

DRAFT
5/8/2012
MINUTES

cc: Boc
Steve
David
Russ
Christy

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
MONDAY, MAY 7, 2012**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville

Those present were: Chairman Tommy Thompson, Vice-Chairman Bill O'Connor, Commissioner Michael Edney, Commissioner Larry Young, Commissioner Charlie Messer, County Manager Steve Wyatt, Interim Assistant County Manager David Whitson, Associate County Attorney Sarah Zambon and Clerk to the Board Teresa Wilson.

Absent was: County Attorney Russ Burrell

Also present were: Public Information Officer Christy DeStefano, Finance Director J. Carey McLelland, Planning Director Anthony Starr, Sheriff Charles McDonald, Chief Deputy Rodney Raines, Assessor/Tax Collector Stan Duncan, Public Health Administrative Assistant Cathy Nicholson, Public Health Director Tom Bridges, Public Health Nurse Supervisor Sheila Devine, Engineer Marcus Jones, Research/Budget Analyst Amy Brantley, IT Director Becky Snyder, Network Administrator Randall Duncan, and officer David Pearce as security.

CALL TO ORDER/WELCOME

Chairman Thompson called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Kristen Keck of the Henderson County Youth Council.

PUBLIC HEARING REGARDING POTENTIAL APPLICATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANTS

Commissioner Young made the motion that the Board go into public hearing. All voted in favor and the motion carried.

Anthony Starr stated the NC Department of Commerce requires public hearings as part of its Community Development Block Grant (CDBG) programs. These programs provide for a variety of activities including, but not limited to, economic development, housing rehabilitation, community development, etc.

The Henderson County Partnership for Economic Development is requesting that the county apply for these CDBG funds for the benefit of potential projects. As with previous CDBG cycles, the first hearing is generic and not aimed at a particular project. This hearing applies to both the 2011 and 2012 grant cycles. A second hearing is required to receive input on a proposed economic development CDBG application.

Public Input

There was none.

Commission Young made the motion that the Board go out of public hearing. All voted in favor and the motion carried.

DATE APPROVED:

INFORMAL PUBLIC COMMENT

1. Wanda Case Tolar – Ms. Tolar is concerned about NCDOT’s plan to build a 4 foot concrete island on Highway 176 preventing left hand turns for southbound traffic. She feels this will be detrimental to already suffering businesses.
2. Dan Focarrino – Mr. Focarrino is concerned about NCDOT’s plan to build a 4 foot concrete island on Highway 176 preventing left hand turns for southbound traffic. He also feels this will be detrimental to already suffering businesses.
3. Jesse Staton – Mr. Staton owns a private enterprise that delivers water to fill pools. Mr. Staton is aware that some fire departments are occasionally competing with him and filling pools. He does not feel this is right. Tax Dollars are used to pay for fire departments and they should be used for emergencies only.
4. Alan Staton – Mr. Staton feels that the fire departments should have to pay for the water they remove from fire hydrants. The fire departments do not have the proper equipment to deliver water and should be used for emergency purposes only. Mr. Staton understands that Henderson County is the only County that allows water delivery by fire departments.
5. Thomas Umerski – Mr. Umerski lives in Maplewood Subdivision which is currently dealing with a problem of neighbors burning items in their backyards that are not legal to burn. This drops the value of the neighborhood around them. Mr. Umerski has reported with very little action taken.
6. Dr. Robert Laborde – Mr. Laborde is an ophthalmologist and supporter of Park Ridge and Pardee. Mr. Laborde is a member of the Credentials Committee and the Board Performance Committee which look at data on requirements and compliance. He feels there are many professionals at Pardee.
7. Dennis Justice – Mr. Justice is against the Pardee Hospital/Mission Hospital Joint Venture.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner O’Connor made the motion to adopt the Agenda with the addition of “ Sidearm Request” as the first discussion item. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner Messer made the motion to adopt the Consent Agenda minus “Sidearm Request”, moving it to discussion. All voted in favor and the motion carried.

CONSENT AGENDA consisted of the following:

Minutes

Draft minutes were presented for board review and approval of the following meeting(s):
April 18, 2012 – Regularly Scheduled Meeting

Tax Collector’s Report

Deputy Tax Collector Carol McCraw had presented the Tax Collector’s Report to the Commissioners dated April 30, 2012 for information only. No action was required.

County Financial Report/Cash Balance Report – March 2012

The March 2012 County Financial Report and Cash Balance Report were provided for the Board’s review and approval.

The following are explanations for departments/programs with higher budget to actual percentages for the month of March:

- Dues/Non-Profit Contributions – 4th quarter non-profit contribution payments
- Criminal Justice Partnership Program – 100 percent grant funded program
- Rescue Squad – 4th quarter non-profit contribution payment
- Economic Development – pass through incentive payment of \$240,000 from the state to

UPM/Raflatac

The YTD deficit in the Emergency Telephone System (911) Fund is due to the payment of annual debt service (\$106,235.53) on financing for the 911 system upgrade and a transfer to the General Fund for eligible property addressing expenditures. Fund balance of \$109,755 was appropriated to cover expenditures in this Fund for FY2012.

The YTD deficit in the CDBG – the Mud Creek Grant Project Fund is due to the timing difference between the expenditure of grant funds and subsequent reimbursement from the state.

The YTD deficit in the Immigration and Customs Enforcement (ICE) Fund is due to project expenditures for the new ICE vehicle storage building, new vehicles and the purchase of equipment. Most of these expenditures have been covered through the appropriation of available fund balance in the ICE Fund. Also, due to a timing delay in receiving payments - federal ICE revenues for March will not be received and posted until May 2012.

The YTD deficit in the Solid Waste Landfill Fund is due to expenditures made for the Solid Waste Capital Improvements Project. Fund balance of \$1,950,000 was appropriated to pay for approximately 50 percent of the project expenditures in FY2012.

Motion:

I move that the Board of Commissioners approves the March 2012 County Financial Report and Cash Balance Report as presented.

Public Schools Financial Reports – March 2012

The Henderson County Public Schools March 2012 Financial Reports were provided for the Board's information.

Motion:

I move that the Board of Commissioners approves the Henderson County Public Schools March 2012 Financial Reports as presented.

Quarterly Schools Maintenance Report

The Public Schools Quarterly Maintenance Report was provided to the Board for informational purpose only. No action was necessary by the Board.

Engineering Agreement with William G. Lapsley & Associates – Ferncliff Industrial Park Public Road Improvements

The Board is requested to authorize the County Engineer to execute the proposed engineering agreement for the Ferncliff Industrial Park public road improvements with William G. Lapsley & Associates in the amount of \$107,600.

The Board is further requested to approve the budget amendment appropriating the funds for this Project provided in the agenda packet.

Motion:

I move that the Board authorizes the County Engineer to execute the proposed engineering agreement for the Ferncliff Industrial Park public road improvements with William G. Lapsley & Associates for \$107,600. I also move the Board approve the attached budget amendment appropriating the funds for this project.

Inter-local Agreement with Transylvania County

Transylvania County Department of Social Services recently suffered the unexpected death of its attorney. Its “back-up” attorney has covered the bulk of their remaining cases on an interim basis. However, there exists at least one case in which the “back-up” attorney has a conflict of interest, but for which Transylvania County Department of Social Services is in need of immediate legal counsel, even prior to the selection of its new “regular” attorney. Henderson County’s Office of County Attorney can provide services in such matters in the short-term (though not in the long-term).

Article 20 of Chapter 160A of the General Statutes allows two counties to agree together for the performance of certain duties, and for payment for the same, as between any two other parties. Pursuant to that, you will find a short-term Inter-local Agreement between Transylvania and Henderson Counties that provides for the Office of the County Attorney in Henderson County to provide services for a limited period to the Transylvania County Department of Social Services in cases where the current “back-up” attorney has conflicts of interest. Transylvania County will reimburse Henderson County at the rate of \$100 per hour for services rendered, plus actual expenses incurred, which amount will cover Henderson County’s costs and expenses in this matter.

