

ELECTION SYSTEMS & SOFTWARE, LLC
ONE-TIME RENTAL OF EQUIPMENT, SALE OF SERVICES AND LICENSE OF SOFTWARE

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

BETWEEN: ELECTION SYSTEMS & SOFTWARE, LLC, a Delaware Limited Liability Company ("ES&S")

AND: TOWN OF ERIE, COLORADO ("Customer").

RECITALS:

- A. Customer has agreed to rent, license and purchase, as applicable, voter tabulation equipment and related software and services from ES&S for use in the **Town of Erie, Colorado** (the "Jurisdiction"). The terms and conditions under which the equipment, software and services shall be provided are set forth in the **GENERAL TERMS** attached hereto and incorporated herein by reference.

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

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in the Agreement and Amendments.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Colorado**.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

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

TOWN OF ERIE, COLORADO
P.O. Box 750 – 645 Holbrook Street
Erie, CO 80516
Fax No.: (303) 926-2798

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date

**RENTAL OF EQUIPMENT, SALE OF SERVICES AND LICENSE OF SOFTWARE
GENERAL TERMS**

1. Description of Rental Equipment, Software and Services. The following constitutes all Rental Equipment, Software and Services to be provided by ES&S to Customer under this Agreement:

QUANTITY	MODEL	RENTAL EQUIPMENT DESCRIPTION	PRICE	
Covered Election: April 1, 2018				
ES&S Equipment:				
3	Model DS200	Model DS200 Scanner with Plastic Ballot Box with Steel Door and e-Bin, Paper Roll, 4GB Jump Drive, and Roundtrip Shipping & Handling	\$3,255.00	
3		Paper Roll (Additional)	\$5.25	
ES&S Services:				
3		Model DS200 Installation	\$345.00	
1		Project Management Day	\$1,650.00	
1		Election On-Site Support Event	\$4,525.00	
X		Ballot Layout	\$83.25	
X		Coding	\$626.00	
X		Voice Files	\$390.75	
Vote by Mail Ballot Processing Services:				
16,000		Mailing fee per envelope processed (Fee includes the processing of 1 page ballot, black and white, up to 18 inches in length)	\$1.75	\$28,000.00
16,000		Additional Ballot fee for each additional black and white ballot, up to 18 inches in length, printed inserted, matched, and verified in a single envelope	\$0.40	TBD
	Total Rental Fees for the April 1, 2018 Election:		\$38,880.25	

Payment Terms:

Invoicing will occur as Follows:

Total Estimated Rental Fees of \$38,880.25 due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.

Delays in payment due to no fault of ES&S will be subject to interest charges in the maximum amount permitted by applicable law.

Equipment Rental Pricing includes Roundtrip Shipping and Handling provided Customer utilizes the original boxes and packing materials to return the equipment to ES&S. In the event the Customer requires ES&S to provide new boxes and packing material for return of the equipment, such items will be invoiced to Customer separately and shall be due and payable upon receipt of ES&S' invoice by Customer.

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.

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

Notes:

1. Freight and Postage are not included in pricing and will be billed separately.
2. Customer anticipates using 16,000 envelopes in the above covered election. Notwithstanding the foregoing,

ES&S shall only invoice the Customer the actual number of envelopes processed.

2. Description of Services.

- a. Installation. Section 1 specifies the items of Rental Equipment or Software, if any, which ES&S' employees, agents or authorized representatives ("Representatives") will install at Customer's designated site. Customer shall pay ES&S a fee for such installation services, as set forth in Section 1. Customer will provide, at its own expense, a site adequate in space and design for installation and operation of the Rental Equipment and Software. Customer shall be responsible for providing a site that is temperature and humidity controlled, has all necessary electric current outlets, circuits, and wiring for the Rental Equipment and Software, and has electric current of sufficient quality and quantity to operate the Rental Equipment and Software, all as specified in the Rental Equipment Documentation or the Software Documentation (as each is defined below) (collectively the "Documentation"). ES&S may, but shall not be required to, inspect the site and advise on its acceptability before any Rental Equipment or Software is installed. Customer shall be responsible for installing all items of Rental Equipment or Software not installed by ES&S, in accordance with the instructions furnished in the Documentation. ES&S shall have no liability for actual site preparation or for any costs, damages or claims arising out of the installation of any Rental Equipment or Software by Customer.
- b. Additional Professional Services. If requested in writing by Customer, ES&S will provide additional Professional Services support to Customer at ES&S's then-applicable rates for such services.

