



Dale County Commission

Commission Meeting Minutes – November 28, 2023

The Dale County Commission convened in a regular session Tuesday, November 28, 2023. The following members were present: Chairman Steve McKinnon; District One Commissioner Chris Carroll; District Two Commissioner Donald O. Grantham; District Three Commissioner Adam Enfinger; and District Four Commissioner Frankie Wilson.

Chairman McKinnon called the meeting to order at 10:00am. Commissioner Carroll opened with prayer. Commissioner Grantham followed with the Pledge of Allegiance.

APPROVED – AGENDA, MINUTES & MEMORANDUM OF WARRANTS

Commissioner Carroll made a motion to approve the memorandum of warrants and minutes:

Memorandum of Warrants:

- Accounts Payable Check Numbers 97769 – 97868.
- Payroll Check Numbers: 154940 – 154942.
- Direct Deposit Check Numbers: 426831 - 426976.

Minutes: Commission Meeting of November 14, 2023.

Commissioner Enfinger seconded the motion, all voted aye. Motion carried.

APPROVED – PERSONNEL

Commissioner Enfinger made a motion to approve the following:

1. Austin Smith – Mapping & Appraisal – Real Property Appraiser Trainee– New Hire.
2. Evan Faircloth – Sheriff – Deputy to Investigator – Promotion.
3. Tyler Harrington – Sheriff – Part-time to Full-time Deputy – Promotion.

Commissioner Wilson seconded the motion, all voted aye. Motion carried.

APPROVED – ROAD & BRIDGE – ALDOT AGREEMENT

Commissioner Carroll made a motion to approve an agreement for a Local Road Safety Initiative Program Project. See Exhibit 1.

Commissioner Grantham seconded the motion, all voted aye. Motion carried.

APPROVED – WORK REQUEST – TOWN OF GRIMES

Commissioner Wilson made a motion to approve a work request for the Town of Grimes. See Exhibit 2.

Commissioner Grantham seconded the motion, all voted aye. Motion carried.

APPROVED – ARPA - ROAD & BRIDGE OFFICE ADDITION

Commissioner Carroll made a motion to approve the additional expenditures for the ARPA Road & Bridge Office Addition. See Exhibit 3.

Commissioner Grantham seconded the motion, all voted aye. Motion carried.

APPROVED – CAPITAL FUNDS EXPENDITURE – CORONER'S OFFICE

Commissioner Wilson made a motion to approve expenditures for a covered parking structure for the Coroner's office. After three quotes were reviewed, the Commission approved JNB Services. See Exhibit 4

Commissioner Grantham seconded the motion, all voted aye. Motion carried.

APPROVED – ARPA – ELECTIONS

Commissioner Enfinger made a motion to approve the expenditure of ARPA funds for Election equipment such as polling pads, printer, and routers. The Commission authorized the Chairman to sign the ES&S agreement for the purchase. See Exhibit 5.

Commissioner Wilson seconded the motion, all voted aye. Motion carried.

APPROVED – AL DEPT OF YOUTH AGREEMENT

Commissioner Enfinger made a motion to approve an Alabama Department of Youth Services Agency Grant Agreement and for Chairman to sign agreement. See Exhibit 6.

Commissioner Wilson seconded the motion, all voted aye. Motion carried.

ANNOUNCEMENT – NEXT REGULAR MEETING

Chairman McKinnon announced that the next regular meeting of the Dale County Commission will be Tuesday, December 12, 2023, at 10:00am.

ADJOURNMENT: CONFIRMATORY STATEMENT

Commissioner Wilson made a motion to adjourn the meeting. Commissioner Enfinger seconded the motion. All voted aye. Motion carried.

It is hereby ordered the foregoing documents, resolutions, etc., be duly confirmed and entered into the minutes of the Dale County Commission as its official actions.



Steve McKinnon, Chairman

**CONSTRUCTION
AGREEMENT
FOR A
LOCAL ROADS SAFETY INITIATIVE PROGRAM
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND
DALE COUNTY COMMISSION**

**Guardrail and Guardrail End Anchors at 3 Sites
Site 1: BIN 012726 on CR-2
Site 2: BIN 012995 on CR-19 WEST
Site 3: BIN 008291 ON CR-19 EAST**

**Project No. LRSI-2324(____)
CPMS Reference No. 100077768**

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the Dale County Commission, Alabama, (FEIN 63-6001505) hereinafter referred to as the COUNTY.

WHEREAS, the STATE and the COUNTY desire to cooperate on a project for installation of Guardrail and Guardrail End Anchors at 3 Sites; Site 1: (BIN 012726) on CR-2, Site 2: (BIN 012995) on CR-19 West, and Site 3: (BIN 008291) on CR-19 East; Project No. LRSI-2324(____); CPMS Reference No. 100077768.

NOW, THEREFORE, it is mutually agreed between the STATE and the COUNTY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. The STATE will not be liable for Federal Aid funds in any amount. Cost for the project will be financed, when eligible for Federal participation, on the basis of 90 percent Local Roads Safety Initiative (LRSI) funds with 10 percent COUNTY funds. Any deficiency in Federal Aid or overrun in costs will be borne by the COUNTY from County Federal Aid funds, if available, and from COUNTY funds unless approved in writing by the STATE. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 90 percent of eligible LRSI project costs.

B. Estimated Cost: The estimated cost and participation by the various parties is as follows:

	ESTIMATED COSTS
LRSI	\$ 277,128.00
County Funds – 10%	\$ <u>30,792.00</u>
TOTAL (Incl CE&I & Indirect Cost)	\$ 307,920.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the COUNTY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the COUNTY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA), or in excess of the limiting amounts previously stated, will not be an eligible cost to the project and will be borne and paid by the COUNTY.

C. Time Limit: This project will commence upon written authorization to proceed from the STATE directed to the COUNTY. The project shall be advanced to authorization by the end of the fiscal year, unless approved in writing by the State. The COUNTY agrees that the STATE may unilaterally extend the time of the agreement.

PART THREE (3): PROJECT SERVICES

A. The COUNTY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost as part of this Agreement. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this Agreement will be accomplished on property owned by or which will be acquired by the COUNTY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the COUNTY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the COUNTY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property or property interests acquired shall be in the name of the COUNTY with any condemnation or other legal proceedings being performed by the COUNTY.

The COUNTY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the COUNTY from the sale or lease of property.

B. The COUNTY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will not be an eligible cost as part of this Agreement.

C. The COUNTY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with COUNTY forces or with a consultant

approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost as part of this Agreement.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the COUNTY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All costs for which the COUNTY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the COUNTY be reimbursed for expenditures over and beyond the amount approved by the STATE. The COUNTY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the COUNTY and approved by the STATE. The plans, including the documents relating thereto, are of record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. It is understood by the COUNTY that failure of the COUNTY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal or state funding and the refund of any federal or state funds previously received on the project.

- D. The COUNTY will furnish all construction engineering for the project with COUNTY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The COUNTY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The COUNTY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the COUNTY to proceed.
- B. Associated Construction cost will be an eligible cost as part of this Agreement. For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the COUNTY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The COUNTY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid. For projects let to contract by the COUNTY, the COUNTY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The COUNTY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this Agreement. The COUNTY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the COUNTY will provide all bids to the STATE with a recommendation for award. The COUNTY shall not award the contract until it has received written approval from the STATE. For projects with approval by the STATE to use COUNTY Forces, the Construction for the project will be performed by the COUNTY at actual costs for labor, materials, and equipment, as approved by the STATE.”

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the COUNTY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The COUNTY will be the permittee of record with ADEM for the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The COUNTY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.
The COUNTY will secure all permits and licenses of every nature and description applicable to the project in any manner; conform to and comply with the requirements of any such permit or license; and comply with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.
- D. The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation, and the project will be built in accordance with the approved plans.
- E. The COUNTY shall be responsible at all times for all of the work performed under this Agreement and, as provided in Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.
For all claims not subject to Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.
- F. The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the COUNTY will assume full ownership and responsibility for the portion of the project work on COUNTY right-of-way and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The COUNTY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The COUNTY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this Agreement will be submitted within twelve (12) months

after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

- B. The COUNTY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- C. The COUNTY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.
All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.
The COUNTY will report to the STATE the progress of the project in such manner as the STATE may require. The COUNTY will also provide the STATE any information requested by the STATE regarding the project. The COUNTY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.
The COUNTY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project and any and all data and records which in any way relate to the project or to the accomplishment of the project. The COUNTY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the COUNTY will give its full cooperation to those persons or their authorized representatives, as applicable.
The COUNTY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.
- D. The COUNTY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to and the right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this Agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.
- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the COUNTY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this Agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE, and nothing in this Agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this Agreement shall not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that, if any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may be enacted during the term of this Agreement, then the conflicting provision in this agreement shall be deemed null and void.

