

**MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016**

The Limestone County Commission met in a regular meeting today, at 10:00 a.m. at the Clinton Street Courthouse Annex, 100 South Clinton Street, Athens, Alabama.

Kelly Howard, from Martin & Cobey Construction and Architect Robert Littleton, from Goodwyn, Mills & Cawood, briefed the Commission on the Courthouse renovation.

Present: Stanley Hill, Steve Turner, and Ben Harrison. Absent: Jason Black. Mark Yarbrough, Chairman presided.

The meeting began with the Pledge of Allegiance.

**MOTION** was made by Stanley Hill and seconded by Ben Harrison to approve the minutes of September 19 & 28, 2016.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Stanley Hill, aye; Ben Harrison, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Stanley Hill to approve the following claims

9/16/16	Check # 40075 – 40180	\$ 938,504.10
9/23/16	Check # 40181 – 40263	\$ 621,704.40
9/23/16	Check # 40264	\$ 49.12
9/30/16	Check # 40265 – 40384	\$1,334,423.14
9/30/16	Check # 40385	<u>\$ 31.43</u>
	TOTAL	\$2,894,712.19

with detailed claims of the above being on file for review upon request to the County Administrator.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to authorize the Chairman to execute the following resolution for Limestone County’s Participation in the Severe Weather Preparedness Tax Holiday

**RESOLUTION PROVIDING FOR LIMESTONE COUNTY’S  
PARTICIPATION IN THE “SEVERE WEATHER PREPAREDNESS TAX HOLIDAY”  
AS AUTHORIZED BY ACT NO. 2012-256**

**WHEREAS**, during its 2012 Regular Session, the Alabama Legislature enacted Act No. 2012-256, which provides an exemption of the state sales and use tax for certain “covered items” purchased related to severe weather preparedness during the

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first full weekend of July 2012 and the last full weekend of February in subsequent years; and

**WHEREAS**, Act No. 2012-256 authorizes the county commission to provide for an exemption of county sales and use taxes for "certain" items covered by the Act during the same time period in which the state sales and use tax exemption is in place, provided a resolution to that effect is adopted at least 30 days prior to the last full weekend of February in subsequent years; and

**WHEREAS**, the Limestone County Commission has affirmatively voted to grant the exemption of county sales and use taxes on purchases covered by Act No. 2012-256, beginning at 12:01 a.m. on Friday, February 24, 2017, and ends at twelve midnight on Sunday, February 26, 2017; and

**WHEREAS**, Code of Alabama 1975, § 11-51-210(e) requires that the county commission notify the Alabama Department of Revenue of any new local tax or amendment to an existing local tax levy; and

**WHEREAS**, the exemption of certain county sales and use taxes for the last full weekend of February 2017 herein adopted by the county commission is an amendment to the county's sales and use tax levy warranting notice to the Alabama Department of Revenue as provided in Code of Alabama 1975, § 11-51-210(e);

**WHEREFORE BE IT RESOLVED BY THE LIMESTONE COUNTY COMMISSION** that it does hereby provide for an exemption of the county sales and use tax on purchases of items covered by Act No. 2012-256 beginning at 12:01 a.m. on Friday, February 24, 2017 and ending at twelve midnight on Sunday, February 26, 2017.

**BE IT FURTHER RESOLVED** that a copy of this resolution be spread upon the minutes of the 3<sup>rd</sup> day of October, 2016 meeting of the Limestone County Commission, and be immediately forwarded to the Alabama Department of Revenue in compliance with Code of Alabama 1975, § 11-51-210(e).

**IN WITNESS WHEREOF**, the Limestone County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on this the 3<sup>rd</sup> day of October 2016.

\_\_\_\_\_  
Mark Yarbrough, Chairman

Attest: \_\_\_\_\_  
Pam Ball, Administrator

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; and Stanley Hill, aye. Motion carries unanimously.

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**MOTION** was made by Steve Turner and seconded by Ben Harrison to authorize the Chairman to execute the following agreement with Election Systems & Software, LLC for Hardware Maintenance and Software License, Maintenance and Support Services for the AutoMARK ballot marking system, for a period of 2 years, at a cost of \$9,947.00.

### ELECTION SYSTEMS & SOFTWARE, LLC HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS HARDWARE MAINTENANCE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S") and **Limestone County, Alabama** ("Customer").

#### RECITALS:

- A. ES&S has sold to Customer the proprietary voter tabulation equipment ("Equipment") and licensed the software ("Software") described on Attachment 1 and Customer now desires to obtain maintenance services for such Equipment and license, maintenance and support services for such Software.
- B. ES&S has agreed to provide such services, subject to the terms and conditions of this Agreement.
- C. This Agreement supersedes and replaces in their entirety any and all prior agreements between ES&S and Customer respecting maintenance services for such Equipment and license, maintenance and support services for such Software.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

#### ARTICLE I GENERAL

1. **Term: Termination.** This Agreement for Hardware Maintenance and Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Attachment 1 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive **Two-Year Periods** (each a "Renewal Period") until this Agreement 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 sixty (60) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (e), which will require no notice), (c) the date which is thirty (30) days after ES&S notifies Customer that it is no longer able to procure replacement parts that may be needed in order to perform the Hardware Maintenance Services contemplated hereunder, (d) the date on which the Equipment or firmware installed thereon is no longer certified by federal and/or state authorities for use in Customer's jurisdiction, or (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement. The termination of this Agreement shall not relieve Customer of its liability to pay any amounts due to ES&S hereunder and shall only entitle Customer to a prorated refund of any fees already paid to ES&S in the event that this Agreement is terminated pursuant to subsection 1(c) or 1(d) above.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance Services and Software License, Maintenance and Support Services under this Agreement, Customer shall pay to ES&S the Hardware Maintenance and Software License, Maintenance and Support Fees set forth on Attachment 1 for the Initial Term and any Renewal Periods. The Hardware Maintenance and Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Attachment 1. ES&S may increase the Hardware Maintenance and Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% 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 (i) a fee for the Software License, Maintenance and Support provided for the ES&S Firmware, and (ii) 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

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any Section of this Agreement. If Customer elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, ES&S will charge an incremental Software License, Maintenance and Support Fee for such services. In the event Customer terminates this Agreement through no fault of ES&S and later desires to subscribe for a Hardware Maintenance and Software License, Maintenance and Support plan, or otherwise changes its Hardware Maintenance and Software License, Maintenance and Support plan with ES&S during the Initial Term or any Renewal Period thereof, ES&S will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, Hardware Maintenance and Software License, Maintenance and Support plan coverage.

