



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 IMPERIAL HWY. – P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024

CONNOR B. McCORMACK
Registrar-Recorder/County Clerk

April 18, 2006

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AGREEMENT WITH ELECTION SYSTEMS AND SOFTWARE TO PURCHASE
INKAVOTE PLUS VOTING SYSTEM FOR COMPLIANCE WITH FEDERAL LAW
(ALL DISTRICTS – 3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ()
DISAPPROVE ()**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and authorize the Registrar-Recorder/County Clerk, or her designee, to execute the attached Agreement with Election Systems and Software (ES&S) for the acquisition of voting equipment and related software and services to enhance the County's InkaVote optical scan voting system (enhanced system hereafter referred to as InkaVote Plus) to comply with the federal Help America Vote Act (HAVA) of 2002. The fixed price Agreement shall not exceed a maximum contract sum of \$45,184,766 and is fully funded by federal HAVA and the State of California Voting Modernization Bond Act (Proposition 41) funds. The Agreement will become effective upon execution by the Registrar Recorder/County Clerk, or her designee, and will continue in effect for three years from the date of acceptance of the proposed system, with six one-year renewal options, unless terminated earlier in whole or in part by the County.

2. Delegate to the Registrar-Recorder/County Clerk, or her designee, under the terms of this Agreement, the authority to exercise up to six one-year renewal options following the initial three-year term of the Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of this recommended action is to establish an Agreement with ES&S for the purchase and license of voting equipment and related software and services to enhance the County's existing InkaVote system to comply with HAVA requirements. Beginning in 2006, the principal mandates of HAVA require provision of (1) a means for disabled voters, including those who are blind and visually impaired, to vote privately and independently at each polling place and (2) alerting voters in the event of an over-vote (voting for more candidates than is permitted in a contest) thereby allowing voters the opportunity to make corrections prior to casting their ballots.

In response to the Votomatic punch card system de-certification by the Secretary of State in September 2001 (with an effective date of March 2004), your Board made the decision to acquire and implement new voting system technology in multiple phases at the August 22, 2002 meeting. This approach was chosen due to several factors including 1) the rapidly evolving state of electronic voting technology; 2) the desire to learn from the experiences of other counties converting to electronic systems; and 3) the unique challenges of new system implementation in a County with four million voters, 5,000 voting precincts and the requirement to translate the ballot into six languages. Consequently, the phased-in approach called for the purchase and installation of a new optical scan paper-based interim voting system, InkaVote, which was first implemented at the November 2003 elections.

In recognition that planning and successful implementation of new voting system(s) would require cooperation and assistance from multiple departments, a task force was established in March 2003 to serve as a consulting team working with the Registrar-Recorder/County Clerk (RR/CC). Membership consists of the Chief Administrative Officer, County Counsel, Chief Information Officer, Director of Internal Services, Director of Human Resources, Director of Public Social Services and the Los Angeles City Clerk. This advisory task force provides a broad-based perspective with experience in large-scale new system implementations and valuable advice on change-management issues in light of continuing changes in State and Federal voting system requirements. Members of the task force unanimously agree that the next phase of voting system acquisition should be implementation of the InkaVote Plus System.

On April 19, 2005, your Board authorized and endorsed the release of a Request for Proposal (RFP) by the RR/CC for the purchase of equipment needed to enhance the existing InkaVote system to comply with HAVA requirements. California law requires every voting system to be certified by the California Secretary of State (SOS) prior to its purchase and use in California. The SOS has adopted policy requiring all voting systems to complete the Federal testing and qualification process prior to State certification. State testing of the InkaVote Plus System commenced in August 2005. The InkaVote Plus System completed Federal testing and received Federal qualification on November 17, 2005; additional enhancements to the system were federally tested and received Federal qualification on March 15, 2006. The SOS held the required public hearing on the InkaVote Plus System in Sacramento on March 1, 2006. April 13-14 are the scheduled dates for the final component of State testing, a volume test of InkaVote Plus equipment. State Certification of the system is expected prior to the end of April 2006. As time is of the essence to assure timely production and delivery of the 4,900 InkaVote Plus units, the RR/CC is requesting your Board's authorization to allow the RR/CC, or her designee, upon approval as to form by County Counsel, to execute the Agreement immediately upon SOS certification of the InkaVote Plus System.

Implementation of Strategic Plan Goals:

The recommended action supports the County's Strategic Plan:

Goal No. 1: Service Excellence: Provide the public with easy access to quality information and services that are both beneficial and responsive. The InkaVote Plus System provided under the Agreement will allow disabled voters, including those who are blind and visually impaired, to cast a ballot privately and independently and will alert all voters of any over-votes. Adding the two mandated functions to the existing InkaVote System will result in enhanced customer service to all voters who will benefit from the opportunity to have their ballots reviewed for errors by precinct-based equipment prior to casting their votes. Additionally, voters who are blind or visually impaired will have the option of using an audio ballot at their precinct voting location.

Goal No. 4: Fiscal Responsibility: Manage effectively the resources we have. Use of existing State and Federal funding for this purchase will allow the County to comply with new Federal law while reserving a significant amount of available funding to preserve the County's option to purchase another voting system at a later time in the future.

FISCAL IMPACT/FINANCING

The cost of acquisition and implementation of the InkaVote Plus System (all hardware, software and training) shall not exceed \$24,622,640. The Agreement calls for payment of ongoing InkaVote Plus System software maintenance and support fees of \$2,698,220 approximately \$385,000 per year beginning with the expiration of the two-year warranty period. Other professional services, for any additional work, is limited to \$2,750,000 during the term of the Agreement, including renewal option years. The Agreement provides for a total "not to exceed" maximum contract sum of \$45,184,766. The preceding dollar amounts, however, are premised on the County acquiring up to 750 additional InkaVote Plus units that are available for purchase under the Agreement. Currently, the County intends to acquire a total of 4,900 InkaVote Plus units, and has the option to acquire an additional 750 InkaVote Plus units at any time during the term of the Agreement, at a price that has been predetermined. Additionally, at the County's option, System Hardware and Support may be purchased at a cost not to exceed \$11,320, 017 over the term of the Agreement (should all six option years be exercised).

Sufficient Federal and State funds are currently available to purchase the proposed HAVA-compliant InkaVote Plus equipment due to a combination of State Proposition 41 funds and Federal HAVA funds. No County funds will be required. To date the County has received \$15,800,000 in Federal HAVA funds. Additionally, \$49,600,000 is available to the County in State Voting Modernization Bond Act /Proposition 41 funds upon presentation of invoices for State certified voting equipment to the Voting Modernization Board.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the Agreement is for three years from the date the County accepts the InkaVote Plus System with up to six one-year renewal options, for an aggregate term of approximately nine years, unless terminated earlier in whole or in part by the County, in accordance with the Agreement.

ES&S is a recognized manufacturer and seller of voting systems, software and related services in the United States and internationally. ES&S has entered into a perpetual license agreement with International Lottery & Totalizator Systems, Inc. (ILTS), through its wholly owned subsidiary, Unisyn Voting Solutions Inc., a developer and manufacturer of voting systems. ES&S is the exclusive distributor, reseller, on-going service provider and manufacturer of the InkaVote Plus System. Unisyn Voting Solutions, Inc. will be a subcontractor under the Agreement.

Under the terms of the Agreement, the County is purchasing the InkaVote Plus hardware and obtaining a perpetual, nonexclusive, irrevocable license to use the Contractor's InkaVote Plus System software. The Agreement allows the County to purchase Maintenance and Support Services for the InkaVote Plus System software from Contractor following the expiration of the two-year warranty period for the duration of the Agreement. Contractor has agreed, as part of such Maintenance and Support Services, to provide necessary updates and modifications to the software in order to comply with any changes that may occur in federal, state and local laws and regulations affecting the County's election systems. The software license includes the escrow of source code for all software, which source code would be released to the County if the Contractor were to breach its Maintenance and Support Services obligations.

The Agreement has been written with a number of performance assurance provisions to secure Contractor's timely completion of deliverables. The County has assigned payment points to nine (9) of the sixteen (16) deliverables with percentage holdback on major deliverables tied to InkaVote Plus System Acceptance.

The County has the right to terminate the Agreement for convenience, in whole or in part, on 30 days prior notice. The County also may terminate for Contractor's breach of its obligations under the Agreement, or for Contractor's giving of improper consideration or gratuities. In addition to the County's right to terminate this Agreement, the County could undertake debarment proceedings to further prevent the Contractor from engaging in this or other contractual relationships with the County.

The Agreement contains all required County contracting provisions. Since this is neither a Prop A nor cafeteria concession agreement, the provisions of the County's Living Wage Program (County Code chapter 2.201) are not applicable. The Agreement also contains the Cost of Living Adjustment (COLA) provision which is capped as required by CAO directive dated July 11, 2005. The recommended contractor is in compliance with all Board, Chief Administrative Office, and County Counsel requirements.

County Counsel has reviewed the attached Agreement. In addition, in accordance with your Board's policy, outside counsel, along with County Counsel, assisted in the drafting and negotiation of this proposed Agreement. Contingent upon Board authorization, the RR/CC will execute the Agreement with ES&S only after review and approved signature as to form from County Counsel. A copy of the final Agreement will be delivered to your Board within 15 calendar days from execution.

The Chief Administrative Office has reviewed and approved this Board letter. The Chief Information Officer was involved in the procurement and contracting processes, concurs with the conclusions reached and recommends Board approval. The RR/CC has agreed to track the project in the CIO's project tracking system.

CONTRACT PROCESS

On April 20, 2005 the RR/CC released an RFP. The RFP was sent to sixteen prospective contractors on file with the California Secretary of State as manufacturers/suppliers of voting systems in California. A notice of the RFP was published in four different local newspapers and also placed on the County website. On April 28, 2005, a mandatory contractor's conference was held at the RR/CC headquarters in Norwalk. On May 19, 2005, the RFP closed with one response from ES&S, in a joint venture with Unisyn, ILTS.

The proposal evaluation process consisted of an administrative review of the proposal for compliance with RFP requirements on a Pass/Fail basis; a live product demonstration; and evaluation and scoring of the proposal as set forth in the RFP. The evaluation committee consisted of representative of the CIO, ISD/ITS, Los Angeles City Clerk Office and RR/CC. Members of the RR/CC's Community Voter Outreach Committee participated in the live product demonstration and provided end-user advisory feedback to the evaluation committee. The evaluation committee evaluated and rated the proposal based on criteria established in the RFP. Upon final analysis of the ratings, the evaluation committee reached consensus and recommended ES&S for an Agreement with County to provide the InkaVote Plus System. The contractor was selected without regard to race, creed, or color.

IMPACT ON CURRENT SERVICES/PROJECTS

Approval of the recommended action will allow the RR/CC to execute an Agreement to acquire the InkaVote Plus System to enhance InkaVote. By acquiring this vote recording equipment and related software and services, the County will be in compliance with Federal HAVA requirements.

CONCLUSION

Upon Board approval, the Executive Officer/Clerk is requested to return one original stamped copy of the approved Board letter and its attachments to:

County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Hwy, Room 7201
Norwalk, CA 90650

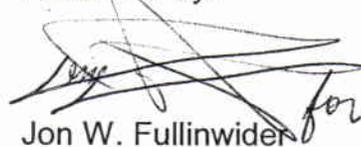
Attn: Ngozi Ume
Head, Management Services

Respectfully submitted,



Conny B. McCormack
Registrar-Recorder/County Clerk

Reviewed by:



Jon W. Fullinwider
Chief Information Officer

CMC:NU
Attachment (2)

- c: David E. Janssen, Chief Administrative Officer
Raymond G. Fortner, County Counsel
Dave Lambertson, Internal Services Department
Michael J. Henry, Department of Human Resources
Bryce Yokomizo, Department of Public Social Services
Frank Martinez, City of Los Angeles

<p style="text-align: center;">CONTRACTING WITH COMMUNITY BUSINESS ENTERPRISE (CBE FIRMS)</p>
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I. **The process used for identifying CBE vendors:**

The Registrar-Recorder/County Clerk distributed the Request for Proposals to 16 prospective contractors on file with the California Secretary of State as manufacturers/suppliers of voting systems in California. A notice of the RFP was published in four different local newspapers and also placed on the County website.

II **A list of firms from which the Department solicited offers:**

The Registrar-Recorder/County Clerk's proposer's list is attached.

III **CBE participation (i.e. partners, associate partners, staff, etc. and percentage of minority women-ownership in each firm):**

A "Community Business Enterprise Firm Information" form, which is used for statistical information on minority/women participation and ownership, partnership and business certification is attached for the recommended contractor.

IV **A comparison of minority participation of competing contractors.**

Only one proposal was received.

V **Stipulation that, on final analysis and consideration of award, contractor was selected without regard to race, creed, or color:**

Stipulated in Board Letter.

VI **Copy of Bid Webpage solicitation.**

Attached.

**HAVA REQUIRED INKAVOTE ENHANCEMENT
REQUEST FOR PROPOSALS
PROSPECTIVE CONTRACTOR LISTING**

<p>Advanced Voting Solutions 2401 Internet Blvd. #111 Frisco, TX 75034 Contact: Howard Van Pelt Phone:(972) 731-8901 Fax: (972) 731-8945 Email: hvp@advancedvoting.com</p>	<p>Avante Intl. Technology, Inc. 70 Washington Road Princeton Junction, NJ 08550 Contact: Cynthia Chu Phone: (609) 799-8896 ext.128 Fax: (609) 799-9308 Email: cchut@aitechnology.com URL: www.aitechnology.com</p>	<p>DFM 10 Chrysler Irvine, CA 92618 Contact: Larry Delamater Phone: (949) 859-8700 Fax: (9949) 859-9512 Email: larryd@dfmassociates.com</p>
<p>Diebold Election Systems PO Box 3077 North Canton, OH 44720 Contact:Thomas Swidarski Phone: (330) 490-4473 Fax: (330) 490-6678 Email: swidart@diebold.com</p>	<p>Diebold Election Systems 13500 Red Yucca NE Albuquerque, NM 87111 Contact: Frank Kaplan Phone: (505) 823-9898 Fax: (505) 823-9899 Email: fkglobal@earthlink.net frank@dieboldes.com</p>	<p>Election Data Corp 29751 Valley Center Rd Valley Center, CA 92082 Contact: Randy Rattray Phone: (760) 751-1131 Fax: (760) 751-1141 Email: randy@eddvote.com edcorp@aol.com</p>
<p>Election Data Direct PO Box 302021 Escondido, CA 92030 Contact: Randy Rattray Phone:(800) 233-9953 Fax: (760) 751-9901 Email: randy@eddvote.com URL: www.eddvote.com</p>	<p>ES&S (Election Sys & Software) 11209 John Galt Blvd. Omaha, NE 68137 Contact: Aldo Tesi Phone: (402) 593-0101 Fax: (402) 593-8107 Email:webelectionservices@essvote.com bcuellar@essvote.com (Bonnie Cuellar)</p>	<p>ES&S (Election Sys & Software) 3917 Diamond Loch East Fort Worth, TX 76180 Contact: Tom Eschberger Phone: (800) 247-8683 Fax: (817) 595-1401 Email: eschberger5@charter.net eschberger@fastlane.net</p>
<p>Hart Intercivic 1650 Cold Creek Drive #E Contact: Phone: (303) 385-6440 Fax: (512) 252-6466 Email: info@hartic.com dhart@hartic.com jsuver@hartic.com</p>	<p>IVS 13147 Middletown Industrial Blvd. Louisville, KY 40233 Contact: Gail Hart Phone: (888) 888-6952 Fax: (502) 657-0273 Email: sales@ivsllc.com URL: www.ivsllc.com</p>	<p>John W Harris & Assoc. 911 Wilshire Blvd, Ste 1820 Los Angeles, CA 90017 Contact: Susy Castillo Phone: (213) 489-9833 Fax: (213) 489-3761 Email: susyc@jwharrislaw.com</p>
<p>Martin & Chapman 1951 Wright Circle Anaheim, CA 92806 Contact: Scott Martin Phone: (714) 939-9866 Fax: (714) 939-9870 Email:scott@martinchapman.com</p>	<p>Sequoia Voting Systems 7677 Oakport St., Ste 800 Oakland, CA 94621 Contact: Bill Hedleston Phone: (510) 875-1250 Fax: (909) 383-5260 Email: bhedleston@sequoiavote.com URL: www.sequoiavote.com</p>	<p>UniLect 7080 Donlon Way, Ste. 220 Dublin, CA 94568 Contact: James Minor Phone: (888) 864-5328 Fax: (925) 833-8874 Email: jim@unilect.com URL: www.unilect.com</p>

**HAVA REQUIRED INKAVOTE ENHANCEMENT
REQUEST FOR PROPOSALS
PROSPECTIVE CONTRACTOR LISTING**

<p>Unisyn Voting Solutions 2131 Faraday Ave. Carlsbad, CA 92008 Contact: Ray Ortiz Phone: (760) 930-3633 Fax: (760) 931-1789 Email: rortiz@ilts.com</p>	<p>Unisyn Voting Solutions 2131 Faraday Ave. Carlsbad, CA 92008 Contact: Steve Schwickert Phone: (760) 930-3633 Fax: (760) 931-1789 Email: sschwicker@ilts.com</p>	<p>Independent Print Company 3930 Pacheco Blvd Martinez, CA 94553 Contact: Phone: (925) 229-5050 Fax: (925) 229-5051 Email: martinez@ipcprinting.com</p>
<p>ES&S (Election Sys & Software) Sacramento, CA Contact: Mark Hammergren Phone: (916) 812-4378 Fax: (916) 314-2701 Email: mahammergren@essv.com</p>	<p>Diebold Election Systems Contact: Steve Knecht 396 Grandview Ave. Novato, CA 94945 Phone: (415) 225-6591 Office: (415) 893-9941 Fax: (415) 893-9951 Email: stevek@dieboldes.com</p>	<p>Election Data Corp 29751 Valley Center Rd Valley Center, CA 92082 Contact: Dick Stevens Phone: (760) 751-1131 Fax: (760) 751-1141 Email: edcorp@aol.com</p>
<p>Sequoia Voting Systems 7677 Oakport St., Ste 800 Oakland, CA 94621 Contact: Alfie Charles Phone: (510) 875-1200 Fax: (909) 383-5260 Email: acharles@sequoiavote.com URL: www.sequoiavote.com</p>	<p>VoteHere Pacific Plaza 155 108th Ave NE Ste 425 Bellevue, WA 98004 Contact: Tom Phone: (425) 450-2770 Fax: (425) 453-4350 Email: Tomm@votehere.com Meishelle.Haverkamp@votehere.com sales@votehere.com</p>	

Request for Local SBE Preference Program Consideration and
CBE Firm/Organization Information Form

INSTRUCTIONS: All proposers/bidders responding to this solicitation must complete and return this form for proper consideration of the proposal/bid.

1. **LOCAL SMALL BUSINESS ENTERPRISE PREFERENCE PROGRAM:**

FIRM NAME: Election Systems and Software, Inc.

- I AM NOT** A Local SBE certified by the County of Los Angeles Office of Affirmative Action
 I AM Compliance as of the date of this proposal/bid's submission.
 As an eligible Local SBE, I request this proposal/bid be considered for the Local SBE Preference.

My County (WebVen) Vendor Number: 11088101

II. **FIRM/ORGANIZATION INFORMATION:** The information requested below is for statistical purposes only. On final analysis and consideration of award, contractor/vendor will be selected without regard to gender, race, creed, or color.

Business Structure: Sole Proprietorship Partnership Corporation Non-Profit
 Franchise Other (Please Specify) _____

Total Number of Employees (including owners): 344

Race/Ethnic Composition of Firm. Please distribute the above total number of individuals into the following categories:

Race/Ethnic Composition	Owners/Partners/ Associate Partners		Managers		Staff	
	Male	Female	Male	Female	Male	Female
Black/African American			2	1	13	8
Hispanic/Latino			2	1	5	7
Asian or Pacific Islander			3	1	5	4
American Indian/Alaskan Native						
Filipino American						
White	0	0	61	25	124	78

III. **PERCENTAGE OF OWNERSHIP IN FIRM:** Please indicate by percentage (%) how ownership is distributed.

	Black/African American	Hispanic/Latino	Asian or Pacific Islander	American Indian/Alaskan Native	Filipino American	White
Men						100%
Women						0%

IV. **CERTIFICATION AS MINORITY, WOMEN, DISADVANTAGED, AND DISABLED VETERAN BUSINESS ENTERPRISES:** If your firm is currently certified as a minority, women, disadvantaged or disabled veteran owned business enterprise by a public agency, complete the following and attach a copy of your proof of certification. (Use back of form, if necessary.)

Agency Name	Minority	Women	Disadvantaged	Disabled Veteran	Expiration Date
None					

V. **DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE.**

Authorized Signature: Signature on file	Title: Chief Financial Officer	Date: May 16, 2005
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles IT Standards?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	This contract and/or project and its milestone deliverables must be entered into the Information Technology Tracking System (ITTS).

Project/Contract Description:

The Department of Registrar-Recorder/County Clerk (RR/CC) is requesting your Board delegate authority to the Registrar-Recorder/County Clerk, or her designee, to sign an Agreement with Election Systems and Software (ES&S) to acquire and license voting recording equipment and related software and services to enhance the County's existing InkaVote system to comply with federal Help America Vote Act (HAVA) of 2002 requirements. This Agreement is effective upon execution by the Registrar-Recorder/County Clerk, or her designee, and will continue in effect for three years from the date of acceptance of the proposed system, with six one-year renewal options, unless terminated by the County. This Agreement has a maximum contract sum of \$45,184,766, if the six one-year renewals are exercised.

Background:

HAVA established new election administration mandates for state and local governments. Beginning in January 2006, HAVA places two key requirements on voting systems: (1) to detect and allow voters the ability to correct any ballot containing multiple votes for a single office (over-vote); and (2) to allow disabled, including blind and visually impaired voters, to cast a ballot privately and independently at each polling place, including the over-vote checking provided to non-disabled voters. The RR/CC desires to acquire and license Precinct Ballot Reader (PBR) system hardware and related software designed to be integrated with the County's existing InkaVote optical scan voting system, which will be called the InkaVote Plus System, to comply with these requirements.

All voting systems are required to undergo federal and state certification prior to use in an election. Further, no jurisdiction may purchase a voting system that has not been approved by the California Secretary of State (SOS). The InkaVote Plus System has received federal qualification and State certification is still pending but is expected prior to end of April 2006. In order to assure the timely production and delivery of InkaVote Plus Units, which will be installed at each County polling location to validate and tabulate ballots for the November 2006 general election, the RR/CC is requesting your Board's authorization to allow the Registrar-Recorder/County Clerk, or her designee, in conjunction with County Counsel, to execute the Agreement immediately upon SOS certification of the InkaVote Plus System.

The proposed Agreement, if authorized by the Board, would provide the following:

- **Purchase of PBR ballot readers and audio ballot reader/writers.** Both of these would be used at each voting precinct. The PBR ballot readers would detect over-vote errors and audio ballot reader/writers would assist disabled voters to cast ballots.
- **Acquisition of PBR software licenses.** This software is required to operate the PBR units and integrate the PBR units with the rest of the InkaVote system.
- **Vendor implementation support services.** These services include project management, system testing assistance, and election support.
- **Pool dollars for professional services and goods.** These pool dollars would be used to fund additional services on a time and materials basis and goods throughout the term of the proposed Agreement.
- **Software and hardware maintenance and support services.** These services are provided during the base contract term following a two-year warranty period after system acceptance of the PBR, and the RR/CC has the option of extending these services at extra cost (increased for cost-of-living adjustments). The maintenance and support services cover correction of ordinary deficiencies and updates of the PBR software required for any changes to election law. They do not include changes in hardware to comply with prospective changes in election law that may require new functionality.
- **Purchase of additional PBR units.** Due to cost of hardware maintenance, the RR/CC desires to purchase up to 750 additional PBR units to either replace damaged or defective units or supplement existing units during the term of the proposed Agreement.

Project Justification/Benefits:

Board authorization will enable the enhancement of the County's InkaVote System, which will meet federal HAVA requirements.

Project Metrics:

The ultimate measure of success will be the implementation of a HAVA compliant InkaVote Plus System.

Impact On Service Delivery Or Department Operations, If Proposal Is Not Approved:

If the Board does not authorize this request, this will impact the ability of the County to meet HAVA requirements and response to the specific needs of disabled voters.

Alternatives Considered:

ES&S was selected following a competitive Request for Proposal solicitation, in which they were the only responder. The InkaVote Plus System approach is part of a deliberative multi-phase approach for implementation of a new County voting system, which was authorized and endorsed by your Board.

Project Risks:

Project management activities are built into the InkaVote Plus System Statement of Work and project plan to alleviate potential risks and maximize the probability of project success. However, as with any IT project, there are inherent project risks that will require a dedicated project team (both vendor and County) to ensure project success.

Risk Mitigation Measures:

The Agreement contains a number of performance assurance provisions to secure the vendor's timely completion of deliverables. The County has assigned payment points to nine of the 16 deliverables with percentage holdbacks on major deliverables tied to InkaVote Plus System acceptance.

The CIO will provide project oversight and independent verification and validation of progress based on the project plan, Statement of Work and the contract. Additionally, the project will be monitored using the new Information Technology Project Tracking System.

Financial Analysis:

This Agreement has a maximum contract sum of \$45,184,766 if the six one-year extensions are exercised. The contract sum includes the following:

Description	Cost
PBR System Hardware	\$17,495,940
PBR System Software	2,012,400
ADA Compliant Equipment	4,541,700
Implementation Services	572,600
Pool Dollars for professional services and goods	2,750,000
PBR System Software Maintenance & Support Services	2,698,220
PBR Hardware Maintenance & Support Services	11,320,017
Additional PBR Units	3,793,889
Total Contract Sum	\$45,184,766

The Department indicates that the cost of this Agreement will be fully offset by federal and state funds.

CIO Concerns:

None.

CIO Recommendations:

Recommend Board approval.

CIO APPROVAL

Date Received: 4/6/2006
Prepared by: Shes Melendy
Date: 4/7/2006
Approved: ~~_____
_____~~
Date: 4/7/2006

AGREEMENT

County of Los Angeles
Registrar-Recorder/County Clerk

HAVA REQUIRED INKAVOTE ENHANCEMENT AGREEMENT

**HAVA REQUIRED INKAVOTE ENHANCEMENT
FOR
REGISTRAR-RECORDER/COUNTY CLERK
BY AND BETWEEN
COUNTY OF LOS ANGELES
AND
ELECTION SYSTEMS & SOFTWARE, INC.**

LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK AGREEMENT

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EXHIBIT O –	TASK/DELIVERABLE ACCEPTANCE CERTIFICATE
EXHIBIT P –	PERFORMANCE BOND

THIS AGREEMENT is entered into as of the Effective Date by and between the County of Los Angeles (“County”) and Election Systems & Software, Inc., a corporation organized under the laws of Delaware, located at 11208 John Galt Blvd., Omaha, Nebraska, 68137 (“Contractor”), for the department of the Los Angeles County Registrar-Recorder/County Clerk (the “Department” or “RR/CC”).

WHEREAS, County currently uses a small ballot card optical scan election voting system known as the “InkaVote System” (as defined below);

WHEREAS, County desires to acquire and implement an enhancement to the InkaVote System required by “HAVA” (as defined below) which among other things, will enable the disabled, including blind and visually impaired voters, to cast a ballot independently at every voting precinct, and will enable second chance voting by alerting voters of an overvote on their ballots prior to submission of the ballot;

WHEREAS, County desires that the enhancement shall be fully interactive and integrated with the InkaVote System and shall be capable of receiving input from and providing output to County’s InkaVote System currently in use by the Department, and all future versions of the InkaVote System;

WHEREAS, Contractor possesses the necessary special skills, knowledge and technical competence and sufficient staffing to provide such enhancement to the InkaVote System, along with implementation, integration, and maintenance and support services; and

WHEREAS, this Agreement (as defined below) is authorized pursuant to California Government Code Sections 31000 and 23004.

NOW THEREFORE, In consideration of the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree as follows:

1. AGREEMENT AND INTERPRETATION.

- 1.1 Agreement. This base document along with Exhibits A through P, the Project Control Document (as and when delivered by Contractor in accordance with the Statement of Work), any schedules attached hereto or thereto, and any Change Order or amendment from time to time hereto or thereto collectively constitute and throughout and hereinafter are referred to as the “Agreement.” This Agreement shall constitute the complete and exclusive statement of understanding between County and Contractor and supersedes any and all prior or contemporaneous agreements, written or oral, and all communications between the parties relating to the subject matter of this Agreement.
- 1.2 Interpretation. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any Task, Subtask, Deliverable, goods, service, or other Work, or otherwise, such conflict or inconsistency shall be resolved by giving precedence first to this base document, and then to the Exhibits and any attachments thereto, according to the following priority:

- 1.2.1. Exhibit A – Additional Terms and Conditions
- 1.2.2. Exhibit B – Price and Schedule of Payments
- 1.2.3. Exhibit C – Statement of Work
- 1.2.4. Exhibit D – Requirements
- 1.2.5. Exhibit E – Maintenance & Support Services

Additionally, County’s request for proposal, dated as of April 20, 2005 (“RFP”), and Contractor’s response, dated May 19, 2005, to County’s RFP (“Contractor’s Response”) are incorporated by this reference as if such documents were attached to this Agreement as an Exhibit hereto. In the event of a conflict or inconsistency, County’s RFP and Contractor’s Response, in that order, shall be inserted into the above order of priority after Exhibit P (Performance Bond).

- 1.3 Additional Terms and Conditions. Without limiting the generality of Paragraph 1.1 (Agreement), attached hereto as Exhibit A (Additional Terms and Conditions), and incorporated by reference herein, are additional terms and conditions to this Agreement. Contractor acknowledges and agrees that it shall be bound by the additional terms and conditions enumerated in such Exhibit as if such terms and conditions were enumerated in the body of this base document.
- 1.4 Construction. The words “herein”, “hereof”, and “hereunder” and words of similar import used in this Agreement refer to this Agreement, including all annexes, attachments, Exhibits, and Schedules as the context may require. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural. Whenever examples are used in this Agreement with the words “including”, “for example”, “e.g.”, “such as”, “etc.”, or any derivation of such words, such examples are intended to be illustrative and not limiting. Captions and Paragraph headings used in the Agreement are for convenience only and are not a part of the Agreement and shall not be used in construing the Agreement.

2. DEFINITIONS. The following terms and phrases in quotation marks and with initial letters capitalized shall have the following specific meaning when used in this Agreement.

- 2.1. “Additional Goods and Services” has the meaning set forth in Paragraph 13.5 (Pool Dollars Work).
- 2.2. “Additional Goods and Services Warranty Period” has the meaning set forth in Paragraph 12.3.
- 2.3. “Additional PBR Unit” has the meaning set forth in Paragraph 19.1 (Units Option).
- 2.4. “Additional PBR Unit Acceptance” has the meaning set forth in Paragraph 19.3 (Additional Unit Acceptance).

- 2.5. “Additional PBR Unit Acceptance Date” has the meaning set forth in Paragraph 19.3 (Additional Unit Acceptance).
- 2.6. “Additional PBR Unit Warranty Period” has the meaning set forth in Paragraph 12.4.
- 2.7. “Agreement” has the meaning set forth in Paragraph 1.1 (Agreement).
- 2.8. “Board” means the Los Angeles County Board of Supervisors.
- 2.9. “Business Day” means Monday through Friday, excluding County observed holidays.
- 2.10. “California Public Records Act” means the California Public Records Act, promulgated under California Government Code §6250 *et seq.*
- 2.11. “CAO” means County’s Chief Administrative Officer.
- 2.12. “Change Order” has the meaning set forth in Paragraph 6.2 (Change Order).
- 2.13. “CIO” means County’s Chief Information Officer.
- 2.14. “Compatible” or “Compatibility” means with respect to each PBR Unit and the PBR System, taken as a whole, such PBR Unit or PBR System, as the case may be, shall be capable of performing in accordance with the Specifications when used in conjunction with the InkaVote System, including any Updates thereto.
- 2.15. “Contractor Key Personnel” has the meaning set forth in Paragraph 4.3.2.
- 2.16. “Contractor Project Director” has the meaning set forth in Paragraph 4.1 (Contractor Project Director).
- 2.17. “Contractor Project Manager” has the meaning set forth in Paragraph 4.1.3 (Contractor Project Manager).
- 2.18. “Contractor Technical Staff” has the meaning set forth in Paragraph 4.3.2.
- 2.19. “County” has the meaning set forth in the Recitals.
- 2.20. “County Counsel” means County’s Office of the County Counsel.
- 2.21. “County Indemnitees” has the meaning set forth in Paragraph 12.1 (Indemnification) of Exhibit A (Additional Terms and Conditions).
- 2.22. “County Product” has the meaning set forth in Paragraph 3.2 (County Product) of Exhibit A (Additional Terms and Conditions).
- 2.23. “County Project Director” has the meaning set forth in Paragraph 3.1 (County Project Director).