- C. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- D. No member, officer, or employee of the COUNTY, during their tenure of employment and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This Agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

Dale County, Alabama

By: Cheryl Gasey
Clerk (Signature)

By: Steve McKinney
As Chairman (Signature)

Cheryl Gasey
Print Name of Clerk

Steve McKinney
Print Name of Chairman

(AFFIX SEAL)

This agreement has been legally reviewed and approved as to form and content.

By: _____

William F. Patty
Chief Counsel

RECOMMENDED FOR APPROVAL:

Steve Graben, P.E.
Southeast Region Engineer

Bradley B. Lindsey, P.E.
State Local Transportation Engineer

Edward N. Austin, P.E.
Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20 ____.

KAY IVEY
GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER 2023-11-28

BE IT RESOLVED, by the Dale County Commission as follows:

That the County enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

Installation of Guardrail and Guardrail End Anchors at 3 Sites; Site 1: (BIN 012726) on CR-2, Site 2: (BIN 012995) on CR-19 West, and Site 3: (BIN 008291) on CR-19 East; Project No. LRSI-2324(); CPMS Reference No. 100077768.

Which agreement is before this Commission, and that the agreement be executed in the name of the County, by the Chairman for and on its behalf and that it be attested by the County Clerk and the official seal of the County be affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the County.

I, the undersigned qualified and acting Clerk of Dale County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County named therein, at a regular meeting of such Commission held on the 28 day of November, 2023, and that such resolution is on file in the County Clerk's Office.

ATTESTED:

Cheryl Gandy
County Clerk

Steve McAnis
Chairman

28 day of November, 2023, and that such resolution is of record in the Minute Book of the County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this 28 day of November, 2023.

Cheryl Gandy
County Clerk

(AFFIX SEAL)

STD CONTRACT EXHIBITS

REV. 9/19/16

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

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EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the COUNTY upon an equitable basis. The value of the work performed by the COUNTY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 - 1. The ratio of the amount of work performed by the COUNTY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

 - 2. The amount of the expense to which the COUNTY is put in performing the work to be terminated in proportion to the amount of expense to which the COUNTY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the COUNTY prior to the termination, no consideration will be given to profit, which the COUNTY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the COUNTY, the value of the work performed by the COUNTY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

- b. Should the AGREEMENT be terminated due to default by COUNTY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

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EXHIBIT H

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EQUAL RIGHTS PROVISIONS

During the performance of this contract, the COUNTY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The COUNTY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

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- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)

b. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The COUNTY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The COUNTY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. Solicitations

In all solicitations either by competitive bidding or negotiation made by the COUNTY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the COUNTY of the COUNTY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. Information and Reports

The COUNTY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

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records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a COUNTY is in the exclusive possession of another who fails or refuses to furnish this information, the COUNTY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the COUNTY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the COUNTY under contract until the COUNTY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The COUNTY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The COUNTY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a COUNTY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the COUNTY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the COUNTY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

**STD CONTRACT EXHIBITS
REV. 9/19/16****EXHIBIT H**

Page 4

The COUNTY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not 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. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The COUNTY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The COUNTY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The COUNTY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

**STD CONTRACT EXHIBITS
REV. 9/19/16****EXHIBIT H**

Page 5

- b. The COUNTY, in accordance with the status of COUNTY as an independent contractor, covenants and agrees that the conduct of COUNTY will be consistent with such status, that COUNTY will neither hold COUNTY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that COUNTY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of COUNTY.

COUNTY'S CERTIFICATIONS

The COUNTY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the COUNTY. The COUNTY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the COUNTY at the time of execution of the AGREEMENT. The COUNTY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The COUNTY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The COUNTY agrees that a meal allowance shall be limited to COUNTY employees while in travel status only and only when used in lieu of a per diem rate.

The COUNTY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The COUNTY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

**STD CONTRACT EXHIBITS
REV. 9/19/16****EXHIBIT M****CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**STD CONTRACT EXHIBITS
REV. 9/19/16**

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and COUNTY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, COUNTY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The COUNTY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Work Request Form

Dale County Road & Bridge Department

Government Entity: Town of Grimes

Date Requested: 11/14/2023

Requested by: Mayor Kirkland

Project Location: Town of Grimes

Description of Work: Culverts being cleaned

Cost Estimate: \$3,177.10

(to be completed by County
Engineer and/or personnel

Road and Bridge Reimbursement Options:

X

1. 100% by the requesting entity
2. 50% General Fund /50% requesting entity
3. 100% by the General Fund

Commission Meeting Date: 11/28/2023

Approved (Y/N): Yes - 11/28/23

NOTE: Responsible party will be invoiced the actual county cost for labor, equipment use and materials. Equipment use cost is based on Blue Book rates.

**RESOLUTION FOR THE EXPENDITURE OF AMERICAN RESCUE PLAN ACT
REVENUE REPLACEMENT FUNDS FOR GOVERNMENT SERVICES**

WHEREAS, Dale County, Alabama (the "County") has received American Rescue Plan Act fiscal recovery funds ("ARPA funds") and is charged with ensuring that such funds are expended in accordance with state and federal law; and

WHEREAS, under the Final Rule published by the United States Department of Treasury dated January 6, 2022, the County has elected to designate a standard allowance of up to \$10,000,000 of its ARPA funds, not to exceed the County's total ARPA funds award, as revenue replacement ("Revenue Replacement funds"); and

WHEREAS, the County may expend designated Revenue Replacement funds for government services; and

WHEREAS, the County has determined that there is a need to construct a new county-owned shop facility to support its Engineering Department to facilitate governmental services for its citizens ("Project"); and

WHEREAS, the Commission has determined that funds necessary to complete this project is a necessary, eligible, and reasonable use of these funds; and

WHEREAS, the Commission entered into a contract dated June 6, 2023, for the construction of the Project with Hughes Construction Services, LLC and subsequently allocated \$559,000.00 of ARPA revenue replacement funds for this project on June 13, 2023; and

WHEREAS, the contract price included a contingency amount of \$10,000.00, some of which was already encumbered, leaving \$1,610.55 in the contingency fund for this project to date; and

WHEREAS, during the course of construction, Hughes Construction Services, LLC has identified the need for a Change Order to add additional electrical upgrades needed to bring the property up to code and has proposed a cost of \$14,202.50;

WHEREAS, consistent with multiple Attorney General's Opinions, Poly, Inc., the architect of record for the project, has submitted a statement detailing the need, review of the pricing, and recommending that the Change Order be approved; and

WHEREAS, the Commission has reviewed the information submitted by Poly, Inc., and hereby approves the Change Order as requested; and

WHEREAS, the Commission further finds that the covering the cost of the the Change Order, less the remaining contingency budget, is a necessary, eligible, and reasonable use of ARPA revenue replacement funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION as follows:

1) The County shall use an additional \$12,068.14, totaling up to \$611,068.14 of ARPA funds, so designated as ARPA revenue replacement funds, to cover costs of construction of the Project in support of the above-referenced governmental service.

2) The County Administrator is hereby authorized to expend ARPA funds for costs of expenses to support the governmental services pursuant to the contract and Change Order #1.

3) Expenditure of these funds, as authorized by this Resolution, shall be contingent on the continued appropriation and availability of ARPA funds for this purpose and in no event shall be used for any costs associated with the ARPA infrastructure project that are not obligated on or before December 31, 2024, and expended on or before December 31, 2026.

IN WITNESS WHEREOF, the Dale County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 28th day of November, 2023.