### **ARTICLE II** **HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to Customer under this Agreement for the ES&S equipment set forth on Attachment 1 (the "Products") shall be subject to the following terms and conditions:

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products working in accordance with their Documentation, normal wear and tear excepted ("Normal Working Condition"). The services provided by ES&S pursuant to this Subsection 1(a) are referred to herein as "Routine Maintenance Services. Routine Maintenance Services shall be provided once each **Twenty-Four (24) Months** during the Initial Term or any Renewal Period thereof. Generally, Routine Maintenance Services shall include cleaning, lubrication, diagnostic check, and calibration services. The Routine Maintenance Services shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Customer may request that Routine Maintenance Services be performed more than once during the Initial Term or any Renewal Period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Attachment 1 and shall be due within thirty (30) days after invoice date. At the request of Customer, ES&S shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to the Products. ES&S will schedule the Routine Maintenance Services with Customer. The Routine Maintenance Services will be provided at Customer's Designated Location. Customer's "Designated Location" shall mean Customer's owned or leased facility at which Customer desires ES&S to perform the Hardware Maintenance Services.

b. **Repair Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, Customer shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. The services provided by ES&S pursuant to this Subsection 1(b)(i) are referred to herein as "Repair Services". ES&S will perform Repair Services in conjunction with a Routine Maintenance Service event at the Customer's Designated Location.

ii. **Defects Due to Customer Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, rodent infestation, or if Customer does not notify ES&S within 72 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, Customer shall pay ES&S for the Repair Services at ES&S' then-current rates, as well as for the cost of all parts used in connection with such Repair Services.

iii. **Timing.** The date(s) on which any Repair Services shall be provided shall be mutually agreed upon by ES&S and Customer. If Customer requires ES&S to provide "emergency" Repair Services (which shall be defined as Repair Services that are provided

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by ES&S within 48 hours after Customer notifies ES&S of the need therefore), and such emergency Repair Services are not needed as a result of an action, error or omission by ES&S, Customer shall pay a surcharge, as set forth on Attachment 1.

iv. Loaner Unit. At Customer's request and if such product is available, ES&S shall use reasonable efforts to promptly make available to Customer a product that is the same as, or substantially similar to, the Product for which Repair Services are being performed (a "Loaner Unit"). If the Repair Services are being performed pursuant to Subsection 1(b)(ii) above, Customer shall pay ES&S for the use of the Loaner Unit at ES&S' then-current rates including the cost of shipping.

c. Exclusions. ES&S has no obligation under this Agreement to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including, but not limited to, printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices, or (iii) repair any Product from which the serial number has been removed or altered. In addition, ES&S may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, ES&S shall no longer be required to provide Hardware Maintenance Services for such Product. ES&S shall also refund to Customer an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the respective period within the Initial Term or Renewal Period for which such fee was paid and the denominator of which is the total number of days in the respective period within such Initial Term or Renewal Period.

d. Sole Provider: Access. Customer shall not permit any individual other than an ES&S Representative to provide maintenance or repairs with respect to the Products for so long as the Initial Term or any Renewal Period is in effect. Customer shall provide ES&S Representatives with all information necessary to enable them to provide Hardware Maintenance Services. Customer shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

e. Storage. When not in use, Products should be stored in a clean, secure environment. During operation of the Products, the facility temperature range should be 50° to 104° and the moisture range should be 10% to 50% relative humidity.

f. Reinstatement of Hardware Maintenance Services: Inspection. If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter resume receiving Hardware Maintenance Services upon (a) notification to ES&S and (b) the granting to ES&S of access to the Products. ES&S requires Customer to allow it to inspect such Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are in Normal Working Condition. The cost of such inspection will be at ES&S' then current rates and shall be due from Customer within thirty (30) days of its receipt of ES&S' invoice therefore. If any of the Products is not in Normal Working Condition, ES&S, at the option of Customer, (i) shall provide such repairs and replacements as it deems reasonable and necessary to restore such item to Normal Working Condition, at Customer's expense with respect to the cost of any labor (charged at ES&S' then current rates) and parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

### ARTICLE III ANNUAL LICENSE OF SOFTWARE

1. Grant of License. Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer a nonexclusive, nontransferable license for its bona fide full time employees to use the Software and all related operating instructions, user manuals and training materials supplied by ES&S (collectively the "Documentation") in Limestone County, Alabama ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of defining an election and tabulating and reporting election results in the Jurisdiction. The licenses granted in this Section do not permit Customer to use the source code for the ES&S Software. The license does not permit Customer to take any of the following actions:

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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 Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer (including, but not limited to, any coding, programming or layout services) without ES&S' prior written consent; or

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

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

2. License Fees. In consideration for ES&S' grant of the license for the ES&S Software described in Section 1, Customer shall pay ES&S the ES&S Software License Fees set forth on Attachment 1. Any license or royalty fees payable to any Third Parties for the use of any third party items are the sole responsibility of Customer.

3. Term of License. The licenses granted in Section 1 shall commence upon the delivery of the ES&S Software described in Section 1 and shall continue for a one-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 Attachment 1. ES&S may terminate either license if Customer fails to pay the consideration due for, or breaches Sections 1, 2, or 4 with respect to, such license. Upon the termination of either of the licenses granted in Section 1 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. Proprietary Rights. Customer acknowledges and agrees that ES&S owns all right, title and interest in and to the Software and Documentation, subject to the license granted herein. ES&S likewise owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation. The Software and Documentation also contain confidential and proprietary trade secrets of ES&S which are protected by law and are of substantial value to ES&S. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.

5. Indemnification by Customer. To the fullest extent permitted under applicable law, Customer shall indemnify and hold harmless ES&S from and against any and all claims, damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to the following:

a. Any claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's copyright, trademark or patent existing as of the date hereof (a "Third Party Infringement Claim") resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) Customer's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S;

b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control ("Customer's Representatives") of any Third Party Items; and

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c. Customer's election not to receive, or to terminate, ES&S Hardware Maintenance Services or ES&S Software License and Maintenance and Support.

