system that has not been approved by the county board of elections. Following SBE approval, the County Board understands that it may then proceed to ask its Board of County Commissioners for the approval and funding to acquire the recommended voting system.

**Along with this request, the Board is submitting the proposed vendor contract to permit the State Board of Elections to review and approve the terms of the vendor's contract.**

*Board Chair* \_\_\_\_\_ *Date*

*Board Secretary* \_\_\_\_\_ *Date*

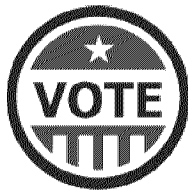
*Board Member* \_\_\_\_\_ *Date*

*Board Member* \_\_\_\_\_ *Date*

*Board Member* \_\_\_\_\_ *Date*

<b><i>State Board of Elections use Only</i></b>		
The proposed voting system replacement <input type="checkbox"/> IS <input type="checkbox"/> IS NOT approved.		
<b>Approved by:</b>		<b>Date:</b>





# NORTH CAROLINA

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P.O. Box 27255  
Raleigh, NC 27611

(919) 814-0700 or  
(866) 522-4723

*Fax:* (919) 715-0135

### **Standards for Simulated Election**

**Adopted by the State Board of Elections on July 31, 2020**

#### **Authority**

G.S. § 163-165.9(a)(3)(b), as amended by Part IV of Session Law 2019-239, authorizes a county board of elections to test new voting equipment “during a simulated election, in accordance with standards established by the State Board.” The simulated election may be conducted in lieu of testing a new voting system during an election in at least one precinct in the county where the voting system would be used if adopted and acquired.

#### **Standards**

A county board of elections conducting a simulated election before approving the adoption and acquisition of any voting system shall complete the following procedures:

1. One standard test election shall be coded by precinct with 25 precincts and the following additional “administrative polls”: absentee by mail, provisional, election day transfer and at least three one-stop sites. Contests will model actual election contests and include at least the following: federal partisan single-seat contests; state partisan single-seat contests, including unaffiliated candidates and at least one qualified write-in; county partisan single-seat and multi-seat contests; nonpartisan single-seat and multi-seat contests which allow write-ins; and at least one referendum question.
2. If applicable to the voting system being tested, a second sample election will be coded by style with the same criteria listed in paragraph 1.
3. The county board shall use equipment and coding for as many precincts as exist in the county or 25 precincts, whichever is fewer. Additionally, the county shall test all administrative polls, including at least one one-stop site per ten precincts up to a maximum of three one-stop sites. A minimum of 200 ballots per precinct shall be printed. The county board will set up all necessary voting equipment, and testing personnel shall vote simulated election ballots according to standard ballot marking instructions for the purpose of ensuring that the system is operating properly and has been programmed to count votes accurately.
4. After all simulated voting sites have been opened, voted, and closed, the county board will import results into the election management software, print reports, and compare results against the tabulator results tapes.

5. The State Board of Elections will provide the county board of elections at least two sites chosen at random for a hand-eye sample audit. With each chosen site, the highest contest on the simulated election ballot and one other contest selected at random will be audited.
6. County board of elections members and staff may conduct the simulated election. If possible, the county board of elections shall include precinct officials in the simulated election event. The public shall be invited and may observe the simulated election event.
7. All records, ballots, and related documents for the simulated election shall be retained for 5 years after the testing event and in accordance with the Records Retention and Disposition Schedule for County Boards of Elections as issued by the North Carolina Department of Cultural Resources, specifically item 23, "Voting Machine Lists, Testing Records and Certifications."
8. If the county board of elections seeks approval from the State Board to replace the current voting system with the system tested in the simulated election, the following documentation shall be provided with the request as evidence of the simulated election:
  - a. Summary election results report(s);
  - b. By precinct election results report(s); and
  - c. Copies, or a link to digital copies, of tabulator results tapes.