Motion:

I move that the Board approves the Inter-local Agreement as presented.

Sidearm Request – Moved to Discussion

NOMINATIONS

Notification of Vacancies

Chairman Thompson reminded the Board of the following vacancies and opened the floor to nominations:

1. Green River, Tuxedo, and Zirconia PARK Planning Committee – 7 vac.
1. Henderson County Board of Health – 1 vac.
2. Industrial Facilities and Pollution Control Financing Authority – 1 vac.
3. Nursing/Adult Care Home Community Advisory Committee – 3 vac.

Nominations

1. Environmental Advisory Committee – 1 vac.

Commissioner O’Connor nominated Susan Mehiel for position #2. *Chairman Thompson made the motion that to accept the appointment of Susan Mehiel to position #2 by acclamation. All voted in favor and the motion carried.*

2. Equalization and Review, Henderson County Board of – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

3. Green River, Tuxedo, Zirconia Small Area Planning Committee – 11 vac.

Commissioner O’Connor nominated Terry Maybin, James Miller, Linda Lamphier, David Hill, Patricia MacDuff, Theron Maybin and Ann Pouch. Commissioner Young nominated Louise Peterson and Stephen Waggoner.

Commissioner Messer made the motion that the Board adds an additional at large position. All voted in favor and the motion carried.

Chairman Thompson made the motion to accept the eleven (11) appointments as nominated by acclamation. All voted in favor and the motion carried.

4. Henderson County Historic Courthouse/dba Heritage Museum Board – 1 vac.

Commissioner Young had nominated Doris Eklund at the April 18th meeting and the nomination was rolled. Commissioner O'Connor nominated Bessie Bright. The Board was polled with the following results:

Michael Edney	Bill O'Connor	Tommy Thompson	Larry Young	Charlie Messer
1.Bright	1.Bright	1.Bright	1.Eklund	1.Eklund

Bessie Bright was appointed to position #1 with the majority of votes.

5. Historic Resources Commission – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

6. Juvenile Crime Prevention Council – 5 vac.

There were no nominations at this time so this item was rolled to the next meeting.

7. Mountain Valleys Resource Conservation and Development Program – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

8. Nursing/Adult Care Home Community Advisory Committee – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

9. Senior Volunteer Services Advisory Council – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

10. Travel & Tourism Committee – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting. Commissioners Young and Messer would work together in an effort to locate a motel/hotel owner/operator in the Fletcher area to fill this position.

Green River, Tuxedo, and Zirconia PARK Planning Committee

Staff was directed to draft a Charter for a seven (7) member committee for the purpose of completing the goals and directives for a community park. The first required step is the approval of a committee charter and the appointment of members to that committee. It is recommended that a diverse group of people representing Green River, Tuxedo, and Zirconia be appointed.

Commissioner O'Connor made the motion that the Board approves the charter for the Green River, Tuxedo, and Zirconia Park Planning Committee. All voted in favor and the motion carried.

Commissioner O'Connor nominated Theron Maybin, Terry Maybin, Marc Pedersen, and Zane Pedersen. This item was rolled to the next meeting.

SIDEARM REQUEST – MOVED FROM CONSENT

Sheriff Charlie McDonald stated the Henderson County Sheriff's Office requests that the service weapons of Corporal Terry Lee Whitmire, Deputy Howard Moretz, Sergeant Douglas Hill and Deputy Jeffrey Allison be awarded to them in recognition of their retirement from the Henderson County Sheriff's Office. It has been customary in the past to present each officer with his firearm upon departure.

Deputy Jeffrey Keith Allison retired March 31, 2012 from the Henderson County Sheriff's Office. Deputy Allison has served this agency since March 23, 1995. He began his career as a Reserve Telecommunicator and on August 1, 1995, became a Reserve Deputy. A new position created in the FY 2000-2001 budget process allowed Deputy Allison to come out of the Detention Facility and into a Patrol

position (CRO). While working with the Sheriff's Office, Deputy Allison has also worked in several special areas within the agency, such as Civil Process and the Warrant Squad. Deputy Allison has been a true asset to the Sheriff's Office and through his many years of self-sacrifice and dedication, he has served the citizens of our community very well.

Sergeant Douglas Arthur Hill will be retiring effective April 30, 2012 from the Henderson County Sheriff's Office. Sergeant Hill has served this agency since February 29, 1997. His many years of service with the Hendersonville Police Department brought a seasoned officer to our agency as a Deputy III/K9 Officer on Patrol. He was promoted to a Corporal in September 1999 and Sergeant on August 29, 2000. While working with the Sheriff's Office, Sgt. Hill has also worked the Courts, School Resource, Criminal Investigations and specialized in Gang Enforcement, to include becoming a member of a Task Force based in Buncombe County with several agencies involvement for out agency. Sgt. Hill has been a true asset to the Sheriff's Office and through his many years of self-sacrifice and dedication, he has served the citizens of our community very well.

Randall Howard Moretz will be retiring effective June 8, 2012 from the Henderson County Sheriff's Office. Deputy Moretz has served with this agency since March 20, 2007. He began his career here as a Detention Officer holding dual certifications as a Detention Officer as well as a Deputy Sheriff. While working in the Detention Facility, Deputy Moretz was promoted to Corporal. He chose to accept a Deputy III position as a School Resource Officer and has remained as a School Resource Officer until his date of retirement.

Corporal Terry Lee Whitmire will be retiring May 11, 2012 from the Henderson County Sheriff's Office. Corporal Whitmire has served this agency since March 19, 2007. He started his career as a Detention Officer holding dual certifications as a Detention Officer as well as a Deputy Sheriff. He was promoted to Sergeant on May 15, 2007 and was supervisor in the Courthouse, but per Corporal Whitmire's request, he moved to an open Corporal position. He has remained in this position until his date of retirement.

Sheriff McDonald makes this request on behalf of the Henderson County Sheriff's Office pursuant to North Carolina General Statute 20-187.2(a).

Commissioner Edney made the motion to amend the agenda allowing Sheriff McDonald to award Corporal Terry Lee Whitmire, Deputy Howard Moretz, Sergeant Douglas Hill and Deputy Jeffrey Allison with their service weapons at no charge in recognition of their retirement from the Henderson County Sheriff's Department. All voted in favor and the motion carried.

NCACC 2011 OUTSTANDING COUNTY PROGRAM AWARD

Sheila Devine, with the Henderson County Health Department, has been selected by the North Carolina Association of County Commissioners as a 2011 Outstanding County Program Award winner in the Human Services category. Many others were instrumental in this program including Randall Duncan, Kim Berry, and the school system.

David Nicholson, NCACC Outreach Associate, presented the award for the "Electronic School Nurse" entry.

RESOLUTION – HENDERSON COUNTY RELAY FOR LIFE

Amy Brantley stated the 2012 Henderson County Relay For Life, supporting the American Cancer Society, will be taking place May 18th through May 19th, 2012 at the WNC Agricultural Center. The Board is requested to adopt the attached Resolution designating May 18th through May 19th, 2012 as Relay For Life Day in Henderson County, in support of the efforts of its citizens in taking an active role in the fight against cancer.

Commissioner Young made the motion that the Board adopts the Resolution designating May 18th through May 19th, 2012 as Relay For Life Day in Henderson County. All voted in favor and the motion carried.