ES&S shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 5, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer's expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

### **ARTICLE IV** **SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**

1. Services Provided. ES&S shall provide maintenance and support services ("Software License, Maintenance and Support") for the ES&S Software and ES&S Firmware (collectively, "ES&S Software"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Attachment 1.

2. Updates. During the Initial License Term or any License Renewal Term, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. ES&S may charge Customer at its then-current rates to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; (iii) install the Updates or (iv) provide maintenance and support on the ES&S Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in state or local law.

3. Conditions. ES&S shall not provide Software License, Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by ES&S, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S, (c) causes beyond the reasonable control of ES&S or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) Customer's failure to timely and properly install and use the most recent update provided to it by ES&S, (e) Customer's failure to notify ES&S within three (3) business days after Customer knows of the need for such services, or (f) if Customer is otherwise not in compliance with its obligations under this Agreement. 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 Agreement, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance 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 Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. 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 Agreement.

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5. Reinstatement of Software License. Maintenance and Support. If the Initial 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, including a reinstatement charge, which would have been due to ES&S had the Initial 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..

### ARTICLE V MISCELLANEOUS

1. Taxes: Interest. Customer will provide ES&S with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by ES&S' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

2. 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. Any action by Customer against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, Customer agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve Customer's intended results; (b) the use of the Equipment and Software; (c) the results obtained from the use of the Equipment and Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Equipment or Software; or (e) 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, or the second most recent Update, provided to it by ES&S or (z) Customer' selection not to receive, or to terminate, the Hardware Maintenance Services or the Software License and Maintenance and Support.

3. 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, riots, acts of war, terrorism or insurrection, 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.

4. 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 confirmed fax, (d) sent by commercial overnight courier (with written verification of receipt) or (e) 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, email address or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties in accordance herewith.

5. Assignment. Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the 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. ES&S may assign its right to receive payments under this Agreement to such third party(ies) as ES&S may desire without the prior consent of Customer, provided that ES&S provides written notice (including evidence of such assignment) to Customer thirty (30) days in advance of any payment(s) so assigned.



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6. 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 Attachment 1 (which is specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces 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 Attachment to this Agreement and these General Terms, the provision contained in the Attachment 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 Article II, Section 1(f) and Article III, and Article IV, Sections 1-6 shall survive the termination of this Agreement, to the extent applicable.

7. Counterparts: Execution by Facsimile. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by the last of the parties hereto.

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

LIMESTONE COUNTY, ALABAMA  
100 S. Clinton Street, Suite D  
Athens, AL 35611-2561  
Fax No.: (256) 233-6474

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

## PRICING SUMMARY AND PAYMENT TERMS

<b>Sale Summary:</b>		
<b>Description</b>	<b>Refer to</b>	<b>Amount</b>
ES&S Hardware Maintenance Fees	Attachment 1	\$9,947.00
ES&S Firmware License, Maintenance and Support Fees	Attachment 1	Included in Hardware Maintenance Fees
Total Maintenance Fees for the Initial Term:		\$9,947.00
<b>Terms &amp; Conditions:</b>		
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>		
\$4,263.00 due on or before December 1, 2016 for the Coverage Period of January 1, 2017 through September 30, 2017.		
\$5,684.00 due on or before September 1, 2017 for the Coverage Period of October 1, 2017 through September 30, 2018.		
Note 3: In the event the Customer subsequently acquires any ES&S Equipment and or ES&S Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

### Attachment 1

#### ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

**Initial Term: January 1, 2017 through September 30, 2018**

Qty	Description	Coverage Period	Annual Maintenance Fee Per Unit	Maintenance Fee In Total
28	AutoMARK BMD Terminal	1/1/2017 through 9/30/2017	\$203.00	\$4,263.00 (Pro-Rated)
28	AutoMARK BMD Terminal	10/1/2017 through 9/30/2018	\$203.00	\$5,684.00
<b>Total Hardware Maintenance Fees for the Initial Term</b>				<b>\$9,947.00</b>

**Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 24-month period for "Silver" Coverage Items shall be 75% of the then current maintenance fee per unit.**

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

**Note 3: Customer's Designated Location: Limestone County, Alabama**

**Note 4: The Per Unit Surcharge for performance of Routine Maintenance visit at more than one Customer Designated Location shall be \$25.00 per unit for all units located at second or more locations.**

## MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

**Note 5: Upon expiration of the Initial Term, this Agreement shall automatically renew as set forth in Article I, Section 1.**

### **Hardware Maintenance Services Provided by ES&S Under the Agreement**

1. Telephone Support.
2. Issue Resolution.
3. ES&S posts Technical Bulletins available through Customer's ES&S Web-based portal.
4. Routine Maintenance Services.
  - Onsite scheduled maintenance inspection per Article 2, Section 1a. The inspection includes:
    - o Service performed by an ES&S trained and certified technician.
    - o Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
    - o Replacement of worn or defective with new or remanufactured federally and state certified parts.
    - o Conducting a final test to verify that the unit is working according to manufacturer's specifications.
    - o Use of a checklist tailored for each piece of equipment.
    - o Update of maintenance records which are kept by serial number and available to you through your ES&S Web-based portal.
5. Repair Services.
  - Customer receives coverage for interim repair calls.
    - o Interim calls may be scheduled during the regular Routine Maintenance Services event or scheduled in conjunction with other service work being performed in close proximity of Customer's location if they are not election critical.
    - o A Product may be sent to ES&S' Depot location for repairs at a time to be mutually agreed upon by ES&S and Customer.
6. Priority Services.
  - Customer has access to the ES&S Help Desk for assistance.
  - The customer receives priority on service calls.
  - The customer receives priority on response time.
  - The customer receives priority on certified ES&S parts inventory.