Steve McKinnon, Chairman
Dale County Commission

AIA Document G701® – 2017

Change Order

PROJECT: <i>(Name and address)</i> Dale County Road and Bridge Office Addition 1725 County Road 30 Ozark, AL 36360	CONTRACT INFORMATION: Contract For: Construction Date: June 6, 2023	CHANGE ORDER INFORMATION: Change Order Number: 01 Date: December 4, 2023
OWNER: <i>(Name and address)</i> Dale County Commission 202 South AL-123, Suite C Ozark, AL 36360	ARCHITECT: <i>(Name and address)</i> Poly, Inc. 1935 Headland Avenue Dothan, AL 36303	CONTRACTOR: <i>(Name and address)</i> Hughes Construction Services, LLC 11083 E. Highway 27 Ozark, AL 36360

THE CONTRACT IS CHANGED AS FOLLOWS:




(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

- Refer to the attachments to this change order for supporting documentation and detail descriptions.

The original Contract Sum was	\$ 599,000.00
The net change by previously authorized Change Orders	\$ 0.00
The Contract Sum prior to this Change Order was	\$ 599,000.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 12,068.14
The new Contract Sum including this Change Order will be	\$ 611,068.14
The Contract Time will be increased by Zero (0) days.	
The new date of Substantial Completion will be April 21, 2024	

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>Poly, Inc.</u> ARCHITECT <i>(Firm name)</i>  SIGNATURE Clayton M. Wilks, Principal Architect PRINTED NAME AND TITLE 12/4/23 DATE	<u>Hughes Construction Services, LLC</u> CONTRACTOR <i>(Firm name)</i>  SIGNATURE James S. Hughes, Owner PRINTED NAME AND TITLE 12/4/23 DATE	<u>Dale County Commission</u> OWNER <i>(Firm name)</i>  SIGNATURE Steve McKinnon, Chairman PRINTED NAME AND TITLE Steve McKinnon DATE
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Digitally signed
by Clayton M
Wilks
Date: 2023.12.04
16:02:29-06'00'

CHANGE ORDER JUSTIFICATION

Change Order No. 1

Date: December 4, 2023

Purpose and instructions on next page.
Do not staple this form and/or attachments; use clips.

(A)	PROJECT NAME & LOCATION: Dale County Road and Bridge Office Addition 1725 County Road 30 Ozark, AL 36360	OWNER ENTITY NAME & ADDRESS: Dale County Commission 202 South AL-123, Suite C Ozark, AL 36360						
	CONTRACTOR COMPANY NAME & ADDRESS: Hughes Construction Services, LLC 11083 E. Highway 27 Ozark, AL 36360	ARCHITECTURAL / ENGINEERING FIRM NAME & ADDRESS: Poly, Inc. 1935 Headland Avenue Dothan, AL 36303						
(B)	DESCRIPTION OF PROPOSED CHANGE(S): ATTACH CONTRACTOR'S DETAILED COST PROPOSAL(s) Upgrading an existing transformer, panel and feeders needed for the new addition electrical to tie into the existing building main panel and building service.							
	AMOUNT: <input checked="" type="checkbox"/> ADD <input type="checkbox"/> DEDUCT \$ <u>12,068.14</u> TIME EXTENSION: <u>0</u> CALENDAR DAYS							
(C)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">ORIGINAL CONTRACT AMOUNT</td> <td style="width:30%;">PREVIOUS C.O.'s <u>1</u> THRU <u>1</u></td> <td style="width:40%; text-align: right;">CONTRACT AMOUNT PRIOR TO PROPOSED CHANGE ORDER</td> </tr> <tr> <td>\$ <u>599,000.00</u></td> <td>+ \$ <u>12,068.14</u></td> <td>= \$ <u>611,068.14</u></td> </tr> </table>		ORIGINAL CONTRACT AMOUNT	PREVIOUS C.O.'s <u>1</u> THRU <u>1</u>	CONTRACT AMOUNT PRIOR TO PROPOSED CHANGE ORDER	\$ <u>599,000.00</u>	+ \$ <u>12,068.14</u>	= \$ <u>611,068.14</u>
ORIGINAL CONTRACT AMOUNT	PREVIOUS C.O.'s <u>1</u> THRU <u>1</u>	CONTRACT AMOUNT PRIOR TO PROPOSED CHANGE ORDER						
\$ <u>599,000.00</u>	+ \$ <u>12,068.14</u>	= \$ <u>611,068.14</u>						
(D)	JUSTIFICATION FOR NEED OF CHANGE(S): During course of his work, the electrical sub discovered that an existing transformer, panel and feeders needed to be upgraded for them to tie the new addition electrical into the existing building main panel. These necessary upgrades were items that the electrical engineer would not have been able to foresee until panel covers were removed and existing wiring routing was identified during the construction process. Proposed work outlined in the attached work proposal from electrical subcontractor.							
(E)	JUSTIFICATION OF CHANGE ORDER vs. COMPETITIVE BID: Contractor's electrical subcontractor is already onsite. Therefore, mobilization costs would be reduced. In addition, work could be completed more quickly compared to competitive bid.							
(F)	ARCHITECT / ENGINEER'S EVALUATION OF PROPOSED COST: The cost of work based on the amount of work required appears to be fair and appropriate.							
(G)	CHANGE ORDER RECOMMENDED Poly, Inc. <hr/> ARCHITECTURAL / ENGINEERING FIRM NAME By: <u>Clayton M. Wilkes</u> ARCHITECT / ENGINEER'S SIGNATURE By: _____ OWNER'S PROJECT REPRESENTATIVE'S SIGNATURE	CHANGE ORDER JUSTIFIED AND APPROVED Dale County Commission <hr/> LOCAL OWNER ENTITY NAME By: <u>[Signature]</u> OWNER'S SIGNATURE By: <u>[Signature]</u> OWNER'S LEGAL COUNSEL'S SIGNATURE						

CHANGE ORDER JUSTIFICATION: PURPOSE and INSTRUCTIONS

PURPOSE

The awarding of work through an existing contract may potentially conflict with, or violate, the "Competitive Bid Laws" of the State of Alabama. **The determination of legality of Change Orders rests with the Awarding Authority and its legal advisor.** In a June 15, 1979, Opinion, the Office of the Attorney General offered guidelines for making such determinations in conjunction with considering the facts and merits of each situation. The purpose of the CHANGE ORDER JUSTIFICATION is to provide a means through which the Awarding Authority considers these guidelines and the intent of the "Competitive Bid Laws" when authorizing Change Orders. Pursuant to these guidelines, the following types of changes meet the criteria for awarding work through Change Orders in lieu of through the Competitive Bid process:

- I. Minor Changes for a monetary value less than required for competitive bidding.
- II. Changes for matters relatively minor and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of the work.
- III. Emergencies arising during the course of the work of the contract.
- IV. Bid alternates provided for in the original bidding where there is no difference in price of the change order from the original best bid on the alternate.
- V. Changes of relatively minor items not contemplated when the plans and specifications were prepared and the project was bid which are in the public interest and which do not exceed 10% of the contract price.

Under these guidelines the cumulative total of Change Orders, including any negotiations to bring the original contract price within the funds available, would become questionable if the total of such changes and negotiations exceed 10% of the original contract price. These guidelines are not intended to interfere with the Awarding Authority's good faith discretion to respond to specific situations in the public's best interest. If the cumulative change order amount exceeds 10% of the original contract amount then the Owner's legal consultant must sign the Change Order Justification prior to submission

INSTRUCTIONS

The CHANGE ORDER JUSTIFICATION is to be prepared by the design professional, who has evaluated the fairness and reasonableness of the proposed cost of the change(s) and recommends that the proposed Change Order be executed.

