

8/16/23

**CONTRACT BETWEEN
ELECTION SYSTEMS & SOFTWARE, LLC
AND
COUNTY OF GLOUCESTER**

THIS CONTRACT is made effective the 16th day of August, 2023, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "County", and **Election Systems & Software, LLC** of 11208 John Galt Boulevard, Omaha, Nebraska 68137, hereinafter referred to as "Contractor".

RECITALS

WHEREAS, there exists a need for the County to purchase services for election hardware related to election operations in the County of Gloucester; and

WHEREAS, the contract has been awarded consistent with the fair and open provisions of the Gloucester County Administrative Code and with N.J.S.A. 19:44A-20.4 et seq., which exempt this contract from competition because Contractor has certified that it has not made or will not make during the term of the contract a disqualifying contribution; and

WHEREAS, the services to be performed as to this contract are relative to election expenses and therefore is an exception to the Local Public Contracts Law as described and provided by N.J.S.A. 40A:11-5(1); and

WHEREAS, Contractor represents that he is qualified to perform said services and desires to so perform pursuant to the terms and provisions of this contract.

NOW, THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Contractor do hereby agree as follows:

TERMS OF AGREEMENT

1. **TERM**. The term of the contract is from October 1, 2023 to September 30, 2024.
2. **COMPENSATION**. Contractor shall be compensated in the total contract amount of \$80,818.50.

Contractor shall be paid in accordance with this contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Contractor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this contract.

3. DUTIES OF CONTRACTOR. Contractor shall be compensated in a total contract amount of \$80,818.50, as per Contractor's Invoice, Invoice Number CD2063564, dated July 26, 2023, attached hereto as Attachment A and made a part of this contract. Contractor agrees that it has or will comply with, and where applicable shall continue throughout the period of this contract to comply with, all of the requirements of any specifications, which may have been issued by the County of Gloucester in connection with the work to be performed.

Contractor shall be paid in accordance with this Contract document upon date of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

4. FURTHER OBLIGATIONS OF THE PARTIES. During the performance of this contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. The Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service.

The Contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. LICENSING AND PERMITTING. If the Contractor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Contractor shall provide to the County a copy of all current license and permits to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Contractor shall notify the County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Contractor or its agents.

6. TERMINATION. This Contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the Bid Specifications or in the Request for Proposals, if any, as the case may be, which are specifically referred to and incorporated herein by reference.

B. If Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Contractor or Subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the County.

D. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

E. Notwithstanding the above, the Contractor or Subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount

of damages due the County from the Contractor is determined.

F. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **PROPERTY OF THE COUNTY.** All materials developed, prepared, completer, or acquired by Contractor during the performance of the services specified by this Contract, including, but not limited to, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, shall become the property of the County, except as may otherwise be stipulated in a written statement by the County.

8. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Contractor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

9. **INDEMNIFICATION.** The Contractor or Subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Contractor's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent Contractors, or from the Contractor's failure to provide for the safety and protection of its employees, or from Contractor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. **POLITICAL CONTRIBUTION DISCLOSURE AND PROHIBITION.** This contract has been awarded to Contractor based on the merits and abilities of Contractor to provide the goods or services described in this Contract. This contract was awarded through a non-competitive process pursuant to N.J.S.A. 19:44A-20.4 et seq. The signer of this Contract does hereby certify that Contractor, its subsidiaries, assigns or principals controlling in excess of 10% of the Contractor will not make a reportable contribution during the term of the contract to any political party committee in Gloucester County if a member of that political party is serving in an elective public office of Gloucester County when the contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the contract is awarded.

11. **INSURANCE.** Contractor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of

New Jersey. Contractor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Contractor is a member of a profession that is subject to suit for professional malpractice, then Contractor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. Contractor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Contractor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

12. SET-OFF. Should Contractor either refuse or neglect to perform the service that Contractor is required to perform in accordance with the terms of this Contract, and if expense is incurred by County by reason of Contractor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Contractor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

13. PREVENTION OF PERFORMANCE BY COUNTY. In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Contractor shall be suspended without liability for the period during which the County is so prevented.