- 2.24. “County Project Manager” has the meaning set forth in Paragraph 3.2 (County Project Manager).
- 2.25. “CSSD” has the meaning set forth in Paragraph 33 (Contractor’s Warranty of Adherence to County’s Child Support Compliance Program) of Exhibit A (Additional Terms and Conditions).
- 2.26. “Custom Programming Modifications” means Interfaces and custom software programs or applications, in object code and Source Code format, including custom programs provided as Additional Goods and Services, and all related Documentation.
- 2.27. “Daily Labor Rate” means, for Contractor’s personnel, the fully burdened per diem rates set forth in Exhibit B (Price and Schedule of Payments), each of which such rates includes an allocated average of direct and indirect costs, overhead, and administrative expenses attributable to each personnel day worked.
- 2.28. “Deficiency” has the meaning set forth in Paragraph 11.1 (Deficiencies).
- 2.29. “Deliverable” means a service, product, or good to be provided by Contractor to County under this Agreement and identified as a numbered Deliverable in the Statement of Work (including the Project Control Document) or any approved Change Order or amendment, as well as the Specifications for any hardware or other goods to be purchased directly by County.
- 2.30. “Department” has the meaning set forth in the Recitals.
- 2.31. “Disabling Device” has the meaning set forth in Paragraph 12.7 of Exhibit A (Additional Terms and Conditions).
- 2.32. “Dispute Resolution Procedure” has the meaning set forth in Paragraph 2 (Dispute Resolution Procedure) of Exhibit A (Additional Terms and Conditions).
- 2.33. “Documentation” means any and all written materials, including user manuals, quick-reference guides, FAQs, training materials, testing protocols, methodologies, Specifications, flow charts, and system designs and system design reviews that support the design, use, implementation, and execution of the PBR Units or the PBR System, or that are required to be provided by Contractor under this Agreement.
- 2.34. “Effective Date” means the date this Agreement is executed by all parties.
- 2.35. “Election” means any federal, state or local election conducted by County or its designees that utilizes all or any part of the InkaVote System.
- 2.36. “Election Day” means the date of any Election as determined by County, or its designee or applicable federal or state authorities.
- 2.37. “Election Laws and Regulations” means all federal, state and local laws, rules and regulations, including the InkaVote System procedures applicable to County’s InkaVote

- System, pertaining to the conduct and administration of Elections, the hardware, software, systems and other related devices and equipment to be used in the conduct and administration of Elections, and applicable published directives or requirements issued by federal, state (including the Secretary of State) and local agencies responsible for implementing such laws, rules and regulations and overseeing Elections, or responsible for administering and awarding federal and state appropriations to support Elections.
- 2.38. “Escrow Agreement” has the meaning set forth in Paragraph 15.1 (Establishment of Escrow Account).
- 2.39. “HAVA” means the Help America Vote Act, P.L. 107-252 (2002), 42 USC § 15301 *et. seq.*
- 2.40. “Holdback Amount” has the meaning set forth in Paragraph 10.4 (Holdbacks).
- 2.41. “Hourly Labor Rate” means, for Contractor’s personnel, the fully burdened hourly rates set forth in Exhibit B (Price and Schedule of Payments), each of which such rates includes an allocated average of direct and indirect costs, overhead, and administrative expenses attributable to each personnel hour worked.
- 2.42. “Infringement Claims” has the meaning set forth in Paragraph 16.1 of Exhibit A (Additional Terms and Conditions).
- 2.43. “Initial Term” has the meaning set forth in Paragraph 7 (Term).
- 2.44. “Interfaces” means the software mechanisms, and related Documentation, which allow the transfer of electronic data or software commands between computer systems, devices, applications, or modules.
- 2.45. “InkaVote System” means County’s small ballot card optical scan election voting system, including its functionality and procedures for its use as described generally in the procedures promulgated by County and approved by the Secretary of State, and all future versions of, and procedures applicable to, the system used or scheduled for use in an upcoming Election. From and after the PBR System Acceptance Date, InkaVote System shall be deemed to include the PBR System.
- 2.46. “InkaVote Tally” means the hardware and software components to the InkaVote System that are responsible for reading ballot images, summarizing results, and reporting the results to the SOS, the media, public and county.
- 2.47. “Invoice Discrepancy Report” or “IDR” has the meaning set forth in Paragraph 10.7 (Invoice Discrepancy Report).
- 2.48. “Jury Service Program” has the meaning set forth in Paragraph 36.1 (Compliance with Jury Service Program) of Exhibit A (Additional Terms and Conditions).

- 2.49. “Key Deliverable” means those Deliverables identified as on the critical path to achieving PBR System Acceptance, the scheduled delivery date of which may not be altered except in accordance with Paragraph 4.5.3 (Deviation from Project Control Document).
- 2.50. “License” has the meaning set forth in Paragraph 14.2 (License).
- 2.51. “Maintenance & Support Fees” means the amount charged by Contractor for Maintenance & Support Services, as such amount is allocated among PBR System Hardware Maintenance & Support and PBR System Software Maintenance & Support, and set forth on the attached Exhibit B (Price and Schedule of Payments), as such amounts may be adjusted from time to time in accordance with Paragraph 8.3.
- 2.52. “Maintenance & Support Services” has the meaning set forth in Paragraph 13 (Maintenance & Support Services) and includes PBR System Hardware Maintenance & Support and PBR System Software Maintenance & Support, as further described in the attached Exhibit E (Maintenance & Support Services).
- 2.53. “Maximum Contract Sum” has the meaning set forth in Paragraph 8 (Prices and Fees).
- 2.54. “Non-critical path deviations” has the meaning set forth in Paragraph 4.5.3 (Deviation from Project Control Document).
- 2.55. “Notice of Delay” has the meaning set forth in Paragraph 17 (Notice of Delay) of Exhibit A (Additional Terms and Conditions).
- 2.56. “Option Term” has the meaning set forth in Paragraph 7 (Term).
- 2.57. “PBR System” means the PBR Units in the aggregate (including all Additional PBR Units), and any and all other PBR System Hardware, all PBR System Software, other PBR System Hardware Maintenance & Support, equipment, devices, and other Deliverables and services provided by Contractor in accordance with this Agreement, and any component of any of the foregoing.
- 2.58. “PBR System Acceptance” has the meaning set forth in Paragraph 5.3 (PBR System Acceptance).
- 2.59. “PBR System Acceptance Date” has the meaning set forth in Paragraph 5.3 (PBR System Acceptance).
- 2.60. “PBR System Hardware” means the PBR Units (including all Additional PBR Units) plus other hardware and equipment comprising the PBR System (but not including any Third Party Hardware), including servers, portable memory and storage devices, and other related peripheral equipment.
- 2.61. “PBR System Hardware Maintenance & Support” has the meaning set forth in Paragraph 13.2 (PBR System Hardware Maintenance & Support).

- 2.62. “PBR System Hardware Maintenance & Support Period” has the meaning set forth in Paragraph 13.2 (PBR System Hardware Maintenance & Support).
- 2.63. “PBR System Software” means the PBR Unit Software and any and all additional computer programs, including Third Party Software, conceived, created, or developed by Contractor, or licensed by Contractor with a right of sublicense, in furtherance of Contractor’s obligation to develop and deliver to County the PBR System, and the computer programs necessary to achieve Compatibility of the PBR System with the InkaVote System, and otherwise in furtherance of all of Contractor’s obligations pursuant to this Agreement. PBR System Software includes executable object code, firmware, Updates and any applicable Custom Programming Modifications, but not Source Code.
- 2.64. “PBR System Software Maintenance & Support” has the meaning set forth in Paragraph 13.3 (PBR System Software Maintenance & Support).
- 2.65. “PBR System Warranty Period” has the meaning set forth in Paragraph 12.1 (System Warranty).
- 2.66. “PBR Unit” means the precinct-based ballot card reader, and any and all related peripherals integrated into or with the ballot card reader, including the devices used to enable independent voting by blind or visually impaired voters. For avoidance of doubt, except to the extent otherwise expressly noted to the contrary (e.g., in Paragraph 5.3 (PBR System Acceptance)), references to a PBR Unit or PBR Units include any Additional PBR Units acquired by County pursuant to Paragraph 19 (Additional Units).
- 2.67. “PBR Unit Software” means the computer programs, including Third Party Software and firmware, used to operate the PBR Units in executable object code format only. PBR Unit Software includes the operating system for any PBR Unit, if applicable, the application programs, and any Updates and applicable Custom Programming Modifications, but not Source Code.
- 2.68. “Phase” means a particular group of Tasks, Deliverables and other Work to be performed by or on behalf of Contractor, as described further in Exhibit C (Statement of Work).
- 2.69. “Physical Materials” has the meaning set forth in Paragraph 4.1 (Physical Embodiment of the PBR System Software) of Exhibit A (Additional Terms and Conditions).
- 2.70. “Project Control Document” has the meaning set forth in Paragraph 4.5.1 (Delivery of Project Control Document).
- 2.71. “Pool Dollars” has the meaning set forth in Paragraph 8.4 (Pool Dollars).
- 2.72. “Preapproved Subcontractor” has the meaning set forth in Paragraph 1 (Subcontracting) of Exhibit A (Additional Terms and Conditions).
- 2.73. “Project” means the development and installation of the PBR System in accordance with the Project Control Document and this Agreement.

- 2.74. “Project Control Document” has the meaning given to the defined term “PCD” in the Statement of Work.
- 2.75. “Project Status Reports” has the meaning set forth in Paragraph 4.4 (Project Status Reports by Contractor).
- 2.76. “Public Record Data” shall mean any “public record” as that term is used in the California Public Records Act.
- 2.77. “Replacement Product” has the meaning set forth in Paragraph 45 (Continuous Product Support) of Exhibit A (Additional Terms and Conditions).
- 2.78. “Registrar” means the department head of the Registrar-Recorder/County Clerk, or such person’s designee, as noticed to Contractor.
- 2.79. “Requirements” means the functional performance requirements of the PBR System, as required by County under this Agreement, and more fully described in the attached Exhibit D (Requirements), as the same may be amended by any approved Change Order or amendment.
- 2.80. “RR/CC” has the meaning set forth in the Recitals.
- 2.81. “Secretary of State” or “SOS” means the California Secretary of State, or its designee.
- 2.82. “Source Code” means, generally, computer programming code in human readable form that is not suitable for machine execution without the intervening steps of interpretation or compilation, and, specifically, includes code for all the PBR System Software including all Updates and Custom Programming Modifications, and all Documentation and other proprietary information related to the use and compilation of such code.
- 2.83. “Specifications” means the specifications for the PBR System, including the PBR Units and the PBR System Software, as set forth in this Agreement, the Statement of Work, Requirements, the Project Control Document, the Documentation, and any approved Change Order or amendment, including specifications regarding interconnectivity and Compatibility.
- 2.84. “Statement of Work” or “SOW” means the Statement of Work, attached as Exhibit C (Statement of Work) to this Agreement, including the Project Control Document provided as a Deliverable thereto and any additional attachments to the SOW, as the same may be amended by any approved Change Order or amendment.
- 2.85. “Subtask” means one or more sub-areas of work to be performed under this Agreement and identified as a numbered Subtask in the Statement of Work or any approved Change Order or amendment.
- 2.86. “Task/Deliverable Acceptance Certificate” means the certificate issued by County upon Contractor’s satisfactory completion of the applicable Tasks, Subtasks, Deliverables,

goods, and services and other Work in accordance with the requirements, Specifications, and timetables set forth in this Agreement, the Statement of Work or any approved Change Order or amendment, a form of which is attached hereto as Exhibit O (Task/Deliverable Acceptance Certificate).

- 2.87. “Tasks” means one or more major areas of work to be performed under this Agreement and identified as a numbered Task in the Statement of Work or any approved Change Order or amendment.
- 2.88. “Tax” and “Taxes” means governmental fees (including license, filing and registration fees) and all taxes (including franchise, excise, stamp, value added, income, gross receipts, gross revenue, import, export, sales, use, transfer, and property taxes), withholdings, assessments, levies, imposts, duties, charges, or interest thereon imposed.
- 2.89. “Term” has the meaning set forth in Paragraph 7 (Term).
- 2.90. “Third Party Software” has the meaning set forth in Paragraph 16 (Third Party Software and Hardware).
- 2.91. “Third Party Hardware” has the meaning set forth in Paragraph 16 (Third Party Software and Hardware).
- 2.92. “Unit Option” has the meaning set forth in Paragraph 19.1 (Units Option).
- 2.93. “Updates” means any upgrades, enhancements, revisions, improvements, new version releases (major and minor), bug fixes, patches, and modifications to the PBR System, including the PBR Units and the PBR System Software. Any Update delivered by Contractor to County is and shall become a component of the PBR System.
- 2.94. “Warranty Period” has the meaning set forth in Paragraph 12.5.
- 2.95. “Work” means any and all Tasks, Subtasks, Deliverables, goods, and other services performed by or on behalf of Contractor in order to develop and deliver to County the PBR System, including the PBR Units and the PBR System Software, and including the work required pursuant to this Agreement, the Statement of Work, and all the Exhibits, Change Orders, and amendments hereto.

3. ADMINISTRATION OF AGREEMENT – COUNTY.

3.1 County Project Director.

3.1.1. “County Project Director” for this Agreement initially shall be Michael Petrucello.

3.1.2. County will notify Contractor of any change in the name of County Project Director.

- 3.1.3. Except as set forth in Paragraph 6 (Change Orders and Amendments) of this Agreement, County Project Director is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.
- 3.1.4. County Project Director shall have the right at all times to inspect any and all Work provided by or on behalf of Contractor.

3.2 County Project Manager.

- 3.2.1. “County Project Manager” for this Agreement initially shall be John Lake.
- 3.2.2. County shall notify Contractor of any change in the name of County Project Manager.
- 3.2.3. County Project Manager shall be a resource for addressing the technical standards and requirements of this Agreement, shall interface regularly with Contractor and further shall have the duties from time to time given to such person by County.
- 3.2.4. County Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement nor obligate County in any respect whatsoever.
- 3.2.5. County Project Managers shall advise County Project Director as to Contractor’s performance in areas relating to technical requirements and standards, Project schedule completion, County policy, information requirements, and procedural requirements.

3.3 County Personnel. All County personnel assigned to this Agreement shall be under the exclusive supervision of County. Contractor understands and agrees that all such County personnel are assigned only for the convenience of County. Contractor hereby represents and warrants that its price, Project schedule, and performance hereunder are not based on the use of County personnel except as otherwise expressly provided in this Agreement.

4. ADMINISTRATION OF AGREEMENT – CONTRACTOR.

4.1 Contractor Project Director.

4.1.1. “Contractor Project Director” shall be the following person, who shall be a full-time employee of Contractor:

Lou Dedier

4.1.2. Contractor Project Director shall be responsible for Contractor’s performance of all Work and ensuring Contractor’s compliance with this Agreement.

- 4.1.3. For the duration of the Initial Term, Contractor Project Director shall be available to meet and confer with County's Project Director at least monthly, and at least weekly during the two-month period prior to any Election Day, either in person or by telephone. Such meetings shall be conducted at a time and place convenient to both County Project Director and Contractor Project Director.

4.2 Contractor Project Manager.

- 4.2.1. The "Contractor Project Manager" shall be the following person who shall be a full-time employee of Contractor or agent represented and warranted by Contractor to be fully authorized to bind Contractor and to otherwise act on Contractor's behalf under this Agreement:

Keith McGinnis

- 4.2.2. Contractor Project Manager shall be responsible for Contractor's day-to-day activities as related to this Agreement and for reporting to County in the manner set forth in Paragraph 4.4 (Project Status Reports by Contractor).
- 4.2.3. For the duration of the Initial Term, Contractor Project Manager shall meet and confer, either in person or by telephone, with County Project Manager on a regular basis as necessary, but no less frequently than weekly during the two month period prior to, and the one month period following each County-wide Election in which the PBR System, or any component thereof, is intended by County to be used, and is used. Thereafter, pre and post Election consultation shall occur as necessary and mutually agreed.

4.3 Approval of Contractor's Staff.

- 4.3.1. County has the right to approve or disapprove each member or proposed member of Contractor's staff, including Contractor Project Director, Contractor Project Manager, and Contractor Technical Staff prior to, and during, their performance of any Work hereunder, as well as so approving or disapproving any proposed deletions from or other changes in Contractor staff. County Project Director may require replacement, in the exercise of reasonable discretion and with an articulable basis for such determination, of any member of Contractor's staff performing, or offering to perform, Work hereunder, including Contractor Project Director, Contractor Project Manager, and Contractor Technical Staff. County approves the proposed Contractor Project Director and Contractor Project Manager listed in Paragraphs 4.1.1 and 4.2.1, respectively. Contractor shall provide County with a resume of each such proposed replacement of Contractor Key Personnel and an opportunity to interview such person prior to such person performing any Work hereunder.
- 4.3.2. Contractor shall endeavor to assure continuity during the Initial Term of Contractor personnel performing key functions under this Agreement, including but not limited to McDermott Coutts, (collectively, "Contractor Technical Staff,"

and together with Contractor Project Director and Contractor Project Manager, the “Contractor Key Personnel”).

- 4.3.3. In the event Contractor should desire to remove any Contractor Key Personnel from performing Work under this Agreement, Contractor shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible (*e.g.*, employee resignation, a removal for cause or other egregious act), and shall work with County on a mutually agreeable transition plan so as to ensure Project continuity.
 - 4.3.4. Contractor shall fill any vacancy in Contractor Key Personnel with individuals having qualifications at least equivalent to those of Contractor Key Personnel being replaced.
 - 4.3.5. All staff employed by and on behalf of Contractor shall be adults who are legally eligible to work under the laws of the United States of America and the state of California. All Contractor Key Personnel and all other members of Contractor’s staff who have direct contact with County (either by telephone, electronic or written correspondence, or in person) shall be fully fluent in both spoken and written English.
 - 4.3.6. Contractor shall provide all staff assigned to this Agreement with a photo identification badge in accordance with County’s then current specifications. Contractor staff, while on duty or when entering a County facility or its grounds, shall prominently display the photo identification badge on such staff member’s person. Contractor shall notify County within one (1) Business Day when staff is terminated from performing Work under this Agreement. Contractor is responsible to retrieve and immediately destroy the staff’s County specified photo identification badge at the time such person ceases performing Work under this Agreement. If County requests the removal of Contractor’s staff, Contractor is responsible to retrieve and immediately destroy Contractor’s staff’s County specified photo identification badge at the time of removal from performing Work under this Agreement.
- 4.4 Project Status Reports by Contractor. In order to control expenditures and to ensure the reporting of all Work provided by Contractor, Contractor Project Manager shall provide County Project Director and each County Project Manager with written reports (“Project Status Reports”) under the timelines required under, and which contain the information set forth in, Subtask 1.3 of the Statement of Work, and such other information as County Project Director or either County Project Manager may from time to time reasonably request.
- 4.5 Delivery and Acceptance of Project Control Document.
- 4.5.1. Delivery of Project Control Document. No later than five (5) days after the Effective Date, Contractor shall provide to County Project Manager a project control document. The initial project control document, or as subsequently

revised pursuant to this Paragraph 4.5, is referred to herein as the “Project Control Document”. Contractor and County promptly shall review and revise the draft Project Control Document as necessary, and Contractor shall submit the final Project Control Document within twenty (20) days following the Effective Date, but in any event, no payments will be due by County to Contractor under this Agreement until the Project Control Document is approved by County Project Director pursuant to this Paragraph 4.5. The Project Control Document is a Deliverable under the SOW and shall be comprehensive in scope and breadth, setting forth in detail the Work plan proposed by Contractor and County to install, configure and make operational, directly or through subcontractors, the PBR System, provide the training, and otherwise deliver the PBR System required by this Agreement. The Project Control Document shall include, without limitation, all subject matter content generally described in the SOW, presented in the form of a Deliverables chart, a specific Task description, a narrative Project schedule, and the expected resources, and variations therein, required of both parties over the course of the Project. Without limiting the foregoing, the Project Control Document also shall address competently every subject generally described in the SOW and the Specifications, including the Requirements.

4.5.2. Approval of the Project Control Document.

- (i) Approval of Implementation Strategy. County Project Manager, in the exercise of reasonable discretion, has the right to require modification of the Project Control Document, including if such Project Control Document (a) fails to meet the description and satisfy the requirements in this Agreement or fails to follow the form of the initial Project Control Document, (b) fails to describe a process which will result in the delivery of the PBR System or any Deliverable at a time or pursuant to a process satisfactory to County, (c) provides for an unreasonably short period of time to permit County to adequately review and approve any Deliverables, or (d) assumes County staffing, locations, manner of performance or other County provided items not consistent with or specifically identified in this Agreement, or the SOW or Requirements.
- (ii) Modification of the Revised Implementation Strategy. Except in respect of the initial Project Control Document, County Project Manager shall have ten (10) Business Days from receipt of any proposed Project Control Document within which to provide Contractor with either a written notice of acceptance, or a statement specifying the manner in which the Project Control Document fails to meet the reasonable requirements of County. If County Project Manager provides Contractor with a description of such failures, Contractor will correct any such deficiencies and redeliver the Project Control Document within ten (10) Business Days of receipt of the notice. If the redelivered Project Control Document still fails to meet the requirements of County, the Project Managers shall meet and implement

the resolution process described in Paragraph 2 (Dispute Resolution Procedure) of Exhibit A (Additional Terms and Conditions).

- 4.5.3. Deviation from Project Control Document. Contractor may make only “non-critical path deviations” (as defined herein) from the Project Control Document without obtaining County’s prior written consent; provided, however, that Contractor shall give County’s Project Manager prior written notification of any such planned deviation through the delivery of an updated Project Status Report (including if applicable, a Gantt chart or schedule) which shows the impact, if any, of such deviations on the remainder of the Project. As used in this Paragraph, “non-critical path deviations” mean those adjustments to the tasks or resources required of Contractor or to the date on which such Deliverable is required to be delivered or approved that do not (i) result in Contractor deviating from the scheduled delivery date of any Deliverable identified in the Project Control Document, or (ii) require any greater resources from County than those identified in the Project Control Document. Contractor may also deviate from the Project Control Document, to change (earlier or later) the scheduled date of any Deliverable, on the condition that the County Project Manager first expressly agrees in writing with such proposed deviation, and provided further such deviation does not change the scheduled date of delivery of the PBR System Acceptance Deliverable, or any other Key Deliverable identified in the Project Control Document. Notwithstanding any provision of this Paragraph or this Agreement to the contrary, to the extent any proposed deviation from the Project Control Document will alter any process for Contractor’s achievement of PBR System Acceptance, or any Key Deliverable, such deviation may not be approved solely by County Project Manager but must first be expressly approved by County in accordance with the Change process more particularly described in Paragraph 6 (Change Orders and Amendments).
- 4.6 Revised Project Control Documents. Contractor shall evidence any deviation from the Project Control Document which, under the provisions of Paragraph 4.5.3 (Deviation from Project Control Document), may be approved solely by County Project Manager by preparation and delivery of a revised Project Control Document including all proposed changes therein. From and after acceptance of such revised Project Control Document pursuant to the process set forth in Paragraph 6 (Change Orders and Amendments), the revised Project Control Document shall be the Project Control Document hereunder and shall supersede the prior approved Project Control Document in all respects.

5. WORK; APPROVAL AND ACCEPTANCE.

- 5.1 General. Contractor acknowledges that all Work performed under this Agreement, including pursuant to an executed Change Order or amendment, is payable on a fixed price basis in accordance with the terms and conditions of this Agreement, including this Paragraph 5 (Work; Approval and Acceptance), Paragraph 8 (Prices and Fees), and Paragraph 10 (Invoices and Payments).

- 5.2 Approval: Task/Deliverable Acceptance Certificates. Upon completion of particular Tasks, including all applicable Subtasks, Deliverables, goods, services, and other Work to be provided by Contractor pursuant to this Agreement, including the Statement of Work and any executed Change Order, Contractor shall submit a Task/Deliverable Acceptance Certificate to County Project Director, together with any supporting documentation reasonably requested by County, for County Project Director's written approval. All Work shall be completed in a timely manner and in accordance with the requirements and Specifications set forth in this Agreement, and must have the written approval of County Project Director, as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Acceptance Certificate. In no event shall County be liable or responsible for payment respecting a particular Task or Deliverable prior to execution of the Task/Deliverable Acceptance Certificate for such Task or Deliverable.
- 5.3 PBR System Acceptance. Contractor shall achieve PBR System Acceptance on or before the date set forth in the Project Control Document for such achievement. Contractor shall achieve "PBR System Acceptance" upon successful completion of all the following: (a) its completion and delivery of all Work, including all PBR Units (other than Additional PBR Units purchased subsequently) , and testing protocols associated with the PBR System Acceptance; (b) successful implementation of all functions and features of the applicable Phases associated with PBR System Acceptance, and successful achievement of all applicable testing protocols has been verified by Contractor; (c) County Project Director has provided Contractor with written approval, as evidenced by County Project Director's countersignature on all applicable prior Task/Deliverable Acceptance Certificates, of all such Work; and (d) County Project Director has provided Contractor with written approval, as evidenced by County Project Director's countersignature on the applicable Task/Deliverable Acceptance Certificate, of Contractor's achievement of PBR System Acceptance (the date of satisfaction of the foregoing, including written approval thereof shall be referred to as the "PBR System Acceptance Date").

6. CHANGE ORDERS AND AMENDMENTS. No representative of either County or Contractor, including those named in this Agreement, is authorized to make any changes in any of the terms, obligations, or conditions of this Agreement, except through the procedures set forth in this Paragraph 6 (Change Orders and Amendments).

- 6.1 General. County reserves the right to change any portion of the Work required under this Agreement, or amend such other terms and conditions, as may become necessary. Any such revision shall be accomplished in the following manner:
- 6.1.1. For any change which does not materially affect the scope of Work, period of performance, amount of payments, or any other term or condition included under this Agreement, other than the exercise of Unit Options by County, a Change Order shall be executed by both County Project Director and Contractor Project Director. To the extent that extensions of time for Contractor performance do not impact either the scope of Work, delivery dates for Key Deliverables, or cost of this Agreement, County Project Director, in County Project Director's discretion, may grant Contractor extensions of time in writing for the Work listed in the

Statement of Work or otherwise in this Agreement provided that such extensions shall not cause Contractor to fail to achieve any Key Deliverable, including PBR System Acceptance, by the dates required therefor, or extend the Term of this Agreement. If an extension of time for Contractor performance impacts the schedule for a Key Deliverable, including PBR System Acceptance, any agreement to such an extension must be agreed and executed by both County Project Director and the Registrar.

- 6.1.2. Without limiting Paragraph 6.1.3, for any change to be effected through the use of, and that will not exceed, the available Pool Dollars, and provided such change will not delay the achievement of PBR System Acceptance, then a Change Order shall be mutually agreed upon and executed by Contractor Project Director and County Project Director.
- 6.1.3. Subject to Paragraph 6.1.5, for any change that materially affects any term or condition in the body of this Agreement or Exhibit A (Additional Terms and Conditions), then a negotiated amendment to this Agreement with written concurrence of the CAO and County Counsel shall be executed by the Board and Contractor.
- 6.1.4. From time to time during the Term, the Board or CAO or its designee may require the addition or change of certain terms and conditions applicable to County agreements with third party vendors, which generally applicable changes may require the amendment or modification of this Agreement. To implement such changes, an amendment to the Agreement shall be prepared and executed by Contractor and the Registrar at the time of the Registrar's next notice to Contractor of the County's determination to extend the Agreement for an additional Option Term.
- 6.1.5. Notwithstanding any other provision of this Paragraph 6 (Change Orders and Amendments) or Paragraph 7 (Termination for Convenience) of Exhibit A (Additional Terms and Conditions), County Project Director, with written concurrence of the CAO and County Counsel, shall take all appropriate action to carry out any orders of the Board relating to this Agreement, and, for this purpose, the Registrar, with written concurrence of the CAO and County Counsel, is authorized to: (a) issue written notices of partial or total termination or suspension of this Agreement pursuant to Paragraph 7 (Termination for Convenience; Suspension) of Exhibit A (Additional Terms and Conditions) without further action by the Board, and (b) prepare and sign amendments to this Agreement which reduce the Statement of Work and the Maximum Contract Sum without further action by the Board.
 - (i) Such notices of partial or total termination or suspension shall be authorized under the following conditions:

- (A) Notices shall be in compliance with all applicable federal, state and County laws, rules, regulations, ordinances, guidelines, and directives.
 - (B) The Department shall obtain approval of the CAO and County Counsel for any notice.
 - (C) The Department shall file a copy of all notices with the Executive Office of the Board within fifteen (15) days after execution of each notice.
- (ii) Such amendments shall be authorized under the following conditions:
- (A) Notices shall be in compliance with all applicable federal, state and County laws, rules, regulations, ordinances, guidelines, and directives.
 - (B) The Board has appropriated sufficient funds for purposes of such amendments.
 - (C) The Department shall obtain approval of the CAO and County Counsel for any such amendment.
 - (D) The Department shall file a copy of all such amendments with the Executive Office of the Board within fifteen (15) days after execution of each amendment.

6.2 Change Order. Any “Change Order” proposed or executed by the parties shall be substantially in the form attached hereto as Exhibit M (Change Order) and shall include:

- 6.2.1. a functional description of the Work to be performed under the Change Order and a statement, signed by Contractor Project Director, which statement explains and certifies that such Work is outside the scope of Work required of Contractor under this Agreement in order for Contractor to deliver the PBR System;
- 6.2.2. a quotation of a price for completion and delivery of the requested Work, including a proposed Task and Deliverable completion and payment schedule and Contractor staff and estimated personnel hours recommended for completion of such Work;
- 6.2.3. if the Change Order is under Paragraph 6.1.2, the amount of Pool Dollars to be utilized by such Change Order and the amount of Pool Dollars available under the Agreement, both before and after giving effect to such Change Order;
- 6.2.4. a recitation of the Task, Subtasks, and Deliverables to which such Change Order relates;

- 6.2.5. a description of and Contractor's cost of any hardware, software, or other materials required to complete the requested Work;
 - 6.2.6. an accounting of the cost savings to be realized by County from the nonperformance of any Work that is to be supplanted by the Work to be performed under the Change Order;
 - 6.2.7. final delivery date for completed Work; and
 - 6.2.8. if applicable, a revised Project Control Document.
- 6.3 Price Quotations. Contractor's quotations under the proposed Change Order shall be valid for sixty (60) days from the date of submission to County.
- 6.4 Performance During Change Order Dispute. Contractor shall, if directed by County, perform the Work described in any Change Order notwithstanding any dispute over the terms of the Change Order, including any dispute over the cost thereof. Failure to agree to the terms of a Change Order is a dispute subject to the dispute resolution procedure described in Paragraph 2 (Dispute Resolution) of Exhibit A (Additional Terms and Conditions). If Contractor is directed to perform Work under this Paragraph 6.4 despite the continuance of a dispute regarding the terms and conditions controlling such Work, then Contractor will perform such Work on a time and materials basis. If Contractor is directed to perform Work on a time and materials basis, then as part of the notice directing Contractor to perform, County will determine and notify Contractor of the amount of funds allocated to such Change Order, and Contractor will provide County's Project Manager twice monthly Project Status Reports in respect of such Change Order. The Project Status Reports shall include all the information required under Paragraph 4.4 (Project Status Reports by Contractor), and shall further detail the amount of fees, estimated reimbursable expenses, and estimated Subcontractor costs accrued in respect of such Work performed on the Change Order, calculated at the applicable Daily Labor Rate or Hourly Labor Rate, but in no event will Contractor accrue fees and reimbursable expenses in excess of the funds allocated by County to such Change Order without written approval of County Project Director. County agrees to pay Contractor for such Work performed on a time and materials basis, up to the limit of funds so allocated, in accordance with the procedures set forth in Paragraph 10 (Invoices and Payments).
- 6.5 Audit of Change Order Work. County is entitled to audit, in accordance with Paragraph 47 (Records and Audits) of Exhibit A (Additional Terms and Conditions), Contractor's compliance with Paragraph 6 (Change Orders and Amendments) in respect of Work performed pursuant to a Change Order.

7. **TERM.** The term of this Agreement shall commence upon the Effective Date and shall continue until the third anniversary of the PBR System Acceptance Date, unless terminated earlier in whole or in part, as provided in this Agreement (the "Initial Term"). The Registrar has the option, at the Registrar's election and upon notice to Contractor no later than thirty (30) days prior to the end of the then current period of the Term, to extend the Term of this Agreement for up to six (6) additional one (1) year periods (each an "Option Term"). As used herein, the

“Term” shall mean the Initial Term and, if extended, each Option Term, as the case may be. Contractor shall notify each County Project Manager and County Project Director when the Initial Term, or when each Option Term, as the case may be, is within six (6) months from the expiration of the Initial Term, or such Option Term, as the case may be, as provided for in this Paragraph 7 (Term).

8. PRICES AND FEES.

- 8.1 General. Attached to this Agreement as Exhibit B (Price and Schedule of Payments) is a schedule of all fees applicable to this Agreement. Exhibit B (Price and Schedule of Payments) includes (a) a payment schedule for completion of Work beginning on the Effective Date and continuing up to and including the PBR System Acceptance Date, (b) the aggregate Maintenance & Support Fees, specified annually for the Term, (c) itemized schedules for all components of the PBR System, including the PBR Units, PBR System Software, related hardware and other goods, (d) Hourly Labor Rates and Daily Labor Rates, and (e) Pool Dollars reserved for Additional Goods and Services.
- 8.2 Maximum Contract Sum. The “Maximum Contract Sum” under this Agreement shall be the total monetary amount that would be payable by County to Contractor for supplying the PBR System, including all PBR Units (including the Additional PBR Units, provided that the County orders all Additional PBR Units available pursuant to Paragraph 19.2 (Number and Price of Additional Units)) and the PBR System Software, training, implementation, Maintenance & Support Services, and all other Work under this Agreement for the Term. The Maximum Contract Sum for this Agreement, including applicable Taxes, authorized by County hereunder shall in no event, expressly or by implication, exceed forty-five million one hundred and eighty-four thousand seven hundred and sixty-six dollars (\$45,184,766.00) and shall be allocated as set forth in Exhibit B (Price and Schedule of Payments). Contractor shall perform and complete all Work required of Contractor by this Agreement in exchange for the amounts to be paid to Contractor as set forth in this Agreement but in any event, not in excess of the Maximum Contract Sum. Contractor acknowledges and agrees that the Maximum Contract Sum is an all-inclusive, not-to-exceed price, and is an agreed upon assessment of the amount to be paid by County to Contractor in exchange for Contractor delivering to County, and County accepting, within the required delivery schedule the PBR System. Contractor further acknowledges that the Specifications set forth in this Agreement, including in the Statement of Work and Requirements, are functional Specifications and that it is Contractor’s risk and responsibility to design, achieve, and timely deliver the PBR System, including the PBR Units and the PBR System Software.
- 8.3 Adjustments to Daily Labor Rates and Hourly Labor Rates; Maintenance & Support Fees. Commencing upon the expiration of the Initial Term, the Daily Labor Rates and Hourly Labor Rates may be adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics’ Consumer Price Index for the Los Angeles – Riverside – Orange County Area for the most recently published percentage change for the twelve (12) month period preceding the anniversary date of the expiration of the Initial Term and any applicable Option Term, which shall be the effective date for

any such adjustment. However, any increase shall not exceed the general annual percentage salary change granted to County employees as determined by County's Chief Administrative Office as of the prior July 1. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, Contractor acknowledges that there shall be no corresponding adjustment to the Daily Labor Rates or Hourly Labor Rates. Contractor further agrees that, if at the time of County's election to acquire Maintenance & Support Services for an Option Term Contractor's prevailing rates for the provision of maintenance and support services substantially similar to the level of Maintenance & Support Services provided hereunder are less than Contractor's price quotation for such Option Term, then the Maintenance & Support Fees for such Option Term shall be reduced to Contractor's prevailing rates. If so desired, Contractor shall initiate a request for adjustment six (6) months prior to the anticipated commencement date of any Option Term to be effective in the subsequent Option Term period if option year is exercised by County.