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

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

**Initial License and Maintenance Term: January 1, 2017 through September 30, 2018**

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

**MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016**

<b>Qty</b>	<b>Description</b>	<b>Coverage Period</b>	<b>Annual Firmware License, Maintenance and Support Fee Per Unit</b>	<b>Firmware License, Maintenance and Support Fee in Total</b>
28	AutoMARK BMD Terminal	1/1/2017 through 9/30/2017	Included in Hardware Maintenance Fees	Included in Hardware Maintenance Fees
28	AutoMARK BMD Terminal	10/1/2017 through 9/30/2018	Included in Hardware Maintenance Fees	Included in Hardware Maintenance Fees
<b>Total Firmware License, Maintenance and Support Fees for the Initial Term</b>				<b>Included in Hardware Maintenance Fees</b>

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

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be 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 and Hardware Maintenance and Support Services - Customer Responsibilities**

1. Customer shall have completed a full software training session for each product selected.
  - Customer shall have completed training at a proficiency level to successfully use the hardware (firmware) and software products.
  - Customer shall have the ability to install firmware and application software and make changes to date and time settings.
  - Customer shall have the ability to change consumable items. Any other changes made by the customer must be pre-approved in writing by ES&S.
  - Customer shall store the Equipment in accordance with ES&S requirements set forth herein.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall have reviewed Training Checklists.
4. 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.
5. Customer shall be responsible for data extraction from Customer voter registration system.
6. 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 Equipment and ES&S Software.
7. Customer shall be responsible for the acceptance of the Equipment and Software, unless otherwise agreed upon, in writing, by the parties.
8. Customer shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the Customer's network.
9. 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 User Guides as part of ES&S' Equipment and Software.
10. Customer shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-ES&S Ballot Partner Printers ballots.
11. Customer shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by Customer. The price for such additional or replacement Software CDs or DVDs shall be at ES&S' then current rates.

## MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Ben Harrison, aye; and Stanley Hill, aye. Motion carries unanimously.

**MOTION** was made by Stanley Hill and seconded by Ben Harrison to approve Alabama Department of Youth Services Grant Agreement for the Limestone County Diversion Program through the Juvenile Probation Office. The grant is for \$44,100.00 (no County match) for FY 2016/2017.

### ALABAMA DEPARTMENT OF YOUTH SERVICES AGENCY GRANT AGREEMENT

Fiscal Year 2016 – 2017

The Alabama Department of Youth Services hereby awards to

**Limestone County Commission**  
(Fiscal Agent, hereinafter called Recipient)

the amount of **Forty-four thousand one hundred and no/100 dollars (\$44,100.00)**

These funds shall be used for non-residential services for Limestone County youth who would otherwise be committed to the Department of Youth Services. As a result of the interventions funded by these monies, the parties expect that the county will eliminate commitments to DYS (including HIT), barring a significant increase in serious juvenile crime (i.e. violent felonies, felony sex offenses) by diverting **50+ youth annually.**

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

*The Limestone County Youth Diversion Program provides assessments and treatment for juvenile offenders by providing group and individual counseling through the Intensive Outpatient Therapy program. Electronic monitoring allows juvenile offenders to be supervised at home and community service assignments allow juveniles to be held accountable for their offenses. This program utilizes the services of the Limestone County Family Resource Center in Athens.*

The program that receives funding from this grant will:

- Serve youth who would have historically been committed to the Alabama Department of Youth Services (HIT 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 or high risk of re-arrest, as determined by the risk assessment instrument available on the DYS website
- In order to ensure that the program only serves youth who would have otherwise been committed to DYS, youth with the following characteristics only will not be eligible for participation:

## MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

- Youth charged with harassment, simple assault, or first time misdemeanors
- Status offenders
- Be developed by or in collaboration with the **Limestone County Juvenile Court (LCJC)**;
- Conduct regular self-evaluations of program effectiveness, including evaluations that track outcomes for children served by the program;
- Maintain data on program participants as required in the DYS Grantee Information Management System database (GIMS) on a monthly basis.
- Produce an annual report (required forms available on DYS website) by November 30, that includes the following information, at a minimum:
  - A narrative description of each program funded by the grant
  - Annual summary of participant data
  - A description of the program's efforts to evaluate its own effectiveness, along with a summary of the results of all such evaluations.
- Each such completed annual report shall be made available to the Alabama Department of Youth Services, in addition to quarterly reports (if requested by DYS). 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 HIT.

The Recipient or its designee shall administer the services for which this grant is awarded, in accordance with the applicable rules, regulations and conditions as set forth by the Department. Both **LCJC** and DYS acknowledge that this Award may be terminated at will by **LCJC** 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 and/or Medicaid funds may be available to fund this program and have and/or will be applied to the total grant award. 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.

By signing this agreement, the contracting parties, including sub-contractors, agree that representatives of the Department of Youth Services will plan site visits (both announced and unannounced), and that all records pertaining to the program will be made available for review.

**MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016**

**ALABAMA DEPARTMENT OF YOUTH SERVICES**

BY: \_\_\_\_\_  
Steven P. Lafreniere  
Executive Director

BY: \_\_\_\_\_  
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 3<sup>rd</sup> day of October, 2016.

BY: \_\_\_\_\_  
*Limestone County Commission*

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Stanley Hill, aye; Ben Harrison, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Ben Harrison to approve the FY 2016/2017 Agreement with Tracking Solutions for home detention/ankle monitoring for the Juvenile Probation Office grant through the Alabama Department of Youth Services.

**Tracking Solutions Agreement**

This Agreement, effective as of October 1, 2016 (“the effective date”), is between Tracking Solutions, a sole proprietorship (“Company”), having an office at 8500 Carlton Road, Christiana, TN 37037 and Limestone County Commission (“Customer”), having an office at 310 West Washington Street, Athens, AL 35611.

WHEREAS, Customer desires to have the ability to electronically monitor the location of certain individuals using electronic monitoring equipment that is worn/used by each of those individuals and which communicates with a monitoring center.

WHEREAS, Company agrees to fulfill the Customer’s desires as set forth above by providing equipment and/or services and certain limited use rights.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the receipt of other goods and valuable consideration, the parties agree as follows:

I. Scope of Work: Company will provide Customer electronic monitoring equipment. Customer will receive and process alarms in the manner that best suits the needs of the Customer. Company shall facilitate initial and on-going training as well as provide equipment as needed.

II. Agreement Term and Renewal: This Agreement shall begin on the Effective Date and shall continue through September 30, 2017, unless terminated or renewed as provided herein (“Initial Term”). Following the Initial Term, this Agreement, its terms and

## MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

conditions, and authorized amendments, will renew automatically for succeeding periods of one (1) year each on the anniversary of the Effective Date. However, either party may terminate this Agreement at any time with or without cause by providing at least ninety (90) days written notice of termination to the other party, provided that if Company terminates this Agreement without cause, Customer's rights and obligations hereunder shall extend to the later of the aforementioned ninety (90) days or through the stated term of the contracts with end-users who are utilizing the Products and Services pursuant to this agreement which Customer has in effect at the time of notice of termination. Notwithstanding any termination, Customer shall pay Company for the equipment and/or services provided as set forth in the Attached Exhibit for the period prior to such termination.