TERMS AND CONDITIONS RELATING TO RENTAL EQUIPMENT

3. Items Included in Rental Equipment. In addition to the Rental Equipment, ES&S will also provide Customer with copies of operating instructions, user manuals and training materials for the Rental Equipment ("Rental Equipment Documentation"). Certain items included in the Rental Equipment may have been manufactured by parties other than ES&S; any such items are separately identified in Section 1 and are collectively known as "Non-ES&S Rental Equipment". Customer acknowledges and agrees that, except for the payment to ES&S of the amount dues under Section 1 which is attributable to the Non-ES&S Rental Equipment, all of its rights and obligations with respect to the Non-ES&S Rental Equipment flow from and to the manufacturers, lessors or other vendors of the Non-ES&S Rental Equipment (collectively the "Third Party Rental Equipment Vendors"). Customer further acknowledges that it has received copies of all applicable Third Party Rental Equipment Vendor Documentation, warranties and other applicable information regarding its rights and obligations with respect to the Non-ES&S Rental Equipment.
4. Warranty. ES&S warrants that any ES&S-manufactured scanning equipment included in the Rental Equipment ("Scanning Equipment") will perform in accordance with the specifications set forth in the Rental Equipment Documentation and will be free from defects in material and workmanship under normal use and service for the Rental Term (the "Warranty Period"). ES&S' sole obligation under this Section 4 shall be to repair or replace the Scanning Equipment or the applicable parts thereof, at its sole expense, at Customer's location or at ES&S's facilities, as determined by ES&S in its sole discretion. Any repaired or replaced Scanning Equipment or parts thereof shall be warranted only for the unexpired term of the original Warranty Period. All replaced Scanning Equipment or parts thereof will become the property of ES&S on an exchange basis. The warranty provided by ES&S under this Section 4 does not apply to and shall not require ES&S to repair or replace any item (i) which requires repair or replacement due to normal wear and tear caused solely by Customer use, (ii) which has been repaired, altered or transported by persons other than ES&S authorized Representatives, (iii) from which any serial number has been removed, defaced or changed, (iv) which is damaged due to accident, disaster, theft, vandalism, neglect, abuse, use for a purpose other than the purpose for which such item is designed or use which is not in accordance with instructions furnished by ES&S, (v) which has been subjected to physical, mechanical or electrical design alterations or any conversion by persons other than ES&S personnel, (vi) which has been used by any person other than Customer's employees or persons under Customer's direct supervision; (vii) which has been used in a site not meeting the specifications set forth in Section 2(a) above; (viii) has been used with ballots other than ES&S copyrighted ballots; or (ix) have been used with ballot code stock other than ballot code stock supplied or approved by ES&S.
5. Rental Payments. The rental payment for each item included in the Rental Equipment for the Rental Term (defined below) is set forth in Section 1 above, and the total amount thereof shall be paid in accordance with the terms of Section 1. Customer shall notify ES&S if it desires to rent additional items of Rental Equipment. If ES&S agrees to rent such items to Customer, the parties shall amend Section 1 of this Agreement to include such items within the definition of

"Rental Equipment" and Customer shall pay to ES&S rental payments for each such item at ES&S's then-current rental rates.

6. **Rental Term.** The period during which Customer shall rent the Rental Equipment from ES&S shall be in effect from **February 1, 2018 through April 30, 2018**, unless earlier terminated pursuant to this Agreement (the "Rental Term"). The Rental Term shall terminate upon the first to occur of (i) a breach of any provision herein applicable to the Rental Equipment which has not been cured by the breaching party within thirty (30) days after it receives written notice of the breach from the non-breaching party (except a breach as provided in (iii) below which will require no notice); (ii) either party's providing thirty (30) days' prior written notice to the other party hereto of its desire to terminate the Rental Term; or (iii) Customer's failure to make any rental payment due hereunder within sixty (60) days after it is due. In the event of early termination by ES&S due to (a) a breach of this Agreement by Customer, (b) Customer's failure to pay any amounts owed under this Agreement or (c) the failure of Customer's Board of Supervisors to appropriate funds to make the payments due under this Agreement, Customer shall pay ES&S liquidated damages equal to the present value of the remaining monthly amounts owing hereunder, discounted at the rate of 8% per annum. Further, in the event of a termination by the Customer in accordance with Section 6(ii) above, Customer hereby agrees to promptly pay ES&S for all costs incurred and deliverables provided by ES&S through the effective date of such termination, including, but not limited to, any equipment and software delivered, shipping costs incurred, and services performed. No later than ten (10) calendar days following the termination of the Rental Term, Customer shall release the Rental Equipment to ES&S at its own expense and in the same operation, order, repair, condition and appearance as when received, subject to normal wear and tear. In the event Customer fails to release the Rental Equipment to ES&S no later than ten (10) calendar days following the termination of the Rental Term, Customer shall pay to ES&S a late return charge in the amount of \$500.00 per calendar day until the Rental Equipment is returned to ES&S in accordance herewith.