1. Insert the proposed Change Order Number, date of the Justification, and DCM (BC) Project Number in the spaces provided in the upper right-hand corner.
2. **Section (A):** Insert the complete name and address of the PROJECT, OWNER, CONTRACTOR, AND ARCHITECT/ENGINEER.
3. **Section (B):** Provide a complete description of the proposed changes in work, referring to and attaching revised specifications and/or drawings as appropriate. An attachment may be used if additional space is needed, but insert the proposed amount and time extension of the change(s) in the spaces provided. **Attached a copy of the contractor's detailed cost proposal.**
4. **Section (C):** Insert the Original Contract amount, the net increase or decrease of previous Change Orders, and the Current Contract amount (preceding the currently proposed Change Order).
5. **Section (D):** Explain why it is necessary, or in the public's interest, to make the proposed change(s) to the Work.
6. **Section (E):** Explain why award of the changed work to the existing contractor instead of awarding the work under the competitive bid process is justified.
7. **Section (F):** The design professional must state his evaluation of the reasonableness and fairness of the proposed costs based upon his review of the contractor's proposal.
8. **Section (G):** The design professional must recommend the Change Order to the Owner by signing the document; the Owner may require such recommendation from other individuals. The Owner must sign the document indicating that they believe change order action in lieu of the competitive bid process is justified for the proposed change(s). **Review of the matter and signing of the document by the Owner's legal counsel is highly recommended. If the cumulative change order amount exceeds 10% of the original contract amount then the Owner's legal consultant must sign the Change Order Justification prior to submission to DCM.**

HUGHES CONSTRUCTION SERVICES, LLC

CHANGE ORDER PROPOSAL

B.C. No _____ Date of Request: 11/20/2023
Project: Dale County Road and Bridge Renovation Requested by: Clay Wilks
Architect: Poly, Inc. Change Order No.:

CONSTRUCTION CONTRACT
CHANGE ORDER # 01

Change Request: Electrical Deficiencies

Description of Change:

1 Electrical Deficiencies

Note: Lead Time on Transformer is Approx. 2 weeks

Lead Time on Electrical Panel is Approx 5 Weeks

Subtotal of Additional work	\$	11,117.45
Less Contingency in Bid	\$	(1,610.55)
G.C. OVERHEAD & PROFIT	10% \$	950.69
Net Change Order Amount:	\$	10,457.59

Work performed on the basis of: LUMP SUM

If work is to be done on unit prices basis, quantities shown are approximate and payment will be made for actual quantities as determined under the Subcontract.

If this proposal is accepted the AIA documents will reflect this change to our total contract along with any previous changes.

Increase / (Decrease) in Contract Time: 0

Total Proposal Amount **\$12,068.14**

APPROVED BY: HUGHES CONSTRUCTION SERVICES, LLC

By: Keith Richardson

Witness: _____

Title: Project Manager

Date: 11/20/2023

ACCEPTED BY: THE ARCHITECT

By: _____

Witness: _____

Title: _____

Date: _____



Digitally signed by Clayton M Wilks
Date: 2023.12.04 16:03:04-06'00'

SCARBOROUGH & ASSOCIATES, INC.

ELECTRICAL CONTRACTORS AND ENGINEERS
DOTHAN, ALABAMA 36302
P.O. BOX 7127

TELEPHONE (334) 794-2781

FAX (334) 671-1710

Hughes Construction Services
11083E. Hwy 27
Ozark, AL 36360

November 18, 2023

Attention: Keith Richardson

Reference: Dale County Road & Bridge Office Addition

Keith,

We are pleased to submit a price of \$11,117.45 to bring the electrical system up to code compliance.

Scope of Work

- Remove and replace the 37.5kva transformer with a 45kva transformer.
- Remove and replace the 100amp fuses with 70amps fuses in the existing disconnect switch serving the transformer.
- Remove and replace the primary conduit and wire with 3 #4 and 1 #8 ground. Connect to primary of the new transformer and existing disconnect switch.
- Disconnect the transformer ground and reconnect to the new transformer.
- Remove and replace the secondary wiring with 4 #1/0 and 1 #6 ground, retain existing conduit for reuse. Connect to the secondary of the new transformer and new panel
- Remove LB and conduit going thru the wall to the existing low voltage panel.
- Provide and install a new 42 circuit 120/208V panel behind the existing panel on backside of wall, where the LB was removed. New panel will be provided with a 150Amp main breaker rated 10KAIC and feed thru lugs.
- Refeed the existing MLO panel from the new panel utilizing the feed thru lugs.
- Label new panel RPA Sec #1. Label existing panel RPA section #2 and as being fed from RPA section #1. Label transformer TX-RPA. Label transformer disconnect switch.

General.

- Work to be performed during normal working hours Monday thru Friday, no premium time included.
- Sales tax excluded from price.
- Davis Bacon wages and certified payrolls excluded.
- This price is for the above scope of work, no other work included.
- This price is good for 60 days.

If you have any questions, please contact me

Sincerely,



James D (Danny) Champion
Project Manager

NOTICE TO PROCEED

Owner: Dale County Commission Owner's Contract No.: _____

Contractor: Hughes Construction Services, LLC Contractor's Project No.: _____

Architect: Poly, Inc. Architect's Project No.: 26420

Project: Dale County Road and Bridge Office Addition Effective Date of Contract: June 6, 2023

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Time under the above Contract will commence to run on July 26, 2023.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the date of Substantial Completion is April 21, 2024 and the date to achieve readiness for final payment is May 21, 2024.

Before starting any Work at the Site, Contractor must comply with the following:

- Install construction site fencing, gates and safety signage for protection of students.
- All local and state permits should be issued for the project.

Owner: Dale County Commission



Authorized Signature

By: Steve McKinnon

Title: Chairman

Date: June 6, 2023

Contractor: Hughes Construction Services, LLC



Authorized Signature

By: James S. Hughes

Title: Owner

Date: June 6, 2023

Copy: Architect
Owner
Contractor

ALLOWANCE LOG SUMMARY

DALE COUNTY ROAD AND BRIDGE OFFICE ADDITION

DALE COUNTY, AL

DCM PROJECT NO: N/A

PSCA PROJECT NO: N/A

POLY PROJECT NO: 26420

DATE: 11/22/23

Original Contract Allowances \$ 10,000.00 \$ 4,000.00

ITEM	DESCRIPTION	Construction Contingency Allowance	Furnishings and Equipment Allowance	Notes
1	Extra Electrical Outlets	\$ 1,714.45		
2	Corian Countertops	\$ 2,700.00		
3	Wall Relocation	\$ 3,975.00		
4	Additional Electrical Upgrades	\$ 12,068.14		
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25				
TOTAL CONTINGENCY ITEMS TO DATE		\$ 20,457.59	\$ -	
BALANCE OF CONTINGENCY REMAINING		\$ (10,457.59)	\$ 4,000.00	

TOTAL ALLOWANCES REMAINING \$ (8,457.59)
 TOTAL ALLOWANCES SPENT TO DATE \$ 20,457.59



Estimate

Customer Steve McKinnon
719 S Union Ave
Ozark, AL 36360

From JNB Services
381 N Daleville Avenue
Daleville, AL 36322
334-599-0169
jnbservices.al@gmail.com
License #: #25756

Estimate Number 8315
Sent Date October 30, 2023
Expires January 28, 2024

Estimate for Front section porch

Item	Quantity	Price	Total
install bottom brace anchored. install 6x6 post. frame ceiling structure (open ceiling). structure will gabled with proper slope to fit 2 vehicles. install metal roofing with proper screws. install gutters on each side of porch. (20x23)	1	\$18,300.00	\$18,300.00
Estimate includes labor, materials and trash removal. (Structure will not be attached to building)	1	\$0.00	\$0.00
Subtotal			\$18,300.00
Total			\$18,300.00

Notes

This estimate does not include the removal/relocation of Personal belongings/Furniture, any items not removed prior to the start of the job are not the responsibility of the contractor if damaged or dirty. If removal of personal belongings/furniture by the contractor is desired an additional fee will need it to cover this cost.

Florida Builders License - CBC1263783

CONSTRUCTION CONTRACT

This Construction Contract (“**Contract**”) is entered into November 30, 2023 (“**Effective Date**”), by and between JNB Services LLC, with an address of 381 N Daleville Ave, Daleville, AL 36322 (“**Contractor**”) and Steve McKinnon, with an address of 719 S Union Ave Ozark, AL 36360 (“**Customer**”), collectively the “**Parties**.”

1. **Construction Services.** The customer wishes to obtain the Contractor’s services to perform the following work.

Extra:

- install bottom brace anchored. install a 6x6 post. frame ceiling structure (open ceiling). structure will be gabled with proper slope to fit 2 vehicles. install metal roofing with proper screws. install gutters on each side of the porch. (20x23)
- Estimates include labor, materials and trash removal. (Structure will not be attached to building)

Note:

This Contract does not include the removal/relocation of Personal belongings/Furniture, any items not removed prior to the start of the job are not the responsibility of the contractor if damaged or dirty. If removal of personal belongings/furniture by the contractor is desired an additional fee will be needed to cover this cost.