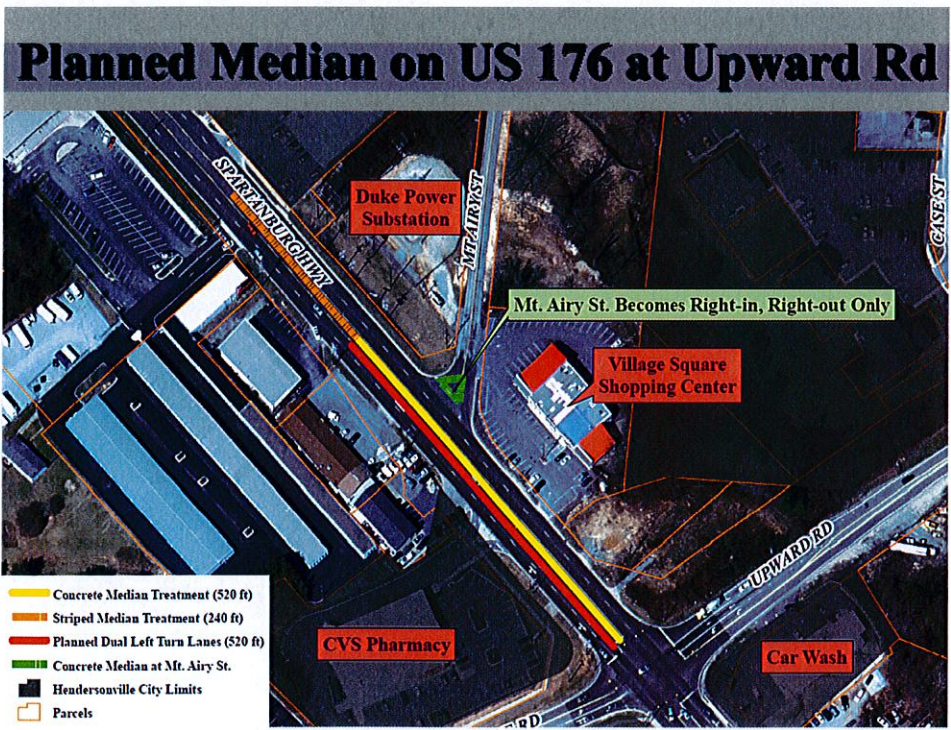
NCDOT PLANNED MEDIAN ON SPARTANBURG HIGHWAY AT UPWARD ROAD

Anthony Starr stated at its April 18th, 2012 meeting, the Board received public comment conveying concern regarding a planned concrete median on Spartanburg Highway west of its intersection with Upward Road. A business owner expressed concern about the potential impact of the median on business.

NCDOT plans show the 4-foot wide concrete median (5 inches in height) will extend approximately 520 feet along Spartanburg Highway west of its intersection with Upward Road. The attached map illustrates the location of the planned median and the location of planned dual left turn lanes on Spartanburg Highway (turning onto Upward Road).

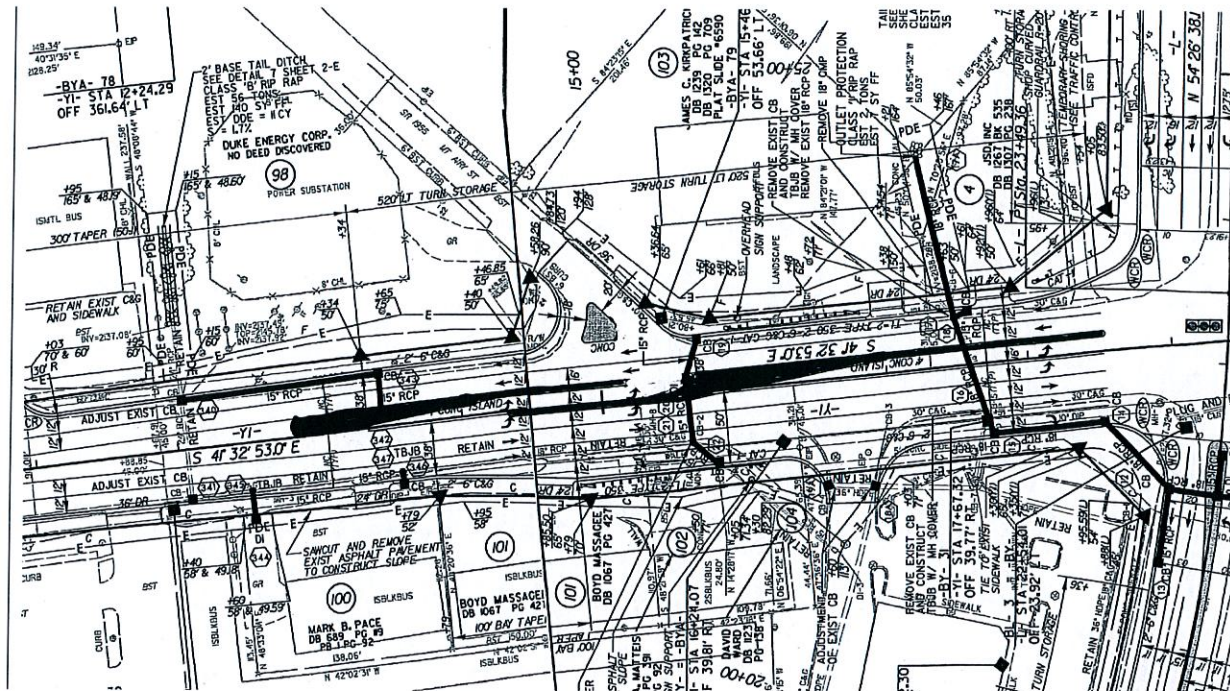
The planned changes on Spartanburg Highway are associated with NCDOT's Upward Road Widening Project. At the Board's direction, Planning Staff requested NCDOT provide an overview of the project's impact in this area. Steve Cannon, NCDOT District Engineer for Henderson County, and Aaron Powell, NCDOT Resident Engineer for Henderson County, will attend the meeting to discuss the plans for this project.

The Board of Commissioners has no authority to change NCDOT plans for road projects.



Steve Cannon requested suggestions from the Board to forward to their design engineer. Mr. Aaron Powell shared the following new proposal.

Proposed Median Revision on US 176 at Upward Rd



Steve Cannon stated he would share all recommendation with their engineer and come back to the Board with an update as soon as possible.

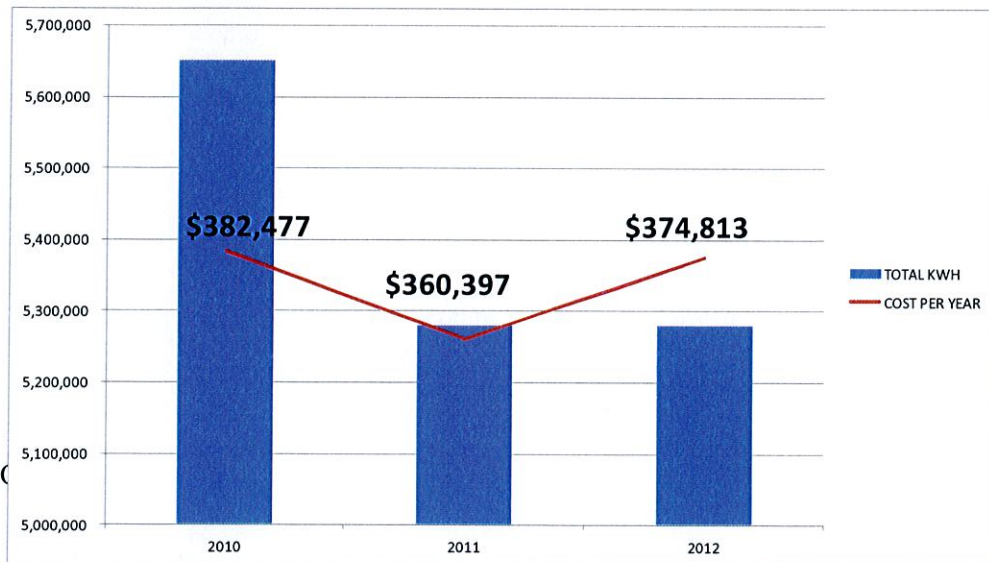
BLUE RIDGE COMMUNITY COLLEGE BUDGET PRESENTATION

Dr Molly Parkhill, President of Blue Ridge Community College, presented the Community College FY 2012-2012 proposed budget request to the Board.