8.4 Pool Dollars. Exhibit B (Price and Schedule of Payments) includes the aggregate pool dollars available for Change Orders for additional Good & Services entered into pursuant to, and in accordance with, Paragraph 13.5 (Pool Dollars Work) (collectively, "Pool Dollars"). The aggregate amount of Pool Dollars available under this Agreement shall not exceed two million seven hundred and fifty thousand dollars (\$2,750,000.00). Contractor acknowledges that, as of the Effective Date, County has not initiated, and the parties have not executed, any Change Order pursuant to Paragraph 6.1.2.

8.5 Taxes. The amounts set forth on Exhibit B (Price and Schedule of Payments) include all amounts necessary for County to reimburse Contractor for all applicable California and other state and local Taxes for the PBR System, and other Work procured by County from Contractor. County shall not be liable or responsible for reimbursement of any Taxes associated with such procurement except as set forth on Exhibit B (Price and Schedule of Payments). Contractor will be solely liable and responsible for, and shall pay such Tax directly to, the state or other taxing authority. In addition, Contractor shall be solely responsible for all Taxes based on Contractor's income or gross revenue, or personal property Taxes levied or assessed on Contractor's personal property to which County does not hold title, and, accordingly, shall not invoice County for any such Taxes.

9. TERMINATION FOR NON-APPROPRIATION OF FUNDS. Notwithstanding any other provision of this Agreement, either expressly or by implication, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until the Board appropriates funds for this Agreement in County's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated and such termination shall be deemed a termination for convenience pursuant to Paragraph 7 (Termination for Convenience; Suspension) of Exhibit A (Additional Terms and Conditions). County shall endeavor to notify Contractor in writing of any such non-appropriation of funds at the earliest possible date.

10. INVOICES AND PAYMENTS.

- 10.1 Approval of Invoices. All invoices submitted by Contractor for payment must have the written approval of County Project Director, as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Acceptance Certificate, prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval.
- 10.2 Submission of Invoices. Contractor shall invoice County upon completion of Tasks, Subtasks, Deliverables, goods and services and other Work which are specified, without duplication, in this Agreement, Exhibit B (Price and Schedule of Payments), Exhibit C (Statement of Work), Exhibit E (Maintenance & Support Services), or any Change Orders, as applicable, and which have been approved in writing by County Project Director pursuant to Paragraph 5 (Work; Approval and Acceptance). In addition, the initial invoice for Maintenance & Support Services with respect to any Additional PBR Unit acquired by County upon exercise of a Unit Option shall be prorated for the period commencing upon the expiration of the applicable Additional PBR Unit Warranty Period and continuing until the expiration of the then current period of annual Maintenance & Support Services. All invoices and supporting documents under this Agreement shall be submitted in duplicate (original and one copy) to the following address:

County of Los Angeles
Registrar-Recorder/County Clerk
Finance Officer
12400 E. Imperial Highway, Room 7211
Norwalk, California 90650

- 10.3 Detail. Each invoice submitted by Contractor shall include:
- 10.3.1. The Tasks, Subtasks, Deliverables, goods, services, or other Work as described in Exhibit C (Statement of Work) and Exhibit B (Price and Schedule of Payments) for which payment is claimed, including a copy of the fully executed Task/Deliverable Acceptance Certificate evidencing County Project Director's approval of such Work, and the amount of payment therefor.
- 10.3.2. If the invoice is for Work pursuant to a Change Order for which Pool Dollars will be utilized, a copy of the applicable Change Order, executed by the applicable representative of County (see Paragraph 6 (Change Orders and Amendments)), a copy of the fully executed Task/Deliverable Acceptance Certificate evidencing County Project Director's approval of such Work, and any additional supporting documentation reasonably requested by County. The invoice further shall include the cumulative amount of Pool Dollars charged to County to date (inclusive of the current invoice) and the remaining Pool Dollars available for use in connection with this Agreement generally.
- 10.3.3. If the invoice is for Maintenance & Support Services, a statement by Contractor that a Task/Deliverable Acceptance Certificate is not applicable for this reason.

- 10.3.4. Indication of the applicable Holdback Amount and the cumulative Holdback Amount accrued under this Agreement.
- 10.3.5. Indication of any applicable withholds or credits, including Resolution Time Credit, due to County under the terms of this Agreement or reversals thereof, including liquidated damages assessed in accordance with Paragraph 17 (Liquidated Damages).
- 10.4 Holdbacks. Contractor's invoice for all Work payable at the payment point identified on Exhibit B (Price and Schedule of Payments) shall be subject to a holdback by County of the percentage set forth on Exhibit B (Price and Schedule of Payments) of the total dollar amount of such invoice (the "Holdback Amount"), approved by County, including invoices for Change Orders associated with such Work.
- 10.4.1. The aggregate Holdback Amount for all Work that (i) is set forth in Exhibit C (Statement of Work) or is the subject of a Change Order agreed between the parties under Paragraph 6, and (ii) is completed and approved in writing by County prior to PBR System Acceptance, will be due and payable to Contractor following PBR System Acceptance, subject to adjustment for any amounts owed to County by Contractor, including any amounts arising from Paragraphs 10.7 (Invoice Discrepancy Report), 10.8 (County's Right to Withhold), Exhibit E (Maintenance & Support Services), and any partial termination of any Task, Subtask, or Deliverable set forth in the Statement of Work or any Change Order as provided hereunder.
- 10.4.2. For all Work that is set forth in a Change Order agreed between the parties pursuant to Paragraph 6 (other than a Change Order whose work is completed prior to PBR System Acceptance), the aggregate Holdback Amount in respect of such Change Order will be due and payable to Contractor on the completion and approval by County in writing of all Work under said Change Order, in either case subject to adjustment for any amounts owed to County by Contractor, including any amounts arising from Paragraphs 10.7 (Invoice Discrepancy Report), 10.8 (County's Right to Withhold), Exhibit E (Maintenance & Support Services), and any partial termination of any Task, Subtask or Deliverable set forth in the Statement of Work or any Change Order as provided hereunder.
- 10.5 No Out-of-Pocket Expenses. Contractor acknowledges that out-of-pocket expenses, including travel, meal, and lodging expenses, are not reimbursable by County. Accordingly, Contractor's invoices, including invoices for training services and Maintenance & Support Services, shall not include out-of-pocket expenses.
- 10.6 No Partial or Progress Payments. Contractor shall be entitled to payment in respect of a Task or Deliverable, or other Work, only upon successful completion by Contractor and approval by County of such Task or Deliverable, or other Work. Except with regard to Maintenance & Support Services, no partial or progress payments towards anticipated or substantial completion of Tasks or Deliverables, or other Work, will be made under this Agreement.

- 10.7 Invoice Discrepancy Report; Payment of Invoices. County Project Director or County Project Director's designee shall review all invoices for any discrepancies and shall make reasonable best efforts to either (i) issue an "Invoice Discrepancy Report" (or "IDR"), a form of which is attached hereto as Exhibit L (Invoice Discrepancy Report), to Contractor, if any requested payment amounts are disputed, or (ii) approve such invoice for payment, in either case within fifteen (15) Business Days of receipt of the invoice. Contractor shall review the disputed charges and send a written explanation detailing the basis for the charges within fifteen (15) Business Days of receipt of the IDR from County Project Director. If County Project Director does not receive a written response within fifteen (15) Business Days of County's notice to Contractor of an IDR, then County payment will be made, less the disputed charges. Provided Contractor responds in writing to the IDR, County and Contractor shall endeavor to resolve any dispute regarding the invoice within fifteen (15) further Business Days or such other time period as may be mutually agreed by the parties. Upon approval of the invoice by County Project Director, whether as resolved or as adjusted by County pursuant to this Paragraph 10.7, County shall endeavor to pay each such invoice within thirty (30) days. In the event that any invoice complying fully with all requirements set forth herein is not paid in full (less any Holdback Amount, Resolution Time Credit, and other offsets and withholds permitted hereunder), within thirty (30) days of County's approval thereof, Contractor may inquire regarding such invoice with County Project Director, who shall endeavor reasonably to seek prompt payment thereof, and failing to obtain payment thereby, may institute Dispute Resolution under Paragraph 2 (Dispute Resolution Procedure) of Exhibit A (Additional Terms and Conditions) with respect to such invoice.
- 10.8 County's Right to Withhold. In addition to any rights of County provided in this Agreement, or at law or in equity, County may, upon notice to Contractor, withhold payment for any Work while Contractor is in default hereunder, or at any time that Contractor has not provided County approved Work. County may furthermore withhold from the payment of any invoice any Resolution Time Credit due to County pursuant to the terms of Exhibit E (Maintenance & Support Services).

11. DEFICIENCIES.

- 11.1 Deficiencies. As used herein, the term "Deficiency" shall mean and include, as applicable to any Work provided by or on behalf of Contractor to County: any malfunction, error, or defect in the design, development, or implementation of Work; any error or omission, or deviation from the Specifications or mutually agreed upon industry standards, or any other malfunction or error, including the provision of negligent workmanship, which results in the PBR System, in whole or in part and including any PBR Unit, not performing in accordance with the provisions of this Agreement (as the same may be amended from time to time), including the Statement of Work, the Requirements, and applicable Election Laws and Regulations in accordance with Contractor's obligations under Paragraph 21 (Compliance with Applicable Law) of Exhibit A (Additional Terms and Conditions), or not performing in accordance with its intended function or purpose, in each instance as determined by County Project Director, in County Project Director's sole discretion.

- 11.2 Corrective Measures. County Project Director shall notify Contractor Project Director of any Deficiency occurring during the Term, which notice shall be in writing or if not practicable, orally (and provided such oral notification is reduced to writing within ten (10) days) to either Contractor Project Director or Contractor Project Manager. Upon the earlier of (a) notice (orally or in writing) from County, or (b) Contractor's discovery of such Deficiency, Contractor shall promptly commence corrective measures to remedy any Deficiency, and shall remedy such Deficiency, in accordance with the level of service (including timelines) set forth in Exhibit E (Maintenance & Support Services), irrespective of whether such Deficiency occurs before or after the commencement of the System Warranty Period. Contractor acknowledges that, as part of PBR System Warranty Services and, if applicable, Maintenance & Support Services, provided to County, Contractor may be required to create an Update, or repair, replace, or reinstall all or any part of the PBR System, including PBR Units and PBR System Software, in order to remedy a Deficiency or maintain Compatibility.
- 11.3 Approval. No Deficiency shall be deemed remedied until all necessary remedial action has been completed and approved in writing by County Project Director in accordance with the procedures set forth in Paragraph 5 (Work; Approval and Acceptance).

12. PBR SYSTEM WARRANTY.

- 12.1. Contractor hereby represents, warrants and covenants to County that the PBR System, including the PBR Units and other PBR System Hardware, and the PBR System Software, as applicable, shall be free from all Deficiencies for the period commencing upon the delivery to County (and completion of initial inspection by County) of the applicable component of the PBR System, and shall continue for twenty four (24) months following the PBR System Acceptance Date (the "PBR System Warranty Period"), or, in respect of Third Party Hardware and Third Party Software set forth on Exhibit F (Third Party Hardware and Software), for the duration of any period provided by the third party manufacturer thereof.
- 12.2. For the avoidance of doubt, Contractor shall not be required to provide any warranty for the Third Party Hardware or Third Party Software set forth on Exhibit F (Third Party Hardware and Software). Any applicable warranties for the Third Party Hardware and Third Party Software set forth on Exhibit F (Third Party Hardware and Software) shall be provided to the County directly by the relevant third party manufacturer.
- 12.3. Contractor hereby represents, warrants and covenants to County that any Additional Goods and Services, including Custom Programming Modifications (except any additional Third Party Hardware or Third Party Software set forth on Exhibit F (Third Party Hardware and Software), the warranties of which shall be provided to the County directly by the relevant third party manufacturer as set forth in Paragraph 12.2), delivered pursuant to a Change Order shall be free from all Deficiencies for the period commencing upon the delivery to and acceptance by County of the applicable item of Work, and shall continue until the later of twenty four months thereafter or the expiration of the PBR System Warranty Period (the "Additional Goods and Services Warranty Period").

- 12.4. Contractor hereby represents, warrants and covenants to County that any Additional PBR Units shall be free from all Deficiencies for the period commencing upon the Additional PBR Unit Acceptance Date, and continuing until the later of twenty four months thereafter or the expiration of the PBR System Warranty Period (the “Additional PBR Unit Warranty Period”).
- 12.5. As used in this Agreement, “Warranty Period” means, as the context requires, the PBR System Warranty Period, the Additional PBR Unit Warranty Period, or the Additional Goods and Services Warranty Period.
- 12.6. Contractor shall provide all Maintenance & Support Services to correct all Deficiencies in accordance with Exhibit E (Maintenance & Support Services) from the commencement date of the PBR System Warranty Period, the Additional PBR Unit Warranty Period, or the Additional Goods and Services Warranty Period, as applicable, and continuing through the Initial Term, and any extensions thereof, but Contractor shall not charge, and County shall not pay, any applicable Maintenance & Support Fees until the expiration of the PBR System Warranty Period, the Additional PBR Unit Warranty Period, or the Additional Goods and Services Warranty Period, as applicable.

13. MAINTENANCE & SUPPORT SERVICES; POOL DOLLARS WORK.

- 13.1 Maintenance and Support Services. Although County is not required to, County has elected to acquire Maintenance & Support Services for the PBR System Software from Contractor during the Term for the PBR System. County may furthermore elect to obtain Maintenance & Support Services during the Option Terms for the PBR System Software, the PBR System Hardware, or the PBR System in its entirety in accordance with Paragraph 13.2 (PBR System Hardware Maintenance & Support) or Paragraph 13.3 (PBR System Software Maintenance & Support) and in each case at the prices set forth for such Maintenance & Support Services in Exhibit B (Price and Schedule of Payments). County shall provide notice to Contractor of the extent of its election to acquire Maintenance & Support Services on an annual basis as part of and at the time of notice for each Option Term in accordance with Paragraph 7 (Term), or, in respect of the PBR System Hardware, prior to the expiration of the PBR System Hardware Warranty Period or prior to the expiration of the Additional PBR Unit Warranty Period as the case may be. Accordingly, without limiting Contractor’s obligations under Paragraph 11 (Deficiencies) and Paragraph 12 (PBR System Warranty), in the event and to the extent of such election by County, and in exchange for County’s payment of the Maintenance & Support Fees in accordance with this Agreement, Contractor shall provide support and maintenance services to County for the PBR System following the expiration of the PBR System Warranty Period, the Additional PBR Unit Warranty Period, and any Additional Goods and Services Warranty Period if applicable, in accordance with this Agreement and Exhibit E (Maintenance & Support Services). However, nothing contained in this Paragraph 13.1 is intended or deemed to restrict County’s ability to obtain maintenance and support services independently for Custom Programming Modifications, or for Third Party Software from such third party licensors directly, or to obtain maintenance and support for any Third Party Software currently used in connection with, or licensed in

the future for use with, the PBR System. Maintenance & Support Services, and the Maintenance & Support Fees, includes providing Updates to the PBR System, and repairing, replacing, or reinstalling any component of the PBR System Hardware, including any PBR Unit, (a) to correct all Deficiencies, and (b) in order for the PBR System to remain in compliance with Contractor's obligations under Paragraph 21 (Compliance with Applicable Law) of Exhibit A (Additional Terms and Conditions), in each case during the applicable Warranty Period and to the extent County has elected to purchase optional Maintenance & Support Services after such period with respect to the PBR System Hardware or PBR System Software in question. If any component of the PBR System, including a PBR Unit, requires Maintenance & Support Services, Contractor shall endeavor reasonably to provide such services at County's location (which may include the provision of such services remotely by Contractor), provided, that if Contractor determines it necessary to replace or repair any PBR Unit, or component, at Contractor's facility, Contractor shall pay all shipping costs to transport such PBR Unit, or component, to and from Contractor's location. Contractor agrees to provide full replacement value insurance, in connection with the retrieval from, and the return to, County's facilities of such PBR Unit, or component. In addition, upon the reasonable request of County Project Director, Contractor will deliver to County a replacement or temporary PBR Unit, or component, prior to removing the item requiring Maintenance & Support Services (for example, if County tests a PBR Unit and finds it to be functioning properly during recommended pre-Election testing, and within two weeks of an Election in which it intends to use the device, discovers new defects). County acknowledges and agrees that Contractor's obligation to repair or replace any component of the PBR System Hardware in the course of providing Maintenance & Support Services applies (i) for the duration of the PBR System Hardware Maintenance & Support Period, and (ii) for the duration of the Term if such repair or replacement of any such component is necessary in order for Contractor to provide PBR System Software Maintenance & Support in accordance with the terms hereof (e.g. if a software remedy requires replacement of ROM chips or another memory components of the PBR Unit, such repair will be made in the course of providing PBR System Software Maintenance & Support), except that such obligation under this clause (ii) does not alter or amend Contractor's obligations under Paragraph 21 (Compliance with Applicable Law) of Exhibit A (Additional Terms and Conditions).

- 13.2 PBR System Hardware Maintenance & Support. Contractor shall provide Maintenance & Support Services for the PBR System Hardware ("PBR System Hardware Maintenance & Support") commencing upon County's acceptance of each component of the PBR System Hardware, including any PBR Unit, and continuing until the expiration of the Warranty Period for such component of PBR System Hardware (the "PBR System Hardware Maintenance & Support Period"), except that County has no obligation to pay fees for PBR System Hardware Maintenance & Support during such period. After the expiration of the applicable Warranty Period, Contractor shall provide PBR System Hardware Maintenance & Support at County's election in accordance with Paragraph 13.1 (Maintenance and Support Services) in consideration of the Maintenance & Support Fees attributable to PBR System Hardware Maintenance & Support and the PBR System Hardware Maintenance & Support Period shall be extended for the duration of such term

of PBR System Hardware Maintenance & Support. For the avoidance of doubt, all PBR Unit Software Maintenance & Support Services are provided as part of the PBR System Software Maintenance & Support.

13.3 PBR System Software Maintenance & Support. At County’s election in accordance with Paragraph 13.1 (Maintenance and Support Services), in exchange for County’s payment of the PBR System Software Maintenance & Support Fees, Contractor shall provide Maintenance & Support Services for the PBR System Software (“PBR System Software Maintenance & Support”). PBR System Software Maintenance & Support shall commence upon County’s acceptance of each applicable component of the PBR System Software, except that County’s obligation to pay the Maintenance & Support Fee attributable to PBR System Software shall commence only upon the expiration of the applicable Warranty Period (*i.e.*, the PBR System Warranty Period or the Additional PBR Unit Warranty Period).

13.4 Third Party Software and Third Party Hardware Maintenance & Support. Contractor shall provide limited Maintenance & Support Services in respect of Third Party Software and Third Party Hardware provided by Contractor hereunder, in accordance with this Paragraph 13.4 and Exhibit E (Maintenance & Support Services). Subject to County’s (i) installation and use of the most recent federal and state certified Update provided to it by Contractor, and (ii) installation and use of the Third Party Software and Third Party Hardware set forth on Exhibit F or that otherwise meets Contractor’s then current specifications for such Third Party Software and Third Party Hardware, in the event that any Deficiency in Third Party Software is not promptly remedied by the warranty service provider or author of such Third Party Software, Contractor shall ameliorate any Deficiency in the PBR System arising from such Deficiency, in all ways otherwise in accordance with its obligations hereunder (e.g., by the development of software workarounds in the PBR System Software for the defect in the Third Party Software, or the replacement of the Third Party Software with other software to perform the required functions thereof). In no event shall Contractor be required to repair or replace Third Party Hardware as a part of Maintenance & Support Services.

13.5 Pool Dollars Work.

13.5.1. Subject to Paragraph 6 (Change Orders and Amendments), at any time and from time to time during the Term, County Project Director may make a written request that Contractor provide, and Contractor shall provide, additional goods or services outside of the scope of Work set forth in this Agreement, including, Custom Programming Modifications, additional implementation services, training, other Election-related services, on-site support services beyond that which is deemed required Maintenance & Support Services, or additional incidental hardware to supplement the PBR System (collectively “Additional Goods and Services”). Additional Goods and Services shall utilize available Pool Dollars, and in no event shall County be obligated to pay in excess of the Pool Dollars, nor shall Contractor be required to provide any Additional Goods and Services for which there are not sufficient Pool Dollars to pay.

13.5.2. Additional Goods and Services requested by County pursuant to this Paragraph 13.5 (Pool Dollars Work) shall be treated by the parties as a change requiring the execution of a Change Order pursuant to Paragraph 6 (Change Orders and Amendments).

13.5.3. Upon County's request for Additional Goods and Services requested pursuant to this Paragraph 13.5 (Pool Dollars Work), Contractor shall provide County, within seven (7) days of receipt of such request, a proposed Change Order containing all information requested under Paragraph 6.2 (Change Order). Approval of the Change Order and of the Work to be performed thereunder shall be in accordance with Paragraph 6 (Change Orders and Amendments).

13.5.4. Upon completion, delivery and acceptance by County of any Custom Programming Modifications provided as Additional Goods and Services, such Custom Programming Modifications shall become part of and be included in the PBR System Software for all purposes.

14. OWNERSHIP; LICENSE.

14.1 Ownership.

14.1.1. Subject only to Contractor's rights, and the rights of the owners of any Third Party Software, in the intellectual property that is contained within PBR Units, if any (*e.g.*, to the extent that a PBR Unit contains embedded firmware comprised of PBR Unit Software), County owns all PBR Units and any related hardware or devices acquired hereunder. County further owns all Interfaces to the InkaVote System that are Custom Programming Modifications, in object code and Source Code formats, provided by or on behalf of Contractor hereunder, subject to a perpetual license to Contractor to use, modify, copy, display, sell and create derivative works therefrom (and own such derivative works), in Contractor's business. Title to each such PBR Unit (other than Additional PBR Units) or applicable Interface, as the case may be, passes to County upon PBR System Acceptance and payment by County of all amounts due therefor, subject to any adjustments pursuant to Paragraph 10.3.5 or Paragraph 10.8 (County's Right to Withhold). Title to each Additional PBR Unit passes to County upon Additional PBR Unit Acceptance and payment by County of all amounts due therefor, subject to any adjustments pursuant to Paragraph 10.3.5 or Paragraph 10.8 (County's Right to Withhold). The transfer of title to County in each case shall not affect any other rights the County has pursuant to this Agreement, including rights in respect of approval and payment therefor pursuant to Paragraph 5 (Work; Approval and Acceptance) and Paragraph 10 (Invoices and Payments), or Contractor's obligation to repair Deficiencies and warranties and covenants pursuant to Paragraph 11 (Deficiencies) and Paragraph 12 (PBR System Warranty).

14.1.2. Except for Interfaces owned by County (as described in Paragraph 14.1.1, the PBR System Software provided to County pursuant to this Agreement shall

remain the property of Contractor (or, in the case of Third Party Software, shall be controlled by Contractor as a licensee of such software), and all such software is subject to the License granted to County pursuant to this Paragraph 14 (Ownership; License). The Third Party Software provided to County pursuant to this Agreement shall remain the property of the applicable third party owners; provided, however, all such software is subject to the License granted to County pursuant to this Paragraph 14 (Ownership; License).

- 14.2 License. Contractor grants to County, effective as of the Effective Date, a perpetual, nonexclusive, irrevocable license (the “License”):
- 14.2.1. To use the PBR System Software, other than PBR Unit Software, on as many computers, servers, and local area networks, and by as many users, as are reasonably necessary for County to enjoy fully the rights granted to County under this Agreement, except that the use of certain Third Party Software shall be subject to limitations as set forth in Paragraph 16 (Third Party Software);
 - 14.2.2. To use a single copy of the PBR Unit Software on the PBR Unit on which it was originally installed pursuant to this Agreement;
 - 14.2.3. To permit use and access to the PBR System, including the PBR Units and the PBR System Software, in whole or in part, for the conduct of Elections within the boundaries of County that are conducted or supported by the RR/CC (e.g., an Election conducted by the City of Los Angeles, but supported by the RR/CC);
 - 14.2.4. To use, modify, copy, and display the Documentation, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License;
 - 14.2.5. To archive and make sufficient numbers of copies of the PBR System Software, other than the PBR Unit Software, as is necessary for County to enjoy and exercise fully its rights under this Agreement and the License, except that the copying of certain Third Party Software shall be subject to limitations as set forth in Paragraph 16 (Third Party Software);
 - 14.2.6. To access, and to permit third party access to, the PBR System Software and the Documentation, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License, including for the provision of Maintenance & Support Services or other support of the PBR System Software; provided, however, that County covenants and agrees that it shall not exercise any of the rights contained in this Paragraph 14.2.6 in respect of PBR System Software (other than Custom Programming Modifications or Third Party Software) unless and until the occurrence of any act that causes or results in, or entitles County to, a release of the Source Code from escrow pursuant to Paragraph 15 (Source Code Escrow).

14.3 Fully-Paid License to the System Software. Upon (a) the PBR System Acceptance Date, and (b) County's payment to Contractor of all approved invoiced amounts for all Work to be completed and delivered prior to the PBR System Acceptance Date, subject to any adjustments pursuant to Paragraphs 10.3.5 or 10.8, this License is and shall be a fully paid, irrevocable License to the System Software, as modified by the Work performed under this Agreement, which License survives the termination or expiration of this Agreement for any reason.

14.4 Prohibited Uses.

County shall not take any of the following actions with respect to the PBR System Software or the Documentation unless the Source Code is released to County for use thereby in accordance with Paragraph 15.2 and then the following actions are permitted only to the extent permissible under the License hereunder:

- (i) 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 PBR System Software; or
- (ii) Cause or permit any use, loan, transfer of possession, sublicensing or other dissemination of the PBR System Software or Documentation, in whole or in part, to or by any third party outside the physical perimeter of the County without Contractor's prior written consent, except to the extent required by law; or
- (iii) Cause or permit any change to be made to the PBR System Software without Contractor's prior written consent; provided, however, that no change in the configuration of the PBR System Software, made without modification to the Source Code or a reverse engineered version thereof, shall be considered a change to the PBR System Software itself hereunder.

In the event that County takes any of the foregoing prohibited actions with respect to the PBR System Software or the Documentation, Contractor shall have the right to terminate any ongoing or future obligation to provide any maintenance and support services in support of the PBR System Software and shall be under no further obligation to maintain or in any way upgrade the PBR System Software in order to maintain its compliance with Election Laws and Regulations. In this event, County shall have no further obligation to make any payment to Contractor with respect to the maintenance or support services so terminated.

15. SOURCE CODE ESCROW.

15.1 Establishment of Escrow Account. Contractor shall deposit to a California Secretary of State approved escrow facility pursuant to California Elections Code Section 19103, and Title 2, Division 7, Section 20610 et seq. of the California Code of Regulations, the Source Code for all PBR System Software. Such escrow deposits shall be made in

compliance with the timing requirements set forth in the Code of Regulations, with the first deposit made in any case before June 1, 2006, and updated and additional deposits made concurrently with the delivery to County of each item of PBR System Software pursuant to the SOW and Maintenance & Support Services. Prior to the first deposit, an escrow agreement shall be executed that is substantially in the form of the sample attached to this Agreement as Exhibit H (Form of Escrow Agreement), and shall be a three party agreement executed by the escrow company, Contractor and County (the "Escrow Agreement"). The provisions of the Escrow Agreement and the maintenance of the Source Code shall comply with the preceding and other relevant regulations promulgated by the California Secretary of State, including the requirement that changes or modifications to the Source Code after an Election require the establishment of a new escrow, and that any changes, modifications, or updates to Source Code prior to an Election be deposited promptly into escrow with notice to County of the same. Contractor's duty to deposit, update and maintain the Source Code with a Secretary of State certified escrow company and approved escrow facility shall continue throughout the Term.

- 15.2 Conditions for Release. The Escrow Agreement shall provide terms and conditions for the release of the Source Code from escrow to County, including the requirement that the Source Code on deposit with the escrow company be released from escrow to County in accordance with the release conditions set forth on Schedule C to the Escrow Agreement.

16. THIRD PARTY SOFTWARE AND HARDWARE.

- 16.1. Attached as Exhibit F (Third Party Hardware and Software) is a schedule of (i) all third party software that is a component of the PBR System and provided by Contractor hereunder (collectively, "Third Party Software"), and (ii) all third party hardware that shall be provided by Contractor hereunder for use with the PBR System (collectively, "Third Party Hardware"). For the avoidance of doubt, notwithstanding anything else in this Agreement to the contrary, no component of a PBR Unit is to be deemed Third Party Software or Third Party Hardware hereunder for the purpose of Maintenance & Support Services or otherwise.
- 16.2. Contractor hereby represents and warrants that Contractor has not modified, shall not modify, and does not have any need to modify any Third Party Hardware or Third Party Software provided by or on behalf of Contractor, which modification, in each case, would void any applicable third party warranty.
- 16.3. Contractor hereby represents and warrants that it has assembled and manufactured, directly or under contract manufacture agreements for its benefit, all of the PBR Units and any other hardware comprising the PBR System and provided by Contractor to County hereunder, except as specified in Exhibit F (Third Party Hardware and Software).
- 16.4. County acknowledges that it may have to execute, or consent to, certain third party license agreements in respect of such Third Party Software. These third party license agreements shall be at no additional cost to County. Except solely for limitations on the number of concurrent users or the number of permissible copies, which limitations shall

be set forth in the attached Exhibit F (Third Party Hardware and Software), to the extent that any such third party license agreement conflicts with this Agreement or in any way restricts County's full use and enjoyment of the PBR System Software as contemplated herein and in the configuration as agreed upon by County and Contractor as of the Effective Date, Contractor shall take all necessary action and pay all sums required for County fully to enjoy the rights and benefits granted to County under this Agreement in respect of the PBR System Software. Those actions shall include, if necessary to convey such rights and benefits, Contractor promptly and at no additional cost to County, either: (a) obtaining a license from the appropriate third party which shall enable Contractor to modify such Third Party Software as necessary and appropriate to convey such rights and benefits, or (b) to the extent that Contractor is unable to obtain such a license, providing an upgrade or alternative solution, which is functionally equivalent, in County Project Director's reasonable determination, in lieu of modifying such Third Party Software.

- 16.5. Contractor assigns to County to the fullest extent permitted by law or by Agreement and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any Third Party Hardware or Third Party Software or any other product or services provided hereunder shall fully extend to and be enjoyed by County.

17. LIQUIDATED DAMAGES.

- 17.1 Effective as of January 1, 2006, the Election Laws and Regulations require the RR/CC's compliance with certain provisions of HAVA. Failure to so comply during Elections taking place after this date will subject the County to a high risk of litigation and possible fines, and also to possible losses of revenue from certain sources of grants and other assistance. Implementing the PBR System in accordance with the Requirements and with the timelines and Specifications set forth in the Statement of Work is a critical step in County's compliance with HAVA. Accordingly, time is of the essence. In particular, County and Contractor have identified Deliverable 6.4 (PBR System Delivery And Acceptance) in Exhibit C (Statement of Work) as a Key Deliverable hereunder, Contractor's timely completion and delivery of which will ensure County receives, and is able to implement, the PBR System in a timely fashion. If Contractor fails to complete and timely achieve Deliverable 6.4, it is mutually agreed that such delay materially decreases County's ability to use the PBR System to achieve its goals, including but not limited to HAVA compliance. If Contractor fails to successfully achieve Deliverable 6.4 as set forth in the SOW by the date set forth for such achievement in the Project Control Document, then it is mutually understood and agreed that the nature of the resultant damages arising from such delay will be extremely difficult and impractical to fix. County and Contractor have endeavored to fix the amount of said damages in advance; such that the amount set forth below is the nearest and most exact measure of damages for such breach that can be fixed at or after such breach; and that, therefore, County and Contractor hereby fix the liquidated damages set forth below, not as a penalty or forfeiture for breach of this Agreement. The damages set forth under Paragraph 17.2 are to be construed narrowly to apply to the initial twenty (20) Business Day delinquency period and are not intended to limit damages that may result or arise from any other breach by Contractor of its obligations under this Agreement or incremental damages that

may result or arise from any continued delay beyond the initial twenty (20) Business Day delinquency period covered by the liquidated damages assessment.

17.2 County shall be entitled to liquidated damages arising from Contractor's noncompliance with its obligations relating to Deliverable 6.4 in a timely fashion. Such damages will be calculated according to the following rules:

- (i) Deliverable 6.4 (PBR System Delivery And Acceptance) in Exhibit C (Statement of Work) shall be completed by Contractor and submitted to County for its review and approval pursuant to the terms of Paragraph 5 (Work; Approval and Acceptance) on or prior to the due date for Deliverable 6.4 specified in the Project Control Document.
- (ii) If Contractor fails to complete Deliverable 6.4 prior to the due date specified therefor in the Project Control Document for such Key Deliverable, then County is entitled to liquidated damages of one thousand five hundred dollars (\$1,500.00) on the first Business Day after such due date on which Deliverable 6.4 has not been achieved.
- (iii) The amount of liquidated damages shall be increased by one thousand five hundred dollars (\$1,500.00) for each subsequent Business Day that Deliverable 6.4 is late beyond the due date therefor, up to a maximum of twenty Business Days (20) days, for a maximum credit of thirty thousand dollars (\$30,000.00). Such credit may be applied as an offset against any amount owed to Contractor under this Agreement.

17.3 Deliverable 6.4 shall not be considered late to the extent any delay in delivery thereof is due to circumstances caused by County, provided Contractor has filed a timely Notice of Delay pursuant to Paragraph 17 (Notice of Delay) of Exhibit A (Additional Terms and Conditions) in respect of such circumstance.

17.4 Payment of any such liquidated damages that may accrue pursuant to this Paragraph 17 (Liquidated Damages) shall be made, at County's election, within fifteen (15) days of any and all notices and demands for such payment (which demand may be for all or less than all of the liquidated damages that have accrued through the date of any such notice), or by the application of a credit against Contractor's invoices. In the event Contractor fails to promptly apply such credit, then County may deduct such payment amount from any amounts due to Contractor under this Agreement.

18. PRODUCTION USE OF THE SYSTEM. Following installation by Contractor and prior to PBR System Acceptance by County, County shall have the right to use, in production mode, any component of the PBR System, including any PBR Units, without any additional cost to County where County determines that it is necessary for County operations, including for the conduct of Elections. Such production use shall not restrict Contractor's performance under this Agreement and shall not be deemed to be Contractor's achievement of PBR System Acceptance.