III. Payment: Customer shall pay for services herein within sixty (60) days of Company's invoice, to be issued at the end of each calendar month. Any invoices not paid within sixty (60) calendar days shall be deemed a "Late Payment Breach" of this Agreement. Company shall notify Customer in writing (with email and fax also being allowable as in writing) of any Late Payment Breach and Customer shall have ten (10) calendar days to cure ("late Payment Cure Period"). If the Late Payment Breach is not cured within the Late Payment Cure Period, Company shall have the absolute right to immediately deactivate any products and services pursuant to this Agreement and make any attempts necessary to collect monies due, Company's attorney's fees and 1½ percent interest per month in which the payment is overdue.

IV. Customer's Obligations: In addition to any obligations and responsibilities otherwise noted herein, Customer understands and acknowledges that during the term of this Agreement and any renewals thereof, it has complete authority and responsibility for the selection, management and administration of Offenders. "Offenders" for purposes of this Agreement shall be persons whose whereabouts are monitored pursuant to a governmental program, such monitoring including but not limited to (a) designating a monitoring level, or coordinating with the respective government agency, for all individuals monitored with the leased equipment, (b) identifying and making available Customer staff during the term of this Agreement, and (c) establishing alert notification protocols and parameters.

V. Nondisclosure: The parties hereto agree to protect all confidential proprietary information provided by one party to the other, and not to publish or disclose the other party's information to any third party without the other's written permission. The term proprietary information means confidential materials, documents, data and other information which Company or Customer has designated or marked as proprietary and confidential. Neither Company nor Customer will be required to protect proprietary information that is or becomes publicly available (other than as a result of a breach of this Agreement), is independently developed by such party outside the scope of this Agreement, or is rightfully obtained from third parties.



## MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

To the extent permitted by federal and state law, Customer shall indemnify and hold harmless Company for matters that involve monitoring of, or in any way providing services to agencies related to, offenders and any claim, injury, loss, damage or expense arising out of willful and intentional acts of Customer or Offenders.

### VI. Miscellaneous Provisions:

**Continued Performance:** When this Agreement terminates, both parties will continue to comply with all of the terms of this Agreement which call for performance prior or subsequent to the termination date, including their respective obligations to protect confidential and proprietary information.

**Breach and Non-payment Termination:** Unless otherwise noted herein, in the event a breach of this Agreement occurs by Customer for any reason, then Company shall notify Customer who shall then have ten (10) business days to cure said breach. In the event of a failure to cure, Company, in addition to exercising any other rights or remedies that may be available, may terminate this Agreement upon seventy-two (72) hours notice. The occurrence of any of the following events shall constitute a breach under this Agreement: (i) either Party fails to comply with any other term, condition or covenant contained in this Agreement and does not cure that failure as specified herein; (ii) a petition in bankruptcy is filed by or against either Party or a receiver or trustee of any property of either Party is appointed, (iii) either Party is dissolved, liquidated, or terminated, or either Party ceases its ongoing business operations, sales activity or support services, without prior written consent of the other Party, (iv) any act or omission of either Party, which adversely effects the reputation of the other, (v) the passage of any legislation which would impair or jeopardize the ability of Company to maintain Company's proprietary rights in its intellectual property for the products and services covered by this Agreement.

**Statute of Limitations:** The parties hereby agree that the statute of limitations for any action for fault hereunder by either party, including for breach of warranty or indemnity, shall be one (1) year after a cause of action accrues.

**Choice of Law:** This Agreement shall be governed, interpreted and construed under the laws of the State of Tennessee.

**No Third Party Beneficiaries:** This Agreement is intended for the exclusive benefit of Company, Customer and their permitted affiliates and permitted assigns, and is not intended and shall not be construed as conferring any benefit on any third party or the general public.

**Assignment:** No transfer or assignment of this Agreement or any licenses or rights hereunder shall occur without Company's express written consent. Any purported assignment or transfer of this Agreement or licenses or rights hereunder by the Customer without Company's written consent shall be null and void (without affecting any other licenses or rights hereunder).

## MINUTES, LIMESTONE COUNTY COMMISSION, OCTOBER 3, 2016

Successors: This Agreement shall be binding upon the respective successors, affiliates and permitted assigns of the parties.

Modifications and Waivers: If either party waives or modifies any term or condition of this Agreement, this will not void, waive or change any other term or condition, if either party waives a default by the other, this will not waive future or other defaults. If any part of this Agreement, for any reason is declared to be invalid, it shall be deemed modified as necessary to be valid. The remainder of this Agreement shall continue in effect as if the Agreement has been entered without the invalid portion.

Notwithstanding anything to the contrary in this Agreement, Company MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IN CONNECTION WITH THIS AGREEMENT, THE EQUIPMENT, THE USER INTERFACE OR THE MONITORING SERVICE. Company is not responsible for any injuries, damages, or losses to Customer or to any other person or to any property, regardless of owner, caused by the misuse, improper activation, or improper maintenance of the Equipment, or the failure to connect to, or the inability to access, the user interface, the failure to follow any instructions or abide by any policies related thereto or to the monitoring service, or the failure of the same to operate as anticipated, including, without limitation, as a result of any defects in the manufacturing or programming of the same or any failure of the equipment, user interface or monitoring service to operate for any reason, other than any such injuries, damages or losses caused by the gross negligence of Company. Notwithstanding anything to the contrary in this Agreement, Company shall not be liable for any loss, damage, detention, failure to perform or delay resulting from any cause whatsoever beyond Company's reasonable control or resulting from a *force majeure*, including, without limitation, fire, flood, strike, lockout, civil or military authority, insurrection, acts of terrorism, war, embargo, power outages, downed cell sites, internet connection problems or similar causes.

Customer also understands that only an officer of Company is authorized to waive or alter any of the terms of this Agreement, and that any such waiver or alteration must be in writing signed by Company.