Current Financial Update

- FY12 Operating Budget \$2,151,102
 - Spent YTD \$1,510,473
 - Committed YTD \$620,165
 - \$20,464 (2%) remaining budget
- FY12 Capital Budget (FY11 carryover funds)

Utility (Electric) Trends



- Salary and Benefit increased
- Air Cards and Software Licenses
- Vehicle Replacement (beyond useful life)
- Facility Salaries
 - Recruitment and retention
 - Paid lower than similar jobs in County

Capital Priorities

- Safety \$53,204
 - Campus-wide emergency announcement system (\$17,200/four years)
 - ADA compliance, locks, elevator sound, signs, security systems, etc. (\$36,000)
- Energy Efficiency \$20,000
 - Partitions in Patton and cutoff of air compressors in Spearman
- Deferred maintenance \$75,000
 - HVAC controls (\$60,000)
 - Other drainage and painting work (\$15,000)
 - Program/Service Needs \$460,843
 - Campus-wide phone system (\$22,543/year)
 - Lab upgrades and other renovations to meet program needs (\$73,800)
 - Parking lot paving/expansion (\$307,500)
 - Vehicle replacement (\$57,000)

FY 2012-2013 Proposed Budget

- Operating \$2,171,930 (recurring)
- Capital \$609,047 (nonrecurring)

HENDERSON COUNTY PUBLIC SCHOOLS BUDGET PRESENTATION

Representatives for the Henderson County Public Schools, including Board Chairman Ervin Bazzle, presented their FY 2012-2013 budget request to the Board.

2012-2013 County Appropriation Projected Needs and Request

12-13 Projected Local Budget Increases

Increase in local matching retirement	\$ 120,624
Increase in local matching hospitalization	\$ 3,570
Required Supplement Increase	\$ 997,000
Required Capital Increase	\$ 550,000

Fund Balance

Used during 2011-12	\$2,615,830
Projected use for 2012-13	\$2,849,986
TOTAL	
Fund Balance Remaining	\$1,526,007

The School District utilized Federal Education Jobs dollars to build fund balance in order to deal with the challenging economy over the last few years. If fund balance is used for the 2012-13 school year, the fund balance will be reduced to approximately \$1.5 million.

2012-13 County Appropriations Request

2012-13 Current	\$20,700,000
2012-13 Capital	\$ 500,000
2012-13 Total County Appropriation	\$21,200,000
2011-12 Funding	\$19,561,999
An Increase of...	\$1,638,001

FINANCIAL UPDATE – QUARTER ENDED MARCH 31, 2012

Staff presented to the Board of Commissioners an update on the County’s financial position as of the quarter ended March 31, 2012 as information only. Staff will also update the Board on the school system’s capital outlay expenditures to date.

FY 2011-2012 County Expenditures

County Department	BOC Adopted	Expenditure Revisions (As of 3.31.12)	Total Revised Budget	\$ Expended (As of 3.31.12)	% Expended (As of 3.31.12)
Governing Body	\$ 350,590	\$ 4,000	\$ 354,590	\$ 242,101	68.3%
Dues & Non-Profits	\$ 355,581	\$ 16,833	\$ 372,414	\$ 309,402	83.1%
County Administration	\$ 721,115	\$ -	\$ 721,115	\$ 507,384	70.4%
Human Resources	\$ 451,234	\$ -	\$ 451,234	\$ 339,519	75.2%
Elections	\$ 734,085	\$ 1,106	\$ 735,191	\$ 340,710	46.3%
Finance	\$ 630,064	\$ -	\$ 630,064	\$ 467,924	74.3%
Assessor	\$ 1,689,174	\$ -	\$ 1,689,174	\$ 1,152,611	68.2%
Tax Collections	\$ 425,320	\$ 6,219	\$ 431,539	\$ 331,000	76.7%
Legal	\$ 638,003	\$ -	\$ 638,003	\$ 439,439	68.9%
Register of Deeds	\$ 739,276	\$ 102,720	\$ 841,996	\$ 358,648	42.6%
Engineering & Facility Serv.	\$ 2,442,577	\$ 12,400	\$ 2,454,977	\$ 1,837,108	74.8%
Court Facilities	\$ 190,000	\$ -	\$ 190,000	\$ 86,807	45.7%
Information Technology	\$ 1,760,946	\$ 85,000	\$ 1,845,946	\$ 1,399,633	75.8%

FY 2011-2012 County Expenditures

County Department	BOC Adopted	Expenditure Revisions (As of 3.31.12)	Total Revised Budget	\$ Expended (As of 3.31.12)	% Expended (As of 3.31.12)
Sheriff	\$ 11,773,419	\$ 455,700	\$ 12,229,119	\$ 9,061,828	74.1%
Detention Facility	\$ 4,132,300	\$ -	\$ 4,132,300	\$ 3,032,857	73.4%
Emergency Management	\$ 198,355	\$ 84,997	\$ 283,352	\$ 156,290	55.2%
Fire Marshal	\$ 370,190	\$ 675	\$ 370,865	\$ 199,145	53.7%
Building Services	\$ 792,746	\$ 17,729	\$ 810,475	\$ 553,548	68.3%
Wellness Clinic	\$ 376,544	\$ -	\$ 376,544	\$ 282,836	75.1%
Emergency Medical Services	\$ 3,893,331	\$ 249,378	\$ 4,142,709	\$ 3,121,226	75.3%
Animal Services	\$ 508,475	\$ 2,573	\$ 511,048	\$ 321,113	62.8%
CJPP	\$ 96,588	\$ -	\$ 96,588	\$ 77,102	79.8%
Rescue Squad	\$ 98,650	\$ 1,350	\$ 100,000	\$ 99,355	99.4%
Property Addressing	\$ 59,751	\$ 26,226	\$ 85,977	\$ 56,642	65.9%
Forestry Services	\$ 65,899	\$ -	\$ 65,899	\$ 21,073	32.0%
Soil & Water Conservation	\$ 260,257	\$ 96,000	\$ 356,257	\$ 215,566	60.5%

FY 2011-2012 County Expenditures

County Department	BOC Adopted	Expenditure Revisions (As of 3.31.12)	Total Revised Budget	\$ Expended (As of 3.31.12)	% Expended (As of 3.31.12)
Utilities	\$ 215,212	\$ -	\$ 215,212	\$ 147,592	68.6%
Planning	\$ 471,417	\$ -	\$ 471,417	\$ 301,527	64.0%
Code Enforcement	\$ 243,826	\$ 37,500	\$ 281,326	\$ 164,570	58.5%
Cooperative Extension	\$ 321,326	\$ -	\$ 321,326	\$ 203,067	63.2%
Economic Development	\$ 505,573	\$ 240,000	\$ 745,573	\$ 636,344	85.3%
Public Health	\$ 5,797,204	\$ 306,618	\$ 6,103,822	\$ 3,997,618	65.5%
Environmental Health	\$ 889,896	\$ -	\$ 889,896	\$ 654,110	73.5%
Home/Community Care Grant	\$ 753,676	\$ -	\$ 753,676	\$ 562,877	74.7%
Medical Services	\$ 46,250	\$ -	\$ 46,250	\$ 26,900	58.2%
Mental Health	\$ 528,612	\$ -	\$ 528,612	\$ 353,709	66.9%
ROAP (Rural Operating Assistance)	\$ 267,294	\$ -	\$ 267,294	\$ 165,066	61.8%
Social Services	\$ 11,584,245	\$ 13,493	\$ 11,597,738	\$ 8,310,713	71.7%
DSS - Smart Start	\$ 492,740	\$ 43,001	\$ 535,741	\$ 399,621	74.6%