(“**Services**”).

The Services are to be performed at the following address:

719 S Union Ave Ozark, AL 36360

(“**Property**”).

The contractor agrees to furnish the labor, materials, and supplies necessary to perform the Services in accordance with the terms and conditions contained in this Contract. Upon completion of the Services, the Contractor will remove all materials, supplies, and other debris.

2. **Changes in the Services.** Customers may request reasonable changes to the services described in Section 1. Any changes to the Services must be in writing and signed by both Contractor and Customer. The customer agrees that any changes to the Services

may result in additional charges and extend the Construction Schedule described in Section 3.

3. **Construction Schedule.** The contractor will complete the Services in accordance with the following schedule. The customer agrees that all dates are subject to change if the Customer requests any changes or additions to the Services. The completion date is further subject to weather conditions

Start Date: to be determined

Completion Date: to be determined

4. **Payment Schedule.** Customer agrees to pay Contractor the Total Payment specified below for the Services in accordance with the following schedule:
- Total project amount: \$18,300.00
 - The client will give an upfront down payment of \$5,490.00
 - The remainder of the Balance:
 1. when the Contractor reaches 50% of the complete amount will be \$6,405.00
 2. when the Contractor reaches 100% of the complete amount will be \$6,405.00

→ We accept checks and cash.

5. **Representations.**

Contractor Representations. The contractor is duly licensed. Homebuilders #25756, HVAC license #1999243, Master Plumbing license #EMP-2092 Florida Builders License# CBC1263783. The contractor will perform the Services in a workmanlike manner, in compliance with all applicable laws, regulations, codes, restrictive covenants, and homeowners' association requirements.

Customer Representations. The customer is the legal owner of the Property, or otherwise has the authority to permit construction upon the Property. The requested Services are in accordance with all applicable laws, regulations, codes, restrictive covenants, and homeowners' association requirements. The customer has the financial ability to pay the Contractor for the Services.

6. **Obligations.**

Contractor Obligations. The contractor will obtain, at its own cost, all necessary permits and approvals to perform the Services. The contractor agrees to provide Customer lien waivers, lien releases, and/or acknowledgment of full payment upon receipt of each payment laid out in the Payment Schedule in Section 4 above. The contractor will take all reasonable safety precautions in performing the Services. The contractor will comply with all applicable laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons and property.

Customer Obligations. The customer will provide the Contractor, its employees, agents, and subcontractors, reasonable access to the Property for the purpose of performing the Services. The customer agrees to keep the property clear of all known and potential hazards. The customer further agrees to keep all pets out of the work area of the Property. The Customer will be responsible to make a decision to vacate the property; if chosen otherwise The Contractor will not be responsible for any medical issues. We advise you to stay away from working areas due to safety hazards. We advise all customers with medical conditions that may worsen by the type of work being conducted in the property to vacant while work is performed.

7. **Insurance.** Contractor warrants it is adequately insured for injury to its employees and any others incurring loss or injury as a result of the acts of Contractor or its employees and subcontractors.
8. **Subcontractors.** No Subcontractors will be used.
9. **Events Beyond Contractor's Control.** Customer agrees that if the Contractor is unable to complete the Services by the Completion Date because of reasons that were not caused by the Contractor (i.e., availability of necessary supplies, materials, etc.) or because of events beyond the Contractor's control (such as labor issues, fire, flood, acts of God, vandalism, etc.), Contractor will not be deemed to have breached this Contract and the time for Contractor to complete the Services will be extended by the amount of time reasonably necessary for Contractor to complete the Services and at a schedule agreeable to the Parties. The time for the Customer to pay the Contractor for the Services will be extended in the same manner.
10. **Liability Waiver.** If Contractor, any of its employees, contractors, agents, or the like are injured in the course of performing the Services, Customer is exempt from liability for those injuries to the fullest extent allowed by law.
11. **Termination.** Customer can terminate the Contract by giving written notice: (a) if Contractor commits any material breach of this Contract and fails to correct the breach within 10 days of notice of the breach; or (b) if there is any repeated failure by Contractor to provide the Services of an acceptable standard and to the reasonable satisfaction of Customer. The customer is obligated to pay for the materials installed at the property if he decides to terminate the contract.

The contractor can terminate the Contract by giving written notice: (a) if Customer fails to make the payments required and set forth in Section 4 within 5 days of notice of failure to make a payment; or (b) if Customer commits any other material,

non-financial breach and fails to correct the breach within 10 days of notice of the breach.

12. **Entire Agreement.** This document reflects the entire agreement between the Parties and reflects a complete understanding of the Parties with respect to the subject matter. This Contract supersedes all prior written and oral representations. The Contract may not be amended, altered, or supplemented except in writing signed by both Contractor and Customer.
13. **Dispute Resolution and Legal Fees.** In the event of a dispute arising out of this Contract that cannot be resolved by mutual agreement, the Parties agree to engage in mediation. If the matter cannot be resolved through mediation, and legal action ensues, the successful party will be entitled to its legal fees, including, but not limited to its attorneys' fees.
14. **Legal and Binding Contract.** This Contract is legal and binding between the Parties as stated above. This Contract may be entered into and is legal and binding both in the United States and throughout Europe. The Parties each represent that they have the authority to enter into this Contract.
15. **Severability.** If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If the Court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
16. **Waiver.** The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.
17. **Applicable Law.** This Contract shall be governed and construed in accordance with the laws of the state where the property is located, without giving effect to any conflicts of laws provisions.

BY SIGNING BELOW, THE CUSTOMER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND THAT CUSTOMER IS SATISFIED WITH THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT. THE CUSTOMER SHOULD NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES. THE CUSTOMER IS ENTITLED TO A COPY OF THIS CONTRACT.

The Parties agree to the terms and conditions set forth above as demonstrated by their signatures as follows:

“CONTRACTOR”

Signed: 

Print Name: Nashaly N. Cordero

Title: General Administrator

Date: 12/18/2023

“CUSTOMER” or Authorized

Signed: 

Print Name: Steve McKinnon

Date: Dec 18, 2023

RESOLUTION FOR THE EXPENDITURE OF AMERICAN RESCUE PLAN ACT FUNDS FOR GOVERNMENT SERVICES

WHEREAS, Dale County, Alabama (the "County") has received American Rescue Plan Act fiscal recovery funds ("ARPA funds") and is charged with ensuring that such funds are expended in accordance with state and federal law; and

WHEREAS, under the Final Rule published by the United States Department of Treasury dated January 6, 2022, the County designated a standard allowance of up to \$10,000,000 of its ARPA funds, not to exceed the County's total ARPA funds award, as revenue replacement ("Revenue Replacement funds"); and

WHEREAS, the County may expend designated Revenue Replacement funds for government services; and

WHEREAS, the County has determined that there is a need to purchase additional polling pads to provide for safe and efficient elections; and

WHEREAS, consistent with Code of Alabama (1975) § 17-4-2.1, Counties may utilize electronic polling devices to effectuate elections, provided the polling devices and software are certified by the Alabama Secretary of State for use; and

WHEREAS, consistent with Code of Alabama (1975) § 41-16-51, resources and materials needed to effectuate elections is exempt from the Competitive Bid Law, and

WHEREAS, the County has determined that the procurement of the following equipment is a necessary, reasonable, and proportionate measure to facilitate the provision of these government services:

\$38,425.00 to purchase 18 ExpressPoll System electronic polling devices, including all necessary software, routers, and printers from Election Systems & Software, LLC, as approved by the Alabama Secretary of State; and

WHEREAS, the County has identified the vendor from which to procure this equipment in a manner consistent with federal and state laws and guidelines, including compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200) as it relates to the expenditure of Revenue Replacement Funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION as follows:

- 1) The County shall use up to \$33,991.00 of ARPA funds, which are hereby designated as Revenue Replacement funds, to facilitate the provision of the government services described herein.
- 2) The County Administrator is hereby authorized to expend these funds to purchase equipment as described herein from the designated vendor to facilitate the provision of these services.
- 3) The ARPA Program Director is charged with ensuring that Revenue Replacement funds allocated and expended to provide these government services will not be used in such a way as to frustrate

COVID-19 mitigation guidance issued by the Centers for Disease Control, or for any other use prohibited by the Final Rule or any applicable state or federal law.