11206 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: 704-852-6005

Fax Number: N/A

Customer Contact, Title: Adam Ragan

Customer Name: Gaston County, North Carolina

Type of Sale: ☒ **NEW**

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

Bill To:

Gaston County, North Carolina

Adam Ragan

P.O. Box 1396

Gastonia, NC 28053

Ship To:

Gaston County, North Carolina

Adam Ragan

410 W. Franklin Boulevard - Suite 50

Gastonia, NC 28052

Description			Qty	Price	Total
1	ExpressVote BMD	ExpressVote BMD Terminal with Internal Backup Battery, ADA Keypad, Headphones, Power Supply with AC Cord, and One (1) Standard 4GB Memory Device	55	\$3,325.00	\$182,875.00
2	ExpressVote BMD	Soft-Sided Carrying Case	55	\$175.00	\$9,625.00
3	ExpressVote BMD	ExpressVote Blank Ballot Card Stock - 14" (250 per pkg)	5	\$23.75	\$118.75
4	Software	ElectionWare Software - Reporting Only	1	No Charge Upgrade	No Charge Upgrade
5	Software	Media Burn Capability	1	No Charge Upgrade	No Charge Upgrade
6	ExpressVote BMD	Equipment Installation	55	\$105.00	\$5,775.00
7	Services	Equipment Operations Training Day	1	\$1,700.00	\$1,700.00
8	Services	Software Training Day	1	\$1,700.00	\$1,700.00
9	Customer Loyalty Discount & Trade-In Allowance	Equipment Being Traded-In by Customer Includes: 1 - Model 650 Scanner 56 - AutoMARK	1	(\$18,699.75)	(\$18,699.75)
10	Shipping	Shipping & Handling	1	\$2,200.00	\$2,200.00
Order Total					\$ 185,294.00

Freight Billable: yes ☒ no ☐

Cara Florence

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.

**Payment Terms**

\$92,647.00 of Order Total will be invoiced upon Contract Execution.

\$92,647.00 of Order Total will be invoiced as Equipment and Software are delivered to Customer.

Invoices are due net 30 from invoice date.

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):**

ES&S Equipment and ES&S Firmware: One (1) Year From ES&S Equipment Delivery. ES&S Software: No Warranty

**Software Upgrade License Term**

ES&S is providing Customer with an initial no charge upgrade from ES&S' Unity Software to ES&S' ElectionWare Software and Media Burn for the balance of the existing license term set forth under that certain ES&S Hardware Maintenance and Software License, Maintenance and Support Services Agreement entered into between ES&S and the Customer dated September 10, 2020 ("Prior SLA"). Upon reaching the expiration of the current license term under the Prior SLA, ES&S will invoice Customer for annual Software License, Maintenance and Support Fees and such fees shall be due and payable thirty (30) days prior to commencement of the annual Software License, Maintenance and Support term.

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

Upon the expiration of the Warranty Period and Initial License Terms, ES&S and Customer will enter into a Hardware Maintenance and Software License, Maintenance and Support Services Agreement for the continued maintenance of the ES&S Equipment and the continued license and use of the ES&S Software and ES&S Firmware.

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 front side of this Agreement. The payment terms for the ES&S Equipment and ES&S Firmware are set forth on the front side of this Agreement. Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the front side of this Agreement 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.

a. **Equipment Purchase.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Equipment. Title to the ES&S Equipment shall pass to Customer when Customer has paid ES&S the total amount set forth on the front side of this Agreement for the ES&S Equipment.

b. **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, part time or temporary employees to use the ES&S Software and any and all written or electronic documentation furnished or generally made available to licensees by ES&S relating to the ES&S Software, including any operating instructions, user manuals or training materials (collectively, the "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. 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 the Jurisdiction.

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

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

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

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

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the ES&S Software (except finished ballots by ballot printers selected by Customer) 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.

3. **Term of Licenses.** The licenses granted in Section 1(b) shall commence upon the delivery of the ES&S Software and ES&S Firmware described in Section 1(b) and shall continue (i) through June 30, 2021 with respect to the ES&S Software (the "Initial Software License Term") and (ii) for a one (1) year period with respect to the ES&S Firmware (the "Initial Firmware License Term"). The Initial Software License Term and the Initial Firmware License Term shall be referred to herein collectively as the "Initial License Terms". Upon expiration of the Initial License Terms, 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 ES&S Software and ES&S Firmware license, maintenance and support fees. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 1(b), 2, or 8 with respect to, such license. Upon the termination of either of the licenses granted in Section 1(b) for the ES&S Software or ES&S Firmware or upon Customer's discontinuance of the use of any ES&S Software or ES&S Firmware, Customer shall immediately return such ES&S Software, ES&S Firmware and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software, ES&S Firmware and Documentation and certify in writing to ES&S that such destruction has occurred.