FY 2011-2012 County Expenditures

County Department	BOC Adopted	Expenditure Revisions (As of 3.31.12)	Total Revised Budget	\$ Expended (As of 3.31.12)	% Expended (As of 3.31.12)
DSS – Federal & State	\$ 7,198,736	\$ 552,240	\$ 7,750,976	\$ 5,217,205	67.3%
DSS – General Assistance	\$ 57,000	\$ -	\$ 57,000	\$ 25,723	45.1%
Juvenile Justice Grant	\$ 209,672	\$ -	\$ 209,672	\$ 120,188	57.3%
Veteran's Services	\$ 25,209	\$ -	\$ 25,209	\$ 18,474	73.3%
Public Library	\$ 2,734,186	\$ 76,127	\$ 2,810,313	\$ 1,968,631	70.1%
Recreation	\$ 1,408,091	\$ 2,161	\$ 1,410,252	\$ 916,761	65.0%
County Debt Service	\$ 3,920,511	\$ -	\$ 3,920,511	\$ 1,595,240	40.7%
Non-Departmental	\$ 254,000	\$ (80,175)	\$ 173,825	\$ 774	0.4%
Transfers to Other Funds	\$ 343,817	\$ -	\$ 343,817	\$ 257,863	75.0%
TOTAL	\$ 72,022,963	\$2,353,871	\$ 74,376,834	\$ 51,055,441	68.6%

FY 2011-2012 Education Expenditures

	BOC Adopted	Expenditure Revisions (As of 3.31.12)	Total Revised Budget	\$ Expended (As of 3.31.12)	% Expended (As of 3.31.12)
HC Public School System					
Current Expense	\$ 18,561,999	\$ -	\$ 18,561,999	\$ 13,921,499	75.0%
Capital Expense	\$ 1,000,000	\$ -	\$ 1,000,000	\$ 151,046	24.7%
Debt Service	\$ 9,567,197	\$ -	\$ 9,567,197	\$ 6,788,303	71.0%
TOTAL	\$ 29,129,196	\$ -	\$ 29,129,196	\$ 20,860,848	71.6%

Blue Ridge Comm. College					
Operational Expenses	\$ 2,151,102	\$ -	\$ 2,151,102	\$ 1,613,327	75.0%
Capital Expense	\$ 90,724	\$ -	\$ 90,724	\$ 68,042	75.0%
Debt Service	\$ 1,653,247	\$ -	\$ 1,653,247	\$ 509,538	30.8%
TOTAL	\$ 3,895,073	\$ -	\$ 3,895,073	\$ 2,190,907	56.2%

FY2011-2012 Total Expenditures

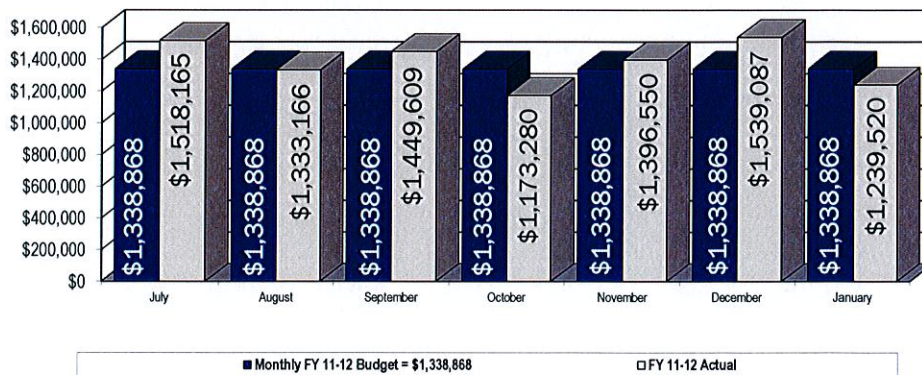
	BOC Adopted	Expenditure Revisions (As of 3.31.12)	Total Revised Budget	\$ Expended (As of 3.31.12)	% Expended (As of 3.31.12)
GENERAL FUND TOTAL	\$105,047,232	\$1,289,871	\$107,401,103	\$ 74,107,196	69.0%

FY 2011-2012 Revenues

Revenue Source	BOC Adopted	Revisions (As of 3.31.12)	Total Revised Budget	\$ Received (As of 3.31.12)	% Received (As of 3.31.12)
Ad Valorem Taxes – Current Year	\$ 58,743,127	\$ -	\$ 58,743,127	\$ 58,070,571	98.9%
Ad Valorem Taxes – Prior Years	\$ 1,745,000	\$ -	\$ 1,745,000	\$ 1,889,677	108.3%
Local Option Sales Taxes	\$ 16,066,421	\$ -	\$ 16,066,421	\$ 8,409,857	52.3%
Other Taxes and Licenses	\$ 709,880	\$ -	\$ 709,880	\$ 329,955	46.5%
Unrestricted Intergovernmental	\$ 82,000	\$ -	\$ 82,000	\$ 57,632	70.3%
Restricted Intergovernmental	\$ 17,517,405	\$ 1,664,895	\$ 19,182,300	\$ 12,792,201	66.7%
Permits and Fees	\$ 1,039,470	\$ -	\$ 1,039,470	\$ 758,991	73.0%
Sales and Services	\$ 4,788,556	\$ 31,255	\$ 4,819,811	\$ 3,615,775	75.0%
Investment Earnings	\$ 275,000	\$ -	\$ 275,000	\$ 289,711	105.3%
Other Revenues	\$ 520,820	\$ 422,942	\$ 943,762	\$ 1,168,692	124.0%
Transfers from Other Funds	\$ 365,362	\$ 49,674	\$ 415,036	\$ 385,372	92.9%
Total General Fund Revenues	\$101,853,041	\$ 2,168,766	\$104,021,807	\$ 87,768,434	81.7%
Fund Balance Appropriated	\$ 3,194,191	\$ 185,105	\$ 3,379,296	\$ -	0.00%

FY 2011-2012 Sales Tax Revenues

- Local Option Sales Tax = \$ 16,066,421
- Year to Date Variance = \$ 277,301
- * Municipality hold harmless payments resulting from Medicaid Relief paid out of Article 39 Sales Tax Receipts