19. ADDITIONAL UNITS.

- 19.1 Units Option. From time to time during the Term of this Agreement, County has the option to purchase up to seven hundred fifty (750) additional PBR Units from Contractor as County deems necessary or desirable to replace or augment existing PBR Units (a "Unit Option," and each PBR Unit acquired upon exercise of a Unit Option shall hereinafter be referred to as an "Additional PBR Unit"). County may, immediately upon notice to Contractor, exercise one or more Unit Options which Unit Option shall specify the number of Additional PBR Units to be acquired, subject to the aggregate limit set forth in this Paragraph 19.1. Upon exercise of such option by County, Contractor shall perform all Work in respect of such Additional PBR Unit as is required in Exhibit C (Statement of Work), as if such Additional PBR Unit were acquired initially by County upon execution of this Agreement, except that the completion and delivery schedule for such Additional PBR Unit shall be as provided in Paragraph 19.4.
- 19.2 Number and Price of Additional Units. County may, upon exercise of a Unit Option, acquire such number of Additional PBR Units as equals seven hundred fifty (750) less the number of Additional PBR Units previously acquired by County, including those acquired upon exercise of any previous Unit Option. The amount payable per Additional PBR Unit and for all Work required to achieve Additional PBR Unit Acceptance pursuant to this Agreement and the Statement of Work, including all applicable PBR System Hardware and PBR System Software, is equal to the per unit charge for each Additional PBR Unit, set forth on Exhibit B (Price and Schedule of Payments). Exhibit B (Price and Schedule of Payments) further includes the payment schedule for each Additional PBR Unit acquired by County upon exercise of a Unit Option. The amount payable by County for Maintenance & Support Services, including PBR System Hardware Support and PBR System Software Support as applicable, also shall be revised to reflect the acquisition of such Additional PBR Units.
- 19.3 Additional Unit Acceptance. Contractor shall be deemed to have achieved "Additional PBR Unit Acceptance" (a) upon its completion of all Tasks and Deliverables associated with the Additional PBR Unit (including installing, implementing, and testing all applicable PBR System Hardware and PBR System Software in such PBR Unit and testing all interfaces with the PBR System) in accordance with the SOW; (b) the successful implementation of all functions and features of such Tasks and Deliverables has been verified by Contractor; (c) County's Project Director has approved, in writing, all such Work; (d) all such Work has been provided, installed, and operates in County's production environment with no Deficiencies, as determined in the reasonable judgment of County's Project Director; and (e) County's Project Director has provided Contractor with written approval, as evidenced by County's Project Director's countersignature to the applicable Task/Deliverable Acceptance Certificate, of Contractor's achievement of Additional PBR Unit Acceptance (the date of satisfaction of the foregoing, including County's written approval thereof, shall be referred to as the "Additional PBR Unit Acceptance Date"). Written approval by the County's Project Director of Contractor's achievement of Additional PBR Unit Acceptance shall not be unreasonably delayed. Upon Contractor's achievement of Additional PBR Unit Acceptance, such Additional

PBR Unit so acquired shall be deemed and shall be for all purposes under this Agreement a PBR Unit, unless expressly stated to the contrary (e.g. the warranty applicable to Additional PBR Units shall be for two years from the Additional PBR Unit Acceptance Date, and not for two years from the PBR System Acceptance Date).

19.4 Additional PBR Unit Completion Schedule. For each Additional PBR Unit acquired upon exercise by County of a Unit Option, Contractor shall cause Additional PBR Unit Acceptance to occur no later than one hundred and twenty (120) days from the date County's exercise of the applicable Unit Option unless otherwise agreed by the parties.

20. **CONTRACTOR'S OFFICES.** Contractor's business offices are located at 11208 John Galt Blvd., Omaha, Nebraska, 68137. Contractor shall notify County of any change in its business address at least ten (10) calendar days prior to the effective date thereof.

21. **NOTICES.** All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (a) by hand with signed receipt; (b) by first-class registered or certified mail, postage prepaid; (c) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid; or (d) by overnight commercial carrier, with signed receipt. Notice is deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing, or on the date of signature receipt by the receiving part of any overnight commercial carrier delivery. Addresses may be changed by either party giving ten (10) days prior notice in accordance with the procedures set forth above, to the other party.

To County: Michael Petrucello, Assistant Registrar-Recorder/County Clerk
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Alvarez Lecesne, Assistant Registrar Recorder/County Clerk
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201
Norwalk, CA 90650

To Contractor: Election Systems & Software, Inc.
11208 John Galt Boulevard
Omaha, NE 68137
Attention: Office of General Counsel
Facsimile: (402) 970-1291

County Project Director shall have the authority to issue all notices or demands, which are required or permitted by County under this Agreement.

- 22. ARM'S LENGTH NEGOTIATIONS.** This Agreement is the product of an arm's length negotiation between Contractor and County. Each party has had at all times the opportunity to receive advice from independent counsel of its own choosing. Accordingly, this Agreement is to be interpreted fairly as between the parties, and not strictly construed as against either party as drafter or creator.
- 23. SURVIVAL.** The following Paragraphs of this Agreement shall survive its expiration or termination for any reason: 1, 2, 8, 10, 12, 14, 15, 17, 18, 21, 22, and 23, and all the terms and conditions set forth in Exhibit A (Additional Terms and Conditions).

[Intentionally Left Blank]

AGREEMENT
BETWEEN COUNTY OF LOS ANGELES
AND
ELECTION SYSTEMS & SOFTWARE, INC.

IN WITNESS WHEREOF, the Los Angeles County Board of Supervisors has caused this Agreement to be subscribed on its behalf by the Registrar-Recorder/County Clerk and Contractor has subscribed the same through its authorized officer, effective as of the date executed by the Registrar-Recorder/County Clerk. The person signing on behalf of Contractor warrants under penalty of perjury that he or she is fully authorized to bind Contractor hereto.

COUNTY OF LOS ANGELES

By _____
 CONNY B. McCORMACK,
 Registrar-Recorder/County Clerk

Date: _____

Election Systems & Software, Inc.

Signed: _____

Printed: _____

Title: _____

Date: _____

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.,
County Counsel

By _____
 Judy W. Whitehurst
 Senior Deputy County Counsel

Date: _____

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS

HAVA REQUIRED INKAVOTE ENHANCEMENT

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EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions are applicable to, and form a part of, the Agreement. Capitalized terms not otherwise defined in this Exhibit A (Additional Terms and Conditions (as used in this Exhibit A (Additional Terms and Conditions), this “Exhibit”) have the meanings given to such terms in the base document of the Agreement. Paragraph cross-references shall, unless otherwise specified, refer to Paragraphs in this Exhibit.

1. SUBCONTRACTING.

- 1.1. General. County has relied, in entering into the Agreement, on the reputation of and on obtaining the personal performance of Contractor itself. Consequently, no performance of the Agreement, or any portion thereof, shall be subcontracted by Contractor except in accordance with the procedures set forth in this Paragraph 1 (Subcontracting). Any attempt by Contractor to subcontract any performance, obligation, or responsibility under the Agreement, except in accordance with the procedures set forth in this Paragraph 1 (Subcontracting), shall be null and void and shall constitute a material breach of the Agreement, upon which County may immediately terminate the Agreement.
- 1.2. Preapproved Subcontractors. County has approved the subcontractors (“Preapproved Subcontractors”) listed on Exhibit J (Preapproved Subcontractors), all of whom have entered into subcontracts substantially similar to the form attached to the Agreement as Exhibit K (Form Subcontract) and attached hereto as Exhibit J-1, J-2, etc. as the case may be, with such changes as have been approved by County Project Director.
- 1.3. Procedure for Subcontracting. If Contractor desires to subcontract any portion of its performance, obligations, or responsibilities under the Agreement to any subcontractor including to a Preapproved Subcontractor, Contractor shall adhere to the following procedures.
 - 1.3.1. Contractor shall notify County Project Director of its desire to subcontract a portion of the Work, which notice shall include the reason for the proposed subcontract, and a description of the Work to be performed under the proposed subcontract.
 - 1.3.2. The identity of such subcontractor and why such subcontractor was selected.
 - 1.3.3. A certificate of insurance from the proposed subcontractor which establishes that the subcontractor maintains all the programs of insurance required by the Agreement, or required by Exhibit K (Form Subcontract) if the proposed subcontractor is not a Preapproved Subcontractor.

1.3.4. If the proposed Work is to be performed by a subcontractor other than a Preapproved Subcontractor, then in addition to the foregoing, Contractor shall provide:

- (i) a draft copy of the proposed subcontract which shall contain, at a minimum, the provisions set forth in Exhibit K (Form Subcontract). The provisions of Exhibit K (Form Subcontract), or of any approved subcontract agreement between Contractor and a third party may be changed or amended, as applicable, only with the prior written approval of County Project Director, which approval shall not be unreasonably withheld; and
- (ii) any other information and/or certifications reasonably requested by County.

County Project Director will review Contractor's request to subcontract and determine, in County Project Director's discretion, whether or not to consent to such request on an individual basis. Without limiting in any way County's prior approval rights, Contractor shall deliver to County Project Director a fully executed copy of each subcontract entered into by Contractor pursuant to this Paragraph 1.3.4, on or immediately after the effective date of the subcontract but in no event later than the date any Work is performed under the subcontract.

1.3.5. Contractor shall obtain an executed subcontractor Employee Acknowledgment, Confidentiality & Assignment Agreement (see Exhibit N (Contractor's Employee Acknowledgement, Confidentiality & Assignment Agreement)) for each of subcontractor's employees performing Work under the subcontract, including for each Preapproved Subcontractor's employees performing Work under preapproved subcontracts. Such agreements shall be delivered to County Project Director on or immediately after the effective date of the particular subcontract but in no event later than the date any such employee commences performing Work under the subcontract.

1.4. Contractor Responsibilities.

1.4.1. Notwithstanding any County consent to any subcontracting, Contractor shall remain responsible for any and all performance required of it under the Agreement, including the obligation properly to supervise, coordinate, and perform, all Work required hereunder, and no subcontract shall bind or purport to bind County. Further, County approval of any subcontract shall not be construed to limit in any way Contractor's performance, obligations, or responsibilities, to County.

1.4.2. In the event that County consents to any subcontracting, such consent shall be subject to County's right to reject, at its discretion, any and all subcontractor personnel providing services under such subcontract.

- 1.4.3. In the event that County consents to any subcontracting, Contractor shall cause the subcontractor, on behalf of itself, its successors and administrators, to assume and be bound by and shall be deemed to have assumed and agreed to be bound by each and all of the provisions of the Agreement and any amendment hereto as it relates to or affects the Work performed by subcontractor hereunder.
- 1.4.4. Contractor shall be solely liable and responsible for any and all payments and other compensation to all subcontractors and their officers, employees, and agents. County shall have no liability or responsibility whatsoever for any payment or other compensation for any subcontractors or their officers, employees, and agents.

2. DISPUTE RESOLUTION PROCEDURE.

- 2.1. General. Contractor and County agree to act immediately to resolve mutually any disputes that may arise with respect to the Agreement. All such disputes shall be subject to the provisions of this Paragraph 2 (Dispute Resolution Procedure) (such provisions are collectively referred to as the “Dispute Resolution Procedures”). Time is of the essence in the resolution of disputes.
- 2.2. Continued Work. Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance, other than payment by County for approved Work that County, in its discretion, determines should be delayed as a result of such dispute.
 - 2.2.1. If Contractor fails to continue without delay its performance hereunder that County, in its discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by Contractor or County as a result of Contractor’s failure to continue to so perform shall be borne by Contractor, and Contractor shall make no claim whatsoever against County for such costs. Contractor shall promptly reimburse County for such County costs, as determined by County, or County may deduct or offset all such additional costs from any amounts due to Contractor from County.
 - 2.2.2. If County fails to continue without delay to perform its responsibilities under the Agreement which County, in its discretion, determines should not be delayed as a result of such dispute, then any additional costs incurred by Contractor or County as a result of County’s failure to continue to so perform shall be borne by County, and County shall make no claim whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for all such additional Contractor costs subject to the approval of such costs by County.
- 2.3. Dispute Resolution Procedures. In the event of any dispute between the parties with respect to the Agreement, Contractor and County shall submit the matter as follows:

- 2.3.1. Contractor and County shall first submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
 - 2.3.2. If the Project Managers are unable to resolve the dispute within a reasonable time, not to exceed five (5) Business Days from the date of submission of the dispute, then the matter immediately shall be submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute.
 - 2.3.3. If the Project Directors are unable to resolve the dispute within a reasonable time not to exceed five (5) Business Days from the date of submission of the dispute, then the matter shall be immediately submitted to Contractor's CFO and the Chief Deputy to the Registrar. These persons shall have five (5) Business Days to attempt to resolve the dispute.
 - 2.3.4. If the Chief Deputy to the Registrar and Contractor's CFO are unable to resolve the dispute within a reasonable time not to exceed five (5) Business Days from the date of submission of the dispute, then the matter shall be immediately submitted to Contractor's president or chief executive officer and the Registrar. These persons shall have five (5) Business Days to attempt to resolve the dispute.
 - 2.3.5. In the event that at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under the Agreement and its rights and remedies as provided by law.
- 2.4. Documentation of Dispute Resolution Procedures. All disputes utilizing the Dispute Resolution Procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all three (3) levels described in Paragraph 2.3 (Dispute Resolution Procedure), the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in writing by exchange of correspondence.
 - 2.5. Not Applicable to County's Right to Terminate. Notwithstanding any other provision of the Agreement, County's right to terminate the Agreement pursuant to Paragraph 4 (Termination for Insolvency), Paragraph 6 (Termination for Default), Paragraph 7 (Termination for Convenience; Suspension), or Paragraph 8 (Termination for Improper Consideration), in each case, of this Exhibit, or any other termination provision hereunder, shall not be subject to the Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of County's rights, and shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims after any such termination or such injunctive relief has been obtained.

3. CONFIDENTIALITY.

3.1. General. Subject to the disclosure requirements of the Public Records Act, Contractor shall maintain the confidentiality of all records and information, events or circumstances which occur during the course of Contractor's performance under the Agreement, in accordance with all applicable federal, state, and local laws, regulations, ordinances, guidelines, and directives relating to confidentiality. Contractor shall keep confidential any personally identifiable information regarding voters, and shall use such information only in connection with Contractor's performance under the Agreement. In addition, Contractor shall not reproduce, distribute, or disclose to any person or entity any information identifying, characterizing, or relating to any risk, threat, vulnerability, weakness, or problem regarding data security or maintenance in County's computer systems, or to any safeguard, countermeasure, or contingency plan, policy or procedure for data security contemplated or implemented by County, without County's express prior written consent. Contractor shall inform all of its directors, officers, shareholders, employees, agents, and subcontractors providing services hereunder of the confidentiality provisions of the Agreement. Contractor shall provide to County an executed Contractor's Employee Acknowledgment, Confidentiality & Assignment Agreement (Exhibit N to the Agreement) for each of its employees performing Work under the Agreement. Notwithstanding anything herein to the contrary, Contractor acknowledges and agrees that it is responsible for any breach of the obligations of confidentiality set forth herein by any person or entity to whom Contractor discloses such confidential information.

3.2. Disclosure of Information.

3.2.1. With respect to any confidential information obtained by Contractor pursuant to the Agreement, Contractor shall: (a) not use any such records or information for any purpose whatsoever other than carrying out the express terms of the Agreement; (b) promptly transmit to County all requests for disclosure of any such records or information; (c) not disclose, except as otherwise specifically permitted by the Agreement, any such records or information to any person or organization other than County without County's prior written authorization that the records are, or information is, releasable; and (d) at the expiration or termination of the Agreement, return all such records and information to County or maintain such records and information according to the written procedures sent to Contractor by County for this purpose.

3.2.2. Without limiting the generality of Paragraph 3.2.1 of this Exhibit, in the event Contractor receives any court or administrative agency order, service of process, or request by any person or entity (other than Contractor's professionals) for disclosure of any such details, Contractor shall immediately notify County Project Director. Thereafter, Contractor shall comply with such order, process, or request only to the extent required by applicable law and to the extent disclosure is based on the written advice of Contractor's legal counsel that disclosure, and the scope

and extent thereof, is required pursuant to the foregoing. Notwithstanding the preceding sentence, to the extent permitted by law, Contractor shall delay such compliance and cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief.

- 3.3. Contractor Information. Any and all confidential or proprietary information which is developed or was originally acquired by Contractor outside the scope of this Agreement, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County's Project Director as proprietary or confidential, and shall be plainly and prominently marked by Contractor as "proprietary" or "confidential." County shall undertake reasonably to maintain the confidentiality of materials marked by Contractor as "proprietary" or "confidential." Notwithstanding any other provision of this Agreement, County shall not be obligated in any way under this Agreement for:
- 3.3.1. Any of Contractor's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends; and
 - 3.3.2. Any disclosure of any materials which County determines it is required to make under the California Public Records Act or otherwise by law. County shall use reasonable efforts to notify Contractor as soon as is reasonably practicable of a California Public Records Act request for information County reasonably believes may require the disclosure of information marked as proprietary or confidential by Contractor under this Agreement, and shall cooperate reasonably with Contractor, at Contractor's expense, in any effort by Contractor to secure confidential treatment of such information or otherwise restrict the disclosure thereof, provided such action does not cause County to be in violation of the California Public Records Act, as reasonably determined by County. Cooperation may include requesting legally permissible extensions of time (if requested by Contractor), providing copies or a description of the records considered for disclosure, and abiding by any judicial order obtained in respect of such records. Should Contractor's efforts to restrict release of information in any judicial proceeding fail, Contractor agrees to pay all mandatory attorney's fees imposed pursuant to Government Code Section 6259.
- 3.4. Use of County Name. In recognizing Contractor's need to identify its services and related clients to sustain itself, County shall not inhibit Contractor from publishing its role under the Agreement under the following conditions:
- 3.4.1. Contractor shall develop all publicity material in a professional manner.
 - 3.4.2. During the Term, Contractor shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County Project Director, which shall not be unreasonably withheld or delayed.

- 3.4.3. From and after the Effective Date, Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded the Agreement with County, provided that the requirements of this Paragraph 3.3 (Use of County Name) (other than the requirements set forth in Paragraph 3.4.2) shall apply.
- 3.4.4. Notwithstanding anything herein to the contrary, County reserves the right to object to any use of County's name and Contractor shall cure promptly and prospectively any use of County's name that has been objected to by County.
- 3.5. Protection of Public Record Data.
- 3.5.1. No Ownership by Contractor. Neither Contractor, nor its subcontractors, employees, or agents, shall have any ownership rights or interest in any Public Record Data that they possess, modify, or create pursuant to this Agreement, or any modifications thereto or derivatives thereof, all of which shall, at all times and for all purposes, remain the property of County.
- 3.5.2. No Impairment by Contractor. Neither Contractor, nor its subcontractors, employees, or agents, shall impair the integrity of any Public Record Data that they possess or create.
- 3.5.3. California Public Records Act. Any Public Record Data that is provided to Contractor, or its subcontractors, employees, or agents, shall remain a public record for purposes of the California Public Records Act. Contractor, and its subcontractors, employees, and agents, shall have a joint and several obligation to comply with the obligations of County under the California Public Records Act as amended, with regard to the Public Record Data and the management, handling, retention, destruction, transfer, and disposal thereof. Subject to Paragraph 3.2.2, the determination of whether Contractor is compelled to disclose any such data shall be made solely by County. In the event of a conflict between the disclosure provisions of the California Public Records Act, or any other law, and this Agreement, the provisions of such law shall prevail.
- 3.5.4. Limitations on Disclosure. Neither Contractor nor its subcontractors, employees, or agents, shall disclose to the public any Public Record Data that they possess, modify, or create pursuant to this Agreement and which County: (i) is prohibited in all cases from disclosing pursuant to federal, State, or County law or regulation; (ii) may disclose pursuant to federal, State, or County law or regulation only to certain persons or under certain conditions; or (iii) may withhold from disclosure pursuant to federal, State, or County law or regulation. No provisions of this Paragraph 3.5 shall be construed to prohibit Contractor from disclosing such Public Record Data to any subcontractor if necessary to carry out the purposes of this Agreement. In no event shall Contractor, or its subcontractors, employees, or agents, sell, market, or otherwise profit in any manner from the disclosure or use of any Public Record Data.

- 3.6. Notification. If Contractor learns of any violations of this Paragraph 3 (Confidentiality), it shall promptly (and in no event later than seven (7) days after learning of such violation) notify County Project Manager of such violation. In the event of any disclosure, loss, or destruction of confidential information, the receiving party shall immediately notify the disclosing party.
- 3.7. Injunctive Relief. Contractor acknowledges that a breach by Contractor of this Paragraph 3 (Confidentiality) may result in irreparable injury to County that may not be adequately compensated by monetary damages and that, in addition to County's other rights under the Agreement and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 3 (Confidentiality).

4. PROPRIETARY CONSIDERATIONS.

- 4.1. Physical Embodiment of the PBR System Software. Contractor and County agree that without limiting Contractor's intellectual property rights in the PBR System Software, County owns the physical media through which the PBR System Software and Source Code is delivered to County pursuant to this Agreement, in any form whatsoever, including the physical media through which the Source Code is held on deposit in escrow (collectively, the "Physical Materials").
- 4.2. County Product. Contractor and County agree that all plans, reports, acceptance test criteria, acceptance test plans, the SOW, the Project Control Document, the Requirements, departmental procedures and processes, data, and information and other similar materials developed by County, or by Contractor pursuant to and for delivery to County under this Agreement (collectively "County Product"), and all copyrights, patent rights, trade secret rights and other proprietary rights therein shall be the sole property of County; provided, however, that County Product shall not include any intellectual property of Contractor which Contractor may utilize in performing services for the County, but which is not otherwise assigned to County hereunder. Contractor hereby assigns and transfers to County all of Contractor's right, title, and interest in and to all County Product developed under this Agreement. Notwithstanding such County ownership, during and for a minimum of seven (7) years subsequent to the Term, Contractor shall retain possession of all working papers prepared by Contractor for the purposes of this Agreement or, if solely related to County Product, shall return such papers to County, at County's request, and to the extent such working papers are no longer needed for Contractor to perform its obligations hereunder. County shall have the right to inspect any and all such working papers in Contractor's possession during this period, make copies thereof, and use the working papers and the information contained therein, solely for its internal use and subject to provisions of confidentiality under Paragraph 3 (Confidentiality). To the extent that such County Product developed by Contractor may be made generally applicable to the provision of Election systems and services, Contractor is hereby granted a perpetual, nonexclusive, and irrevocable license to use such County Product, including the right to modify, reproduce, make derivative

works from, and sublicense, so long as such use does not reveal confidential material of County and otherwise complies with Paragraph 3 (Confidentiality).

- 4.3. Further Assistance. Upon request of County, Contractor shall execute all documents requested by County and shall perform all other acts requested by County to assign and transfer to, and vest in, County all of Contractor's right, title and interest in and to the Physical Materials and County Product.
- 4.4. Copyright of County Product. As to County Product, if requested in writing by County's Project Director, Contractor shall affix the following notice to applicable County Product developed under this Agreement: "©copyright 200_ (or such other date of first publication), County of Los Angeles. All rights reserved". Contractor shall affix such notice as directed by County.
- 4.5. Protection of County Product. Contractor shall protect the security of and keep confidential all County Product obtained or developed under this Agreement to the extent such County Product is of a confidential nature. Further, Contractor shall use all such security measures that a prudent contractor operating in Contractor's industry would use to protect all such County Product from loss or damage by any cause, including fire and theft, which measures shall at least equal the degree of care Contractor applies to the treatment of its own similar materials.

5. TERMINATION FOR INSOLVENCY.

- 5.1. County may terminate the Agreement immediately at any time following the occurrence of any of the following:
 - 5.1.1. Contractor has ceased to pay or has admitted in writing its inability to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay debts that Contractor disputes in good faith;
 - 5.1.2. The filing of a voluntary or involuntary petition (which involuntary petition is not dismissed within sixty (60) days) regarding Contractor under the United States bankruptcy code;
 - 5.1.3. The appointment of a receiver or trustee for Contractor; or
 - 5.1.4. The execution by Contractor of a general assignment for the benefit of creditors other than in the course of arranging financial lines of credit.

- 5.2. The rights and remedies of County provided in this Paragraph 5 (Termination for Insolvency) shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity, or under the Agreement.
- 5.3. Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in bankruptcy, rejects the Agreement, County may elect to retain its rights under the Agreement in respect of the PBR System Software, as provided under section 365(n) of the United States Bankruptcy Code (11 U.S.C. Section 365(n)). Upon written request by County to Contractor or the trustee in bankruptcy, as applicable, Contractor or such trustee shall allow County to exercise all of its rights and benefits under the Agreement and the License including the right to continued use of all versions of the PBR System Software and the related Documentation, and shall not interfere with the rights and benefits of County as provided therein. The foregoing shall survive the termination or expiration of the Agreement for any reason whatsoever.

6. TERMINATION FOR DEFAULT.

- 6.1. Event of Default. County may, upon notice to Contractor, terminate the whole or any part of the Agreement in any one of the following circumstances:
 - 6.1.1. If Contractor fails to perform or provide any Work within the times specified in the Agreement, or Contractor breaches or fails to perform or comply with any of the other provisions of the Agreement, including the applicable notice and cure periods, if any (if no cure period is specified in the Agreement, Contractor shall have thirty (30) days following notice from County Project Director specifying such breach or failure to cure prior to termination under this Paragraph 6 (Termination for Default), provided that nothing in this Paragraph 6.1.1 shall in any way limit or modify any rights of County or obligations of Contractor relating to timely performance by Contractor as otherwise set forth in the Agreement; or
 - 6.1.2. In respect of PBR System Warranty Services and, if applicable, Maintenance & Support Services, immediately upon notice to Contractor, if on two (2) separate occasions in any single calendar month during the Term, or more than three (3) times in the aggregate in any trailing twelve (12) month period during the Term, Contractor fails to timely correct any Deficiencies pursuant to the service level schedule set forth in the Statement of Work and Exhibit E (Maintenance & Support Services).
- 6.2. Deemed Termination for Convenience. If, after County has given notice of termination under the provisions of this Paragraph 6 (Termination for Default), it is determined by County or otherwise that Contractor was not in default under the provisions of this Paragraph 6 (Termination for Default), or that the default was excusable or curable under the provisions of this Paragraph 6 (Termination for Default), the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 7 (Termination for Convenience; Suspension) of this Exhibit except that no additional notice shall be required to effect such termination.

6.3. Completion of Work. Without limiting any of County's rights and remedies pursuant to the Agreement, upon the occurrence of any event giving rise to County's rights to terminate the Agreement, in whole or in part, pursuant to this Paragraph 6 (Termination for Default), County may, in lieu of such termination, (a) perform, or cause the performance of, any required correction, remedy any Deficiency, replace any noncomplying Work, or take any other such action as may be reasonably required to promptly remedy such default, and (b) debit Contractor therefor at County's direct actual cost of outside labor and materials and County's burdened (including salary, employee benefits and reimbursement policies) rates for labor. Such debit shall be made against any amounts owed by County to Contractor under the Agreement. In the event County elects to proceed under this Paragraph 6.3 (Completion of Work), any Work created, modified, or repaired by or at the direction of County (including software) shall be deemed Work under the Agreement, and Contractor's obligations in respect of PBR System Warranty Services and, if applicable, Maintenance & Support Services shall extend to such Work as if such Work had been prepared and delivered to County by Contractor. County shall provide Contractor such documentation in County's possession or control as reasonably requested by Contractor as is necessary for Contractor to provide PBR System Warranty Services and, if applicable, Maintenance & Support Services in respect of such Work.

7. TERMINATION FOR CONVENIENCE; SUSPENSION.

7.1. Termination for Convenience. The Agreement may be terminated, in whole or in part from time to time, by County in its sole discretion for whatever reason. Termination of Work hereunder shall be effected by delivery to Contractor of a notice of termination specifying the extent to which performance of Work is terminated and the date upon which such termination become effective. The date upon which such termination becomes effective shall be no less than thirty (30) days after notice. After receipt of a notice of termination and except as otherwise directed by County Project Director, Contractor shall, in addition to complying with the requirements of Paragraph 10 (Effect of Termination):

- 7.1.1. Stop Work under this Agreement on the date and to the extent specified in such notice;
- 7.1.2. Immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities; and
- 7.1.3. Complete performance of such part of the Work as shall not have been terminated by such notice.

After receipt of a notice of termination, Contractor shall submit to County, in the form and with any certifications as may be prescribed by County, Contractor's termination claim and invoice. Such claim and invoice shall be submitted promptly, but no later than thirty (30) days from the effective date of termination. Subject to the remainder of this Paragraph, such claim and invoice is entitled to cover costs and expenses for Work in

progress (subject to compliance with the directives in Paragraph 7.1.1) as of the effective date of termination, and reasonable costs associated with wind-down of activities directed specifically to Work required under this Agreement, and may include a reasonable allowance for profit on Work completed and in progress, but shall not include any allowance for profit on Work terminated or any allowance for profit on Work completed which cannot function without Work which was terminated, or any allowance for profit on wind-down costs. Notwithstanding the preceding sentence, Contractor agrees to exercise all commercially reasonable efforts to mitigate costs and expenses that can be avoided upon receipt of a notice of termination, including reassigning contract employees (i.e. non at-will employees hired specifically for the Work), subleasing office space specifically leased within County for the Work, and repurposing parts, materials and facilities to other Contractor goods and projects. County shall pay the agreed amount, provided that such amount shall not exceed the total funding obligated under this Agreement as reduced by the amount of payments otherwise made and as further reduced by the price of Work terminated. Thereafter, Contractor shall have no further claims against County under this Agreement. All finished or unfinished Documentation and materials procured for or produced under this Agreement shall become County's property upon date of such termination.

- 7.2. Suspension. County, at its convenience, and without further liability except as herein specified, may suspend Contractor's performance under this Agreement, in whole or in part, by notice from County Project Director to Contractor specifying the effective date and extent of the suspension.
- 7.2.1. Contractor shall immediately discontinue all services unless otherwise indicated by County Project Director.
- 7.2.2. Upon request of County Project Director, Contractor shall surrender and deliver to County within seven (7) days from receipt of said request, all requested drawings, designs, specifications, notes, data, reports, estimates, summaries, or other information relative to the PBR System as may have been accumulated by Contractor, whether complete or in process, for which an invoice has been approved by County pursuant to Paragraph 10.1 (Approval of Invoices) of the Agreement or for which an agreement for partial payment has been negotiated. Unless otherwise specified by County, County's License rights shall continue for the duration of any period of suspension.
- 7.2.3. In the event the entire Agreement is suspended for longer than six (6) months, County shall pay Contractor demobilization expenses. Demobilization expenses are expenses directly attributable to temporarily suspending the work in progress, including the reasonable and actual cost of suspending any commitments for services not yet complete. County shall not be liable for demobilization expenses if only a portion of the Agreement is suspended.
- 7.2.4. In the event the entire Agreement is suspended for longer than six (6) months and Contractor is directed to remobilize within one calendar year of the effective date

of the suspension, County shall pay reasonable and actual remobilization expenses directly attributable to restarting services hereunder and, at Contractor's option, Contractor and County shall renegotiate Contractor's fees for services remaining under this Agreement. If no agreement as to expenses and fees can be reached, this Agreement may be terminated for County's convenience.

7.2.5. In the event the entire Agreement is suspended and the period of suspension exceeds one (1) calendar year, this Agreement may be deemed terminated for the convenience of County at the option of either party, upon written notice to the other party.

7.3. Sole Remedy. Contractor acknowledges that the rights and remedies set forth in this Paragraph 7 shall be the only remedy available to Contractor in the event of a termination or suspension pursuant to this Paragraph 7 (Termination for Convenience; Suspension) by County.

8. TERMINATION FOR IMPROPER CONSIDERATION.

8.1. County may, upon notice to Contractor, immediately terminate the right of Contractor to proceed under the Agreement if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment or extension of the Agreement or the making of any determinations with respect to Contractor's performance pursuant to the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.2. Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County Auditor-Controller's employee fraud hotline at (213) 974-0914 or (800) 544-6861.

8.3. Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

9. TERMINATION FOR GRATUITIES. County may, by notice to Contractor, terminate the right of Contractor to proceed under the Agreement upon one (1) calendar day's notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer, employee, or agent of County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such contract. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

10. EFFECT OF TERMINATION.

10.1. Remedies. In the event that County terminates the Agreement in whole or in part as provided in Paragraph 4 (Termination for Insolvency), Paragraph 6 (Termination for Default), Paragraph 7 (Termination for Convenience; Suspension), Paragraph 8 (Termination for Improper Consideration), or Paragraph 9 (Termination for Gratuities), in each case, of this Exhibit, then:

10.1.1. Contractor shall (a) stop performing Work under the Agreement on the date and to the extent specified in such notice, (b) promptly transfer and deliver to County copies of all PBR System Software and all other completed Work and Work that is in process, in a media reasonably requested by County, (c) promptly transfer and deliver all PBR Units and other components of the PBR System previously paid for by County, and (d) complete performance of such part of the Work as shall not have been terminated by such notice;

10.1.2. the License and associated rights thereunder granted to County pursuant to Paragraph 14 (Ownership; License) of the base document shall continue in perpetuity;

10.1.3. unless County has terminated the Agreement pursuant to Paragraph 7 (Termination for Convenience; Suspension) of this Exhibit, subject to County's duty to mitigate, County shall have the right to procure, upon such terms and in such a manner as County may determine appropriate, goods, services, and other Work, similar and competitive to those so terminated, and Contractor shall be liable to County for, and shall promptly pay to County by cash payment, any and all actual, out-of-pocket excess costs reasonably incurred by County, as determined by County, to procure and furnish such similar goods, services, and other Work;

10.1.4. Contractor shall promptly return to County any and all of County's confidential information that relates to that portion of the Agreement or Work terminated by County;

10.1.5. Contractor shall tender promptly payment to County, and shall continue to tender payment for the duration, of any liquidated damages levied pursuant to Paragraph 17 (Liquidated Damages), of the Agreement, to the extent applicable; and

10.1.6. Contractor and County shall continue the performance of the Agreement to the extent not otherwise terminated.

10.2. Transition Services. Contractor agrees that in the event of any termination of the Agreement, as a result of the breach hereof by either party, or for any other reason, Contractor shall fully cooperate with County in the transition by County to new PBR System, toward the end that there be no interruption of the Department's operations due

to the unavailability of the PBR System during such transition. Contractor agrees that if County terminates the Agreement pursuant to Paragraph 7 (Termination for Convenience; Suspension) of this Exhibit or Paragraph 6.2 (Deemed Termination for Convenience) of this Exhibit, Contractor shall perform transition services, and shall invoice County for such transition services determined in accordance with the Hourly Labor Rates specified in Exhibit B (Price and Schedule of Payments) of the Agreement, in accordance with a transition plan to be agreed upon, in advance, by County Project Director and Contractor Project Director. Contractor further agrees that in the event County terminates the Agreement for any other breach by Contractor, Contractor shall perform transition services at its own expense. In connection with the provision of any transition services pursuant to this Paragraph 10.2 (Transition Services), Contractor shall provide to County Project Director, on request by County Project Director, documentation that reasonably details the source and amount of the expenses Contractor purports to have incurred in the provision of such transition services.