4. **Updates.** During the Initial License Terms or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software or ES&S Firmware, 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 or ES&S Firmware for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) install the Updates; (ii) train Customer on Updates, if such training is requested by Customer or (iii) provide maintenance and support on the ES&S Software or ES&S Firmware 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 or ES&S Firmware 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 and ES&S Firmware 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 and developing 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 ES&S Equipment, ES&S Software and ES&S Firmware 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.

5. **Delivery; Risk of Loss.** The Estimated Delivery Dates and First Election Use (if any) set forth on the front side of this Agreement are estimates and may only be established or revised, as applicable,

by the parties, in a written amendment to this Agreement, because of delays in executing this Agreement, changes requested by Customer, product availability and other events. ES&S will notify Customer of such revisions as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment, ES&S Software and ES&S Firmware 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, ES&S Software and ES&S Firmware and shall name ES&S as an additional insured thereunder and, at ES&S' request, shall deliver written evidence thereof to ES&S until all amounts payable to ES&S under this Agreement have been paid by Customer.

## 6. **Warranty.**

a. **ES&S Equipment/ES&S Firmware.** 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 Firmware 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, but not limited to, headphones and headphone protective covers, printer cartridges or ribbons, paper, batteries, drums, toners, fusers, transfer belts, removable media storage devices, seals, keys, power supplies/cords, PCMCIA, Smart, or CF cards or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. Any repaired or replaced item of ES&S Equipment or ES&S Firmware shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Firmware will become the property of ES&S. This warranty is effective provided that (i) Customer notifies ES&S within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the ES&S Equipment or ES&S Firmware 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 Firmware 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, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (iv) Customer has installed and is using the most recent update provided to it by ES&S. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 6(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.

7. **Limitation of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software, firmware or services not provided by ES&S and used with the ES&S Equipment, ES&S Software or ES&S Firmware; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform. ES&S shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) Customer's failure to timely or properly install and use the most recent update provided to it by ES&S or (z) Customer's election not to receive, or to terminate, the Hardware Maintenance Services or the ES&S Software and ES&S Firmware License Maintenance and Support Services.

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

ES&S owns the ES&S Software, ES&S Firmware, 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, ES&S Firmware 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, ES&S Firmware the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

9. **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.

## 10. **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. 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.

11. **Assignment.** Except in the case of a reorganization of the assets or operations of ES&S with one or more affiliates of ES&S or the sale, transfer or assignment of all or substantially all of the assets of ES&S or any business operations thereof to a successor who has asserted its intent to continue the applicable 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.

12. **Compliance with Laws.** ES&S warrants to Customer that, at the time of delivery, the ES&S Equipment, ES&S Software and ES&S Firmware sold and licensed under this Agreement will comply with all applicable requirements of federal and 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. The ES&S Election Management System (EMS) Equipment, Software, and Firmware, including all EMS components will be provided to Customer in a hardened network environment which means that the network provided by ES&S will include an air-gapped, fully closed network environment that includes only the services, applications, utilities and settings necessary to operate the EMS, in accordance with the guidelines of the United States Election Assistance Commission. ES&S shall not be liable for any claims, damages, losses, liens, obligations, liabilities, judgments, assessed damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to the Customer's failure to maintain the EMS in the hardened network or allows any internal or external access to the hardened network.

13. **North Carolina Election Certification Program.** ES&S shall comply with the requirements set forth in the Election Systems Certification Program ("Certification Program") issued by the North Carolina State Board of Elections ("NCSBOE") which are mandatory and effective as of the Effective Date and which are incorporated herein by this reference. Specifically, ES&S shall comply with the following requirements set forth under the Certification Program.

a. In accordance with Section 3.3.4.2 of the Certification Program ES&S shall bear all costs associated with necessary certifications, reviews, and reports required under the Certification Program, including for all VSTL and third-party review.

b. In accordance with Section 3.3.4.4 of the Certification Program, any voting system or update provided by ES&S will be of a version currently certified by the NCSBOE for use in North Carolina election. The term "most recent update" as used in this agreement includes only a version that is certified for use by the NCSBOE at the time it is provided to the Customer.

c. In accordance with Section 3.7.2.3 of the Certification Program, ES&S will comply with all training requirements issued by the NCSBOE. The training requirements include, but are not limited to, ES&S providing a minimum of five (5) training classes per program (e.g. voting unit, election management system, ballot creation and layout software) per ordering entity (each county board of elections) for the initial contract period and for each renewal period exercised. Dates for training sessions will be mutually agreed upon by county customer and vendor. The NCSBOE reserves the right to require ES&S provide additional or other training as it deems necessary or beneficial.