HENDERSON COUNTY PUBLIC SCHOOLS
CAPITAL OUTLAY FUND
as of March 31, 2012

	Current Year Budget	Year-To- Date Actual	Prior Year-To- Date Actual	Current Budget Balance Remaining
REVENUES:				
DPI School Bus Replacements	\$ 151,662	\$151,662	\$ -	\$ -
County Appropriation	1,000,000	151,046	298,646	848,954
Contributions and Donations	-	6,000	9,750	(6,000)
Fund Balance Appropriated	-	-	78,939	-
TOTAL REVENUES	\$1,151,662	\$318,708	\$387,335	\$ 842,964
% of BUDGET		26.95%	66.42%	72.97%
EXPENDITURES:				
Category I - Land and Buildings				
Roof/Ceiling Repair	\$ 232,746	\$ -	\$ 7,058	\$ - \$ 232,746
Building Repair/Refurbishment	-	-	41,397	-
Diesel Storage Tank Replacement	-	-	5,627	-
Carpet and Tile Replacement	65,000	44,650	-	12,550 7,800
Paving/Concrete Repair	-	-	219,474	-
Wood Floor Repair	-	-	22,050	-
Window Replacement	83,013	57,605	-	25,408
Fire Alarm Repair/Replacement	17,850	7,800	-	10,050
Sewer Projects	45,000	-	-	45,000
HVAC Projects	129,675	9,460	-	120,215
Lighting Projects	281,241	25,381	-	255,910
Wiring/Electrical Projects	116,973	81,820	-	35,155
Architect/Engineering Fees	36,900	22,570	-	13,430
TOTAL CATEGORY I	\$1,007,500	\$249,006	\$196,506	\$ 25,980
% of BUDGET		24.72%	59.49%	2.54%
Category II - Furnishings and Equipment				
Furniture	\$ -	\$ -	\$ 5,827	\$ - \$ -
TOTAL CATEGORY II	\$ -	\$ -	\$ 5,827	\$ -
% of BUDGET			99.98%	
Category III - Vehicles				
Vehicles & Moving Equipment	\$ 153,662	\$153,662	\$ 78,939	\$ 478,511 \$ (478,511)
TOTAL CATEGORY III	\$ 153,662	\$153,662	\$ 78,939	\$ (478,511)
% of BUDGET		100.00%	100.00%	311.40%
Non-Programmed Charges				
Sales Tax Refund	\$ (7,500)	\$ -	\$ -	\$ - \$ (7,500)
TOTAL NON-PROGRAMMED CHARGES	\$ (7,500)	\$ -	\$ -	\$ (7,500)
% of BUDGET		0.00%	0.00%	0.00%
TOTAL EXPENDITURES	\$1,153,662	\$402,668	\$381,372	\$ 504,491
% of BUDGET		34.90%	65.38%	43.73%
EXCESS OF EXPENDITURES OVER REVENUES		\$ (81,960)	\$ 6,063	

ELECTION SYSTEMS & SOFTWARE LLC MAINTENANCE CONTRACT

County Manager Steve Wyatt stated a draft contract was provided to the Board for the maintenance of the voting machines with Election Systems & Software (“ES&S”, which is the only vendor of hardware and software which North Carolina’s state created specifications allow), which PrintElect, ES&S’s North Carolina agent, is requesting the County execute.

These costs have been paid for by the state since 2006 with the Help America Vote Act (“HAVA”) funds. However, beginning July 1, 2012, such fees are County responsibilities.

Most counties appear to be opting for the five year contract because of the cost savings and the fact that if, for any reason the hardware is decertified we will not be required to complete the contract.

NOTES FROM THE OFFICE OF THE COUNTY ATTORNEY:

This draft (form) contract from ES&S does not contain a provision for “pre-audit certification” by the County’s Finance Director, as required by N.C. Gen. Stat. §159-28. The absence of this certification Would not likely preclude the County from enforcing this contract, but would likely preclude enforcement against the County. It is further noted that the draft contract presented by ES&S contains the following language in Article IV, Paragraph 5: “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.”

This contract is terminable by the County upon thirty days’ notice of the end of any year. Note, however, if the County terminates the contract prior to the end of the period chosen (one, three or five years), the county must pay the difference between the rate chosen and the then-current rate for ES&S for the period of years the contract was in effect. (By way of example, if the “five year rate” was \$90 per year, the County terminated after 3 years, and the then-current rate for a one year contract was \$110, the County would have to pay \$20 (the difference between the one year rate and the five year rate) times 3 years, or \$60.)

Commissioner Edney made the motion that the Board approves the Contract with ES&S for a period of 5 years. All voted in favor and the motion carried.

FY 2013 BUDGET SCHEDULE

It was requested that the Board schedules a workshop and public hearing on the FY 2012 Proposed Budget.

Commissioner Messer made the motion that the Board schedules a budget workshop for Tuesday, May 22, 2012 at 1:00 p.m. and a public hearing for Tuesday, May 29, 2012 at 6:00 p.m. All voted in favor and the motion carried.

COUNTY MANAGER'S REPORT

County Manager Steve Wyatt requested a Closed Session for personnel reasons.

IMPORTANT DATES

Reschedule Public Hearing Regarding CDBG Economic Development Application

The NC Department of Commerce requires public hearings as part of its Community Development Block Grant programs. These programs provide for a variety of activities including, but not limited to, economic development, housing rehabilitation, community development, etc.

The Henderson County Partnership for Economic Development requests that the county apply for these CDBG funds for the benefit of a project with Sierra Nevada. As with previous CDBG cycles, the first hearing is generic and not aimed at a particular project. The purpose of the second hearing is to receive input on a proposed economic development CDBG application. The planned application for funds includes providing water and wastewater service to Ferncliff Industrial Park and the Sierra Nevada Brewing facility.

Commissioner Edney made the motion that the Board re-schedules the second public hearing for the CDBG application regarding the Ferncliff/Sierra Nevada project for Monday, June 4, 2012 at 5:30p.m. All voted in favor and the motion carried.

CLOSED SESSION

The Board is requested to go into closed session pursuant to N.C. Gen. Stat. §143-318.11(a), for the following reason(s):

Pursuant to N.C. Gen. Stat. §143-318.11(a)(6), to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee, or to hear or investigate a complaint, charge or grievance against an individual public officer or employee.

Commissioner Edney made the motion that the Board go into closed session pursuant to N.C. Gen. Stat. §143-318.11(a)(6). All voted in favor and the motion carried.

ADJOURN

Chairman Thompson made the motion to go out of closed session and adjourn at 9:25 p.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Clerk to the Board

Thomas H. Thompson, Chairman

**HENDERSON COUNTY TAX DEPARTMENT
Collector's Office
200 North Grove Street
Suite 66
Hendersonville, NC 28792**

Phone: 828/697-5595

Fax: 828/698-8153

www.hendersoncountync.org/tc/

Stan C. Duncan
County Assessor & Tax Collector

Sandy Allison
Administrative Assistant II

April 30, 2012

Re: Tax Collector's Report to Commissioners – 05/07/12 Meeting

Please find outlined below collections information through April 29th for the 2011 bills, which were mailed out on August 19th, as well as registered motor vehicle bills. As a point of reference, we also have included collections information as of the same date last year.

Annual Bills G01 Only:

2011 Total Charge \$57,517,643.76
Payments & Releases: 55,944,358.18
Unpaid Taxes: 1,573,285.58
Percentage Collected: 97.26%
(through 04/29/12)

2010 Total Charge: \$57,524,414.37
Payments & Releases: 55,540,836.94
Unpaid Taxes: 1,983,577.43
Percentage Collected: 96.55%
(through 04/29/11)

Motor Vehicle Bills G01 Only:

2011 Total Charge: \$3,742,171.78
Payments & Releases: 3,143,906.46
Unpaid Taxes: 598,265.32
Percentage Collected: 84.01%
(through 04/29/12)

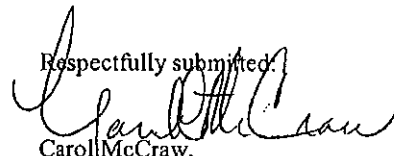
2010 Total Charge: \$3,759,935.29
Payments & Releases: 2,961,562.56
Unpaid Taxes: 798,372.73
Percentage Collected: 78.77%
(through 04/29/11)

Fire Districts All Bills:

2011 Total Charge: \$6,789,938.18
Payments & Releases: 6,528,462.89
Unpaid Taxes: 261,475.29
Percentage Collected: 96.15%
(through 04/29/12)

2010 Total Charge: \$6,705,623.32
Payments & Releases: 6,389,791.90
Unpaid Taxes: 315,831.42
Percentage Collected: 95.46%
(through 04/29/11)

Respectfully submitted,


Carol McCraw,
Deputy Tax Collector

Stan C. Duncan,
Tax Collector

HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite #1
Hendersonville, NC 28792
Phone (828) 697-4808 • Fax (828) 698-4443
www.hendersoncountync.org