- 10.3. Remedies Not Exclusive. The rights and remedies of County set forth in this Paragraph 10 (Effect of Termination) are not exclusive of any other rights and remedies available to County at law or in equity, or under the Agreement.

11. WARRANTY AGAINST CONTINGENT FEES.

- 11.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.
- 11.2. For breach of this warranty, County shall have the right to terminate the Agreement and, in its discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- 12. AUTHORIZATION WARRANTY.** Contractor and the person executing the Agreement on behalf of Contractor hereby represent under penalty of perjury and warrant that the person executing the Agreement for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of the Agreement and that all requirements of Contractor have been fulfilled to provide such actual authority.

- 13. FURTHER WARRANTIES.** Contractor represents, warrants and further covenants and agrees to the following:

- 13.1. Contractor represents and warrants that (a) Contractor has the full power and authority to grant the License and all other rights granted by the Agreement to County; (b) no consent of any other person or entity is required by Contractor to grant such rights other than consents that have been obtained and are in effect; (c) County is entitled to use the PBR System, including the PBR Units and the PBR System Software, without interruption of use; (d) the Agreement and the PBR System, including the PBR Units and the PBR

- System Software licensed or acquired herein, are neither subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Contractor's creditors; (e) during the Term, Contractor shall not subordinate the Agreement or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the PBR System, including the PBR Units and the PBR System Software, and any part thereof, in accordance with the Agreement; (f) there is no litigation, dispute, claim, proceeding or other action pending or, to Contractor's knowledge, threatened against Contractor or in respect of the PBR System, including the PBR Units and the PBR System Software, that could have a material adverse effect on Contractor's business or on Contractor's ability to perform and meet in a timely fashion Contractor's obligations under this Agreement; and (g) neither the performance of the Agreement by Contractor, nor the sale or License to, and use by, County and its users of the PBR System, including the PBR Units and the PBR System Software, in accordance with the Agreement will in any way violate any non-disclosure Agreement, nor, to the best of Contractor's knowledge after due diligence and reasonable investigation, constitute any infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, moral, or other rights of any third party.
- 13.2. Upon delivery to County, County bears the full risk of loss due to total or partial destruction of all or any part of the PBR System, including the PBR Units and the PBR System Software acquired from Contractor and delivered by or on behalf of Contractor.
 - 13.3. At the time of delivery to County, all PBR Units and other hardware and equipment comprising the PBR System shall be new, in good working order, in conformity with manufacturer's published specifications and descriptions, and free from defects in workmanship and materials, as determined by County. For avoidance of doubt, County retains the right to reject any attempted delivery of apparently damaged PBR Units or other components of the PBR System, including PBR Units or other components of the PBR System in respect of which the shipping containers appear to have suffered external damage.
 - 13.4. Contractor shall, in the performance of all Work, strictly comply with the descriptions and representations (including Documentation, Specifications, performance capabilities, accuracy, completeness, characteristics, configurations, standards, functions, and requirements) as set forth in this Agreement, including the Statement of Work and the Requirements.
 - 13.5. All Work shall be performed in a timely and professional manner by qualified personnel.
 - 13.6. Contractor and each of its personnel performing Work hereunder have all permits, licenses, and certifications necessary to perform Contractor's obligations under the Agreement.

- 13.7. Contractor, and each subcontractor as applicable, is an authorized maintenance and service provider in respect of each component of the PBR System provided to County under this Agreement.
- 13.8. Contractor, and each subcontractor as applicable, is an authorized reseller in respect of each component of Third Party Hardware and Third Party Software provided to County by Contractor under this Agreement.
- 13.9. All Documentation developed under the Agreement shall be uniform in appearance.
- 13.10. The PBR System, including the PBR Units and the PBR System Software (and Updates thereto) shall be fully Compatible with the InkaVote System.
- 13.11. Contractor shall not cause any unplanned interruption of the operations of, or accessibility to the PBR System or any component of thereof through any device, method or means including the use of any “virus,” “lockup,” “time bomb,” or “key lock,” “worm,” device or program, or disabling code, (collectively referred to as a “Disabling Device”), which has the potential or capability of compromising the security of County’s confidential or proprietary information or of causing any unplanned interruption of the accessibility of the PBR System or any component thereof by County or any user or which could alter, destroy, or inhibit the use of the PBR System, any component thereof, or the data contained therein. Contractor represents, warrants and agrees that it has not purposely placed, nor is it aware of, any Disabling Device on any component of the PBR System provided to County under the Agreement, nor shall Contractor knowingly permit any subsequently delivered component of the PBR System to contain any Disabling Device.
- 13.12. Contractor shall support all PBR System Software components Licensed to or acquired by County hereunder and all PBR Units and other hardware and equipment comprising the PBR System acquired by County hereunder, in each case, for the Term.

14. RESTRICTIONS ON COUNTY USING PBR SYSTEM. Without limiting the generality of any Contractor warranties or covenants under the Agreement, including under Paragraph 13.10 (Further Warranties) of this Exhibit, if at any time during the Term and as a result of Contractor’s failure to satisfy the requirements set forth in Paragraph 21 (Compliance with Applicable Law), the PBR System or any component thereof: (i) is restricted or otherwise precluded from use in California by the Secretary of State or any other governmental agency, including any judicial authority, or (ii) fails to comply with any applicable Election Laws and Regulations, then in either instance and upon County’s election, Contractor shall, at no cost to County and without limiting any of County’s rights or remedies under the Agreement or at law or in equity and without limiting Contractor’s obligations under the Agreement to remedy the Deficiency or other nonconformance in the PBR System, provide to County an alternative to the PBR System reasonably acceptable to County, necessary for County to implement the HAVA required enhancements (*i.e.* disabled, including blind and visually impaired, unassisted voting and second chance voting).

15. INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND.

- 15.1. Indemnification. Contractor shall indemnify, defend, and hold harmless County, its districts administered by County, its designees who use the PBR System to conduct Elections in accordance with Paragraph 14.2 (License) of the base document, and their elected and appointed officers, employees, and agents (the “County Indemnitees”) from and against any and all liability (whether arising under a theory of contract, statute, strict liability or product liability), including damages, losses, demands, claims, actions, fees, costs, and expenses (including defense costs and legal, accounting, and other expert witness, consulting and professional fees), in any way arising from, connected with or related to Contractor’s, subcontractors’, or any of their respective agents’, employees’, officers’, directors’ or shareholders’ breach of this Agreement, the performance or nonperformance of the PBR System, or acts, errors or omissions in the performance of Work or provision of products hereunder, except that such hold harmless obligation (but not the obligation to defend) does not apply to the extent of damages or liability caused by County’s employees or agents (other than Contractor) gross negligence or intentional misconduct. Any legal defense pursuant to Contractor’s indemnification obligations under this Paragraph 15 (Indemnification, Insurance and Standby Letter of Credit) shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County in writing, which approval shall not be unreasonably withheld or delayed. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law and this Agreement, County shall be entitled to reimbursement for all such costs and expenses. Contractor shall not without County’s prior written approval, accept any settlement, or enter a plea of guilty or *nolo contendere*, to any charge or claim that results in other than a monetary judgment against County Indemnitees, which monetary judgment shall not exceed Contractor’s ability to pay and which shall be paid by Contractor. Except for such liability as may arise in connection with either or any (a) Infringement Claims under Paragraph 16, (b) claims for personal injury or death, and (c) claims arising from Contractor’s or its employees’, subcontractors’ or agents’ gross negligence or intentional misconduct, Contractor’s total liability to County arising out of or relating to the Agreement shall not exceed the Maximum Contract Sum, nor include special, consequential, or indirect damages in excess of ten percent (10%) of the Maximum Contract Sum, even if Contractor is advised of the possibility of such damages.
- 15.2. General Insurance Requirements. Without limiting Contractor’s obligations of indemnification and defense of County Indemnitees, Contractor shall provide and maintain at its own expense during the Term the following programs of insurance as specified in this Paragraph 15.2 (General Insurance Requirements). Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County.
- 15.2.1. Evidence of Insurance. Certificates or other evidence of coverage satisfactory to County, shall be delivered to:

County of Los Angeles
Registrar-Recorder/County Clerk
Contracts Section
12400 Imperial Highway, Room 5203
Norwalk, CA 90650

prior to commencing services under this Agreement. Such certificates or other evidence shall at a minimum:

- (i) specifically identify the Agreement;
- (ii) clearly evidence all coverages required in the Agreement;
- (iii) contain the express conditions that County is to be given notice by mail at least thirty (30) days prior to any termination of any program of insurance;
- (iv) include copies of the additional insured endorsement to the commercial general liability policy, naming all County Indemnitees as insureds for all activities arising from the Agreement; and
- (v) identify any deductibles or self-insured retentions for County's approval. County retains the right to require Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to County Indemnitees, or, require Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the state of California.

15.2.2. Insurer Financial Ratings. Insurance is to be provided by an insurance company acceptable to County with an A.M. Best rating of not less than A:VII, unless otherwise approved by County's Risk Manager.

15.2.3. Insurance Coverage Requirements: At a minimum, Contractor shall maintain during the Term programs of insurance which consists of:

- (i) General liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate:	\$4million
Products/Completed Operations Aggregate:	\$2million
Personal and Advertising Injury:	\$2million
Each Occurrence:	\$2million

- (ii) Professional liability insurance covering any liability arising from any error, omission, commission, negligent, or wrongful act of Contractor, its officers, agents, or employees, in the performance of Work hereunder, with a limit of not less than two million dollars (\$2 million) per occurrence and four million dollars (\$4 million) in the aggregate. Such coverage shall be maintained for a period of not less than two (2) years, or the policy shall be endorsed to provide an extended reporting period of not less than two (2) years, following the expiration or termination of the Agreement.
- (iii) Intellectual property insurance covering any actual or alleged infringement of any copyright, patent or other rights of third parties, and any actual or alleged trade secret disclosure or misappropriation with a limit no less than two million dollars (\$2 million) per occurrence. If this insurance is written on a claims made form, Contractor shall either (1) maintain such insurance through the period ending two (2) years following the expiration or termination of this Agreement or (2) obtain an endorsement on such insurance that provides an extended reporting period of not less than two (2) years following the termination or expiration of this Agreement or insurance policy, whichever is longer or (3) replace such claims made insurance with equivalent coverage of the per occurrence form that covers the entire Term.
- (iv) Auto liability insurance (written on an ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all “owned”, “non-owned”, and “hired” vehicles, or coverage for “any auto”.
- (v) Workers’ compensation insurance in an amount and form required by the California Labor Code (or the labor code of any other applicable state), covering all persons for which Contractor is responsible and all risks to such persons under the Agreement. Such insurance shall include employer’s liability coverage with limits no less than one million dollars (\$1 million) per accident, \$1 million disease-policy limit, and \$1 million disease-each employee.

15.2.4. Notification of Incidents, Claims or Suits. Contractor shall report to County:

- (i) any accident or incident relating to services performed under the Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Contractor or County. Such report shall be made in writing within twenty-four (24) hours of occurrence.
- (ii) any third party claim or lawsuit filed against Contractor arising from or related to services performed by Contractor under the Agreement. Such report shall be made in writing within twenty-four (24) hours of the earlier

of service of process of such claim or lawsuit, or Contractor otherwise has knowledge of such claim or lawsuit.

- (iii) any injury to a Contractor staff member which occurs on County property. This report shall be submitted on a County “Non-employee Injury Report” to the County Project Director. Such report shall be made in writing within twenty-four (24) hours of occurrence.
- (iv) any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Contractor under the terms of the Agreement. Such report shall be made in writing within twenty-four (24) hours of occurrence.

15.3. Performance Bond.

- 15.3.1. Contractor shall furnish to County within ten (10) business days after the Effective Date, a performance bond substantially in the form attached hereto as Exhibit P (Performance Bond), in an amount equal to fifty percent (50%) of the Maximum Contract Sum less Maintenance & Support Fees and less Pool Dollars (the “Performance Bond”). Such Performance Bond shall at all times be in form and substance satisfactory to County, including the conditions for payment to County under such Performance Bond. Prior to acceptance of Contractor’s Performance Bond, Contractor shall submit the form of the proposed performance bond for approval by County’s Treasurer and Tax Collector. Both the initial expense and the annual premiums or fees associated with continuation of the Performance Bond shall be paid by Contractor.
- 15.3.2. The Performance Bond shall be maintained by Contractor in full force and effect until Contractor’s achievement of PBR System Acceptance. Any modification, extension, or termination of the Agreement prior to PBR System Acceptance shall in no way release Contractor or the issuer under such Performance Bond from any of their obligations under such Performance Bond. Such Performance Bond shall contain a waiver of notice of any Change Orders and amendments to the Agreement.
- 15.3.3. No payments shall be due Contractor under this Agreement until the Performance Bond is issued and received by County. The Performance Bond shall be made payable to County and shall be issued by a surety organized under the laws of the United States and which meets the County’s minimum requirements. The County Agreement number shall be specified in the Performance Bond.
- 15.3.4. The Performance Bond shall secure Contractor’s timely performance of all Contractor’s Work in accordance with the Statement of Work and providing Deliverables, and shall secure any and all damages, costs and expenses, resulting from Contractor’s default in the performance of the Agreement.

15.3.5. Without limiting the ability of County's Treasurer and Tax Collector to otherwise make a claim against the Performance Bond in accordance with this Paragraph 15.3, if the Performance Bond is set to expire (and will not be renewed, automatically or otherwise) prior to the completion of PBR System Acceptance, and Contractor has not secured a replacement Performance Bond acceptable to County's Treasurer and Tax Collector, no later than ten (10) working days prior to the expiration of such Performance Bond, then County shall be entitled to make a claim in full on such Performance Bond one (1) working day prior to the expiration thereof. The proceeds of such claim on the Performance Bond paid pursuant to this Paragraph 15.3.5 shall be held in trust by County or, alternatively, without limiting any of County's other rights and remedies permitted under this Agreement, at law or in equity, may be applied by County as a credit toward any amounts due to County by Contractor pursuant to Paragraph 15.3.6.

15.3.6. In the event of a termination by County, other than a termination for convenience pursuant to Paragraph 7 (Termination for Convenience; Suspension) of this Exhibit or a deemed termination for convenience pursuant to Paragraph 6.2 (Deemed Termination for Convenience), County shall be entitled to make a claim against such Performance Bond up to the full amount of such Performance Bond for any outstanding damage assessments made by County against Contractor. Upon County's delivery of a claim to the surety under the Performance Bond, and regardless of whether Contractor disputes the factual basis for County's assertion of such termination, County shall be entitled to receive, and the surety shall pay to County, any amount up to the full amount under the Performance Bond. The amounts received in respect of such claim by County under the Performance Bond shall be applied to Contractor's liability for any direct, administrative and excess costs incurred by County in obtaining similar services in respect of the PBR System acquired by County terminated as a result of Contractor's default. In addition, upon such a termination, County may seek any other remedies permitted under the Agreement or available at law or in equity. The foregoing shall not limit Contractor's right to dispute County's termination of this Agreement or the amount of damages alleged by County in respect thereof.

15.4. Failure to Procure and Maintain Insurance or Performance Bond. Failure on the part of Contractor to procure and maintain all the required insurance and Performance Bond shall constitute a material breach of the Agreement upon which County may terminate the Agreement pursuant to Paragraph 6 (Termination for Default) of this Exhibit and seek all remedies pursuant to Paragraph 10 (Effect of Termination) of this Exhibit, or alternatively, may purchase such required insurance coverage and debit Contractor pursuant to Paragraph 6.3 (Completion of Work) of this Exhibit.

16. INTELLECTUAL PROPERTY INDEMNIFICATION.

16.1. Contractor shall indemnify, defend, and hold harmless County Indemnitees pursuant to Paragraph 15.1 (Indemnification) of this Exhibit, from and against any and all liability

(alleged or actual), including damages, losses, costs, fees and other expenses (including defense costs and legal, accounting and other expert, consulting, attorney or other professional fees), for or by reason of any actual or alleged infringement of any patent, copyright, trademark, or other proprietary rights of any third party, or any actual or alleged trade secret disclosure or misappropriation, arising from or related to the operation and utilization of the Work, including the PBR System, under the Agreement (collectively referred to as “**Infringement Claims**”). Contractor shall have no obligation to County under this Paragraph 16 (Intellectual Property Indemnification) to the extent any damages or losses arising under or resulting from an infringement claim are caused by use by County of the PBR System other than in accordance with the Agreement, the Specifications or other applicable Documentation.

16.2. Without limiting the foregoing, in the event County Project Director becomes aware that ongoing use of the PBR System or any part of it is the subject of any Infringement Claim that might preclude or impair County’s use of the PBR System or any part of it (*e.g.*, injunctive relief), or that County’s continued use of the PBR System or any part of it may subject it to punitive damages or statutory penalties or other costs or expenses, County shall give notice to Contractor of such facts. Upon notice of such facts, Contractor shall, at no cost to County, either (a) procure the right, by license or otherwise, for County to continue to use the affected portion of the PBR System, with the same ownership and license rights hereunder, as applicable, or (b) to the extent Contractor is unable to procure such right, replace or modify the affected portion of the PBR System with product of equivalent quality and performance capabilities, in County’s reasonable determination, to become non-infringing. If Contractor fails to complete the remedial acts set forth above within sixty (60) days of the date of the notice from County, or if completion is not possible despite Contractor’s commercially reasonable efforts within such sixty (60) day period, and County has not approved in writing (such approval not to be unreasonably withheld) Contractor’s plan of completing such remediation, then, in either instance County shall have the right without limiting any other rights or remedies that County may have under the Agreement or at law or equity, to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the PBR System. Contractor shall indemnify and hold County harmless for all amounts paid and all-direct and indirect costs associated with such remedial acts.

17. NOTICE OF DELAY. In the event Contractor determines at any time that failure, delay, or inadequacy of performance of any of County’s obligations hereunder may prevent or tend to prevent Contractor from completing any of Contractor’s obligations in a timely manner or may cause or tend to cause Contractor to incur additional or unanticipated costs or expenses, Contractor shall promptly following such determination (and without limiting Contractor’s obligation of prompt notification, in any event within five (5) days following such determination), notify County Project Director in writing, which notice shall specify in reasonable detail: (a) any alleged failure, delay or inadequacy of performance by County and (b) to the best knowledge of Contractor after due inquiry and analysis, the estimated impact of such alleged failure, delay or inadequacy on the performance of Contractor’s obligations, including any estimated delay and any estimated amount of additional or unanticipated costs or

expenses that may be incurred (a “Notice of Delay”). Such Notice of Delay, if timely filed, shall be treated as a request by Contractor for a Change Order or an amendment to the Agreement, as applicable pursuant to Paragraph 6 (Change Orders and Amendments) of the base document. In the event Contractor fails to notify County in writing of any alleged failure, delay, or inadequacy of performance of any of County’s obligations in a timely manner as set forth in this Paragraph 17 (Notice of Delay), Contractor shall not be entitled to rely upon such alleged failure, delay, or inadequacy of performance for any purpose whatsoever, including as a purported justification for either: (i) claiming that Contractor is entitled to receive any additional payments from County hereunder or (ii) failing to fulfill any of Contractor’s obligations in a timely manner. This Paragraph 17 (Notice of Delay) shall not be interpreted or construed as expanding in any manner the financial obligations of County under the Agreement.

18. BUDGET REDUCTIONS. In the event that the Board adopts, in any fiscal year, a County budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year services provided by Contractor under this Agreement. The County’s notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board’s approval of such actions, and County Project Director and Contractor Project Director promptly shall enter into a Change Order to reflect such reduction in scope of Work concurrent with the reduction in payment obligation directed by the Board. Contractor shall continue to perform all of its obligations set forth in this Agreement. In respect of any Work terminated hereunder, such termination shall be deemed a partial termination for convenience pursuant to Paragraph 7 (Termination for Convenience; Suspension) of this Exhibit A (Additional Terms and Conditions).

19. FORCE MAJEURE. Except with respect to defaults of any subcontractors, Contractor shall not be liable for any such excess costs, if its failure to perform the Agreement arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by Contractor or any of Contractor’s subcontractors), freight embargoes, or other similar acts to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Contractor and subcontractor, and without any fault or negligence of either of them, Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. Contractor agrees to use commercially reasonable best efforts to obtain such goods or services from other sources, and to mitigate the damages and reduce the delay caused by any of the above mentioned *force majeure* events.

20. CONTRACTOR RESPONSIBILITY AND DEBARMENT.

20.1. A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily

- perform the terms of the Agreement. It is County's policy to conduct business only with responsible contractors.
- 20.2. Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if County acquires information concerning the performance of Contractor on this or in other contracts which indicates that Contractor is not responsible, County may, in addition to other remedies provided in this Agreement, debar Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing contracts Contractor may have with County.
 - 20.3. County may debar Contractor if the Board finds, in its discretion, that Contractor has done any of the following: (1) violated a term of a contract with County or a nonprofit corporation created by County; (2) committed an act or omission which negatively reflects on Contractor's quality, fitness or capacity to perform a contract with County, any other public entity, or a nonprofit corporation created by County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty or (4) made or submitted a false claim against County or any other public entity.
 - 20.4. If there is evidence that Contractor may be subject to debarment, County's Project Director will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before County's Contractor Hearing Board.
 - 20.5. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board.
 - 20.6. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board. The Board shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.
 - 20.7. If a contractor has been debarred for a period longer than five (5) years, that contractor may, after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that such contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence

discovered after debarment was imposed; or (4) any other reason that is in the best interests of County.

- 20.8. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the requesting contractor has been debarred for a period longer than five (5) years, (2) the debarment has been in effect for at least five (5) years and (3) the request is in writing, states one or more of the grounds set forth herein for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board may hear evidence from Contractor on the proposed reduction of debarment period or termination of debarment. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
- 20.9. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board. The Board shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- 20.10. These terms shall also apply to Contractor's subcontractors.

21. COMPLIANCE WITH APPLICABLE LAW.

- 21.1. Contractor hereby represents, warrants and covenants that Contractor's activities hereunder shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, guidelines, and directives, including all applicable Election Laws and Regulations, and all provisions required thereby to be included in the Agreement are hereby incorporated herein by reference. Contractor further represents, warrants and covenants that as of the Effective Date, the PBR System, including the PBR Units and the PBR System Software and all components thereof, and County's use thereof as permitted under this Agreement, shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, guidelines, and directives, including all applicable Election Laws and Regulations (including HAVA). From and after the Effective Date and continuing until the expiration of the Warranty Period, or for so long as Maintenance & Support Services are acquired hereunder, the PBR System Software, and County's use thereof, as permitted under this Agreement, shall comply with all applicable federal and state laws, rules, regulations, guidelines, and directives, including all applicable federal and state Election Laws and Regulations. Unless provided otherwise under the Agreement, Contractor shall have up to fifteen (15) days to correct any noncompliance with County rules, regulations, ordinances, guidelines, and directives following notice from County including written copies of such applicable rules, regulations, ordinances, guidelines and directives.

- 21.2. Contractor and County each acknowledge and agree to the following provision, required by the California Secretary of State in connection with the purchase the PBR System hereunder:

Pursuant to this Agreement and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal statutes, regulations, rules and requirements, including, but not limited to, those voting system requirements set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002, that are in effect as of the date of this Agreement. Further, voting systems shall also comply with all applicable state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of the California Elections Code or the Help America Vote Act of 2002 or other applicable state or federal law when appropriate, that are in effect as of the date of this Agreement, including but not limited to, the 2002 Voting system Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005. This does not include future final court interpretations of existing state or federal law not in effect as of the date of this Agreement.

Voting system manufacturers and/or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement, of any voting system or its component parts, found to be necessary for certification or to otherwise bring the system into compliance.

Any voting system purchased with funds allocated by the Secretary of State's Office shall meet all applicable state and federal standards, regulations and requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002 that are in effect as of the date of this (application, agreement, contract, etc.), including, but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

- 21.3. Without limiting Contractor's obligations in respect of PBR System Software (including any software carried in ROM or other fixed medium), County acknowledges that Contractor is not required, under this Paragraph 21 or otherwise under this Agreement, to provide changes to the PBR System Hardware (including any Third Party Hardware set

forth on Exhibit F), or modifications, retrofits, or replacements of such hardware, at its cost, in order to achieve or maintain compliance with a change in applicable federal, state, or local laws, rules, regulations, ordinances, guidelines, or directives, including a change in all applicable Election Laws and Regulations.

22. FAIR LABOR STANDARDS. Contractor shall comply with all applicable provisions of the federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its officers, employees and agents from any and all liability, including damages, losses, wages, overtime pay, liquidated damages, penalties, court costs, fees and other expenses (including attorneys' fees) arising under any wage and hour law, including the federal Fair Labor Standards Act for Work performed by Contractor's employees.

23. NONDISCRIMINATION, AFFIRMATIVE ACTION, AND ASSURANCES. Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and will be treated equally as required by applicable laws and regulations without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable federal and state anti-discrimination laws and regulations.

23.1. Contractor shall certify to, and comply with, the provisions of Contractor's EEO certification.

23.2. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable federal and state anti-discrimination laws and regulations. Such action shall include: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

23.3. Contractor certifies and agrees that it will deal with its bidders, or vendors as required by applicable laws and regulations without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap.

23.4. Contractor certifies and agrees that it, its affiliates, subsidiaries or holding companies, shall comply with all applicable federal and state laws and regulations, including:

23.4.1. Title VII, Civil Rights Act of 1964;

23.4.2. Section 504, Rehabilitation Act of 1973;

23.4.3. Age Discrimination Act of 1975;

23.4.4. Title IX, Education Amendments of 1973, as applicable; and

23.4.5. Title 43, part 17, Code of Federal Regulations, subparts a & b;

And that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Agreement, or under any project, program, or activity supported by the Agreement.

- 23.5. Contractor shall, with reasonable notice and during regular business hours, allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 23 (Nondiscrimination, Affirmative Action, and Assurances) when so requested by County; provided that County's access to such employment records of Contractor shall be limited to access that does not constitute an unlawful invasion of the privacy rights of any such employee. If County finds that any of the provisions of this Paragraph 23 (Nondiscrimination, Affirmative Action, and Assurances) have been violated, such violation shall, at the election of County, constitute a material breach of the Agreement upon which County may immediately terminate the Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of the Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the federal Equal Employment Opportunity Commission that Contractor has violated state or federal anti-discrimination laws or regulations shall constitute a finding by County that Contractor has violated the anti-discrimination provisions of the Agreement. All determinations of violations made pursuant to this Paragraph 23.5 shall be appealable by Contractor in accordance with applicable laws and regulations, and separately pursuant to the Dispute Resolution Procedures.
- 23.6. The parties agree that if Contractor violates the anti-discrimination provisions of the Agreement, County shall, at its option, be entitled to the sum of five hundred dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating the Agreement.

24. EMPLOYMENT ELIGIBILITY VERIFICATION.

- 24.1. Contractor warrants that it fully complies with all federal and state statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under the Agreement meet the citizenship or alien status requirements set forth in federal and state statutes and regulations. Contractor shall obtain, from all employees performing Work hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended.
- 24.2. Contractor shall retain all such documentation for the period prescribed by law. Contractor shall indemnify, defend, and hold harmless County Indemnitees pursuant to Paragraph 15.1 (Indemnification) of this Exhibit from and against any and all liability (alleged or actual), including damages, losses, fees, costs, and expenses (including defense costs and legal, accounting and other expert witness, consulting or professional fees) arising out of or in connection with any employer sanctions and any other liability which may be assessed against Contractor or County in connection with any alleged

violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing Work hereunder.

25. HIRING OF EMPLOYEES. Contractor and County agree that, during the Term and for a period of one (1) year thereafter, except with the prior written consent of the other party, neither party shall in any way intentionally induce or solicit any Project Director, Project Manager or other employee, of one party to become an employee or agent of the other party. Notwithstanding the foregoing, County shall be entitled to make offers of employment to employees of Contractor necessary or desirable to perform Work described in the Agreement, in the event that: (a) County has the right to terminate the Agreement pursuant to Paragraph 4 (Termination for Insolvency) of this Exhibit, (b) the Agreement is terminated by County due to Contractor's default pursuant to Paragraph 6 (Termination for Default) of this Exhibit, (c) without resolution acceptable to both parties, Contractor and County have followed the Dispute Resolution Procedures, or (d) Contractor either announces the withdrawal of support of, or otherwise no longer provides services County deems essential to, the ongoing support of the PBR System Software, as applicable.

26. CONFLICT OF INTEREST.

26.1. No County employee whose position with County enables such employee to influence the award of the Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Contractor or have any other direct or indirect financial interest in the Agreement. No officer or employee of Contractor, who may financially benefit from the performance of Work hereunder, shall in any way participate in County's approval, or ongoing evaluation, of such Work, or in any way attempt to unlawfully influence County's approval or ongoing evaluation of such Work.

26.2. Contractor shall comply with all conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the Term. Contractor warrants that it is not now aware of any facts that do or could create a conflict of interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to County. Full written disclosure shall include identification of all persons implicated and a complete description of all relevant circumstances.

27. RESOLICITATION OF BIDS, PROPOSALS, OR INFORMATION.

27.1. Contractor acknowledges that, prior to the expiration or earlier termination of the Agreement, County, in its discretion, may exercise its right to invite bids, request information, or request proposals for the continued provision of the goods and services delivered or contemplated under the Agreement. County shall make the determination to re-solicit bids, request information, or request proposals in accordance with applicable County policies.

27.2. Contractor acknowledges that County, in its discretion, may enter into a contract for the future provision of goods and services, based upon the bids, information, or proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any future invitation for bids, request for information, or request for proposals by virtue of its present status as Contractor.

28. RESTRICTIONS ON LOBBYING.

28.1. Contractor and each County Lobbyist or County Lobbying Firm as defined in Los Angeles County Code Section 2.160.010, retained by Contractor, shall fully comply with Los Angeles County Code Chapter 2.160 (the "Lobbyist Ordinance"). Failure on the part of Contractor or any County Lobbyist or County Lobbying Firm retained by Contractor to fully comply with the Lobbyist Ordinance shall constitute a material breach of the Agreement upon which County, in its sole discretion, may immediately terminate or suspend the Agreement.

28.2. Contractor has been advised that federal funds are used to pay a portion of Contractor's work under this Agreement. Accordingly, Contractor agrees to and shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and agrees to cause each of its Subcontractors receiving funds provided under this Agreement to fully comply with all such certification and disclosure requirements.

29. CONSIDERATION OF GAIN/GROW PROGRAM PARTICIPANTS FOR

EMPLOYMENT. Should Contractor require additional or replacement personnel after the Effective Date, Contractor shall give reasonable consideration for any such employment openings to participants in County's Department of Public Social Services' Greater Avenues for Independence (in this Paragraph, "GAIN") or General Relief Opportunity for Work (in this Paragraph, "GROW") programs who meet Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that Contractor will interview qualified candidates. County will refer GAIN/GROW participants by job category to Contractor. In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first opportunity.

30. NONDISCRIMINATION IN SERVICES. Contractor shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, or physical or mental handicap, in accordance with all applicable requirements of federal and state law. For the purpose of this Paragraph 30 (Nondiscrimination in Services), discrimination in the provision of services may include the following: (a) denying any person any service or benefit or the availability of the facility, (b) providing any service or benefit to any person which is not equivalent or is not provided in an equivalent manner or at an equivalent time to that provided to others, (c) subjecting any person to segregation or separate treatment in any manner related to the receipt of any service, (d) restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit, and (e) treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or

any other requirements or conditions which persons must meet in order to be provided any service or benefit.

- 31. STAFF PERFORMANCE WHILE UNDER THE INFLUENCE.** Subject to all applicable laws and regulations, Contractor shall use reasonable efforts to ensure that no employee will perform services hereunder while under the influence of any alcoholic beverage, medication, narcotic, or other substance, which might reasonably, or have been observed to, impair such person's physical or mental performance.
- 32. CONTRACTOR PERFORMANCE DURING CIVIL UNREST.** Contractor recognizes that County provides services essential to the residents of the communities it serves, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other provision of this Exhibit or the Agreement, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such performance remains physically possible without related danger to Contractor's employees or suppliers. During any such event in which the health or safety of any of Contractor's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely. Failure to comply with this requirement shall be considered a material breach of this Agreement by Contractor, for which County may immediately terminate this Agreement.
- 33. CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM.**
- 33.1. Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through County contracts are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.
- 33.2. As required by County's Child Support Compliance Program (Los Angeles County Code chapter 2.200) and without limiting Contractor's duty under the Agreement to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the Term maintain compliance with employment and wage reporting requirements as required by the federal Social Security Act (42 U.S.C. Section 653a) and California Unemployment Insurance Code Section 1088.55, and shall implement all lawfully served Wage and Earnings Withholding Orders or County's Child Support Services Department ("CSSD") Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to California Code of Civil Procedure Section 706.031 and California Family Code Section 5246(b).
- 33.3. Failure of Contractor to maintain compliance with the requirements set forth in this Paragraph 33 (Contractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Contractor under the Agreement. Without limiting the rights and remedies available to County under any other provision of the Agreement or at law or in equity, failure of Contractor to cure such default within ninety (90) days of notice by the CSSD shall be grounds upon which County may

suspend or terminate the Agreement pursuant to Paragraph 6 (Termination for Default) of this Exhibit and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

34. RECYCLED-CONTENT PAPER. Consistent with the Board’s policy to reduce the amount of solid waste deposited at County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible in Contractor’s provision of Work pursuant to the Agreement.