Customer acknowledges that neither the Company, equipment, nor the monitoring service shall prevent, and that neither is intended to prevent, any client of Customer from committing any harmful, tortious, or illegal acts. Customer further acknowledges that it may be possible for a client to remove the equipment by unauthorized means, and that Company expressly disclaims any liability for any harmful, tortious, or illegal acts committed by such a client while using the equipment, as well as any liability for any acts committed by a client who removes the Equipment and subsequently engages in any harmful, tortious, or illegal acts. Should any disclaimer or limit on liability for consequential damages set forth herein be found invalid under the laws or policy of the State under which the terms of this Agreement are interpreted, then such consequential damages shall be liquidated and shall equal \$100 per consequential injury or loss.

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Customer acknowledges and agrees that use of the equipment and the monitoring service shall be reserved for those clients of Customer who are considered to be minimal flight risks and minimal risks for commission of crimes or torts against person or property. Customer agrees to indemnify, defend and hold Company harmless from and against any and all claims for any losses, damages, or injuries, which may be asserted on any basis, including those listed above, by client or any other third party against Company. The provisions of this section shall continue to be in force even after the expiration of the Agreement Term.

VII. Pricing: See Attachment A

VIII. Entire Agreement: This Agreement sets forth the full understanding between the parties and may only be changed in writing, duly executed by both Parties.

IX. Acknowledgement: The parties acknowledge that they have had an opportunity to fully examine this Agreement and completely understand its terms, and that they approve the same, including all of the terms and conditions

In witness whereof, each of the parties has executed this Agreement as of the date and year first set herein.

**Tracking Solutions**

Name: Kristen Zachary  
Signature: \_\_\_\_\_  
Title: Owner

**Customer**

Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Billing Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_

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## Attachment A

### PRICING SCHEDULE

Service	Alarm Notification	Data Collection Times	Daily Rate 1-9 active devices	Daily Rate 10-24 active devices	Daily Rate 25+ active devices
ReliAlert Premium Plus	Data reported in real time. Alarm notification via voice, email and/or text including calls to officer and to offender on device. Each alarm is customized for your agency. Ideal for highest risk or domestic violence cases.	1 minute	\$8.75	\$8.25	\$7.75
ReliAlert Premium	Data reported in real time. Alarm notification via voice, email and/or text including calls to officer and to offender on device. Each alarm is customized for your agency. Ideal for highest risk or domestic violence cases.	5 minute	\$8.25	\$7.75	\$7.25
ReliAlert Standard Plus	Data reported in real time. Alarm notification in real time via text or email. Daily alarm report.	1 minute	\$7.50	\$7.00	\$6.50
ReliAlert Standard	Data reported in real time. Alarm notification in real time via text or email. Daily alarm report.	5 minute	\$7.00	\$6.50	\$6.00
ReliAlert Passive	Data reported in real time. Alarm notification via daily alarm report	5 minute	\$6.50	\$6.00	\$5.50
Shadow Active	Data reported in real time. Alarm notification via voice, email and/or text including calls to officer. Each alarm is customized for your agency.	1 minute	\$6.50	\$6.00	\$5.50
Shadow Passive	Data reported in real time. Alarm notification via daily alarm report	1 minute	\$5.50	\$5.00	\$4.50
Inactive devices	n/a	n/a	10% of active device +\$1.50 thereafter	10% of active device+\$1.50 thereafter	10% of active device +\$1.50 thereafter

#### OPTIONAL GPS INSURANCE

\$0.50 per calendar day for insurance to cover any lost, stolen or damaged GPS equipment assigned to Customer. The insurance charge applies to all devices, active or inactive. There is a \$50.00 deductible applied to the bracelet plus \$5.00 deductible for the charger if unrecovered. Idle charges will continue until equipment has been reported as lost/stolen/damaged, at which time daily charges cease. *If the insurance option is not selected, Customer will be responsible for all damaged, lost, stolen equipment at the normal replacement rate.*

Choose One of the following:  Insurance Accepted  Insurance Declined

#### Alcohol Monitoring

Service	Alarm Notification	Daily Rate 1-9 active devices	Daily Rate 10-24 active devices	Daily Rate 25+ active devices
Active Devices	Email and/or text + daily report	\$7.00	\$6.25	\$5.75
Inactive Devices	n/a	\$1.50	\$1.50	\$1.50

\*Insurance not available for alcohol equipment.

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### Shipping Costs:

Equipment will be shipped from Company to Customer via standard shipping at no cost to the Customer. Overnight shipping at the Customer's request will be billed to Customer. Return shipping will be Customer's expense and choice shipping method, unless the equipment is returned for technical reasons. If returned for this reason, Company will provide Customer a pre-paid shipping label upon notice by Customer.

### Accessories:

Accessories are items that are needed to use the devices such as straps, cosmetic caps, chargers, etc. An initial accessories supply is given to the Customer. Thereafter, the Customer is responsible for replacing any accessories as needed. Pricing for accessories is set by the manufacturer and is subject to change. Accessories that are found to be defective will be replaced at no cost to the Customer. An additional cost applies to the SecureCuff.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Ben Harrison, aye; and Stanley Hill, aye. Motion carries unanimously.

**MOTION** was made by Stanley Hill and seconded by Ben Harrison to approve an agreement with Katye Hanson as the Community Service Coordinator for the Limestone County Diversion Program grant through the Alabama Department of Youth Services. The contract is for FY 2016/2017 for 30 hours per week at the rate of \$14 per hour. There is no money required by the County.

**AGREEMENT FOR SERVICES**  
*Between*  
**LIMESTONE COUNTY COMMISSION**  
*and*  
**Katye Hanson, Private Contractor**  
**Community Service Coordinator**

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This Contract for Services (Contract) is hereby made and entered into by and between Katye Hanson (private contractor), and the Limestone County Commission, herein after referred to as LCC.

### **A: PURPOSE:**

The purpose of this Contract is to coordinate Community Services for juveniles assigned through the Limestone County Juvenile Court.

### Services to be Provided:

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Beginning in October 1, 2016 and ending September 30, 2017, or as mutually agreed upon, Katie Hanson will coordinate activities to accomplish the goals and objectives outlined below in the capacity of Community Service Coordinator.

### **B: STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

- Benefits to LCC include lowering the recidivism rate for juveniles in Limestone County Juvenile Court as well as providing job training for juveniles through the Limestone County Juvenile Court.