THOMAS THOMPSON
Chairman
BILL O'CONNOR
Vice-Chairman

CHARLIE MESSER
LARRY YOUNG
J. MICHAEL EDNEY

RESOLUTION 2012 RELAY FOR LIFE

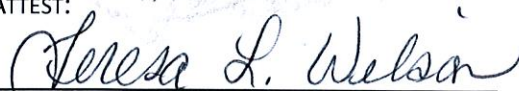
- WHEREAS,** the American Cancer Society is a national organization that generates funds for new research, education, advocacy, and patient services in the fight against cancer; and
- WHEREAS,** Relay For Life is the signature fundraiser for the American Cancer Society in which 3.5 million people participate each year nationally; and
- WHEREAS,** the purpose of Relay For Life is to celebrate the lives of those who have battled cancer, remember loved ones lost to the disease, and to raise money to support the fight to end cancer; and
- WHEREAS,** the 2012 Henderson County Relay For Life will take place at the WNC Agricultural Center on May 18th through May 19th; and
- WHEREAS,** each year hundreds of Henderson County residents join teams to raise thousands of dollars for the American Cancer Society, culminating in a full night of activities, games, entertainment and recognition of those who were touched by this disease; and
- WHEREAS,** one-third of Americans will be diagnosed with cancer during their lifetime and because of fundraising efforts like Relay For Life, the survival rate from the disease is 62%; and
- WHEREAS,** in 2011, 193 Henderson County Survivors/Caregivers were provided with 350 services from the American Cancer Society; and
- WHEREAS,** 344 Henderson County citizens who are cancer survivors celebrated in Henderson County's 2011 Relay For Life;

NOW, THEREFORE, BE IT RESOLVED, that we, the Henderson County Board of Commissioners, do hereby proclaim May 18th through May 19th, 2012 as Relay For Life Day in Henderson County, and encourage citizens in Henderson County to take an active role in the fight against cancer.

Adopted this 7th day of May, 2012.


THOMAS H. THOMPSON, CHAIRMAN
HENDERSON COUNTY BOARD OF COMMISSIONERS

ATTEST:


TERESA L. WILSON, CLERK TO THE BOARD

Election Systems & Software, LLC ("ES&S") Purchase Order
 Term as selected below and beginning on July 1, 2012

Please select Term of Agreement: 1-Year Term _____ 3-Year Term _____ 5-Year Term

ES&S HARDWARE MAINTENANCE DESCRIPTION AND FEES

Qty	Description	Annual Maintenance Fee Per Unit: 1-Year Term	Annual Maintenance Fee In Total: 1-Year Term
198	iVotronic ADA	\$140.40	\$27,799.20
2	iVotronic Supervisor	\$140.40	\$280.80
96	iVotronic Voter	\$138.50	\$13,295.56
N/A	Model 650	N/A	N/A
3	Model 100	\$244.93	\$734.79
N/A	AutoMARK	N/A	N/A
Total Annual Hardware Maintenance Fees: 1-Year Term			\$42,110.35

Qty	Description	Annual Maintenance Fee Per Unit: 3-Year Term	Annual Maintenance Fee In Total: 3-Year Term
198	iVotronic ADA	\$133.71	\$26,474.58
2	iVotronic Supervisor	\$133.71	\$267.42
96	iVotronic Voter	\$131.90	\$12,662.14
N/A	Model 650	N/A	N/A
3	Model 100	\$233.27	\$699.80
N/A	AutoMARK	N/A	N/A
Total Annual Hardware Maintenance Fees: 3-Year Term			\$40,103.94

Qty	Description	Annual Maintenance Fee Per Unit: 5-Year Term	Annual Maintenance Fee In Total: 5-Year Term
198	iVotronic ADA	\$120.34	\$23,827.12
2	iVotronic Supervisor	\$120.34	\$240.68
96	iVotronic Voter	\$118.71	\$11,395.93
N/A	Model 650	N/A	N/A
3	Model 100	\$209.94	\$629.82
N/A	AutoMARK	N/A	N/A
Total Annual Hardware Maintenance Fees: 5-Year Term			\$36,093.55

Note 1: The Per-Unit Fees if Customer requests more than one Routine Maintenance visit in a 12-month period shall be 55% 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: 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.

Note 4: Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period") until this Agreement is terminated according to Article I, Section 1.

ES&S SOFTWARE MAINTENANCE AND SUPPORT DESCRIPTION AND FEES

Listed below are the Unity Software Modules for which Software License, Maintenance and Support will be provided:

Description	Support Provided and Number of Licenses
Software - BIM	N/A
Software - BOD	N/A

Software - DAM	N/A
Software - EDM	N/A
Software - ERM	1
Software - HPM	1
Software - iVIM	N/A

ES&S Annual Software Maintenance and Support Fees for the Initial Term shall be as follows:

Annual Firmware Maintenance and Support Fees 1-Year Term	Annual Firmware Maintenance and Support Fees 3-Year Term	Annual Firmware Maintenance and Support Fees 5-Year Term
\$11,421.99	\$10,878.55	\$9,790.70

Annual Software Maintenance and Support Fees 1-Year Term	Annual Software Maintenance and Support Fees 3-Year Term	Annual Software Maintenance and Support Fees 5-Year Term
\$7,147.18	\$6,806.84	\$6,126.16

Payment Terms: Hardware, Firmware, and Software Maintenance and Support Fees are due and payable no later than thirty (30) days prior to the beginning of each maintenance and support period.

The parties hereby agree that this Purchase Order and the Hardware Maintenance and Software Maintenance and Support Services General Terms, attached hereto and fully incorporated herein by this reference, (collectively, the "Agreement") represents a binding agreement between ES&S and Customer for the purchase of Hardware Maintenance and Software Maintenance and Support Services. Further, the undersigned Customer hereby agrees to purchase such Hardware Maintenance and Software Maintenance and Support Services from ES&S as set forth herein. The undersigned Customer hereby agrees to the Hardware Maintenance and Software Maintenance and Support Services General Terms and acknowledges that he or she has read the entire Agreement, understands it and fully intends to be bound by it. The undersigned Customer hereby certifies that: 1) sufficient funds are available for any of this purchase that exceeds my allocation of state and/or federal funding; and 2) any amount not funded by state and/or federal funds has been authorized and appropriated for this purchase. As of the date of the signature below, the undersigned Customer has full power and authority to enter into and perform this Agreement, and has been properly authorized to execute and deliver this Agreement on behalf of the County/State as set forth above.

ES&S Signature _____ Date _____

Print Name _____

Title _____

Customer
Contact Person
Address
City
State/Province
Zip
Phone number

Henderson County
Beverly Cunningham
PO Box 2090
Hendersonville
North Carolina
28793-2090
828-697-4970

Thomas H. Thompson 5/8/12
Customer Signature _____ Date _____

Thomas H. Thompson
Print Name _____

Chairman, Henderson County
Title *Board of Commissioners*

**ELECTION SYSTEMS & SOFTWARE, LLC
HARDWARE MAINTENANCE AND SOFTWARE MAINTENANCE AND SUPPORT SERVICES
GENERAL TERMS**

**ARTICLE I
GENERAL**

1. **Term; Termination.** This Agreement for Hardware Maintenance and Software Maintenance and Support Services shall be in effect for the coverage period as described on the attached Hardware Maintenance and Software maintenance and Support Services Purchase Order ("Purchase Order"), attached hereto and fully incorporated herein by this reference (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive one-year periods (each a "Renewal Period"). Notwithstanding the foregoing, this Agreement may be 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 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, (e) the date which is thirty (30) days after Customer fails to pay any amount due to ES&S under this Agreement or (f) in the event the Customer purchases a non-ES&S voting system as a replacement to the Customer's ES&S' voting system, Customer may terminate this Agreement at the end of any annual anniversary period during the Initial Term or an Renewal Period, written notice shall be delivered to ES&S at least thirty (30) days prior to the end of such annual anniversary period during the Initial Term or any Renewal Period, as applicable. In the event the Customer terminates this Agreement pursuant to Section 1(f), Customer hereby agrees to pay ES&S within thirty (30) days of its termination of this Agreement a balance due charge that consists of the difference between ES&S' then current published fees as of the effective date of this Agreement for Hardware Maintenance and Software Maintenance and Support Services and the discounted fees for such services set forth on the attached Purchase Order for the period during which this Agreement remained in effect prior to the Customer's termination. Upon the termination of the license, Customer shall immediately return the Software and Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy the Software and Documentation and certify in writing to ES&S that such destruction has occurred. 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) below.