35. COMPLIANCE WITH JURY SERVICE PROGRAM.

35.1. Jury Service Program. This Agreement is subject to the provisions of County’s ordinance entitled Contractor Employee Jury Service (“Jury Service Program”) as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

35.2. Written Employee Jury Service Policy.

35.2.1. Unless Contractor has demonstrated to County’s satisfaction either that Contractor is not a “contractor” as defined under the Jury Service Program (Section 2.203.020 of the Los Angeles County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the Los Angeles County Code), Contractor shall have and adhere to a written policy that provides that its employees shall receive from Contractor, on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the employees’ regular pay the fees received for jury service.

35.2.2. For purposes of this Paragraph 35 (Compliance with Jury Service Program), “contractor” means a person, partnership, corporation or other entity which has a contract with County or a subcontract with a County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. “Employee” means any California resident who is a full time employee of Contractor. “Full time” means 40 hours or more worked per week, or a lesser number of hours if: (a) the lesser number is a recognized industry standard as determined by County, or (b) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for County under the Agreement, the subcontractor shall also be subject to the provisions of this Paragraph 35 (Compliance with Jury Service Program). The provisions of this Paragraph 35 (Compliance with Jury Service Program) shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

35.2.3. If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the applicability of its “exception status” from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program’s definition of “Contractor” or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during the Term and at its sole discretion, that Contractor demonstrate to County’s satisfaction that Contractor either continues to remain outside of the Jury Service Program’s definition of “contractor” or that Contractor continues to qualify for an exception to the Jury Service Program.

35.2.4. Contractor’s violation of this Paragraph 35 (Compliance with Jury Service Program) of this Exhibit may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Agreement or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

- 36. BACKGROUND AND SECURITY INVESTIGATIONS.** Background and security investigations of Contractor’s staff may be required at the discretion of the County as a condition of beginning and continuing work under the Agreement. The cost of background checks is the responsibility of the Contractor.
- 37. ACCESS TO COUNTY FACILITIES.** Contractor, its employees, and agents will be granted access to County facilities, subject to Contractor’s prior notification to County Project Director, for the purpose of executing Contractor’s obligations hereunder, including for the provision of PBR System Warranty Services and, if applicable, Maintenance & Support Services. Access to County facilities shall be on a twenty-four hours per day, seven days per week basis. Access to County facilities outside of normal business hours must be approved in writing in advance by County Project Director. Contractor shall have no tenancy, or any other property or other rights in County facilities. While present at County facilities, Contractor’s personnel shall be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by County Project Director.
- 38. COUNTY FACILITY OFFICE SPACE.** In order for Contractor to perform services hereunder and only for the performance of such services, County may elect, subject to County’s standard administrative and security requirements, to provide Contractor with office space and equipment, as determined at the discretion of County Project Director, at County facilities, on a non-exclusive use basis. County shall also provide Contractor with reasonable telephone service and network connections in such office space for use only for purposes of the Agreement. County disclaims any and all responsibility for the loss, theft or damage of any property or material left at such County office space by Contractor.

39. DAMAGE TO COUNTY FACILITIES, BUILDINGS, OR GROUNDS.

39.1. Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

39.2. If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand, or without limitation of all County's other rights and remedies provided at law or equity, or under the Agreement, County may deduct such costs from any amounts due to Contractor from County under the Agreement.

40. PHYSICAL ALTERATIONS. Contractor shall not in any way physically alter or improve any County facility without the prior written approval of the County Steering Committee Chair, and County's Director of Internal Services Department, in their discretion.

41. FEDERAL EARNED INCOME TAX CREDIT. Contractor shall notify its employees and shall require each subcontractor to notify its employees that they may be eligible for the federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

42. ASSIGNMENT BY CONTRACTOR.

42.1. Contractor shall not assign its rights or delegate its duties under the Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion and which consent shall not be unreasonably withheld or unduly delayed, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Paragraph 42.1, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties, including the Board. For purposes hereof, a reasonable basis for withholding consent includes: the proposed assignee or delegee is a debarred entity from either County or any other public entity, the proposed assignee or delegee is not sufficiently experienced (in County's reasonable judgment) with the maintenance or support of Election systems, the proposed assignee or delegee is not financially qualified and stable to the reasonable satisfaction of County, the proposed assignee or delegee's plans for support of the PBR System are inadequate for County's needs, or the proposed assignee or delegee has been assessed liquidated damages, renegotiated a contract in connection with failures to provide service, or been ordered to pay damages in connection with its provision of other information technology or Election systems.

42.2. Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person, corporation,

partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition must include an assignment of this Agreement and the rights and obligations hereunder, and is an assignment requiring the prior written consent of County in accordance with Paragraph 42.1 of this Exhibit.

43. CONTINUOUS PRODUCT SUPPORT. If Contractor assigns or transfers this Agreement to a permitted assignee and subsequent to such assignment, the PBR System, including the PBR Units and the PBR System Software, is not supported to at least the same level that Contractor supported the PBR System, including the PBR Units and the PBR System Software, as determined by County Project Director (because, for example, Contractor's permitted assignee chooses to support other products in preference to the products licensed herein), or, absent any assignment or transfer, if County, upon six (6) months prior written request by Contractor and at County's sole discretion, waives Contractor's obligation to continue providing PBR System Warranty Services and, if applicable, Maintenance & Support Services in respect of the PBR System under Paragraph 13.12 (if for example, Contractor generally and with County approval is ceasing support of the product), then in either instance County, at its option and without limiting or altering its License rights in respect of the PBR System Software or ownership rights in respect of the PBR Units, County may elect to transfer the License, without cost or penalty, to another similar software product and may elect to require replacement of the PBR Units and related hardware and equipment with another similar hardware product (such similar software and hardware products are collectively referred to as the "Replacement Product") within Contractor's (if the Agreement has not been assigned or has been assigned to an affiliate of Contractor), or Contractor's permitted assignee's, if applicable, product offering. The assignee, by taking benefit (including, without limitation, acceptance of any payment under this Agreement) shall be deemed to have ratified this Paragraph 43. All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product. In addition, the following terms and conditions shall apply if County elects to transfer the license to a Replacement Product:

- 43.1. Any prepaid Maintenance & Support Services Fees for the PBR System shall transfer in full force and effect for the balance of the Replacement Product's maintenance and support term (or equivalent service) at no additional cost. If the prepaid moneys are greater than the Replacement Product's maintenance and support fee for the same term, the credit balance shall be applied to future maintenance and support fees or returned to County, at County's option;
- 43.2. Any and all components of the Replacement Product or otherwise offered separately, and needed to match the original PBR System, including the PBR Units and the PBR System Software, level of functionality, as determined by County's Project Director, shall be supplied by Contractor's permitted assignee without additional cost or penalty, and shall not affect the calculation of any maintenance and support fees;
- 43.3. All County users and support personnel shall receive reasonable training for purposes of learning the Replacement Product. Training shall be provided at no additional direct cost to County or users;

- 43.4. All License terms and conditions shall remain as granted herein with no additional fees imposed on County; and
- 43.5. The definitions of the PBR System, including the PBR Units and the PBR System Software, shall then include the Replacement Product.

44. INDEPENDENT CONTRACTOR STATUS.

- 44.1. The Agreement is by and between County and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. Contractor shall function as, and in all respects is, an independent contractor.
- 44.2. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.
- 44.3. Contractor understands and agrees that all persons performing Work pursuant to the Agreement are, for purposes of workers' compensation liability, the sole employees of Contractor and not employees of County. County shall have no obligation to furnish, or liability for, workers' compensation benefits to any person as a result of any injuries arising from or connected with any Work performed by or on behalf of Contractor pursuant to the Agreement.
- 44.4. Contractor shall provide to County an executed Contractor's Employee Acknowledgment, Confidentiality & Assignment Agreement (Exhibit N) for each of its employees performing Work under the Agreement. Such agreements shall be delivered to County Project Director.

45. RECORDS AND AUDITS.

- 45.1. Contractor shall maintain accurate and complete financial records of its activities and operations relating to the Agreement, including any termination hereof, in accordance with generally accepted accounting principles. Contractor shall also maintain accurate and complete employment and other records relating to its performance of the Agreement. Contractor agrees that County, or its authorized representatives, shall, with reasonable notice and during regular business hours, have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records of Contractor relating to the Agreement; provided that County's access to such employment records of Contractor shall be limited to access that does not constitute an unlawful invasion of the privacy rights of any such employee. Should the examination and audit be performed by a non-County entity or should a non-County entity be requested by County to review information received pursuant to an audit or examination

under this Paragraph 45 (Records and Audits), Contractor may require the non-County examiner or auditor, as the case may be, to execute a nondisclosure agreement prior to any disclosure. The nondisclosure agreement shall limit the non-County entity's use of information received or reviewed in connection with the examination and audit to work performed specifically for the benefit of County. All such material, including all financial records, time cards and other employment records, shall be kept and maintained by Contractor and shall be made available to County during the Term and for a period of five (5) years thereafter unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then at Contractor's option, Contractor shall either (a) provide County with access to such material at a mutually agreed upon location inside Los Angeles County, or (b) pay County for travel, per diem, and other costs and expenses incurred by County to examine, audit, excerpt, copy or transcribe such material at such outside location.

- 45.2. If an audit is conducted of Contractor specifically regarding the Agreement by any federal or state auditor, then Contractor shall file a copy of such audit report with County's Auditor Controller and County Project Director within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable federal or state law or under the Agreement.
- 45.3. If, at any time during or after the Term, representatives of County conduct an audit of Contractor, as and to the extent permitted hereunder, regarding the Work performed under the Agreement, the results of such audit, including any final determination in respect of an underpayment or overpayment, if any by County under the Agreement, shall be provided in writing to Contractor. Contractor shall have thirty (30) days to review the findings contained in such audit and notify County of any objection to the same. Such notice must include, in reasonable detail, the basis for Contractor's objection and any supporting documentation and analysis for Contractor's objection. If the parties cannot agree, within fifteen (15) days of receipt of Contractor's objection to the findings contained in County's audit, on the amount of underpayment or overpayment, if any, by County to Contractor hereunder, then either party may submit such matter to the Dispute Resolution Procedure, provided such matter shall be submitted initially, directly to County Project Director and Contractor Project Director. If Contractor fails to notify County of any objection it has to the findings of County's audit within the thirty (30) day period set forth above, Contractor waives any right to object to the findings of such audit, including any determination of overpayment by County. If such audit, whether initially following a waiver by Contractor of its right of objection or upon final determination pursuant to the Dispute Resolution Procedure, finds that County's dollar liability for any such Work is less than payments made by County to Contractor, then the difference, together with County's reasonable costs of audit, shall be either repaid by Contractor to County by cash payment upon demand or, at the discretion of County Project Director, deducted from any amounts due to Contractor from County. If such audit finds that County's dollar liability for such Work is more than the payments made by County to

Contractor, then the difference shall be paid to Contractor by County, but in no event shall County's payments to Contractor exceed the Maximum Contract Sum.

46. LICENSES, PERMITS, REGISTRATIONS, ACCREDITATION, AND CERTIFICATES. Contractor shall obtain and maintain in effect during the Term all licenses, permits, registrations, accreditation, and certificates required by all federal, state, and local laws, ordinances, rules, and regulations, which are applicable to Contractor's services under the Agreement. Contractor shall further ensure that all of its officers, employees, and agents who perform services hereunder, shall obtain and maintain in effect during the Term all licenses, permits, registrations, accreditation, and certificates which are applicable to their performance hereunder. A copy of each such license, permit, registration, accreditation, and certificate required by all applicable federal, state, and local laws, ordinances, rules, regulations, guidelines, and directives shall be provided, in duplicate, to Registrar-Recorder/County Clerk, Contracts Section, 12400 Imperial Hwy, Room 5203, Norwalk, CA 90650.

47. NEW TECHNOLOGY.

47.1. Without limiting Contractor's obligation to provide County Updates under the PBR System Warranty Services and, if applicable, the Maintenance & Support Services, Contractor and County acknowledge the probability that the technology of the PBR System (or any portion thereof) provided under the Agreement will change and improve during the Term. County desires the flexibility to incorporate into the PBR System any new technologies, as they may become available. Accordingly, Contractor Project Manager shall, promptly upon discovery and on a continuing basis, apprise County Project Director of all new technologies, methodologies, and techniques, other than Updates, that Contractor considers being applicable to the PBR Units or the PBR System Software (or any portion of either of them). Specifically, upon County's request, Contractor shall provide, in writing, a description of such new technologies, methodologies, and techniques, and shall indicate the advantages and disadvantages of incorporating the same into the PBR System, and provide an estimate of the impact such incorporation will have on the performance, scheduling, and price of the PBR System (or any portion thereof). County, at its discretion, may request that the Agreement be amended to incorporate the new technologies, methodologies and techniques into the PBR System (or any portion thereof) pursuant to the provisions of Paragraph 6 (Change Orders and Amendments) of the base document.

47.2. If Contractor develops and distributes any hardware that incorporates new technology, or is otherwise superior in design, portability, processing speed, or other functionality, to the current PBR System acquired by County pursuant to this Agreement, and Contractor is not otherwise required to provide such hardware pursuant to its obligations under the Agreement, then upon County's request, the parties will negotiate in good faith a reasonable trade-in value for all or part of County's then current PBR System (or any part thereof), which trade-in value would be applied by Contractor as a credit towards the amount payable by County for the acquisition of such upgraded hardware.

- 48. NO THIRD PARTY BENEFICIARIES.** Notwithstanding any other provision of the Agreement, Contractor and County do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of the Agreement, except that this Paragraph 48 (No Third Party Beneficiaries) shall not be construed to diminish Contractor's indemnification obligations hereunder.
- 49. MOST FAVORED PUBLIC ENTITY.** If Contractor's prices decline, or should Contractor, at any time during the Term, provide the same goods or services under similar quantity and delivery conditions to the state of California or any county, municipality, public agency, or district within California at prices below those set forth in the Agreement, then such lower prices shall be extended immediately to County on a prospective basis only for purchases which may be made by County after the effective date of such applicable price reduction.
- 50. COUNTY'S QUALITY ASSURANCE PLAN.** County or its agent will evaluate Contractor's performance under the Agreement on not less than an annual basis. Such evaluation will include assessing Contractor's compliance with the terms and performance standards of the Agreement. Contractor deficiencies which County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board. The report will include improvement and corrective action measures taken by County and Contractor. If improvement does not occur consistent with the corrective action measures, County may terminate the Agreement or impose other penalties as specified in the Agreement.
- 51. CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST.** Should Contractor require personnel in addition to those employed by Contractor on the Effective Date to perform the services set forth herein, Contractor shall give consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Agreement. For this purpose, consideration shall mean that Contractor will interview qualified candidates. Prior to consideration being given by Contractor, County will refer such County employees by job category to Contractor. The above obligations do not apply to positions filled by: (a) third parties who have subcontracted with Contractor to perform the services, or (b) Contractor's current employees.
- 52. CONTRACTOR TO NOTIFY COUNTY WHEN IT HAS REACHED 75% OF MAXIMUM CONTRACT SUM (UNDER CONTRACT SUM PROVISION).** Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the Maximum Contract Sum. Upon occurrence of this event, Contractor shall send written notification to County Project Director and County Project Manager.
- 53. NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION OR TERMINATION OF AGREEMENT.** Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration or termination

of this Agreement shall not constitute a waiver of County's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Agreement.

54. SAFELY SURRENDERED BABY LAW.

54.1. Notice to Employees. Contractor shall notify and provide to its employees residing in or working in the state of California, and shall require each subcontractor performing Work under this Agreement to notify and provide to its employees residing in or working in the state of California, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

54.2. Contractor's Acknowledgement of County's Commitment to the Safely Surrendered Baby Law. Contractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is County's policy to encourage all County contractors to voluntarily post County's "Safely Surrendered Baby Law" poster in prominent position at Contractor's place of business. Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. County's Department of Children and Family Services will supply Contractor with the poster to be used.

55. WAIVER. No waiver by County of any breach of any provision of the Agreement shall constitute a waiver of any other breach or of such provision. Failure of County to enforce at any time, or from time to time, any provision of the Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in the Agreement shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity, or under the Agreement.

56. GOVERNING LAW, JURISDICTION, AND VENUE. The Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the state of California applicable to Agreements made and to be performed within that state. Contractor agrees and consents to the exclusive jurisdiction of the courts of the state of California (except with respect to claims that are subject to exclusive federal subject matter jurisdiction, as to which Contractor agrees and consents to the exclusive jurisdiction of the United States District Court of the Central District of California) for all purposes regarding the Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the Central District of the Superior Court for the County of Los Angeles, California.

57. SEVERABILITY. If any provision of the Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective. In the event that one or more of the provisions of the Agreement is found to be invalid, illegal or unenforceable in any respect, such provision shall be deleted here from and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the Agreement fails of its essential purpose because of such deletion.

- 58. RIGHTS AND REMEDIES.** The rights and remedies of County provided in any given Paragraph, as well as throughout the Agreement, including throughout this Exhibit, are non-exclusive and cumulative with any and all other rights and remedies under this Agreement, at law, or in equity.
- 59. FACSIMILE.** Except for the parties initial signatures to the Agreement, which must be provided in “original” form, and not by facsimile, County and Contractor hereby agree to regard facsimile representations of original signatures of authorized officials of each party, when appearing in appropriate places on change notices or in other correspondence, notices, etc. requiring signatures, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed thereto, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of “original” versions of such documents.

* * *

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT B

PRICE AND SCHEDULE OF PAYMENTS

HAVA REQUIRED INKAVOTE ENHANCEMENT

Contractor: Election Systems & Software, Inc.

INTRODUCTION

Exhibit B, Price and Schedule of Payments, represents a summary of all costs. The costs of PBR Software Maintenance & Support Services after the Initial Term, PBR Hardware Maintenance & Support Services, and Additional PBR Units are incurred only at County's election to procure such services in accordance with Paragraphs 13 and 19 of the Agreement, respectively.

Except as otherwise provided in this Exhibit B, payments by County to Contractor will be in accordance with Paragraphs 6, Work: Approval and Acceptance and Paragraph 11, Invoices and Payments, of the Agreement.

All deliverables require a Task/Deliverable Acceptance Certificate signed by the Contractor's Project Director prior to being sent to County for acceptance and approval by the County.

I. PRICING SUMMARY TABLE

CATEGORY	TOTAL COST
II. PBR SYSTEM HARDWARE	\$17,495,940
III. PBR SYSTEM SOFTWARE	\$2,012,400
IV. THIRD PARTY HARDWARE AND SOFTWARE	\$0
V. ADA COMPLIANT EQUIPMENT	\$4,541,700
VI. ADMINISTRATIVE COSTS	\$542,600
VII. TRAINING	\$30,000
SUBTOTAL:	\$24,622,640
VIII. MAINTENANCE & SUPPORT SERVICES – PBR SYSTEM SOFTWARE	\$2,698,220
IX. POOL DOLLARS	\$2,750,000
X. ADDITIONAL PBR UNITS	\$3,793,889
XI. MAINTENANCE & SUPPORT SERVICES – PBR SYSTEM HARDWARE	\$11,320,017
MAXIMUM CONTRACT AMOUNT:	\$45,184,766

II. PRICE: PBR SYSTEM HARDWARE (INCL. PBR UNITS)

ITEM NO.	PRODUCT PART/SKU #	DESCRIPTION	QTY	UNIT COST	SUBTOTAL	SALES TAX	TOTAL COST	
1		PBR InkaVote Plus Ballot Reader, with two year preventative maintenance warranty	4,900	\$3,280	\$16,072,000	\$1,325,940	\$17,397,940	
2		Shipping, Handling & Insurance	4,900	\$20	\$98,000	N/A	\$98,000	
PBR SYSTEM HARDWARE TOTAL								\$17,495,940

IV. PRICE: THIRD PARTY HARDWARE AND SOFTWARE

ITEM NO.	PRODUCT PART/SKU #	MANUFACTURER/LICENSOR	DESCRIPTION	QTY	UNIT COST	SUBTOTAL	SALES TAX	TOTAL COST
HARDWARE								
		Dell	Election Converter PC	2	\$4,191	\$8,382	\$691	\$9,074
		Dell	Election Loader Laptop	10	\$3,097	\$30,970	\$2,555	\$33,525
		Dell	Voter Converter PC	34	\$2,691	\$91,494	\$7,548	\$99,042
SOFTWARE								
		Microsoft	Microsoft XP Professional	46				
		Unisyn	MySQL Database	2				
			Jasper Reports	2				
			Free TTS (Text to Speech)	2				
			Java JRE	46				
			Java Help	46				
THIRD PARTY SOFTWARE TOTAL								\$0

Note: County will purchase under separate contract as set forth in the Request for Proposals (RFP).

VI. PRICE: ADMINISTRATIVE COSTS

(Include project management, performance bond, license fees, etc.)

Description of Administrative Cost	THROUGH FIRST ANNIVERSARY	SECOND YEAR	THIRD YEAR	FIRST OPTION YEAR	SECOND OPTION YEAR	THIRD OPTION YEARS	REMAINING OPTION YEARS
Project Management	\$228,000						
PBR InkaVote Acceptance Testing (First 500 units only) (1)	\$45,000						
L & A Testing (2)	3,600						
Election Support	36,000						
Performance Bond	\$230,000						

TOTAL ADMINISTRATIVE COSTS: \$542,600

- (1) ES&S personnel will be responsible for the conduct of acceptance testing for the first 500 PBR Units and Accessible Booths. For the remaining PBR Units and Booths, County personnel will be responsible for acceptance testing.
- (2) Services represent advising County personnel on the L&A testing of the PBR System. County has full responsibility for managing and executing this task.

VII. PRICE: TRAINING

COURSE DESCRIPTION	MAXIMUM COUNTY PERSONNEL PER COURSE	TRAINING DAYS (8 HOURS/DAY) PER COURSE	# OF COURSES (UP TO)	UNIT COST PER TRAINER DAY	TOTAL COST
A. TECHNICAL STAFF TRAINING					
InkaVote Operations Training	20	1	5	\$1,200 / Course	\$6,000
Election Day Troubleshooting Instructor Training	20	1	5	\$1,200 / Course	\$6,000
Subtotal					\$12,000
B. WAREHOUSE STAFF TRAINING					
Warehouse Training	20	1	5	\$1,200 / Course	\$6,000
Subtotal					\$6,000
C. TRAIN-THE-TRAINER					
Pollworker Train the Trainer	20	2	5	\$2,400 / Course	\$12,000
Subtotal					\$12,000
TOTAL TRAINING COSTS					\$30,000

X. ADDITIONAL PBR UNITS

DESCRIPTION	QTY	UNIT COST	SUBTOTAL	SALES TAX	TOTAL COST
PBR Unit hardware, with two year Preventative Maintenance Warranty ordered during the term of the Agreement. (See Note 1)	750	\$3,280	\$2,460,000	\$202,950	\$2,662,950
Shipping, Handling & Insurance	750	\$20.00	\$15,000	N/A	\$15,000
InkaVote Accessible Booth	750	\$847	\$635,250	\$52,408	\$687,658
Shipping, Handling & Insurance	750	\$10.00	\$7,500	N/A	\$7,500
Application Software – InkaVote Plus PBC Software	750	\$273	\$204,750	\$16,892	\$221,642
PBR Unit Software Maintenance and Support Services (Third Year)	750	\$47	\$35,250	\$1,454	\$36,704
PBR Unit Software Maintenance and Support Services (First Option Year)	750	\$49	\$36,750	\$1,516	\$38,266
PBR Unit Software Maintenance and Support Services (Second Option Year)	750	\$51	\$38,250	\$1,578	\$39,828
PBR Unit Software Maintenance and Support Services (Third Option Year)	750	\$53	\$39,750	\$1,640	\$41,390
PBR Unit Software Maintenance and Support Services (Fourth Option Year)	750	\$55	\$41,250	\$1,702	\$42,952
PBR Unit Software Maintenance and Support Services (Remaining Option Years)	Prior Year Maintenance Fee, subject to 3.5% increase				
Total Cost for Additional PBR Units (Note 2)					\$3,793,889

Note 1: The Unit Cost set forth above for the PBR Unit and Accessible Booth will apply for Units purchased prior to PBR System Acceptance. Units purchased after PBR System Acceptance and before the expiration of the initial term of the Agreement will be at a cost not to exceed 115% of the Unit Costs set forth above.

Note 2: Payment for Additional PBR Units delivered prior to PBR Acceptance will be made upon invoicing after Additional PBR Unit Acceptance in respect of such Additional PBR Units, subject to the hold back schedule set forth in Items 6.4 and 16.1 of the Schedule of Payments (Part XIV of this Exhibit B). For all Additional PBR Units delivered after the date of PBR System Acceptance, payment in respect of such Additional PBR Units shall be made in full upon invoicing after Additional PBR Unit Acceptance.

XI. PRICE: MAINTENANCE & SUPPORT SERVICES– PBR SYSTEM HARDWARE

(Item No. should cross-reference to the Item No. in the applicable “Price” worksheet of the product being purchased.)

ITEM NO.	DESCRIPTION	QTY	EXPIRATION OF 2 YEAR WARRANTY PERIOD TO THIRD ANNIVERSARY THEREOF (YEAR 3) MONTHLY MAINTENANCE FEE	FIRST OPTION YEAR (YEAR 4) MONTHLY MAINTENANCE FEE	SECOND OPTION YEAR (YEAR 5) MONTHLY MAINTENANCE FEE	THIRD OPTION YEAR (YEAR 6) MONTHLY MAINTENANCE FEE	FOURTH OPTION YEAR (YEAR 7) MONTHLY MAINTENANCE FEE	FIFTH OPTION YEAR (YEAR 8) MONTHLY MAINTENANCE FEE	SIXTH OPTION YEAR (YEAR 9) MONTHLY MAINTENANCE FEE
1	PBR InkaVote Plus Ballot Reader	4,900	\$104,125	\$108,208	\$112,292	\$116,783	\$121,275	\$125,520	\$129,913
	Additional PBR Units	750	\$15,938	\$16,560	\$17,190	\$17,873	\$18,563	\$19,212	\$19,885
		Subtotal	\$120,063	\$124,768	\$129,482	\$134,655	\$139,838	\$144,732	\$149,797
	Annualize		x12	x12	x12	x12	x12	x12	x12
MAINTENANCE & SUPPORT SERVICES – PBR SYSTEM HARDWARE TOTAL ANNUAL COST:			\$1,440,750	\$1,497,216	\$1,553,784	\$1,615,866	\$1,678,050	\$1,736,782	\$1,797,569

**MAINTENANCE & SUPPORT SERVICES - PBR SYSTEM HARDWARE
 MAXIMUM CONTRACT OBLIGATION: \$ 11,320,017**

XII. SPARE PARTS/CONSUMABLES

(Spare parts and other consumables not covered under warranty or under Maintenance & Support Services, and that are needed by County for use of the PBR System, including County minor services per Exhibit C.)

PRODUCT PART/SKU #	DESCRIPTION	QTY	UNIT COST	SUBTOTAL	SALES TAX	TOTAL COST
The following is a list of what ES&S believes to be the most commonly used spare parts and consumables:						
	Head Phones (Sony)	1	\$45.00	\$45.00	\$3.71	\$48.71
*	80mm Thermal Printer	1	\$390.00	\$390.00	\$32.18	\$422.18
*	82.55mm Thermal Printer	1	\$500.00	\$500.00	\$41.25	\$541.25
*	PS/2 Keyboard, 5 Quad Keys	1	\$55.00	\$55.00	\$4.54	\$59.54
*	Booth Unit to PBR Unit Umbilical Cable	1	\$50.00	\$50.00	\$4.13	\$54.13
	PBR Unit Report Printer Thermal Paper Roll	1	Per quote	Per quote	TBD	Per quote
	Custom Ballot Slip Thermal Paper Roll	1	Per quote	Per quote	TBD	Per quote
	PBR Unit to Ballot Box Security Seal	1	\$0.50	\$0.50	\$0.04	\$0.54
	PBR Unit Access Door Seal	1	\$0.25	\$0.25	\$0.02	\$0.27

* These items are covered under warranty and price shown applies to post warranty period. However, during warranty period, the cost of any such spare parts/consumable replacement required as a result of a loss or damage to the item due to County's negligence or failure to properly care for such item shall be borne by the County.

XIII. SCHEDULE OF PAYMENTS: TASKS AND DELIVERABLES

(NOTE: Title/description of Deliverables below has been condensed. For full detail and responsibilities refer to the corresponding item number in Exhibit C, Statement of Work. Grayed boxes are not available as payment points.

ITEM NO.	SOW DELIVERABLES	TITLE	PAYMENT POINT	DELIVERABLE PRICE	HOLDBACK PERCENT (%)	AMOUNT DUE	SALES/USE TAX	INVOICE AMOUNT
1.0	PROJECT MANAGEMENT							
	1.1	Delivery and acceptance of Project Control Document in MS Project		\$271,300	15%			\$230,605
	1.2	Monthly Updated Project Control Document and Change Control Document						
	1.3	Project Steering Committee meetings & Status Reports						
	1.4	Attendance and Reporting at relevant meetings as requested by County						
2.0	PROJECT STARTUP							
	2.1	List of Third Party Software and copies of licenses thereto with attestation of compliance.						
	2.2	Delivery to County of a copy of the completed escrow deposit certificate with County named as beneficiary						
	2.3	Compliance with SOS escrow process, confirm by delivery to County of a copy of the completed escrow deposit certificate(s)						
3.0	WAREHOUSING							
	3.1	Provide warehouse plan for all required PBR Units including layout plan, environmental plan, electrical requirements and network requirements.						

ITEM NO.	SOW DELIVERABLES	TITLE	PAYMENT POINT	DELIVERABLE PRICE	HOLDBACK PERCENT (%)	AMOUNT DUE	SALES/USE TAX	INVOICE AMOUNT
Phase I								
4.0	COUNTY EQUIPMENT MODIFICATION/ ACQUISITION							
	4.1	Completed list of hardware modification or hardware to be acquired						
	4.2	Completed delivery schedule						
	4.3	Completed delivery of modified or acquired equipment on schedule.						
5.0	THIRD-PARTY HARDWARE AND SOFTWARE SPECIFICATION							
	5.1	Delivery of 3 rd party hardware specifications and delivery timelines, if any						
	5.2	Delivery of 3 rd party software specifications and delivery timelines, if any						
6.0	PBR SYSTEM DELIVERY AND ACCEPTANCE							
	(Note: Payment will occur as Units are delivered and accepted by County per delivery schedule and Project Control Document.)							
	6.1	Acceptance tests and test plans to be used during acceptance of any PBR System hardware						
	6.2	Receipt and acceptance of 6 or more demo PBR Units.		\$26,982				\$26,982
	6.3	Receipt and acceptance of 4 PBR Units ready for election testing.		\$17,988				\$17,988
	6.4	Receipt and acceptance of remaining PBR System components as required.		\$21,992,670	5%			\$20,893,037
7.0	SYSTEM TESTING AND ACCEPTANCE							
	7.1	Completed test plan and any required import, export, or test files and automated test scripts						
	7.2	Successful election test		\$503,100 (25% of PBR software)	15%			\$427,635

ITEM NO.	SOW DELIVERABLES	TITLE	PAYMENT POINT	DELIVERABLE PRICE	HOLDBACK PERCENT (%)	AMOUNT DUE	SALES/USE TAX	INVOICE AMOUNT
8.0	TRAINING							
	(Note: Up to five (5) classes per course. Payment will be made as training occurs.)							
	8.1	County Technical staff training		\$4,800				\$4,800
	8.2	Poll Worker Instructor training		\$12,000				\$12,000
	8.3	Hardware Storage, Upkeep and Handling training		\$6,000				\$6,000
	8.4	Election Day Troubleshooter Instructor training		\$6,000				\$6,000
9.0	DOCUMENTATION							
	9.1	Provide required manuals, procedures, documentation and Project Administration.		\$135,650	15%			\$115,303
Phase II								
10.0	APPLICATION DESIGN AND DEVELOPMENT							
	10.1	Provide design documents(s) for subtask 10.1						
	10.2	Programs which perform all the required functions documented with related test results, reports, and updated documentation		\$503,100 (25% of PBR software)	15%			\$427,635
11.0	THIRD-PARTY HARDWARE AND SOFTWARE SPECIFICATION							
	11.1	Delivery of 3 rd party hardware specifications and timelines.						
	11.2	Delivery of 3 rd party software specifications and timelines.						
12.0	HARDWARE DELIVERY AND ACCEPTANCE							
	12.1	Acceptance tests upon hardware receipt.						
13.0	SYSTEM TESTING AND ACCEPTANCE							
	13.1	Completed test plan and any required import, export, or test files and automated test scripts.						

ITEM NO.	SOW DELIVERABLES	TITLE	PAYMENT POINT	DELIVERABLE PRICE	HOLDBACK PERCENT (%)	AMOUNT DUE	SALES/USE TAX	INVOICE AMOUNT
	13.2	Successful Special Election system test(s) accepted by County						
	13.3	Successful Primary Election system test accepted by County						
	13.4	Successful General Election and volume system test accepted by County						
	13.5	Acceptance Certificate received and approved by County		\$1,006,200 (50% of PBR software)	15%			\$855,270
	13.6	Provide required updated manuals and documentation to County.						
14.0	TRAINING							
	14.1	Provide training to County		\$1,200				\$1,200
	14.2	Updated training materials in Word documents.						
15.0	DOCUMENTATION							
	15.1	Provide required updated manuals and documentation to County.						
16.0	PBR SYSTEM ACCEPTANCE							
	16.1	PBR System Acceptance Certificate approved by County Project Director		\$135,650				\$1,598,186
TASKS AND DELIVERABLES TOTAL: \$24,622,640								

Note: Task 16.1 includes Holdback payments in the total Invoice Amount.

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT C

STATEMENT OF WORK

HAVA Required InkaVote Enhancement

Statement of Work

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I. PURPOSE

The County of Los Angeles Registrar-Recorder/County Clerk (RRCC) is seeking to upgrade their InkaVote Voting System with Help America Vote Act (HAVA) compliant Precinct Ballot Reader (PBR) Units and System containing (i) a means for the disabled, including blind and visually impaired voters, to vote privately and independently at each polling place; (ii) voting error of over-vote checking, and optionally, (iii) under-vote checking. Such PBR System shall be fully integrated with the existing InkaVote System so RRCC continues to have only one voting system in each polling place. The primary goal is to acquire the required number of PBR Units, one per polling location, to meet HAVA requirements. Given the short time frame to accomplish this, the project is being divided up into two phases.