4) Expenditure of these funds, as authorized by this Resolution, shall be contingent on the continued appropriation and availability of ARPA Revenue Replacement funds for this purpose and in no event shall be used for any expenses not obligated by December 31, 2024, and expended by December 31, 2026.

IN WITNESS WHEREOF, the Dale County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 28th day of November, 2023.



Steve McKinnon, Chairman\
Dale County Commission



Maintaining voter confidence. Enhancing the voter experience.

Dale County, AL
Purchase Proposal Quote
 Submitted by Election Systems & Software

Purchase Solution Includes:

Quantity	Item Description	Unit Price	Extended Price
Pollbook Hardware			
18	ExpressPoll System including Tablet, Premium Stand, Integrated Barcode Reader, Carrying Case, Mobile Device Management and ExpressPoll Software Application	\$1,335.00	\$24,030.00
12	TP-Link Wireless Router	\$55.00	\$660.00
18	ExpressPoll Thermal Receipt Printer	\$230.00	\$4,140.00
18	Thermal Receipt Paper Roll	\$2.00	\$36.00
Election Services			
X	Pollbook Equipment Installation		\$1,975.00
X	1 Year Hardware and Software Warranty		Included
X	Estimated Shipping and Handling		\$450.00
Total Purchase Solution			<u>\$31,291.00</u>
Payment Terms			
	Amount due within thirty (30) calendar days of contract execution:		\$15,645.50
	Amount due within thirty (30) calendar days of delivery of Hardware and/or Software:		\$15,645.50
Annual Post-Warranty License and Maintenance and Support Fees			
(Fees are Based Upon a 1-Year Customer Commitment to Subscribe to the Following Services)			
Annual Post-Warranty Software License and Maintenance and Support Fees:			
18	ExpressPoll Software License and Maintenance and Support Fee	\$150.00	\$2,700.00
Total Annual Post-Warranty License and Maintenance and Support Fees			<u>\$2,700.00</u>

Footnotes:

1. This quote is an estimate and is subject to final review and approval by both ES&S and the Customer.
2. Rates valid for thirty (30) days and thereafter may change.
3. Any applicable (City & State) sales taxes have not been included in pricing and are the responsibility of the customer.
4. Subject to state, municipal, jurisdictional, provincial or territory laws to the contrary, the above pricing information is confidential, proprietary and trade secret information of ES&S and is intended only for the use of the individual or entity to which the document is directed to. This information may not be disclosed or reproduced either publicly or to any other individual or entity without the prior written authorization of ES&S.



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

Sales Order Agreement

1st Election Date: March 5, 2024

Estimated Delivery Date: December 2023

Customer Contact, Title: Sharon Michalic - Probate Judge

Phone Number: 334-774-2754

Customer Name: Dale County, Alabama

Fax Number: N/A

Type of Sale: NEW
 Type of Equip: NEW REFURBISHED

Bill To: _____
Dale County, Alabama
Sharon Michalic - Probate Judge
P.O. Box 580
Ozark, AL 36361

Ship To: _____
Dale County, Alabama
Sharon Michalic - Probate Judge
100 E. Court Square
Ozark, AL 36361

Item	Description	Qty	Price	Total
1	Pollbook ExpressPoll System including Tablet, Premium Stand, Integrated Barcode Reader, Carrying Case, Mobile Device Management, and ExpressPoll Software Application	18	\$1,335.00	\$24,030.00
2	Pollbook TP-Link Wireless Router	12	\$55.00	\$660.00
3	Pollbook Thermal Receipt Printer	18	\$230.00	\$4,140.00
4	Pollbook Thermal Receipt Paper Roll	18	\$2.00	\$36.00
5	Pollbook Equipment Installation	1	\$1,975.00	\$1,975.00
6	Shipping Shipping & Handling	1	\$450.00	\$450.00
Order Total				\$ 31,291.00

Freight Billable: yes no

Gregg Woodyard
 Regional Sales Manager

12/14/2023
 V.P. of Finance Date

Customer Signature
12-13-23
 Date

 Title

Payment Terms
 100% of Order Total due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.
 Invoices are due net 30 from receipt of invoice.
 Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.

Warranty Period (Years): One (1) Year From Equipment Delivery

Software License, Maintenance and Support Services (Post-Warranty Period)
 The terms, conditions, and pricing for the Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.
SEE HARDWARE PURCHASE AND SOFTWARE LICENSE TERMS

HARDWARE PURCHASE AND SOFTWARE LICENSE TERMS

1. Definitions:

All capitalized terms used, but not otherwise defined, in these General Terms or in an Exhibit shall have the following meanings:

- a. "Documentation" means any and all written or electronic documentation furnished or generally made available to Customer by ES&S relating to the ES&S Hardware and ES&S Software, including any operating instructions, user manuals or training materials.
- b. "ES&S Hardware" means ES&S's proprietary electronic pollbook tablet, electronic pollbook stand and ExpressVote Activation Card Printer.
- c. "ES&S Software" means ES&S's proprietary electronic pollbook software installed on ES&S's electronic pollbooks.
- d. "ES&S Software License, Maintenance and Support Services" means those services described on [Exhibit A](#).
- e. "Software" means ES&S Software and Third-Party software.
- f. "Third Party Items" means hardware, equipment and software manufactured and/or developed by parties other than ES&S, including but not limited to, non-proprietary peripheral printers, wireless routers, USB drives and/or SD Cards.

2. Hardware Purchase and Software License Terms. Subject to the terms and conditions of this Sales Order Agreement ("Agreement"), ES&S agrees to sell and/or license, and Customer agrees to purchase and/or license, the ES&S Hardware and ES&S Software described on the front side of this Agreement. The payment terms for the ES&S Hardware and ES&S Software are set forth on the front side of this Agreement. The consideration for ES&S' grant of the license for the Initial Term for the ES&S Software is included in the cost of the ES&S Hardware.

a. **ES&S Hardware Purchase.** Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and Customer agrees to purchase, the ES&S Hardware. Title to the ES&S Hardware 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 Hardware.

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 the Documentation in the jurisdiction while Customer is using the ES&S Hardware and timely pays the applicable annual ES&S Software License, Maintenance and Support Fees set forth on [Schedule A.1](#). The licenses allow such bona fide employees to use the ES&S Software (in object code only) and the Documentation, in the course of operating the ES&S Hardware and managing the ES&S Software voter lists and voter registration process at each polling location in Customer's jurisdiction.

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

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party without ES&S' prior written consent; or
- c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or
- d. Cause or permit any review, testing, examination or audit of the ES&S Software without ES&S' prior written consent;

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

4. **Updates.** During the Initial License Term or any License Renewal Term for which Customer has paid the associated renewal fees, ES&S may provide new releases, upgrades, or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule solely defined by ES&S. Customer is solely responsible for obtaining and purchasing any upgrades or Third-Party Items required to operate the Updates, as well as the cost of any upgrades, replacements, retrofits or modifications to the ES&S Hardware which may be necessary in order to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Updates to the ES&S Software shall be made on a scheduled agreed upon in writing by ES&S and Customer. Updates can be installed in accordance with ES&S's recommended practice and instructions, or Customer may request that ES&S install the Updates at Customer's designated location. ES&S shall charge Customer at its then-current rates to: (i) install the updates (ii) train Customer on Updates, if such training is requested by Customer and (iii) if applicable, provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely install an Update. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, ES&S reserves the right to charge Customer for the following:

- (i) the total cost of any Third-Party Items that are required in order to operate the Updates;

- (ii) the total cost of any replacements, retrofits or modifications to the ES&S Hardware contracted for herein that may be developed and offered by ES&S in order for such ES&S Hardware to remain compliant with applicable laws and regulations; and

- (iii) Customer's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

Customer's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or ES&S Hardware and/or ES&S Software purchased and licensed by Customer under this Agreement. Customer shall pay ES&S the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by Customer.