14. METHODS OF WORK. Contractor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

15. NON-WAIVER. The failure by the County to enforce any particular provision of this Contract, or to act upon a breach of this Contract by Contractor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

16. PARTIAL INVALIDITY. In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

17. CHANGES. This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

18. NOTICES. Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such

notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

19. GOVERNING LAW, JURISDICTION AND VENUE. This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

20. INDEPENDENT CONTRACTOR STATUS. The parties acknowledge that Contractor is an independent Contractor and is not an agent of the County.

21. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. The Company further covenants that in the performance of this Contract, no person having any such interest shall be employed.

22. CONFIDENTIALITY. Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

23. BINDING EFFECT. This Contract shall be binding on the undersigned and their successors and assigns.

24. CONTRACT PARTS. This contract shall consist of this document, the specifications of County, incorporated into this Contract by reference and Contractor's Invoice, Invoice Number CD2063564, dated July 26, 2023, attached hereto as Attachment A. If there is a conflict between this Contract and the specification or the Contractor's Invoice, Invoice Number CD2063564, dated July 26, 2023, then this Contract and the Specifications shall control.

THIS CONTRACT shall be effective the 16th day of August, 2023.

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Director and attested by the Board Clerk pursuant to a Resolution passed for that purpose, and Contractor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

ATTEST:

Laurie Burns
LAURIE J. BURNS,
CLERK OF THE BOARD

COUNTY OF GLOUCESTER

Frank J. Dimarco
FRANK J. DIMARCO,
DIRECTOR

ATTEST:

Bethannah Newman
Bethannah Newman
Paralegal

ELECTION SYSTEMS & SOFTWARE, LLC

Jared Plath
By: Jared Plath
Title: VP of Finance

ATTACHMENT A



Election Systems & Software
6055 Paysphere Circle
Chicago, IL 60674
(877) 377-8683



Invoice
Invoice Date
7/26/23
Order Date
7/26/23
Customer Number
36647
Customer's PO No

Terms of Payment
30 Days Net
Order Number
157997

ORIGINAL
Invoice Number
CD2063564
Election Date
Page
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Invoice Address
GLOUCESTER COUNTY, NEW JERSEY (BOE)
PO BOX 352
WOODBURY NJ 08096-7352

Delivery Address
Gloucester County, New Jersey (BOE)
550 Grove Road
Paulsboro, NJ 08066
US - UNITED STATES

Invoice for Service Contract: 4318, DS450-1; EVXL-100; PYO, Gloucester County, New Jersey (BOE)

Sales

Pos	Description	Sales Qty	Unit	Price	Disc %	Tax %	Net Amount USD
1	HMA - DS450 Extended Warranty with Biennial Maintenance 01-OCT-23 to 30-SEP-24	1.00	EA	1,989.750	0.00	0.00	1,989.75
2	Firmware License - DS450 01-OCT-23 to 30-SEP-24	1.00	EA	1,653.750	0.00	0.00	1,653.75
3	Electionware PYO Standard - Renewal License Fee 01-OCT-23 to 30-SEP-24	1.00	EA	51,975.000	0.00	0.00	51,975.00
4	Firmware License - ExpressVote XL 01-OCT-23 to 30-SEP-24	100.00	EA	78.750	0.00	0.00	7,875.00
5	HMA - ExpressVote XL Extended Warranty with Biennial Maintenance 01-OCT-23 to 30-SEP-24	100.00	EA	173.250	0.00	0.00	17,325.00
Sub Total Amount							80,818.50

Total Exclusive Tax **80,818.50**

Total Tax **0.00**
Invoice Amount **80,818.50**

Customer Number **36647** Invoice Number **CD2063564** INVOICE AMOUNT **80,818.50** Election Systems & Software
ABA Routing No: 071000039
Account No: 5800923558

NJ: New Jersey
PLEASE DETACH AND RETURN THIS STUB WITH YOUR PAYMENT, THANK YOU.