A. Significant Events

Significant Elections affecting the implementation time frame of this offer and the anticipated PBR System Warranty Period are:

November in odd numbered years	UDEL Elections
Even numbered years	June Primary Elections and November General Elections
Special Elections	As scheduled when called

B. Overview of Contractor/County Responsibilities

Contractor shall be responsible for areas related to the proposed PBR System. This includes PBR System and PBR Unit hardware, firmware and software, and their delivery, system development and support.

Contractor shall provide complete Election support to County as specified in the Agreement (including but not limited to Paragraph 12 (PBR System Warranty) and Paragraph 13 (Maintenance & Support Services; Pool Dollars Work) and as specified in Exhibit E (Maintenance & Support Services) of the Agreement).

County is responsible for logistics and operations of all the voting systems including the PBR System and Units.

C. RRCC Technical Operating Environment

The RRCC operates a Microsoft Windows 2000 domain server environment using TCP/IP as the primary network protocol. The Department has standardized software from Microsoft, including Microsoft Office, Microsoft Project, Microsoft Windows 2000 & XP for desktops, Microsoft Windows 2000 Server for servers, and Microsoft SQL Server for database applications. Contractor shall provide all Deliverables and other Work hereunder so as to remain compatible with County's existing IT infrastructure.

Attachments A and B to this Statement of Work provide functional flow charts of how the PBR System fits into the RRCC's InkaVote System. Attachment A shows both the existing Election Day process and the revised Election Day process to be implemented with PBR Units. Attachment B shows the existing process after polls close and the required post-closing process with the PBR System.

II. SCOPE OF WORK

A. Phase I

The PBR System shall integrate with existing and developing RRCC InkaVote System hardware and software. In Phase I, the interface from the InkaVote System to the PBR System is an XML (eXtensible Markup Language) file generated by the InkaVote System. This XML file provides election programming to the PBR System. In Phase I, no data will be passed from the PBR Units or PBR System to the InkaVote System; the InkaVote System will read and tally the physical InkaVote ballots. Phase I also includes the delivery of all PBR System Software and Hardware, including all required PBR Units, as submitted to and certified by the Federal Independent Testing Authority and the California Secretary of State during 2005.

B. Phase II

This Phase includes PBR System program development and certification of all functionality required by Exhibit D, Requirements, not implemented during Phase I, excluding requirements with an "N" response code from Contractor.

III. TASKS AND DELIVERABLES

All Deliverables require written acceptance and approval by the County in accordance with the Agreement before they shall be considered complete. A *Task/Deliverable Acceptance Certificate* is to be sent to both County Project Manager and County Project Director for the County Project Director's signoff for each Deliverable in each Subtask below. The *Task/Deliverable Acceptance Certificate* should already be signed by Contractor's Project Director prior to being sent to County.

Note: Acceptance of any independent deliverable does not constitute acceptance of the integrated PBR System, see Agreement, Paragraph 5.3 (PBR System Acceptance).

A. *Non-Phase Specific*

Task 1. Project Management

Contractor shall provide project management for this InkaVote System Enhancement. Contractor shall prepare and submit a project plan as defined in the following Subtasks. County shall thereafter monitor and oversee Contractor's progress on the project based on the approved project plan, this Statement of Work, and the Agreement.

Subtask 1.1

Project Control Document

Contractor shall prepare and provide to County, an initial Project Control Document (in electronic form using MS Project) including Gantt charts at the beginning of the project and periodically updated at status meetings until final System Acceptance. The initial Project Control Document shall contain the following, broken down by project phase:

- A. Project Personnel and organizational chart showing all relevant reporting relationships and a statement of qualification for each assigned person
- B. Detailed work plan and methods for achieving each Task and Deliverable
- C. Project schedule identifying start and end dates for all Tasks and Deliverables required to achieve successful implementation of the project phase

- D. Task and Deliverable end date schedule in chronological order
- E. County hardware modification and delivery schedules
- F. Delivery schedules for PBR Units and all other PBR System components. Initial delivery, for Subtask 6.4, shall begin no later than July 23rd, 2006. Future deliveries shall occur at least weekly and Contractor will deliver no less than 300 units per week. Final delivery and acceptance of all PBR System components must occur no later than September 26th, 2006 (six weeks prior to the November 2006 General Election).
- G. Draft proposed hardware and software specifications and delivery schedules
- H. Draft PBR Unit Acceptance Test Protocols and Procedures
- I. Draft Acceptance Test Failure Plan which provides an agreed upon escalation and remediation plan in the event PBR Units experience an acceptance test failure rate of ten percent (10%) or higher.
- J. Draft PBR System Acceptance Test Protocols and Procedures
- K. Draft Training Plans
- L. Other

Deliverable 1.1

Project Control Document accepted by County.

Subtask 1.2

Coordinate Project and Provide Updates

County shall coordinate and establish in conjunction with Contractor, the schedule for all project Tasks and Subtasks which shall be consistent with Exhibit B (Price and Schedule of Payments). Contractor shall provide sufficient personnel to complete its assigned Tasks and Subtasks as described in the Project Control Document, and report progress to County's Project Director in writing. After the initial Project Control Document is approved by County, Contractor shall update the Project Control Document monthly for Phases I and II, and deliver the updated Project Control Document and Change Control Document to County for review and, if applicable, approval by County's Project Director and County's Project Manager.

Deliverable 1.2

Monthly Updated Project Control Document and Change Control Document

Subtask 1.3

Project Steering Committee Meetings and Reports

A steering committee meeting shall be held at least once a month during Phases I and II, at County headquarters. Contractor's Project Manager shall attend steering committee meetings. At this meeting, Contractor shall report on progress (work done, not done, etc.) via a project status report updated by Contractor. The project status report shall address at least the following items:

- 1) Period covered by the report
- 2) Overview of the reporting period
- 3) Highlights for the period including those Tasks accomplished and those scheduled to be but not accomplished
- 4) Issues to be resolved and issues resolved during the period
- 5) Milestones not met during the period or in danger of not being met shortly thereafter and a detailed discussion of potential impact on ensuing Tasks, milestones and other Work
- 6) Plans for the next period including plans to meet scheduled but unmet milestones
- 7) Pending milestones and any material risks to achieving them
- 8) Outstanding Change Orders and their status
- 9) Updated Project Control Document, Change Control Document and Schedule (Note: Project Control Document and Change Control Document and schedule changes require County approval – see Agreement Paragraph 4.5 (Delivery and Acceptance of Project Control Document)).
- 10) Any other information that County may from time to time reasonably require

Deliverable 1.3

- 1.3.1 Steering Committee meeting attendance
- 1.3.2 Project Status Reports
- 1.3.3 Assist in establishing Steering Committee meeting dates

Subtask 1.4

Other Meetings & Reports

This project is of concern to the Board of Supervisors, the Secretary of State, a committee of County officers and the citizens of the County. As such, there may

be other meetings that Contractor shall be required to attend, including some public meetings, at which project status reports may be required from Contractor. County shall try to give Contractor as much advanced notice of these meetings as is reasonably possible.

Deliverable 1.4

Attendance and Reporting at relevant meetings as requested by County.

Task 2. Project Startup

Subtask 2.1

Third Party Software Ownership Interests

Contractor must describe in detail all associated Third Party Software required or utilized by the PBR System and certify that Contractor meets all licensing requirements under the Agreement.

Deliverable 2.1

List of Third Party Software and copies of licenses thereto with attestation of compliance.

Subtask 2.2

Contractor shall place the Source Code for PBR System Software as certified by SOS in an SOS approved escrow facility. Upon signing of Agreement LA County shall be named as beneficiary.

Deliverable 2.2

Delivery to County of a copy of the completed deposit certificate with County named as beneficiary.

Subtask 2.3

Contractor shall be responsible for complying with SOS guidelines for escrow process for certified software naming LA County as beneficiary.

Deliverable 2.3

Delivery to County of a copy of the completed deposit certificate(s).

Task 3. Warehousing

Subtask 3.1

Contractor shall develop a warehouse plan showing optimum layout, environmental requirements, electrical and network requirements for the storage, election preparation, and maintenance of all PBR Units and additional PBR System Hardware.

Deliverable 3.1

Provide warehouse plan for all required PBR Units.

- 3.1.1 Layout plan
- 3.1.2 Environmental plan
- 3.1.3 Electrical requirements
- 3.1.4 Network requirements

B. Phase I

Phase I includes the delivery of all PBR System hardware and software, including all required PBR Units. The hardware and software versions of the PBR System shall be those submitted to and certified by the Federal Independent Testing Authority and the California Secretary of State during 2005.

The PBR System shall integrate with existing InkaVote System hardware and software. This will be accomplished by the InkaVote System generating an .xml interface file which provides election specific data to the PBR System

In Phase I, no data will be passed from the PBR Units or PBR System to the InkaVote System. The InkaVote System will read and tally the physical InkaVote ballots.

Task 4. County Equipment Modification / Acquisition

Subtask 4.1

List hardware items needing modification or acquisition of alternative hardware

Specify the required hardware modifications or alternative hardware acquisition, and provide a schedule for the changes or acquisition so that such equipment shall be ready for use within the same delivery period as the PBR System and PBR Units.

Deliverable 4.1

Completed list of hardware modifications or hardware to be acquired.

Subtask 4.2

Delivery schedule of hardware being modified or acquired

Deliverable 4.2

Completed delivery schedule

Subtask 4.3

Perform modifications specified or acquire alternative hardware as needed.

Deliverable 4.3

Completed delivery of modified or acquired equipment on schedule.

Task 5. *Third-party Hardware and Software Specification*

Subtask 5.1

Provide the equipment specifications necessary in Phase I, if any, as defined in the Agreement for third party hardware.

Note: County reserves the right to purchase third party PBR System equipment on its own, in a timely fashion, based upon the specifications and timelines provided by Contractor.

Deliverable 5.1

Delivery of hardware specifications and delivery timelines, if any.

Subtask 5.2

Provide the software specifications necessary in Phase I, if any, as defined in the Agreement for third party software.

Note: County reserves the right to purchase third party PBR System software on its own, in a timely fashion, based upon the specifications and timelines provided by Contractor. Once PBR System software is accepted and installed, Contractor is expected to warrant its operation according to the terms of the Agreement.

Deliverable 5.2

Delivery of software specifications and delivery timelines, if any.

Task 6. *PBR System Delivery and Acceptance*

Subtask 6.1

Prepare acceptance procedures, acceptance tests and test plans.

Deliverable 6.1

Acceptance tests and test plans to be used during acceptance of any PBR System hardware.

- 6.1.1 Physical unit inspection of each component (shipping damage; etc.)
- 6.1.2 Unit Physical Test of basic operations (power; printer; screen; etc.)
- 6.1.3 Unit Logical Test of Demo Election (audio unit function; ballot validation features; etc.)

Subtask 6.2

County requires at least six (6) advance demo PBR Units and other supporting PBR System components delivered within 10 days after the Agreement is signed.

Deliverable 6.2

Receipt and acceptance of six (6) (or more) demo PBR Units and any other required supporting PBR System components in advance.

Subtask 6.3

County desires test use of the PBR Units prior to actual election use. This requires no less than 10 PBR Units and a working PBR System within 30 days of Agreement signing.

Deliverable 6.3

Receipt and acceptance of 10 PBR Units ready for mock election testing – the six demo PBR units from Deliverable 6.2 can fulfill a portion of this deliverable, requiring Contractor to deliver at least four (4) additional units within 30 days of Agreement signing.

Subtask 6.4

All remaining PBR System components shall be delivered to County on the schedule agreed to in the Project Control Document.

Deliverable 6.4

Receipt and acceptance of remaining PBR Units and PBR System components in the required timeframe.

Task 7. System Testing and Acceptance

Using County provided data and working with County staff, Contractor shall conduct Election systems tests of the PBR System and PBR Units working with InkaVote System. County shall determine and provide the data and content of the test election. System tests shall include data import, reports, loading PBR Units, and test-voting, including audio voting. Resolve and correct any errors detected during the tests and re-run as needed. Obtain County staff concurrence the tests were successful.

Subtask 7.1

Prepare acceptance test scripts and test plans for an upcoming election most likely to first utilize the PBR System.

Deliverable 7.1

Complete test plan documentation and any required import, export, or test files and automated test scripts.

Subtask 7.2

Conduct election test defined in Subtask 7.1 for the PBR System working with County systems.

Deliverable 7.2

Successful election test.

Task 8. Training

Provide training in the following areas.

Subtask 8.1

Technical Training

Contractor shall train County technical staff on the functions necessary for:

- Generating media for PBR Units
- Proofing PBR System data created
- Importing/loading election data into PBR System
- Checking and validating PBR Unit data
- Performing logic and accuracy checks on PBR System and PBR Unit samples

- Setting PBR Unit for election
- Printing PBR Unit zero-count and other reports
- PBR Unit closing election
- Extracting data from PBR Units
- Any other procedures and/or maintenance items required to prepare PBR System and PBR Units for an election and keep them up to date and in good working order

Deliverable 8.1

- 8.1.1 Develop a training plan for County Technical Training covering each subject area described in Subtask 8.1, to be approved by County prior to conducting any training in accordance therewith
- 8.1.2 Deliver training for County Technical staff

Subtask 8.2.

Poll Worker Instructor Training

Contractor shall provide qualified staff to train the RRCC Instructors in their preparation for training the over 20,000 poll workers needed for a major election. Contractor shall provide appropriate training materials to the RRCC Instructors including at least the following:

- 8.2.1 Media:
 - Print materials as electronic Microsoft Word documents
 - Demonstrator PBR Unit devices for workers to practice on
- 8.2.2 Topics to be covered in training shall include, but are not limited to:
 - Setting up a PBR Unit
 - Turning on and activating the PBR Unit for the precinct(s) to be processed
 - Configuring ballot validation for the precincts to be processed on the PBR Unit – if needed
 - Selecting ballot and activating audio ballot voting on the PBR Unit
 - PBR Unit error handling and recovery
 - PBR Unit closing procedures
 - Procedures for removing the ballot image media from the PBR Unit and returning to RRCC HQ for processing
 - Disassembling the PBR Unit and packing it for transportation

Deliverable 8.2

- 8.2.1 Develop a training plan to train the RRCC Instructors (Train-the Trainer) as described in *Subtask 8.2*, to be approved by County prior to conducting any training in accordance therewith
- 8.2.2 Deliver training for the RRCC Instructors

Subtask 8.3

Hardware Storage, Upkeep & Handling Training

Contractor shall provide a list of operator maintenance functions and provide a training plan to RRCC Instructors for use in training County personnel to perform these functions. Contractor shall include all storage, handling, basic preventive maintenance (e.g. oil/change castors) and major repair aspects of the PBR Units. This shall include the following: operation and repair manuals check sheets, and charts or diagrams, as needed for the proper and continued maintenance and repair of the PBR Unit Hardware. Additional areas to be covered in the training plan shall include:

- Procedures needed to remove PBR Units from storage and prepare them for election use
- Instructions for PBR Unit transportation and assembling PBR Units for election use
- Instructions for PBR Unit break down at the poll, preparations for PBR Unit return transport, and preparations for the return of PBR Units to storage
- Spare parts inventory and price listing for County including any parts not covered in the Agreement
- Any other procedures for proper use and/or storage of the PBR Units
- Instructions and procedures for repairs to all parts of the PBR Units

Deliverable 8.3

- 8.3.1 Develop a training plan for the RRCC Instructors as described in *Subtask 8.3*, to be approved by County prior to conducting any training in accordance therewith
- 8.3.2 Deliver training for RRCC Instructors

Subtask 8.4

Election Day Troubleshooter Instructor Training

Contractor must provide materials RRCC Instructors for training Election Day Troubleshooters in troubleshooting, repair and all operational aspects of the PBR

Units, and train RRCC Instructors to provide this training. Contractor must provide appropriate training materials, including but not limited to the following:

- 8.4.1 Materials:
 - Print materials as electronic Microsoft Word documents
- 8.4.2 Topics to be covered in training will include, but are not limited to all items listed in Subtask 8.2.2, plus the following:
 - PBR Unit repair and troubleshooting

Deliverable 8.4

- 8.4.2 Deliver training materials to RRCC Instructors

Task 9. Documentation

Contractor shall deliver complete documentation for the operation and maintenance of the PBR Units and PBR System with version numbers and dates as electronic documents in Microsoft Word format.

Subtask 9.1

Documentation shall include, but is not limited to the following:

- Operations manuals, in electronic form, including any necessary charts or diagrams for all components of PBR System
- Storage procedures for PBR Units
- Maintenance activities for PBR System and PBR Units
- Preparation of PBR System and PBR Units for election use
- Supplies used during the election cycle and estimates of quantities needed for each item by PBR Unit and PBR System
- Electronic copy of the California Secretary of State approved procedures for use and any limitations placed upon the PBR System and/or PBR Units

Deliverable 9.1

Provide required electronic manuals, procedures, and documentation to County staff.

C. Phase II

Task 10. Application Design and Development

Subtask 10.1

Create a design document which includes all PBR System software modifications and enhancements required by Exhibit D, Requirements, not implemented during Phase I, excluding requirements with an “N” response code from Contractor.

Deliverable 10.1

Provide design document for Subtask 10.1 in electronic form.

Subtask 10.2

Develop system based upon the County approved design of Deliverable 10.1.

Deliverable 10.2

Programs which perform all the functions required as documented with related test results, reports, and updated documentation.

Task 11. Third-party Hardware and Software Specification

Subtask 11.1

Provide the equipment specifications necessary in Phase II, if any, as defined in the Agreement for third party hardware.

Note: County reserves the right to purchase third party PBR System equipment on its own, in a timely fashion, based upon the specifications and timelines provided by Contractor. Once PBR System equipment is accepted and installed, Contractor is expected to warrant its operation according to the terms of the Agreement.

Deliverable 11.1

Delivery of hardware specifications and delivery timelines, if any.

Subtask 11.2

Provide the software specifications necessary in Phase II, if any, as defined in the Agreement for third party software.

Note: County reserves the right to purchase third party PBR System software on its own, in a timely fashion, based upon the specifications and timelines provided

by Contractor. Once PBR System software is accepted and installed, Contractor is expected to warrant its operation according to the terms of the Agreement.

Deliverable 11.2

Delivery of software specifications and delivery timelines, if any.

Task 12. Hardware Delivery and Acceptance

It is not expected that this task will have any activity, because Phase II is software development. But, in the event such development results in any additional hardware needs, this task is included.

Subtask 12.1

Prepare acceptance tests, test plans and delivery schedule.

Deliverable 12.1

Acceptance tests upon hardware receipt.

12.1.1 Physical unit inspection of each component (shipping damage; etc.)

12.1.2 Unit Physical Test of basic operations (power; printer; screen; etc.)

12.1.3 Unit Logical Test of Demo Election (audio unit function; ballot validation features; etc.)

Task 13. System Testing and Acceptance

Using County provided data and working with County staff, conduct Election systems tests of the PBR System and PBR Units working with InkaVote System. County shall determine and provide the data and content of the test elections. System tests shall include data import, reports, load PBR Units, test voting (including audio voting), and ballot image export to and acceptance by InkaVote Tally. Resolve and correct any deficiencies detected during the tests and re-run as needed. Obtain County staff concurrence the tests were successful.

Subtask 13.1

Prepare acceptance tests and test plans for a Special Election, Primary Election, General Election, and system volume test.

Deliverable 13.1

Complete test plan documentation and any required import, export, or test files and automated test scripts.

Subtask 13.2

Conduct a Special Election system test (26 vote position ballot) of the PBR System working with County systems.

Deliverable 13.2

Successful Special Election system test(s) accepted by County.

Subtask 13.3

Conduct a Primary Election system test of the PBR System working with County systems.

Deliverable 13.3

Successful Primary Election system test accepted by County.

Subtask 13.4

Conduct a General Election system test of the PBR System working with County systems.

Deliverable 13.4

Successful General Election system test accepted by County.

Subtask 13.5

Conduct a volume system test of the PBR System working with County systems.

Deliverable 13.5

Successful volume system test accepted by County.

Subtask 13.6

Contractor prepares a Task/Deliverable Acceptance Certificate for Phase II software for County's signature after successful completion of PBR System Acceptance Tests.

Deliverable 13.6

Task/Deliverable Acceptance Certificate received and executed by County.

Task 14. Training

Contractor shall train County instructors on changes in functionality, integration, and maintenance resulting from the Phase II changes and update previously provided training materials as needed.

Subtask 14.1

Train County instructors on changes caused by Phase II

Deliverable 14.1

Provide training.

Subtask 14.2

Updates of previously provided training materials to reflect changes made in Phase II.

Deliverable 14.2

Updated training materials as electronic Microsoft Word documents.

Task 15. Documentation

Contractor shall deliver complete documentation incorporating the Phase II upgrade for the operation and maintenance of the PBR Units and System with version numbers and dates as electronic documents in Microsoft Word format.

Subtask 15.1

Documentation shall include, but is not limited to updates caused by Phase II to the following:

- Operations manuals, in electronic form, including any necessary charts or diagrams for all components of PBR System
- Preparation of PBR System and Units for election use
- Electronic copy of the California Secretary of State approved System Use Procedures.

Deliverable 15.1

Provide required updated manuals and documentation to County.

Task 16. PBR System Acceptance

Achievement of PBR System Acceptance requires the Contractor to successfully complete all subtasks and County to have accepted all deliverables of the subtasks beginning with Task 2 through, and including, Task 15.

Subtask 16.1

Contractor prepares a PBR System Acceptance Certificate which identifies the date each Task/Deliverable Acceptance Certificate was approved by County beginning with Task 2 through, and including, Task 15.

Deliverable 16.1

PBR System Acceptance Certificate approved by County Project Director.

D. Additional Goods & Services / Pool Dollars

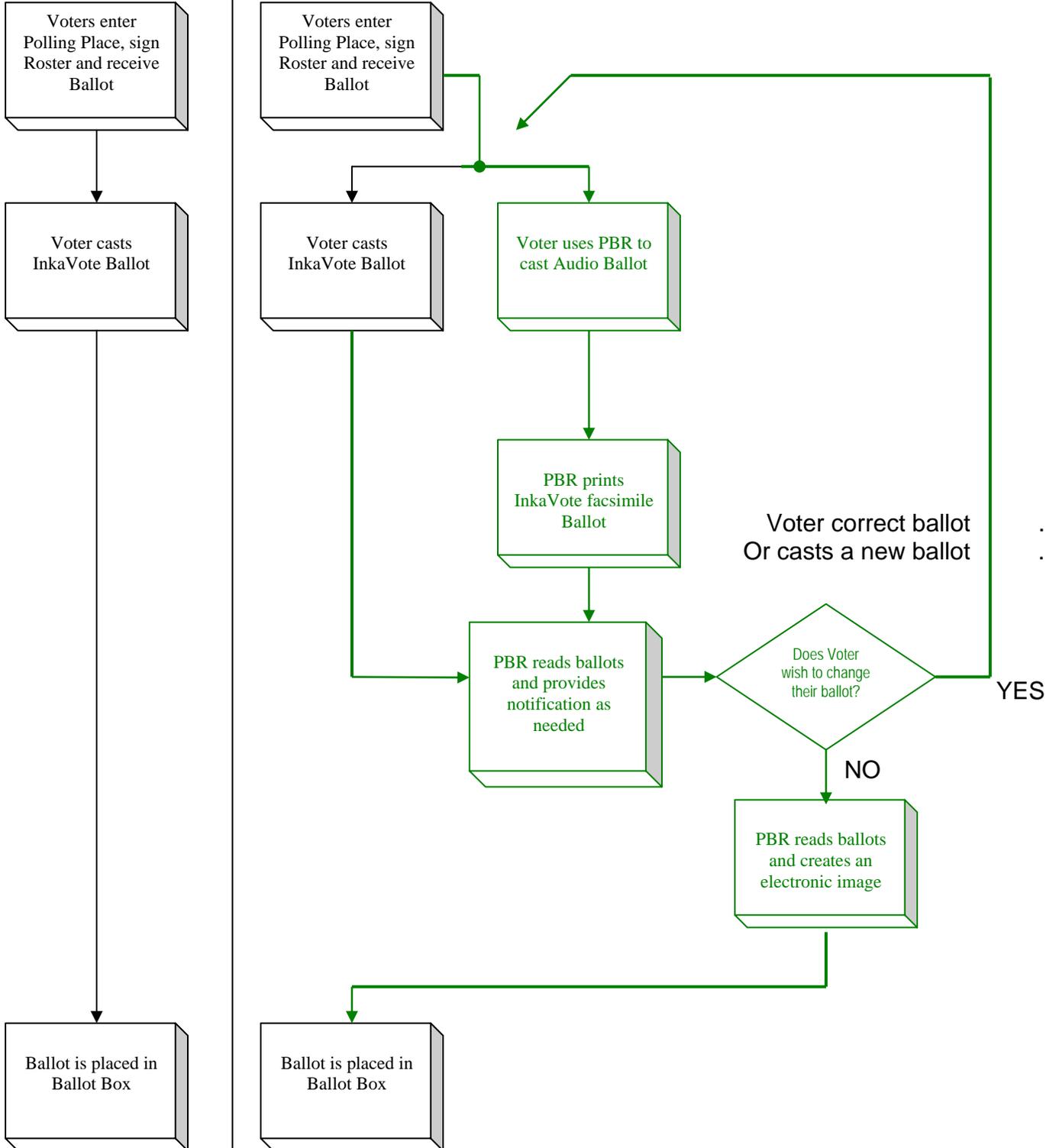
The Pool Dollars are to be used to fund additional goods and services not specified in the Agreement because they were unknown or not anticipated at that time and are beyond the functionality required by County or specified by Contractor hereunder. These Additional Goods and Services will be requested through Change Orders. The Change Order or its response will specify the task(s) and deliverable(s) associated with each Change Order. A deliverable under any Change Order shall be processed as though it was a specified deliverable in the Agreement and accepted by County only in the same manner. Each Change Order shall be numbered sequentially and the associated deliverable shall contain that number.

Attachment A

ELECTION DAY – 7am until Polls close

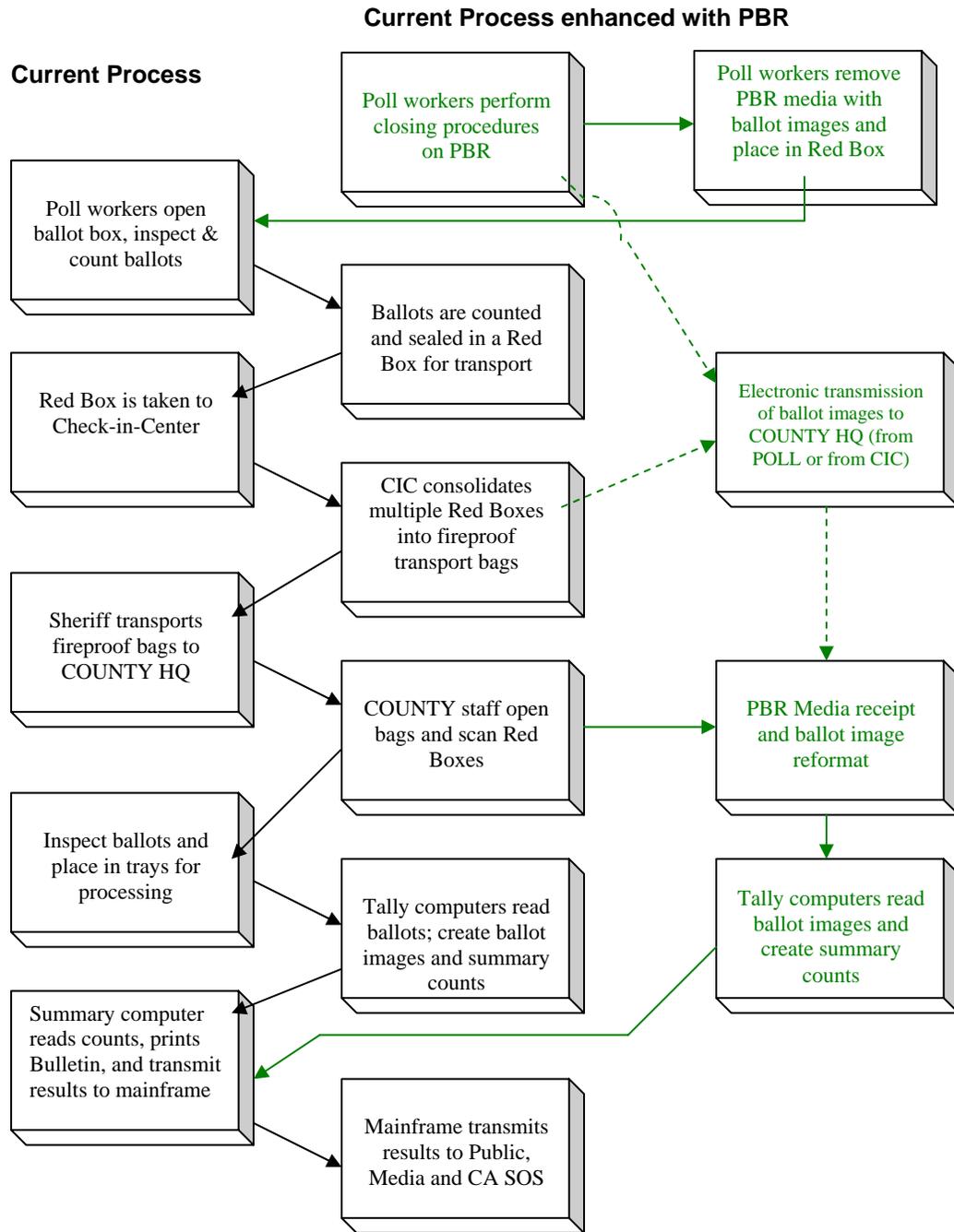
Current Process

Process with PBR



Attachment B

ELECTION DAY – After Polls close



County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT D

REQUIREMENTS

HAVA REQUIRED INKAVOTE ENHANCEMENT

Section 5A Minimum Product Requirement

OVERVIEW OF THE SYSTEM

The ES&S InkaVote Precinct Ballot Reader (PBR) is a single unit, easily installed at the polls to validate and tabulate ballots. For an election, each PBR is loaded with all ballots, and poll workers can deliver and install any PBR at a poll location. The poll worker initiates the appropriate precinct ballots by inserting one or more precinct cards.

The system meets all HAVA requirements, delivers an Audio Ballot, handles all ballots (including audio) in all required languages, has the capacity to handle large numbers of voters at a polling location, and processes an InkaVote 312 position optical scan ballot card. Voters receive a “ballot alert” report from the PBR printer if they have made too many or too few selections for a contest.

GATEWAY UTILITIES

To integrate the PBR with the County’s existing ballot generation and vote tabulation systems, ES&S provides Gateway utilities to import data from and export data to those systems. The four components of the ES&S InkaVote Precinct Ballot Reader (PBR) system provide a single enhancement solution, while maintaining the separation of duties required for security. These components are described in **Table 5A-1**, following.

Component	Purpose	Location
Election Converter	Imports Los Angeles County election data and sound files, and prepares an Election CD	Software installed on a PC at Election Administration
Election Loader	Loads an election onto multiple PBR units over a local area network	Software installed on a PC (laptop) at the warehouse
ES&S InkaVote Precinct Ballot Reader	Verifies and counts ballots, delivers audio voting, and writes the voting results to three (3) storage media types, including Transport Media	Precinct polls – hardware and software are pre-configured
Vote Converter	Uploads data from Transport Media to be read by the InkaVote Tally System	Software installed on PCs at Election Administration

Table 5A-1. Components of the ES&S InkaVote Precinct Ballot Reader System



Exhibit 5A-1, immediately following, shows how the Gateway utilities interact with the PBR unit and Los Angeles County systems.

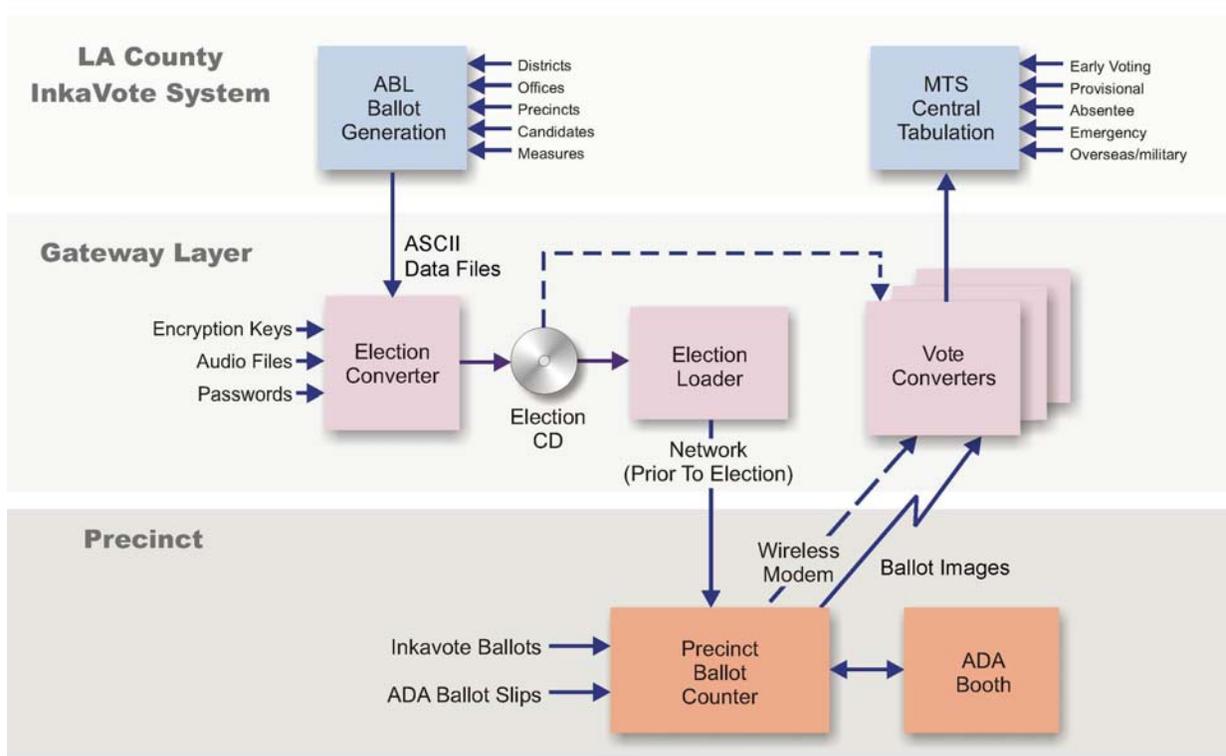


Exhibit 5A-1. Gateway Utilities Interacting with the ES&S InkaVote PBR Unit and County Systems

SYSTEM DATA FLOW

Table 5A-2, following, demonstrates how data flows through the system.