If any conflict exists between this Agreement and the Certification Program, the Certification Program will govern and any provisions in conflict with the Certification Program are void and unenforceable.

14. **Entire Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns. This Agreement 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. 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 of North Carolina, without regard to its conflicts of laws principles. ES&S acknowledges that nothing in this Agreement in any way alters its duty to comply with North Carolina law, including but not limited to the requirement that it post a performance bond pursuant to N.C.G.S. § 163-165.7(a)(1). ES&S further agrees that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in G.S. 163-165.7(f)(9) for the purpose of reviewing the source code. 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, firmware 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, firmware or services, but shall remain fully responsible for such performance. The provisions of Sections 1-4, 6(b), 7, 8, 10(b), 11-14 these General Terms shall survive the termination of this Agreement, to the extent applicable.



**GASTON COUNTY BOARD OF ELECTIONS**

410 West Franklin Boulevard, Suite 50

Gastonia, NC 28052

(704) 852-6005

**A RESOLUTION FOR THE ADOPTION AND ACQUISITION OF VOTING EQUIPMENT BY THE GASTON COUNTY BOARD OF COMMISSIONERS**

**WHEREAS**, the Gaston County Board of Commissioners, with the approval of the Gaston County Board of Elections, may adopt and acquire only a voting system of a type, make, and model certified by the State Board for use in some or all voting places in the county at some or all elections in accordance with G.S. 163-165.8;

**WHEREAS**, the Gaston County Board of Elections has recommended to the Gaston County Board of Commissioners which type of voting system should be acquired by the county, pursuant to G.S. 163-165.9(a)(1);

**WHEREAS**, the Gaston County Board of Elections has witnessed a virtual demonstration, in the county on March 2, 2021 of the type of voting system being recommended, and has also witnessed a demonstration of at least one other type of voting system certified by the State Board of Elections as required by G.S. 163-165.9(a)(2);

**WHEREAS**, the Gaston County Board of Elections has successfully tested during a simulated election event on March 10, 2021, coordinated with the State Board of Elections, that was opened to the public, the proposed voting system, to satisfy the requirements of G.S. 163-165.9(a)(3);

**WHEREAS**, the Gaston County Board of Elections has sought and received approval from the State Board of Elections to replace the current voting system, pursuant to G.S. 163A-165.9(b)(3);

**WHEREAS**, the Gaston County Board of Elections has received Help America Vote Act (HAVA) grant funds that was placed in the 2020-2021 election budget to fund the recommended purchase of new voting equipment; and

**WHEREAS**, the Gaston County Board of Elections plans to trade in their current voting equipment assets of one (1) DS650 High Speed Tabulator and fifty-five (55) ADA-compliant AutoMARK ballot marking devices for the total value of \$18,699.75.

**THEREFORE BE IT RESOLVED** that the Gaston County Board of Commissioners approve the adoption and acquisition of the following certified voting equipment pursuant to G.S. 163-165.9(a)(1) and forward a copy of the resolution to the Gaston County Board of Elections:

Voting Type: ES&S Voting System 5.2.2.0

Vendor: Election Systems and Software

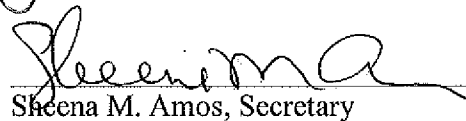
Number of Units: 55 ADA Compliant ExpressVote Ballot Marking Devices with carrying cases

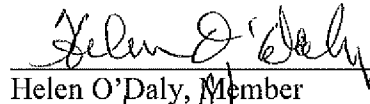
Cost per Unit: ADA ExpressVote = \$3,325.00  
ExpressVote Carrying Case = \$175.00

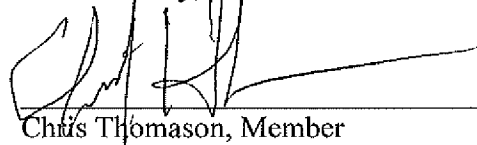
Estimated Total Cost to County: \$185,294.00 (HAVA federal grant funds)

This is the 20<sup>th</sup> day of April 2021.

  
James W. Ragan, Chairman

  
Sheena M. Amos, Secretary

  
Helen O'Daly, Member

  
Chris Thomason, Member

\_\_\_\_\_  
Vacant, Member