TERMS AND CONDITIONS RELATING TO SOFTWARE

7. **Grant of License.**
- a. **In General.** ES&S hereby grants to Customer a nonexclusive and nontransferable license during the Rental Term for its bona fide full-time employees to Use (defined below) the Software designated in Section 1.
 - b. **Third Party Software.** Customer acknowledges that ES&S does not own the Software designated in Section 1 as "Third Party Software" or the accompanying operating instructions, user manuals and training materials relating thereto (the "Third Party Software Documentation") (the ES&S Software Documentation and the Third Party Software Documentation sometimes collectively the "Software Documentation"). Customer further acknowledges that, except for the payment of license fees attributable to the Third Party Software and the Third Party Software Documentation (collectively the "Non-ES&S Software Items"), which shall be paid directly to ES&S pursuant to Section 1 above, all of its rights and obligations with respect to the Non-ES&S Software Items flow from and to the vendors of the Non-ES&S Software Items (the "Third Party Vendors"). Customer further acknowledges that it has received copies of all applicable license agreements for the Non-ES&S Software Items from the Third Party Vendors. None of the Non-ES&S Software Items has been independently authenticated in whole or in part by ES&S, and none of ES&S' representations, warranties, covenants or agreements set forth herein apply with respect to the Non-ES&S Software Items unless otherwise specifically stated herein.
 - c. **Definition of Use.** For purposes of this Agreement, the term "Use" shall mean the right to copy or utilize all or any portion of the instructions or data of the ES&S Software from tangible media supplied by ES&S ("Tangible Media"). The ES&S Software may be used only for internal purposes and shall not be used by, for, or on behalf of, third parties. "Use" shall also mean the right to retain and consult the ES&S Software Documentation. Customer's right to Use the ES&S Software and the ES&S Software Documentation shall not include the right to do any of the following:
 - i. Copy, in whole or in part, any ES&S Software (except for backup and archive purposes and provided that no more than one copy may be in existence at any one time for such purposes), any Tangible Media or any ES&S Software Documentation;
 - ii. Reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow or assist others to create the source code of the ES&S Software or the structural framework of the ES&S Software;

- iii. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or the ES&S Software Documentation, in whole or in part, to or by any third party without Licensor's prior written consent;
 - iv. Modify, enhance or otherwise change the ES&S Software;
 - v. Use the ES&S Software except as specified in the ES&S Software Documentation or as otherwise authorized by ES&S in writing; or
 - vi. Use the ES&S Software on more items of Designated Equipment unless authorized in writing by ES&S.
8. Fees. The license fees for the ES&S Software, the ES&S Software Documentation, the Third Party Software and the Third Party Documentation (collectively the "Licensed Items") for the Rental Term are set forth in Section 1 above and shall be paid in accordance with the terms of Section 1.
9. Term; Termination. The license granted herein shall become effective on the date the ES&S Software is installed by Customer (the "Start Date") and shall remain in force during the Rental Term. Upon termination of the license, Customer shall immediately return the ES&S Software and any other Confidential Information in its possession or under its control (including any and all copies) to ES&S. Termination of the license pursuant to this provision is in addition to any other remedies available to ES&S at law or in equity.
10. Title; Copyright Notice. Customer acknowledges and agrees that: (a) all right, title and interest in and to the ES&S Software, the ES&S Software Documentation and the Tangible Media is owned by ES&S, and Customer has only a limited license to Use such items during the Software License Term. Customer agrees not to challenge ES&S's right, title and interest in and to the ES&S Software, the ES&S Software Documentation or the Tangible Media and to notify ES&S immediately if it becomes aware of any such challenge. Customer shall include the copyright and proprietary rights notices which are set forth on each item of Tangible Media on any copies of the Software which are made from such item of Tangible Media. Likewise, Customer shall include the copyright and proprietary rights notices which are set forth on each item of Documentation on any copies thereof.
11. Export. Customer acknowledges that the laws and regulations of the United States may restrict the export of certain commodities and technical data of United States origin, including the Software, in any medium. Customer agrees that it shall not export the Software or the Documentation in any form without the appropriate United States and foreign government licenses. Licensee further agrees that its obligations pursuant to this Section 11 shall survive and continue after the termination of this Agreement.