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 Hardware and ES&S Software shall pass to Customer when such items are delivered to Customer's designated location. Upon transfer of risk of loss to Customer, Customer shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Hardware and ES&S Software 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 Hardware/ES&S Software.** ES&S warrants that for a one (1) year period (the "Warranty Period"), it will repair or replace any component of the ES&S Hardware or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. The Warranty shall not include the repair or replacement of any ES&S Hardware components that are consumed in the normal course of operating the ES&S Hardware, including, but not limited to, headphones and headphone protective covers, protective coatings, printer cartridges or ribbons, paper, batteries, removable media storage devices (e.g. USB Drives and/or SD Cards), seals, keys, power supplies/cords, or marking devices (collectively, the "Consumables"). ES&S may modify and make available additional Consumables as they may become available from time to time. The Warranty shall not include the repair or replacement of any ES&S Hardware due to cosmetic damages, including, but not limited to, screen cracks, scratches, dents and broken plastic or any defects resulting from normal wear and tear. ES&S has no obligation under this Agreement to assume the obligations under any existing or expired warranty for a Third-Party Item. ES&S shall not provide a warranty for Third Party Items. Customer acknowledges ES&S purchases Third Party Items for resale to Customer and that proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S. Customer further acknowledges that except for payment to ES&S for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. Any repaired or replaced item of ES&S Hardware or ES&S Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Hardware or ES&S Software 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 Hardware or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by ES&S, (iii) the ES&S Hardware or ES&S Software to be repaired or replaced has been maintained or repaired by an individual other than an authorized representative of ES&S (iv) the ES&S Hardware or ES&S Software to be repaired or replaced has not been used, displayed, disseminated, transferred, loaned, disassembled, dismantled, modified, and/or tampered with by a third party without ES&S' prior written consent (v) the ES&S Hardware or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact, use which is not in accordance with the Documentation 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 (vi) Customer has installed and is using the most recent Update provided to it by ES&S. This warranty is void for any units of hardware 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. Upon expiration of the Warranty Period, Customer shall be entitled to receive Software License, Maintenance and Support Services, the terms of which are set forth on [Exhibit A](#).

b. **Exclusive Remedies/Disclaimer.** IN THE EVENT OF A BREACH OF SUBSECTION 7(a), ES&S' OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, IN THE EVENT CUSTOMER DECLINES ES&S' INSTALLATION AND ACCEPTANCE TESTING SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY HARDWARE, 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 or services not provided by ES&S and used with the ES&S Hardware or ES&S Software; 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 ES&S Software Maintenance and Support.

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

ES&S owns the ES&S Software, all Documentation provided by ES&S, the design and configuration of the ES&S Hardware and the format, layout, measurements, design, and all other technical information associated with the ballots to be used with the ES&S Hardware. Customer has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S. Customer shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Hardware, the ES&S Software, the Documentation, 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. **Excusable Nonperformance.** Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, 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, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

11. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing and will be deemed given when (a) delivered personally, (b) sent by confirmed email, (c) sent by commercial overnight courier (with written verification of receipt) or (d) sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or email address set forth on such signature page unless other names or addresses are provided by either or both parties in accordance herewith.

12. **Disputes.**

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due ES&S for any product or service, or (3) the due date of any payment, Customer shall nevertheless pay to ES&S when due all undisputed amounts. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than 30 days, ES&S may suspend performance under this Agreement until such amount is paid. Any disputed or undisputed payment not paid by Customer to ES&S when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

13. **Assignment.** Except in the case of a 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.

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

15. **Pollbook System Reviews.** In the event that the Jurisdiction or the State require any reviews or examinations ("Reviews") of current or previous versions of state-certified ES&S Hardware and/or ES&S Software or components thereof that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the ES&S Software and/or ES&S Hardware licensed and sold hereunder, Customer shall be responsible for:

- (i) Customer's pro-rata share of such Review costs;
- (ii) Customer's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the ES&S Hardware and/or ES&S Software that may result from such Reviews; and
- (iii) the total cost of any Third-Party Items that are required in order for the ES&S Hardware and/or ES&S Software to satisfy any new requirements resulting from such Reviews in order to remain certified;

Customer's pro-rata share of the costs included under subsections 15(ii) and 15(iii) above shall be determined at the time by dividing the number of registered voters in Customer's jurisdiction by the total number of registered voters in all counties in Customer's state to which ES&S has sold and/or licensed the ES&S Hardware and/or ES&S Software purchased and licensed by Customer under this Agreement.

16. **Additional Services; Changes.** Unless otherwise provided in this Agreement, Customer shall be solely responsible for all costs related to services entered into in separate agreements such as, but not limited to, election coding, data conversion costs and network set up and communication. Customer shall also be solely responsible for all equipment and associated setup costs for the network infrastructure for data transfer and application communication, unless otherwise specified in this Agreement or separate agreements between the parties. In the event that Customer makes any changes, updates, enhancements or otherwise modifies Customer's currently existing voter registration system and such changes, updates, enhancements or modifications result in ES&S having to re-

perform any services provided under this Agreement, Customer shall be responsible for any such additional charges, which shall be invoiced at ES&S's then current rates.

17. **Customer Enhancements.** In the event that Customer requests any future enhancements of the ES&S Hardware and/or ES&S Software ("Enhancements"), such requests shall be submitted in writing to ES&S. ES&S will evaluate each of the Enhancements to determine if any of such Enhancements are technologically feasible, commercially reasonable and consistent with ES&S's product direction, security protocol and procedures. In the event that ES&S determines that any of such Enhancements meet the foregoing requirements, then ES&S shall prepare a scope of work which shall include an estimated timeline and the estimated costs for design, development, testing, certification and implementation of such Enhancements (the "SOW"). ES&S shall provide the SOW to Customer for review and approval. After ES&S's receipt of written approval of the SOW by Customer, ES&S shall prepare a written change order for Customer's execution. ES&S shall solely own and retain any and all intellectual proprietary rights in any Enhancements developed and provided to the Customer.

18. **Entire Agreement.** This Agreement, including all exhibits hereto, shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns. This Agreement, including all Exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede and replace any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form, or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in an Exhibit to this Agreement and these General Terms, the provision contained in the Exhibit shall control. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No consent by either party to, or waiver of, a breach by either party shall constitute a consent to or waiver of any other different or subsequent breach by either party. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles. The parties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts of the United States located in the State in which the Customer resides. ES&S is providing equipment, software, and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S may engage subcontractors to provide certain of the equipment, software, or services, but shall remain fully responsible for such performance. The provisions of Sections 1-3, 6(b), 7-8, 11, 12(b), 13-16, and 18 of these General Terms shall survive any termination or expiration of this Agreement, to the extent applicable.

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

ARTICLE I
GENERAL

1. **Term; Termination.** This Exhibit A for Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Post-Warranty Term"). Upon expiration of the Initial Post-Warranty Term, this Exhibit A shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit A is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Post-Warranty Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit A, if the breaching party fails to cure such breach (except for a breach pursuant to subsection 1.(d) below which will require no notice), (c) the date on which the ES&S Software is no longer certified by federal and/or state authorities for use in Customer's jurisdiction; or (d) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Exhibit A. The termination of this Exhibit A shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder.

2. **Fees.** In consideration for ES&S' agreement to provide ES&S Software License, Maintenance and Support Services under this Exhibit A, Customer shall pay to ES&S the Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Post-Warranty Term. The Software License, Maintenance and Support Fees for the Initial Post-Warranty Term are due as set forth on Schedule A1. ES&S may increase the Software License, Maintenance and Support Fees for a Renewal Period by not more than 10% of the amount of the most recent Fees paid by Customer. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of a fee for the Software License, Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Post-Warranty Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services.

ARTICLE II
HARDWARE

1. **Maintenance Services.** Hardware Maintenance Services are not provided for any annual or other periodic predetermined fees for the ES&S Electronic Pollbook Hardware. Any Hardware Maintenance Services shall only be available on a time, travel, and materials basis at ES&S' then current rates and only after Customer has delivered a written purchase order or other written agreement to pay for such services in advance of ES&S' provision of the same.