### **C: COMMUNITY SERVICE COORDINATOR SHALL:**

#### **Goal 1**

Hold juvenile offenders accountable for the criminal offenses they have committed.

*Objective 1:* Insure that an average of 75% of juvenile offenders ordered by the Limestone County Juvenile Court to perform Community Service hours satisfactorily complete the ordered hours within six months of being ordered.

#### Activities

- A. Utilize Community Service Coordination Program to insure timely flow of orders from the Limestone Court for juvenile offenders to perform community service under supervision of Limestone County Juvenile Probation Officer.
- B. Document completion, partial completion of or non-compliance of ordered community service hours with time sheets signed by on-site supervisor in the public or private non-profit community agencies utilizing the services of juveniles ordered to perform community service hours.
- C. Submit updated information on the status of each juvenile's completion, partial completion of or non-compliance with ordered community service hours each week to the Limestone County Juvenile Probation Office.

#### **Goal 2**

Develop and maintain community service assignments that will allow the juvenile to make a positive impact by providing needed services in public and private non-profit organizations.

*Objective 1:* Community Service Coordinator will cultivate and maintain a minimum of 15 partnerships with public or private non-profit community-based agencies where juveniles can be assigned to perform community service activities.

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*Objective 2:* Community Service Coordinator will develop a minimum of 3 new partnerships with public or private non-profit community-based agencies each year where juveniles can be assigned to perform community service activities.

### Activities

- A. Community Service Coordinator will recruit participation by community-based public and private non-profit organizations and agencies to provide meaningful work experiences, to volunteer to supervise offenders sentenced to community service and to serve as mentors for adjudicated youth in community service capacities.

### **Goal 3**

Help offenders develop new skills through supervised work activities.

*Objective 1:* Insure that 100% of community service assignments provide the juveniles an opportunity for skill development and interaction with positive role models, as well as learning about the needs of others and helping to create something of lasting benefit to the community.

### Activities

- A. Limestone County Juvenile Court will seek opportunities for juvenile offenders to participate in human service and public works tasks, such as those provided through participation in projects through Habitat for Humanity, Christmas in April, Make A Difference Day and other community-wide service projects.
- B. Limestone County Juvenile Court and Community Service Coordinator will develop Memorandum of Understanding with each public or private non-profit agency agreeing to participate in the Community Services Program.
- C. Limestone County Juvenile Court and Community Service Coordinator will develop job descriptions with each participating agency or organization for the jobs/tasks to be assigned juveniles performing community service hours.

### **D: LCC SHALL:**

LCC shall provide \$20,580.00 to the Community Service Coordinator for carrying out the goals and objectives listed in this agreement. This provides 30 hours per week at \$14 per hour for 49 weeks for a total of \$20,580. The LCC will be invoiced bi-weekly by Katie Hanson (CSC) for 60 hours (30 hours per week).

The Community Service Coordinator will also be paid an additional payment of \$25 per ankle monitor placed on Juveniles referred to the In- Home Detention Program.

### **E: IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

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**MODIFICATION** Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

**TERMINATION** Katy Hanson (CSC) or LCC may, in writing, terminate this instrument in whole or in part at any time by providing thirty (30) days written notice to the other party.

\_\_\_\_\_  
Mark Yarbrough, Chairman  
Limestone County Commission

\_\_\_\_\_  
Katy Hanson  
Community Service Coordinator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Stanley Hill, aye; Ben Harrison, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to suspend the Rules of Order to add a contract with the Alabama Department of Corrections to the agenda.

The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; and Stanley Hill, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Stanley Hill to authorize the Chairman to execute a contract with the Alabama Department of Corrections for an allocation in the amount of \$157,105.00 to reimburse the Limestone County Community Corrections Program, at rate of \$10 per day for qualified offenders and authorize Tony Gravier, Community Corrections Director to sign contract.

**Community Corrections Program Contract  
The Limestone County Community Corrections Program  
Federal or Employer Identification Number 63-6001607**

This Contract is entered into by and between the Alabama Department of Corrections (hereinafter referred to as the "ADOC") and the Limestone County Community Corrections Program (hereinafter referred to as the "Program"). The Parties agree as follows:

1. The Program has submitted, and the ADOC has approved, a Community Corrections Plan ("Plan"), which is adopted and incorporated as set forth herein.
2. The ADOC has provided an allocation of \$157,105 for reimbursement funding of qualified offenders at a rate of ten dollars (\$ 10) per day for F Y2017. Further



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allocation will be made based on available funding as determined by the ADOC Community Corrections Division Director.

The Program expressly agrees that any funds available for disbursement or paid for reimbursement of supervision under this Contract is done so at the total discretion of the Commissioner of the Department and is also contingent upon available Community Corrections funding appropriated by the Alabama State Legislature.

3. The Program hereby agrees to:
  - a) Comply with the Community Punishment and Corrections Act of 1991, as amended, codified as *Alabama Code Section 15-18-170, et seq*; the *ADOC Community Corrections Program Minimum Standards*; and ADOC Administrative Regulation 490, Community Corrections Program.
  - b) Provide evidence-based treatment programs, services, and supervision for offenders based on the risk of reoffending through utilization of the *Alabama Risk Assessment System (ARAS)* and the *Community Corrections Offender Contact and Supervision Matrix*, as verified by the ADOC Community Corrections Division.
  - c) Perform a monthly review, reconcile, and validate the program offender population with the ADOC Monthly CCP Population Report.
  - d) Participate in ADOC program evaluations, program assessments, and data collection.
  - e) Establish and maintain a good working relationship with the ADOC, Judges, the District Attorney, Bar Association(s), Circuit Clerks, Sheriffs, and other local law enforcement agencies.
  - f) Encourage and promote the growth and expansion of Community Corrections.
  - g) Participate in training provided by the ADOC including, but not limited to, training requirements of the Prison Rape Elimination Act (PREA) and ARAS, as required.
4. 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 Contract shall contravene any statute of Constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then that conflicting provision in the contract shall be deemed null and void.
5. The Program's sole remedy for the settlement of any and all monetary disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. For all other disputes arising under the terms of this Contract, the Parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Nothing in this Contract shall be deemed a waiver of any immunity guaranteed the ADOC under Federal or State law.