2. **Fees.** In consideration for ES&S' agreement to provide Hardware Maintenance and Software Maintenance and Support Services under this Agreement, Customer shall pay to ES&S the Hardware Maintenance and Software Maintenance and Support Fees set forth on the Purchase Order for the Initial Term. The Hardware Maintenance and Software Maintenance and Support Fees for any Renewal Period shall be as agreed to by the parties and such fees will not exceed ES&S' list prices which are in effect at the time of commencement of such Renewal Period. The Renewal Period fees are due and payable on July 1 of each renewal period. The Software Maintenance and Support Fees shall be comprised of (i) a fee for the Software Maintenance and Support of the ES&S Firmware, and (ii) a fee for the Software Maintenance and Support for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If Customer elects to receive Hardware Maintenance or Software Maintenance and Support for an Add-On License or New Product during the Initial Term or any renewal thereof, ES&S will charge an incremental fee for such service. In the event Customer terminates this Agreement through no fault of ES&S and later desires to subscribe to a Hardware Maintenance or Software Maintenance and Support Plan, or otherwise changes its Hardware Maintenance or Software Maintenance and Support Plan with ES&S during the Initial Term or any renewal 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 or Software Maintenance and Support Coverage.

ARTICLE II HARDWARE

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

a. **Routine Maintenance Services.** An ES&S Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition ("Routine Maintenance Services") once each **Twelve Months** during the Initial Term or any renewal 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, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges 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 Purchase Order 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. Customer acknowledges and agrees that the performance of Routine Maintenance Services for Product(s) identified on the Purchase Order as "depot repair only" shall only be provided pursuant to Section 1(b) below.

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 preventative maintenance event as follows: Repair Services for Products covered under this Agreement will be performed at 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 24 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 within 48 hours after Customer notifies ES&S of the need therefor), 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 the Purchase Order.

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(c)(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, paper rolls, batteries, removable media storage devices, PCMCIA cards, ink pads, ink cartridges 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 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 fit for the ordinary purpose for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published ES&S Technician labor rate 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 the current published ES&S Technician labor rate) 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

SOFTWARE MAINTENANCE AND SUPPORT SERVICES

1. **Services Provided.** ES&S shall provide maintenance and support services ("Software 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 Term and any Renewal Period thereof, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, along with appropriate documentation ("Updates"), on a schedule defined by ES&S. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be "Software", and shall be subject to all the terms and conditions of ES&S' license of the Software, upon delivery. Customer shall install Updates in accordance with ES&S' recommended instructions or may request that ES&S install the Updates. In the event Customer requests ES&S to install an ES&S Firmware Update, ES&S shall install such Update only in connection with the Routine Maintenance Services provided herein. ES&S may charge Customer at its then-current rates to (a) ship the Updates, (b) install the Updates (c) provide maintenance and support on the Software which is required as a result of Customer's failure to timely install an Update or (d) train the Customer on the Updates. 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 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 Software in accordance with applicable law. Customer shall pay ES&S for any Update which is required due to a change in federal or state law.

3. **Conditions.** ES&S shall not provide Software 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 24 hours 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 Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises. Replacement versions of Software requested by Customer as a result of items set forth in this Section 4 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 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 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.

5. **Reinstatement of Software Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, Customer may thereafter 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 Maintenance and Support.

ARTICLE IV 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 will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. 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 shall be commenced within one (1) year after the cause of action has accrued. ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's election not to receive, or to terminate, the Hardware Maintenance and Software Maintenance and Support Services.
3. **Excusable Nonperformance.** If ES&S is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including, but not limited to, natural disaster, fire, flood, unusually severe weather, terrorism, insurrection, war, communications or transportation disruptions, Acts of God, labor disputes and governmental regulations, 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 delivered personally, sent by confirmed facsimile transmission, sent by commercial overnight courier (with written verification of receipt) or 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 facsimile 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. **Entire Agreement.** This Agreement, including the Purchase Order and Attachment 1 (which are 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. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, USA, without regard to its conflicts of laws principles. 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 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 engage duly qualified subcontractors to perform certain of the Hardware Maintenance Services, but shall remain fully responsible for such performance.

6. **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.

Attachment 1

Hardware Maintenance Services Provided by ES&S Under the Agreement

1. Telephone support.
 - ES&S will provide Hardware support on procedural questions of a specific nature not covered in ES&S' Hardware User Manuals;
 - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution. (to be provided on a limited basis)
 - ES&S will provide Hardware issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Equipment User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Equipment User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Equipment User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
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:
 - Service performed by an ES&S trained and certified technician.
 - Performance of factory approved diagnostics on the unit, identifying and making adjustments where necessary as indicated by the testing.
 - Replacement of worn or defective with new or remanufactured federally and state certified parts.
 - Conducting a final test to verify that the unit is working according to manufacturer's specifications.
 - Use of a checklist tailored for each piece of equipment.
 - 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.
 - 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.
 - 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.

Software Maintenance and Support Services Provided by ES&S Under the Agreement

1. Telephone support.
 - ES&S will provide Software support on procedural questions of a specific nature not covered in ES&S' Software User Manuals;
 - ES&S will verify the appropriate steps to take to resolve issues identified by the Customer.
2. Issue Resolution. (to be provided on a limited basis)
 - ES&S will provide Software issue resolution on a limited basis once the Customer has followed all issue resolution procedures as set forth in the Software User Manuals and as directed in the required training course. If it becomes apparent that the Customer has not followed the appropriate Software User Manual and/or training directives, Customer will be advised to begin the issue resolution process over by following the procedures identified in the Software User Manuals or by utilizing ES&S Election Services. The Customer may also be advised that additional training may be necessary to ensure the Customer has the appropriate level of issue resolution training.
3. ES&S will provide Technical Bulletins available on the ES&S Customer Portal on a schedule to be determined by ES&S regarding specific issues the Customer may be experiencing.

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

Software Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer's current software and hardware operator shall have completed a full software training session for each product selected.
 - Customer shall have completed training at a proficiency level to successfully use hardware (firmware) and software products for General and Primary elections.
 - 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 the stick batteries on the iVotronic system and the pick belts on the Model 650. Any other changes made by the customer must be pre-approved in writing by ES&S.
 - Customer shall have the ability to store equipment in accordance with ES&S requirements.
2. Customer shall have reviewed a complete set of User Manuals.
 3. Customer shall have reviewed Training Checklists.
 4. Customer shall be responsible for 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 VR system.
 6. Customer shall be responsible for implementation of any security protocols physical, network or otherwise.
 7. Customer shall be responsible for Customer Acceptance of the hardware, unless otherwise agreed upon, in writing, by the parties.
 8. Customer shall be responsible for any error or exception handling not identified in the User Guides as part of ES&S software or hardware.
 9. Customer shall be responsible for customer network design, layout, set up, administration, maintenance or connectivity.
 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.