ARTICLE III
SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES

1. **License and Services Provided.** ES&S shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software, to allow Customer to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Post-Warranty Term and any Renewal Period thereof, ES&S may continue to provide Updates in accordance with the terms of Section 4 of the General Terms. Unless otherwise agreed to by the parties, ES&S shall install Updates in accordance with Section 4 of the General Terms. Updates to the ES&S Software shall be made on a scheduled agreed upon in writing by ES&S and Customer. Updates can be installed in accordance with ES&S's recommended practice and instructions, or Customer may request that ES&S install the Updates at Customer's designated location. ES&S shall also charge Customer at its then-current rates to; (i) install the Updates; (ii) train Customer on Updates, if such training is requested by Customer and (iii) if applicable, provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely install an Update.

3. **Conditions.** ES&S shall not provide Software License, Maintenance and Support for the ES&S Software if such item requires such services as a result of (a) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (b) repairs, changes, modifications or alterations not authorized or approved by ES&S, (c) use, modification, dismantling, or transfer to third party without ES&S's prior written consent, (d) accident, theft, vandalism, neglect, abuse, liquid contact or use that is not in accordance with the Documentation, (e) 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, or (f) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services. Any such Software License, Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 3 or as a result of Customer's actions or inactions shall be billable to Customer at ES&S' then current rates.

4. **Proprietary Rights.** ES&S shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, ES&S hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that ES&S actually delivers to Customer pursuant to this Exhibit A. All licensed items shall be deemed to be ES&S Software for purposes of this Exhibit A. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Exhibit A.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Post-Warranty Term or any Renewal Period thereof expires without being renewed, Customer may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to ES&S, (b) payment of all fees, which would have been due to ES&S had the Initial Post-Warranty Term or any Renewal Period not expired, and (c) the granting to ES&S of access to the ES&S Software, so that ES&S may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

**Schedule A1
Pricing Summary**

<u>Sale Summary:</u>		
Description	Refer To	Amount
ES&S Electronic Pollbook Software License, Maintenance and Support Fees	ES&S Software License, Maintenance and Support Description and Fees Below	\$2,700.00
Total Maintenance Fees for the Initial Post-Warranty Term:		\$2,700.00
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included and are the responsibility of Customer.		
Note 2: <u>Invoicing and Payment Terms are as follows:</u>		
ES&S shall Invoice Customer annually for each year of the Initial Post-Warranty Term.		
Payment is due before the start of each period within the Initial Post-Warranty Term.		

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

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

Listed below is the Software and Fees for which Software License, Maintenance and Support will be provided:

Qty	Description	Annual Fee Per Unit	Electronic Pollbook Software License, Maintenance and Support Fee In Total
18	ExpressPoll Software Application	\$150.00	\$2,700.00
Total Software License, Maintenance and Support Fees for the Initial Post-Warranty Term			\$2,700.00

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

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

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

Software License, Maintenance and Support Customer Responsibilities

1. Customer shall have completed a full software training session for the ES&S Software.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall be responsible for the installation and integration of any third-party hardware or software application, or system purchased by the Customer, unless otherwise agreed upon, in writing, by the parties.
4. Customer shall be responsible for data extraction from Customer's voter registration system. Customer shall additionally be responsible for the accuracy of its voter registration data.
5. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Software.
6. Customer shall be responsible for the design, layout, set up, administration, maintenance, or connectivity of the Customer's network.
7. Customer shall be responsible for the resolution of any errors associated with the Customer's network or other hardware and software not purchased or recommended by ES&S and not otherwise identified in the ES&S Software User Manuals.
8. If applicable, Customer shall be responsible to ensure that its electronic pollbooks are properly connected to Customer's network for purposes of election day use and updates.

ALABAMA DEPARTMENT OF YOUTH SERVICES
AGENCY GRANT AGREEMENT
Fiscal Year 2023 – 2024

The Alabama Department of Youth Services hereby awards to

Dale County Commission
(Fiscal Agent, hereinafter called Recipient)

the amount of **One hundred fifty-six thousand and no/100 dollars (\$156,000.00)**.

These funds shall be used for non-residential diversion services for *Dale County* youth who would otherwise be committed to the Alabama Department of Youth Services (DYS). Based on youth needs, the *Dale County Juvenile Court (DCJC)* will develop or collaborate in the development of a diversion program, which may include the identification and selection of community providers. As a result of the interventions funded by these monies and based on the estimates provided in the grant application, the program will provide diversion services to 44 youth annually with an ongoing capacity of 22 youth at any given time. Thereby aiding in a reduction of county commitments to DYS (including CLIMB, formerly known as HIT), barring a significant increase in serious juvenile crime (i.e. violent felonies, felony sex offenses). To assist juvenile courts in the provision of services for children in need of supervision (CHINS), DYS will permit the program to provide diversion services to no more than 10% of youth with CHINS offenses.

These funds shall be utilized for the following purpose/activities:

The Dale County Juvenile Court Services is a community reinforcement program designed to divert low to very high risk youth from DYS commitment. Pathway, Inc. services are individualized to address the unique risks and needs of each youth. Interventions will focus on performance-based outcomes for youth and their families, and use those outcomes to determine program efficacy and youth progress.

The program that receives funding from this grant will:

- Serve youth who would have historically been committed to the Alabama Department of Youth Services (CLIMB or regular DYS) in the absence of the funded program. Specifically, this includes youth with the following characteristics:
 - Males / Females between the ages of 12 – 18
 - Delinquent youth with a medium to high risk of re-arrest, as determined by the risk assessment instrument available on the DYS website
- Be developed by or in collaboration with the *Dale County Juvenile Court (DCJC)*.
- Conduct regular self-evaluations of program effectiveness, including evaluations that track outcomes for children served by the program (GIMS outcome measures).
- Maintain data on program participants as required in the DYS Grantee Information Management System database (GIMS) on a monthly basis.
- Produce an annual report for the October - September fiscal year by utilizing the form available on the DYS website. Each such completed annual report shall be made available to the Alabama Department of Youth Services by November 30. Decisions about renewing grants may be made based on the courts' ability to show through these reports that the funds have been effective in diverting youth from commitment to DYS or CLIMB.

To ensure fiscally responsible management of state funds, quarterly evaluative criteria are integral to the diversion grant funding process. These criteria include, at a minimum, program adherence to youth capacity, annual numbers, average length of stay, and successful completion rates. At any given time within a quarter,

program population numbers will be reviewed. If at the time of review the total number of youths reported in the GIMS is below 50% of the maximum capacity, an initial warning will be provided. If a subsequent review during the following quarter indicates that the program population remains below 50% maximum capacity, the program may receive a 25% reduction in funding for the following quarter(s). Program and/or designated court representatives will be given an opportunity to explain the low population numbers. However, final reduction determinations will be made by DYS administration.

Both the DCJC and DYS acknowledge that this Award may be terminated at will by the DCJC or DYS for any reason. Any funds remaining from the award shall be returned to DYS upon the termination of said award.

The grant award contained herein is payable in installments, subject to the availability of funds and adjustments by the Alabama Department of Youth Services, as it deems necessary or advisable. All parties agree that prior year funds may be available to fund this program and have and/or will be applied to the total grant award. Any unexpended grant fund amounts shall be reported to DYS no later than November 1st. Nothing contained herein shall be deemed to be a debt of the State of Alabama in the contravention of the laws and constitution of the State of Alabama.

By signing this agreement, the contracting parties, including sub-contractors, agree that representatives of the Department of Youth Services will conduct site visits (both announced and unannounced), and that all records pertaining to the program, including financial records will be made available for review. At a minimum, these records would include: court referrals, JPO reports, service plans, progress notes and termination summaries.

The Recipient or its designee shall administer the services for which this grant is awarded, in accordance with the grant application, and applicable rules, regulations and conditions as set forth by the Department. This agreement is for a one-year period and may be extended for an additional year. Nothing contained herein shall be deemed to be a debt of the State of Alabama in the contravention of the laws and constitution of the State of Alabama.

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

ALABAMA DEPARTMENT OF YOUTH SERVICES

BY: _____

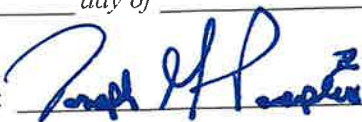
BY: _____

Steven P. Lafreniere
Executive Director

Legal Review
Approved as to form only.

ACCEPTANCE OF AWARD

Recipient hereby signifies its acceptance of the grant award and the terms and conditions set forth, this the _____ day of _____, 2023.

BY:  _____
Diversion Program (Director/Agent)

BY:  _____
Dale County Commission (Fiscal Agent)