TERMS AND CONDITIONS RELATING TO RENTAL EQUIPMENT AND SOFTWARE

12. Limitation on Liability. ES&S' total liability to Customer for any losses, damages, costs or expenses of any nature, whether direct or indirect, arising from or relating to ES&S' performance of this Agreement or the products or services provided by ES&S hereunder, shall be limited to the aggregate amount paid by Customer to ES&S for the product(s) or services(s) that caused the losses or damages or are the subject matter of the claim or cause of action. By entering into this Agreement, Customer agrees to accept responsibility for (i) the selection of the Rental Equipment and Software to achieve Customer's intended results; (ii) the use (Use) of the Rental Equipment and Software; (c) the results obtained from the use of the Rental Equipment and Software; and (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Rental Equipment or Software.
13. Shipment; Title and Risk of Loss. ES&S will ship the Rental Equipment and Software by common carrier to Customer on a date mutually agreed upon by ES&S and Customer, and risk of loss with respect to the Rental Equipment and Software shall pass to Customer when such items are delivered to Customer's place of business. Title to the Rental Equipment shall remain in ES&S. ES&S shall also bear the risk of loss with respect to the Rental Equipment (except that Customer shall bear the risk of loss with respect to, or damage to, the Rental Equipment which is caused by fire, the elements, theft, vandalism, negligent or intentional acts of Customer's employees or other events which are within the control of Customer). During the period in which this Agreement is in effect, Customer shall, at its sole expense, maintain the Rental Equipment in good operating condition and repair and protect the Rental Equipment from deterioration other than normal wear and tear and shall procure and maintain insurance on the Rental Equipment to adequately insure the risks of loss for which Customer is responsible hereunder. Upon request, Customer shall provide ES&S with copies of any and all policies procured and maintained by Customer insuring Customer's risks of loss hereunder. Customer shall not use the Rental Equipment for any purpose other than those for which it was designed and shall not, without the prior written consent of ES&S, alter the Rental Equipment or affix to or install on the Rental Equipment any accessory,

equipment or device which was not supplied to it by ES&S. Customer shall not move the Rental Equipment from the place where it was originally installed without ES&S' prior written consent and shall make the Rental Equipment and any records pertaining thereto available to ES&S during regular business hours for inspection. Customer will not, without the prior written consent of ES&S and subject to such conditions as ES&S may impose for its protection, affix any item of Rental Equipment to any real property if, as a result thereof, such item of Rental Equipment will become a fixture under applicable state law.

14. Prohibition Against Employment of Illegal Aliens.

- a. By its signature on this Agreement, ES&S certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States, ES&S has participated or attempted to participate in the E-verify employment verification program ("E-verify") created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security.
- b. ES&S agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to ES&S that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.
- c. ES&S has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-verify Program. If ES&S has not been accepted into the E-verify Program prior to entering into this Agreement, ES&S shall apply to participate in the E-verify Program every three months until ES&S is accepted or work under this Agreement has been completed, whichever is earlier. This requirement shall not apply if the E-verify Program is discontinued.
- d. ES&S shall not use E-verify Program procedures to undertake pre-employment screening of job applicants while work under this Agreement is being performed.
- e. If ES&S obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, ES&S shall: (1) notify the subcontractor and the Customer within three days that ES&S has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the subcontractor if, within three days of receiving the notice required herein, the subcontractor does not stop employing or contracting with the illegal alien; except that ES&S shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. ES&S shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. section 8-17.5-101(5).
- g. If ES&S violates a provision of this paragraph, the Customer may terminate this Agreement for breach of contract. If the Agreement is so terminated, ES&S shall be liable for actual and consequential damages to the Customer. ES&S understands that, in the event of such a termination, Customer is required to notify the office of the Colorado Secretary of State.