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6. The Program understands and agrees that none of its employees, agents, volunteers, etc., will be subject to the provisions of, or entitled to the benefits of, the State Merit System Law as a consequence of this Contract.
7. Pursuant to Alabama Code Section 14-11-31, as well as 28 C.F.R. Part 115, the Prison Rape Elimination Act ("PREA"), any type of sexual contact with or sexual harassment of an inmate in the custody of the ADOC by an employee of a contractor or subcontractor of the ADOC who is responsible for the care, control, or supervision of inmates - with or without the consent of the inmate - is illegal. Under Alabama law, it constitutes a felony custodial sexual misconduct. See also, ADOC Administrative Regulation 454, Inmate Sexual Assault and Harassment Awareness (Prison Rape Elimination Act (PREA)). The ADOC has a Zero Tolerance Policy toward all forms of custodial sexual misconduct, sexual abuse, and sexual harassment. Any type of conduct - including suspected conduct that falls within the context of custodial sexual misconduct/sexual abuse, as defined by either the state or federal laws referenced above, shall be reported immediately to the Director of the Community Corrections Division of the ADOC or his designee.
8. The Program shall fully comply with all State, Federal, or local laws, ordinances, orders, and regulations of any lawful authority having jurisdiction, including the Beason-Hammon Alabama Taxpayer and Citizen Protection Act as amended. By signing this contract, the contracting parties affirm, for the duration of this Contract, 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 Contract and shall be responsible for all damages resulting therefrom.
9. This Contract shall begin on the date of the last signature below, and continue for one year. Thereafter, it may be renewed under the same terms and conditions upon mutual agreement of the Parties.
10. In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.
11. The Parties agree that this Contract and the Plan constitute the entire agreement of the parties. Any changes, amendments, or renewals must be in writing and signed by both Parties to be valid.

\_\_\_\_\_  
Jefferson S. Dunn, Commissioner

Date: September 27, 2016

\_\_\_\_\_  
Tony Graviet, Director  
Limestone County Community Corrections Program

Date:

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The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to award the following bid proposal to the lowest responsible bidder meeting specifications as follows:

<b>Proposal No.</b>	<b>Item</b>	<b>Awarded to</b>	<b>Amount</b>
2593	Gasoline & Diesel	W. H. Thomas Oil	\$.25/Gallon Margin over rack

The Chairman asked if there was any discussion. Commissioner Harrison discussed Fuelman as an option for purchasing gasoline and diesel. The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; and Stanley Hill, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to approve the following merit increases, which are included in the base pay and cost of living pay as listed below.

<b>Name</b>	<b>Position</b>	<b>Effective Date</b>	<b>Current Rate Per Hour</b>	<b>New Rate Per Hour</b>
Sabrina Bates	C.O.A. Assistant Director	10/20/16	33.19	34.23
Billy Boldin	Equipment Operator III	10/19/16	18.04	18.61
Stephen Croley	Deputy	10/02/16	30.25	31.20
Jeremiah Durden	Deputy	10/13/16	18.95	19.54
Eddie Gilbert	EMA Officer	10/10/16	24.36	25.13
William Harbin	Deputy	10/30/16	18.95	19.54
Emily Lewter	Deputy	10/28/16	23.62	24.36
Gary Lovell	Corrections Officer	10/18/16	21.57	22.25
John McCormick	Deputy	10/16/16	24.01	24.77
Leah Moran	Communications Officer	10/07/16	16.53	17.04
Jackie Perry II	Equipment Operator II	10/05/16	13.89	14.33
Michael J. Stinnett	Patrol Lieutenant	10/17/16	39.00	40.23
Julian Tyler	Corrections Officer	10/26/16	22.94	23.66

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; and Stanley Hill, aye. Motion carries unanimously.

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**MOTION** was made by Steve Turner and seconded by Stanley Hill to approve the following subdivisions:

<b>Name</b>	<b>S/D Type</b>	<b>Approval Type</b>	<b>Lots</b>	<b>District</b>	<b>Location</b>
The Ridge Phase 2	Major	Final	7	2	South side of Pepper Rd

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Stanley Hill, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Stanley Hill and seconded by Steve Turner to approve the following speed limits:

- 25 mph speed limit on Countryside Circle off Alabama Highway 53 in District 1
- 35 mph speed limit on Smith Road from Looney Road to Yarbrough Road in District 1, per Commissioner’s request

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Stanley Hill, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Steve Turner and seconded by Ben Harrison to approve the following Change Orders for Phase III of the Courthouse renovation project; \$24,941.00

- Garber Construction Co., Inc. CO #46 – for the removal of old door and frame from the door opening into the basement boiler room, replacing with a hollow metal door and frame; \$3,476.00
- Garber Construction Co., Inc. CO #48 – for the repair, prep and painting of some of the interior walls on the first floor that was not covered under the construction documents; \$19,665.00
- Comfort Group of Alabama, Inc. CO #15 – for the repairs to the exterior lawn water hydrant system; \$1,800.00

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Ben Harrison, aye; and Stanley Hill, aye. Motion carries unanimously.

**MOTION** was made by Stanley Hill and seconded by Steve Turner to approve the following road improvement project in District 1.

<b>Road Name</b>	<b>Length in miles</b>	<b>Width in feet</b>	<b>Note</b>	<b>Cost</b>
Malone Estates	.12	10	Plant Mix	\$4,340.00

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The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Stanley Hill, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to suspend the Rules of Order to add Allison Loop road project to the agenda.

The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; and Stanley Hill, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to approve the following road improvement project in District 4.

<b>Road Name</b>	<b>Length in miles</b>	<b>Width in feet</b>	<b>Note</b>	<b>Cost</b>
Allison Loop	.33	14	Chip seal	\$ 4,800.00

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; and Stanley Hill, aye. Motion carries unanimously.

Commissioner Harrison discussed the Goodsprings property deed to the County in 1990 from the Board of Education for the Goodsprings Nutrition Center. He stated the Board of Education had leased a portion to the Goodsprings Volunteer Fire Department for their building. Now, the Volunteer Fire Department wants to build an addition; therefore, he requested the County Attorney to research the matter since it appears the County owns the property.

Recessed at 10:22 a.m. until 10:00 a.m. on Wednesday, October 12, 2016, at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, AL.