Component	Input	Output
Election Converter	Ballot generation data files MP3 sound files	Election CD containing compressed, encrypted files
Election Loader	Election CD	Compressed, encrypted election files installed on PBR
ES&S InkaVote Precinct Ballot Reader	InkaVote ballots Audio ballot slips	Tally (Election Summary Report) Ballot images (in a vote file)
Vote Converters	Encrypted ballot Images from Transport Media	Decrypted ballot images at a central location accessible to InkaVote Tally system*

Table 5A-2. PBR Data Flow

* The physical interface and protocol between the InkaVote Tally System and Vote Converter will be defined with Los Angeles County.

SELF-AUDITING SYSTEM

The PBR and all Gateway utilities log activity that takes place on the system. The logs from each component provide an audit trail for election setup, warehouse activities, voting at the polls, and voting upload activity.

Following, ES&S provides narrative responses to address each request or question from Los Angeles County as per Exhibit D.



Ref. #	REQUIREMENTS	Response Code	Contractor Comments
1.0	<p>MINIMUM PRODUCT REQUIREMENTS. Circle Y or N for each item below.</p> <p>1) PBR System provides an accessible voting experience for disabled voters, including blind and visually impaired, allowing them to vote independently and in privacy, which must include, but is not limited to, an audio ballot.</p> <p>2) PBR System enables second chance voting by providing a notification to each voter of which contests were over-voted and allows voter the opportunity to make corrections prior to casting their ballot.</p>	<p><input checked="" type="radio"/> Y <input type="radio"/> N</p> <p><input checked="" type="radio"/> Y <input type="radio"/> N</p>	<p>1) Yes. The ES&S InkaVote Precinct Ballot Reader (PBR) provides an Audio Ballot for visually impaired voters. The Audio Ballot booth provides an ADA-compliant keyboard, headphones, and ballot printer. The keyboard is removable for the convenience of voters that cannot stand at the booth.</p> <p>2) Yes. The ES&S InkaVote Precinct Ballot Reader (PBR) checks for overvoting in all contests when a ballot is inserted in the reader slot. If the PBR detects an overvoting, it returns the ballot to the voter and prints a “ballot alert” report. The report lists the contest name and error. For example:</p> <p style="text-align: center;">State of California, ASSEMBLY MEMBER Overvote</p> <p>Significantly, the alert report may be printed in any supported language.</p> <p>The voter has the opportunity to spoil the ballot and fill out a new one, or instruct the poll worker operating the PBR to override the error and cast the ballot as is by selecting the Override function. Overvotes are not counted on a cast ballot.</p>



Section 5A – Minimum Product Requirement

	<p>3) PBR System accepts import election data files and audio files as input from external systems.</p>	<p>Y N</p>	<p>3) Yes. The Election Converter – an import utility – imports ballot data and audio files from external systems and converts them to a form that can be used by the ES&S InkaVote Precinct Ballot Reader.</p>
	<p>4) PBR System has functional capability to read optical ballots using the standard IBM punch card format conforming to that used by the InkaVote System,</p> <p>5) PBR System captures and retains an electronic image of each ballot cast.</p> <p>6) PBR System exports ballot images as output to external systems.</p>	<p>Y N</p> <p>Y N</p> <p>Y N</p>	<p>4) Yes. PBR reads existing the InkaVote ballot format, with the addition of timing marks on the right edge of the ballot in same PMS 192 drop-out color as the existing position number grid.</p> <p>5) Yes. The PBR captures an image of all ballots cast in a vote file. The vote file is written to three separate media devices and retained on all three. In the case of power loss, the PBR will recover and verify the files on all three devices.</p> <p>6) Yes. The PBR vote file will be used to create ballot images in the format required by external systems.</p>



Section 5A – Minimum Product Requirement

Ref. #	REQUIREMENTS	Response Code	Contractor Comments
	<p>Prospective Contractor:</p> <p><u>Election Systems & Software, Inc.</u></p> <p>I, <u>Matthew E. Nelson</u>, hereby certify that the products and services contained in this proposal as offered to the County of Los Angeles Registrar-Recorder/County Clerk in response to the Request for Proposal for HAVA Required InkaVote Enhancement, Project #04-007, meet the Minimum Product Requirements as set forth herein, Exhibit D, Requirements: Section 1.0, Minimum Product Requirements.</p> <hr/> <p>Signature _____ Date _____</p> <p><u>Matthew E. Nelson, Sr. Vice President of Domestic Sales</u> Title _____</p>		



Section 5B Requirements

In this section, Contractor must complete and submit the remainder of Exhibit D, (Requirements).

The following pages are provided in compliance with the completed Exhibit D as required in the Los Angeles County RFP. ES&S has supplied coded responses to the following table.

These coded responses include:

- Y Yes / Included / fully provided in product proposed
- C Combination of product and custom development required
- F Fully custom developed required
- TPS Third party software required
- TPH Third party hardware or equipment required
- AR Available in a future release (provide scheduled release dates)
- N No / Not applicable / Not available / No scheduled release date

2.0	DATA IMPORTS AND EXPORTS		
2.1	<p>ELECTION CONFIGURATION IMPORT</p> <p>1) PBR System accepts fixed length ASCII files as input from external systems.</p> <p>2) PBR System imports the following files:</p> <ul style="list-style-type: none"> 1) Ballot Group file (Attachment D1) 2) Contest file (Attachment D2) 3) Candidate file (Attachment D3) 4) Precinct file (Attachment D4) 5) Party Name file (Attachment D5) 6) Ballot Division file (Attachment D6) 7) Election Title File (Attachment D7) 	<p>C</p> <p>C</p>	<p>Combination of product and custom development required</p> <p>The system currently accepts ASCII files in XML format. The interface from the InkaVote System to the PBR system will be an .xml file generated by the InkaVote system.</p> <p>Combination of product and custom development required</p> <p>The Election Converter is designed to import external ballot definition files in .xml format per Attachment D12. The InkaVote system will generate an election .xml file that contains all the data presently contained in the seven files D1 – D7. In addition, the PBR System will need translated Contest title data for all defined languages.</p>
	<p>3) PBR System imports election configuration data from XML file(s) whose structure / schema is defined in Attachment D12.</p>	Y	<p>Yes.</p> <p>The PBR System imports election data in .xml file defined in Attachment D12.</p>



<p>2.2</p>	<p>ELECTION DATA EXPORTS</p> <p>1) PBR System creates fixed record length ASCII files and fixed length column-binary files as output to external systems.</p> <p>2) PBR System exports ballot images in column binary format (attachment D8).</p> <p>3) Ballot images exported by PBR Unit are retained by PBR System.</p>	<p>C</p> <p>F</p> <p>Y</p>	<p>Combination of product and custom development required</p> <p>The PBR system currently creates ASCII files in XML format. The PBR System will be modified to convert the vote file to ballot image files in fixed length column-binary format, as defined in Attachment D8.</p> <p>Full customization required.</p> <p>The output will be modified to match the column-binary format defined by the County in Attachment D8.</p> <p>Ballot images are retained on the PBR’s three storage locations: hard disk drive, CF flash disk, and Transport Media flash disk. Files remain on all three media until an election is loaded or the Transport Media is cleaned.</p>
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<p>4) Any hardware device(s) used by PBR Unit to store exported ballot images have a unique device identifier.</p>	<p>C</p>	<p>Combination of product and custom development required</p> <p>(1) Machine ID is written to each PBR that identifies the machine and is retained in all files;</p> <p>(2) An identifying label or tag is applied to each Transport Media by procedure; and</p> <p>(3) An anchor file – already written to each Transport Media to identify it as part of the system – will be modified to include a unique serial number and Barcode label.</p>
<p>5) PBR System accounts for all hardware devices used by PBR Units to export ballot images.</p>	<p>N</p>	<p>No</p> <p>Because the multiple Vote Converters used to export data to the tally system do not communicate with each other, the PBR system cannot consolidate jurisdiction-wide device data. An application to scan bar codes on labels combined with a simple database – uncertified and outside the scope of this RFP – could, however, be developed as an inventory management system.</p>



8) Files containing ballot images exported from PBR Unit are encrypted and contain a file-level checksum.

C Combination of product and custom development required

Each record – ballot – in the PBR vote file is encrypted individually when written. Additionally, an encrypted count in the vote file header is used to verify the number of records, and the decryption process can verify the validity of the individual records.

An explicit checksum for each record will be added, and the header will contain a checksum of the checksums.



	<p>9) PBR System has safeguards to prevent test files from being used in production.</p>	<p>C</p>	<p>Combination of product and custom development required</p> <p>Currently, the PBR allows only one event – actual election, demonstration, or pre-defined accuracy test - to be installed at a time. The election titles in the files reflect that the election is a demo or test, and each election has a unique ID that identifies it across the PBR system.</p> <p>The system will be modified so any election can be a logic test. Each ballot record in a logic test will be marked by a flag. On export of column binary format for a Logic Test or Demonstration vote file data, an * will be added to position 5 of the precinct header. Additionally, each ballot record will have a date – though not time stamped – to further verify on which day it was created.</p>
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	<p>10) Exports contain precinct headers from precinct import file in front of each precinct’s ballot images.</p>	<p>F</p>	<p>Full custom development required</p> <p>Each ballot image will contain precinct and party data as defined in Attachment D8. Ballot images from the same precinct may come from different PBR units. Since the system uses multiple Vote Converters not networked to each other during the export process, the system cannot group the ballot images under one header.</p> <p>The Vote Converter gateway application will need to be modified to add Precinct Header data to precinct vote file export.</p>
	<p>11) PBR System will export ballot images from a precinct no more than one time election night. Precincts split across multiple PBR Units must be consolidated behind a single precinct header. Any ballot images which cannot be consolidated election night must be retained by the PBR System for export and processing during Canvass updates.</p>	<p>F</p>	<p>Full custom development required.</p> <p>An Integrated Vote Converter solution would need to be defined and developed.</p>
	<p>12) Ballot images can be exported without precinct headers (absentee mode).</p>	<p>Y</p>	<p>Precinct headers are currently not used on files; ballot images without precinct headers could therefore be exported.</p>
	<p>13) PBR Unit exports a Device Activity Report (defined in Reporting section).</p>	<p>C</p>	<p>Combination of product and custom development required</p>



			<p>The PBR Machine / Administrative Log contains all activity and may be filtered to display the values of the Device Activity Report. The log will be modified to include checked and rejected ballots in order to complete the report as defined in the Reporting section.</p>
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	<p>14) PBR Unit exports a Device Audit Log (defined in Audit Log section) showing all activity on the PBR Unit.</p>	<p>C / Y</p>	<p>Combination of product and custom development required / Yes</p> <p>The Machine / Administrative Log logs all the events required by the VSS 2002. The log will be modified to include override, print, ballot check, and ballot reject activities.</p>
<p>3.0</p>	<p>PBR REQUIREMENTS</p> <p>1) Contractor can provide 5000 PBR Units to Los Angeles County to meet HAVA mandates in the timeframe defined in Exhibit C, Statement of Work.</p>	<p>C</p>	<p>ES&S recognizes Los Angeles County's desire to debut 5000 PBR units. The timetable called out in the RFP presents tremendous operational challenges, including incorporation and modifications to the PBR firmware as requested in the RFP, re-qualification testing, and manufacturing lead time, to deliver 5,000 units. ES&S will need 182 days from Contract signing to deliver all units. Every reasonable effort will be made to expedite software development, the parts procurement process, and accelerate the manufacturing process in order to meet the County's goals.</p>



	<p>2) Each PBR Unit is portable by one person.</p> <p>3) Each PBR Unit is easy to setup by two people.</p>	<p>Y</p> <p>Y</p>	<p>The PBR unit is wheeled and has a retractable handle.</p> <p>ES&S recommends that two people lift the PBR unit onto the ballot box.</p>
3.1	<p>SYSTEM CAPACITIES</p> <p>Each PBR Unit must load a complete election. A complete election consists of up to:</p> <p>1) 15 political parties</p> <p>2) 1000 contests</p> <p>3) 2000 candidates</p> <p>4) 200 candidates per contest</p> <p>5) 10,000 election precincts</p> <p>6) 7,000 ballot styles/groups</p> <p>7) 7,000 English audio ballot styles/groups</p>	<p>C</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>Combination of product and custom development required</p> <p>The PBR currently supports eight (8) parties including non-Partisan. System will be modified to support at least 15 by adapting the Ballot Pre-Punch definition in Attachment 13.</p> <p>Quantities shown will not exceed system capacity.</p>



<p>3.2</p>	<p>AUDIO BALLOT</p> <p>1) The PBR Unit provides audio ballot capabilities.</p> <p>2) Poll workers activate the audio ballot before the voter begins voting.</p>	<p>Y</p> <p>Y</p>	<p>An Audio Ballot can be delivered in all required languages.</p> <p>The poll worker selects precinct / party / language as necessary to initiate the correct audio ballot for the voter.</p>
	<p>3) Each PBR Unit provides audio ballots for all ballot styles in the election</p> <p>4) Ballot validation and capture continues without interruption while audio voting is occurring.</p> <p>5) When the audio voter is finished and has validated his ballot, the PBR Unit generates a paper ballot in the InkaVote-312 or InkaVote-26 ballot style being used for the election.</p> <p>6) A paper ballot is read by the PBR Unit to create an electronic ballot image (provisional audio ballots are not read by the PBR Unit).</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>Yes</p> <p>Yes</p> <p>The audio voter’s ballot is validated as part of the voting process, and when the voter is finished, the ES&S PBR instructs the printer at the audio booth to print the voter’s selections in the correct InkaVote ballot style.</p> <p>The printed audio ballot representation is inserted into and read by the PBR. Provisional audio ballots are processed manually as are other provisional ballots.</p>



<p>3.3</p>	<p>MULTI-LINGUAL AUDIO BALLOTS</p> <p>1) PBR System imports 7,000 audio ballot styles/groups for each of the following languages (dialects): Spanish; Chinese (Mandarin, Taiwanese, and Cantonese); Japanese; Korean; Tagalog; Vietnamese. PBR System has capacity for 63,000 total ballot styles (56,000 non-English + 7,000 English)</p> <p>2) PBR System creates audio ballots in each of the above languages.</p>	<p>Y</p> <p>Y</p>	<p>The PBR system has sufficient capacity for all ballot styles and languages defined.</p> <p>The PBR can create and deliver audio ballots in all the specified languages.</p>
<p>3.4</p>	<p>CAPTURE BALLOT IMAGES</p> <p>1) Each PBR Unit captures and retains an electronic image of each ballot cast.</p> <p>2) PBR Unit will read physical ballots with control data encoded into four card columns closest to the notch on a ballot card as shown in Attachment D13 – Ballot Pre-Punch Examples.</p> <p>3) Ballot images are retained in the event the PBR Unit loses power.</p>	<p>Y</p> <p>C</p> <p>Y</p>	<p>Yes</p> <p>Combination of product and custom development required.</p> <p>The PBR Software will be modified to read Pre-Punch data as defined in Attachment D13.</p> <p>Ballot images are written to the hard disk and flash media and Transport Media. The devices do not require power to retain files.</p>



			The PBR’s recovery functionality on startup ensures that files match on all devices in the event of power loss.
	4) Each PBR Unit retains no less than 10,000 ballot images.	C	Combination of product and custom development required Each PBR unit supports 8,250 ballot images. The PBR will be modified to support the required 10,000 ballot images at each unit.
	5) Optical scanner ignores text printed on ballot in PMS 192 non-reflective red ink comprised of 10 parts Pantone Warm Red (62.5%) and 6 parts Pantone Rubine Red (37.5%).	Y	Yes
3.5	BALLOT VALIDATION (Second Chance Voting) 1) Each PBR Unit can process ballots from a minimum of six precincts simultaneously. 2) Precinct designation for each PBR Unit is made at the polling place. 3) The elections official centrally determines which contests, if any, the PBR Unit validates for over-voting and/or under-voting.	Y Y Y	The PBR will process any number of precincts. The poll worker inserts a precinct ballot card for each precinct on startup to designate the PBR’s valid precincts. The Election Converter allows an election official to set undervote checking for selected contests. The PBR always



Section 5B – Exhibit D, Requirements

	4) Provide notification to the voter for correcting the ballot.	Y	checks for overvotes. The PBR prints a “ballot alert” report notifying the voter of errors. The report may be printed in all required languages.
	5) Notification shows which contests were over-voted	Y	Yes.
	6) Notification shows which contests were under-voted.	Y	If undervote checking is enabled and the PBR detects an undervote, it returns the ballot to the voter and prints a “ballot alert”. For example: State of California, ASSEMBLY MEMBER Undervote
	7) When the voter is finished correcting their ballot and wants to cast it, poll workers can override the over-vote / under-vote validation features on the PBR Unit allowing the ballot to be processed even if it contains over and/or under votes.	Y	Poll workers can use the PBR’s “override” function to allow the voter to cast the ballot with overvotes or undervotes. Selections from overvoted contests are not tabulated.
	8) Ballot validation allows contests occupying multiple columns on the ballot (corresponding to multiple pages on the vote recorder).	Y	Yes
	9) Ballot validation allows non-sequential contest ballot positions	Y	Yes



	10) Ballot validation allows non-sequential contests across pages (See Attachment D9 for an example).	Y	Yes
3.6	<p>LOGIC AND ACCURACY TESTING</p> <p>1) PBR System contains a test utility to create unique counts for ballot elements including candidate votes, measure yes/no votes, contest ballots cast, contest over-votes and under-votes.</p> <p>2) Test utility runs on both PBR System and PBR Unit.</p> <p>3) Ballot images created in test mode will be exported behind precinct headers with an asterisk “*” in column 5 of the precinct header. This asterisk will identify all ballots within that precinct as being test ballots. PBR System will include a startup option to output precinct headers in test mode (with *) or in production mode (no *).</p>	<p>C</p> <p>Y</p> <p>C</p>	<p>Combination of product and custom development required</p> <p>The PBR currently supports a hardware accuracy test. We are developing a logic test to meet the minimum California Election Code requirements for ballot logic testing.</p> <p>All vote record data must originate from a physical ballot read. No vote generation capability in the PBR System.</p> <p>Yes. Logic tests capability are included in PBR Unit and can be exported to external systems.</p> <p>Combination of product and custom development required.</p> <p>On export of column binary format for a Logic Test or Demonstration vote file data, an * will be added to position 5 of the precinct header.</p>



	<p>4) Test counts can be exported as defined in Election Data Exports section.</p> <p>5) Each PBR Unit can be independently tested to ensure all mechanical components are functioning correctly and operating within specifications</p>	<p>C</p> <p>Y</p>	<p>Combination of product and custom development required</p> <p>Test counts will be exported as defined in Section 2.2 above.</p> <p>Yes. A set of hardware diagnostics are provided for technicians and poll workers.</p>
3.7	<p>AUDIT LOG</p> <p>1) PBR System collects and maintains all legally required audit trails from first use of PBR System during election setup through final certification of results.</p>	<p>Y</p>	<p>Two log files are created. An Administrative Log records all system activities and an Audit Trail – vote file – captures all ballot images.</p>
	<p>2) Audit trail logs a date & time for all system events including at a minimum: program startup and shutdown, clearing collected ballot images; hardware failures; system crashes & restarts; and data import & export events.</p> <p>3) Audit trail contains any exception handling error messages or system status messages displayed to the operator.</p> <p>4) Audit trail logs date, time and action taken for any operator action on any component of the PBR System.</p>	<p>Y</p> <p>Y</p> <p>C</p>	<p>In the PBR system, the audit trail log is named the Administrative Log. The log records all the events required by the VSS 2002.</p> <p>Error codes that appear onscreen for the operator are logged into the Administrative Log.</p> <p>Combination of product and custom development required</p>



			<p>Currently, the PBR does not log “override,” print, or diagnostic operator actions in the Administrative Log file. ES&S will modify the Administrative Log file to record these actions, as needed.</p>
<p>4.0</p>	<p>REPORTING</p> <p>The proposed system will import election files created by the InkaVote System. In order for the County to determine that this import has been done correctly, reports from the PBR System are required to verify the accuracy of data prepared for the PBR Units, audio ballot, and export back to the InkaVote System.</p> <ol style="list-style-type: none"> 1) Sample Ballot Proof List Report contains contests, candidates, and measures by ballot style. See Attachment D10 for an example. 2) Audio import file ballot cross-reference report is created for all data elements on the audio ballot and an exception-only version for any elements without an imported audio file. See Attachment D11 for an example. A version of Attachment D11 is available for each language available as an audio ballot. 	<p>C</p> <p>Y</p>	<p>Sample reports are included in Section 9, Reporting.</p> <p>The Election Converter provides a view for proofing each ballot style. A reporting tool will be integrated into the Election Convert.</p> <p>The Election Converter provides a view of all required audio files. This view can be filtered to show only non-imported audio files. This view can be copied from the screen and pasted into be copied and pasted into any printable document.</p>



<p>3) PBR Unit prints activity counts including total ballots accepted and total ballots accepted by precinct.</p> <p>4) PBR Unit creates a Device Activity Summary Report. This report includes PBR Unit totals for: audio ballots created; ballots checked; ballots rejected; and ballots accepted.</p> <p>5) PBR Unit creates a Device Activity Summary Report for each precinct processed on the PBR Unit.</p>	<p>C</p> <p>C</p> <p>Y</p>	<p>Combination of product and custom development required.</p> <p>An Election Summary is printed at close of voting for each precinct. The Election Summary shows the total ballots accepted by the PBR (Public Count) and the total accepted for the precinct.</p> <p>The Election Summary Report will be modified to provide an option to not print Contest results in the report.</p> <p>Combination of product and custom development required</p> <p>Currently the PBR Administrative Log records audio ballots created and ballots accepted. The log will be modified to log ballots checked and rejected.</p> <p>The system tracks activity by PBR unit / machine. If one unit per precinct is used, the Administrative Log report provides this information.</p>
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	<p>6) Any report with contest-specific results, not including a startup zero-count report, created on the PBR Unit will have an option to suppress the report and prevent it from physically printing at the polling place. If a report is suppressed at the polling place, PBR Unit should place an electronic version on removable media.</p>	<p>C</p>	<p>Combination of product and custom development required</p> <p>The Election Summary Report, which contains contest-specific results, will be modified to provide an option to not print Contest results in the report.</p>
<p>5.0</p>	<p>WAREHOUSING REQUIREMENTS</p> <p>1) PBR Units in closed cases can be stacked at least four high without damaging units.</p> <p>2) Cases will protect PBR from rain and dust when closed.</p> <p>3) Cases and devices have received passing scores from Wyle Laboratories Environmental Qualification testing.</p>	<p>N</p> <p>Y</p> <p>Y</p>	<p>The units cannot be stacked directly on top of each other; they must be supported using a warehouse racking system.</p> <p>The PBR unit has a lid that protects it from rain and dust, although it is not intended to make the unit water- or dust-proof.</p> <p>Cases and devices have met or exceeded all requirements at the Wylie Laboratories testing facility. These tests are documented in Wylie Laboratories’ test report 51349-01.</p>



SECTION II – NARRATIVE RESPONSES

Provide narrative answers to the following requirements. Attach any requested supporting documentation. Contractor response must be in the same order as the following.

6.0 Certification and Approval Process

1) If proposed system is certified, provide copies of all approvals with proposal. If proposed system is not yet certified, please explain where it is in the process: what steps are complete; what steps remain to be completed; and when each step or process is anticipated to be complete.

ES&S RESPONSE

The INKA Vote Precinct Ballot Counter Voting System Version 1.2 received Federal Qualification on November 17, 2005 and was issued NASED number N-1-17-22-22-001 (2002)

Both the PBR and election management software have been modified to incorporate California specific requirements. The PBR software with the CA modifications has successfully passed code review at Wyle Laboratories and is scheduled for functional testing the week of December 19, 2005 at Wyle's facilities.

The EMS software with the CA modifications has also successfully passed code review at Ciber Inc. ITA and is currently awaiting completion of PBR functional testing at Wyle Labs to schedule functional testing.

CA Secretary of State testing is currently scheduled to take place in Carlsbad the week of Jan 16, 2006.

In complying with Los Angeles County’s requirements, any modifications to the existing system will require modification testing to be performed at both Federal and State testing authorities.

7.0 Data Imports and Exports

1) Provide a description of all audio file formats the PBR System can import.

ES&S RESPONSE

The Election Converter organizes and allows election staff to verify the imported audio files created for installation on the ES&S PBR. The Converter accepts import of non-proprietary MP3 audio files. Files in other sound formats are easily converted to MP3 via third-party software.

2) Discuss any import or export files required by the PBR System in addition to files specified in this requirements document. Provide examples

ES&S RESPONSE

In addition to the .xml file generated by the InkaVote system, the PBR requires the following files from Los Angeles County:

- **Contest Translations**

each contest title translated to all supported languages. For example:

CONTEST TRANSLATION FILE

Label Name	From	To	Length	Type	Description
Election_Id	1	4	4	N	Election Designation
Contest_Id	5	9	5	N	Unique Contest Identifier
Language_Id	10	11	2	A	Unique ISO standard Language ID
Contest_Title	12	112	100	AN	Contest Title Text



- Languages

a list of each language name and the language ISO code. For example:

LANGUAGE FILE

Label Name	From	To	Length	Type	Description
Election_Id	1	4	4	N	Election Designation
Language_Id	5	6	2	A	Unique ISO standard Language ID

For export, the PBR will be modified to generate the required column-binary ballot images at close of voting during the PBR tally process. The export file header will contain precinct, party, and machine information, as defined with Los Angeles County upon contract award.

3) Provide procedures to import all files build an election on the PBR System and load the election configuration onto 5,000 PBR Units. Procedures must include hardware required and staffing levels needed complete this within 14 calendar days.

ES&S RESPONSE

Table 5B-1, following, summarizes the procedures, personnel, and hardware required to load the election onto 5,000 PBR units. A description of each procedure follows the table.



Task	Duration	Personnel	Hardware
Import County .xml file to Election Converter	1 hour	1-2 election officials: Superuser and Admin User	1 Election Converter PC with sound and CD-ROM read/write capability
Proof Ballot Styles	2 days	6 election staff	<i>Same as above</i>
Generate Audio Script	1 hour	<i>Same as above</i>	<i>Same as above</i>
Produce Sound Files	<i>unknown</i>	County sound file production personnel	County sound file creation processes
Import Sound Files* ¹	2 hours	1-2 election officials: Superuser and Admin User	1 Election Converter PC with sound and CD-ROM read/write capability
Produce Election CDs	4 hours	<i>Same as above</i>	<i>Same as above</i> , plus 10 CD-write media discs
Load Election	48 hours	10 Maintenance Technician users	10 laptop Election Loader PCs with Election CD inserted, 6 PBRs networked to each

Table 5B-1. Required Procedures, Personnel, and Hardware

IMPORT COUNTY FILES TO ELECTION CONVERTER

The Election Converter imports the County's fixed-length ASCII files from a directory on its hard drive. The Election Converter will use these import files and imported MP3 sounds to generate the encrypted and compressed files required to deliver a election – all ballot styles with audio – on the PBR. Detailed instructions are provided in the *Election Converter User Guide*.

¹ To meet a 14-day time schedule, the County will need to test sounds during the sound file creation process.



Figure 5B-1. Election Converter Successfully Imported Data Appears as an Election Icon

PROOF BALLOT STYLES

The Election Converter provides a View Ballots function that allows an official to select and view the ballot for any precinct or party in any of the required languages. This view can be used to create ballot proofs. For additional information, see the *Election Converter User Guide*.

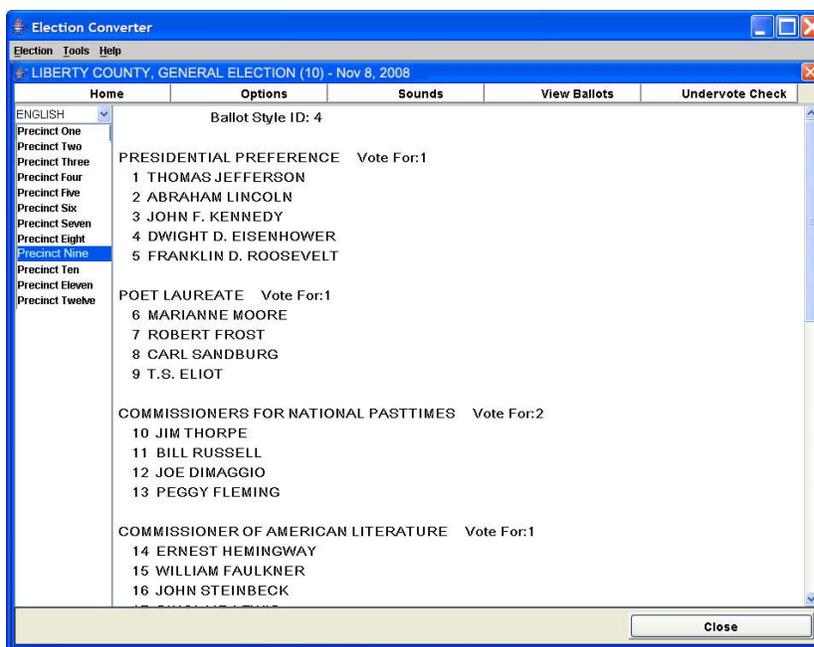


Figure 5B-2. Election Converter, Ballot View

GENERATE AUDIO SCRIPT

Based on the ballot, the Election Converter automatically provides a list of all sound files required to produce the complete Audio Ballot. The Sounds view designates a

filename and narrative script for each sound. Any “Missing” sounds need to be produced and uploaded. This view can be used to generate an audio script for sound production. For complete information, see the *Election Converter User Guide*.

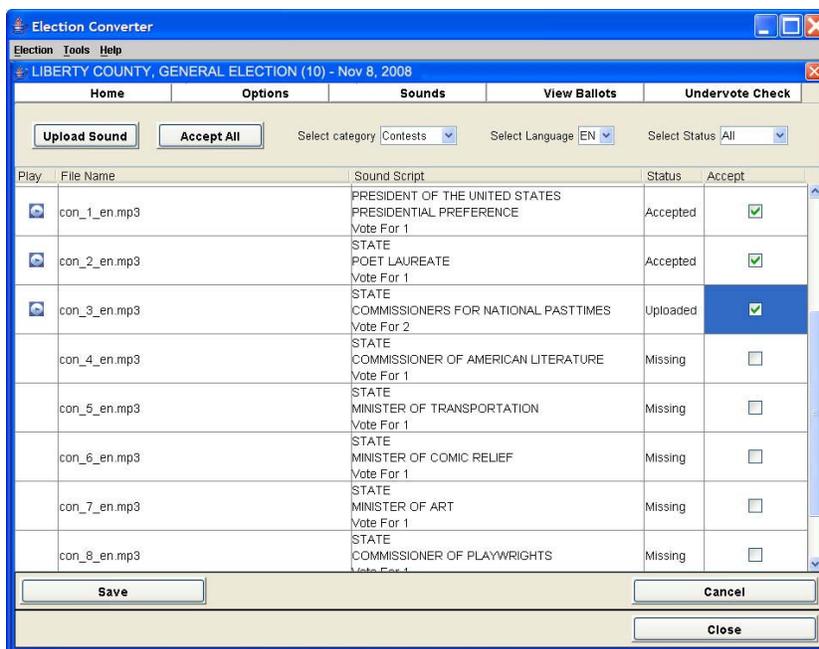


Figure 5B-3. Election Converter - Sounds

PRODUCE SOUND FILES

Los Angeles County will follow their own procedures to produce professional recordings of the audio script in the required languages. All sounds must have the file name designated by the audio script and be produced in, or converted to, MP3 format.

IMPORT SOUND FILES

Figure 5B-3, preceding, displays the Election Converter Upload Sounds function for selecting and uploading the produced sound files. It is possible to upload any “Missing” files individually or as a group from a directory. Functions are provided to enable listening to the files and accepting individual or all files.

PRODUCE ELECTION CDs

The Election Converter displays 'Complete' status when all sounds have been uploaded and accepted, and Maintenance Users have been defined. An election official – the Superuser – can then export election files for CD production. The export creates a directory of encrypted and compressed files ready to be copied to CD media. Any Windows CD-burning software can be used to copy the data onto the CD media. The Superuser creates one CD for each Election Loader PC that will be used. For complete information, see the *Election Converter User Guide*.

LOAD ELECTION

The Election Loader described in **Figure 5B-4**, following – preferably a laptop PC for convenience – delivers the election from the Election CD in its CD-ROM drive to the ES&S PBR. A warehouse technician – the Maintenance User – networks the Election Loader to 6-12 PBRs, then switches on and logs into the PBRs to begin the process. The process will be modified so that no login is required; the technician simply switches on a PBR to begin election loading.

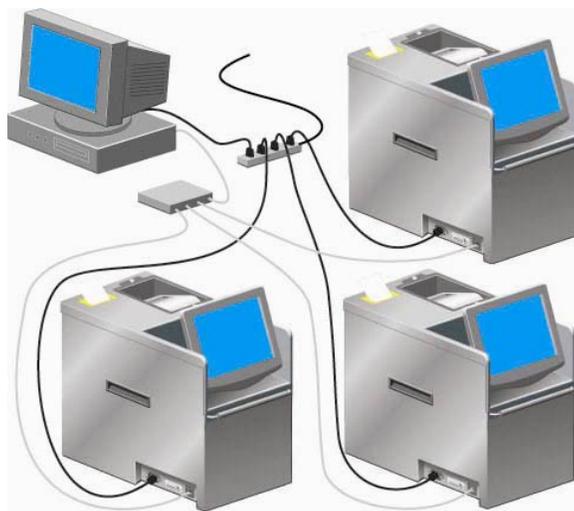


Figure 5B-4. Election Loader: A Local Area Network with PBRs and an Election Loader

The PBR requests the election from the Election Loader, and the election automatically downloads. The status of each download appears on the Election Loader PC screen by PBR machine name, as shown in **Figure 5B-5**, following. When one group of PBRs has been loaded, the technician moves the Election Loader on to the next group of PBRs.

For complete information, please refer to the *Election Loader User Guide*.

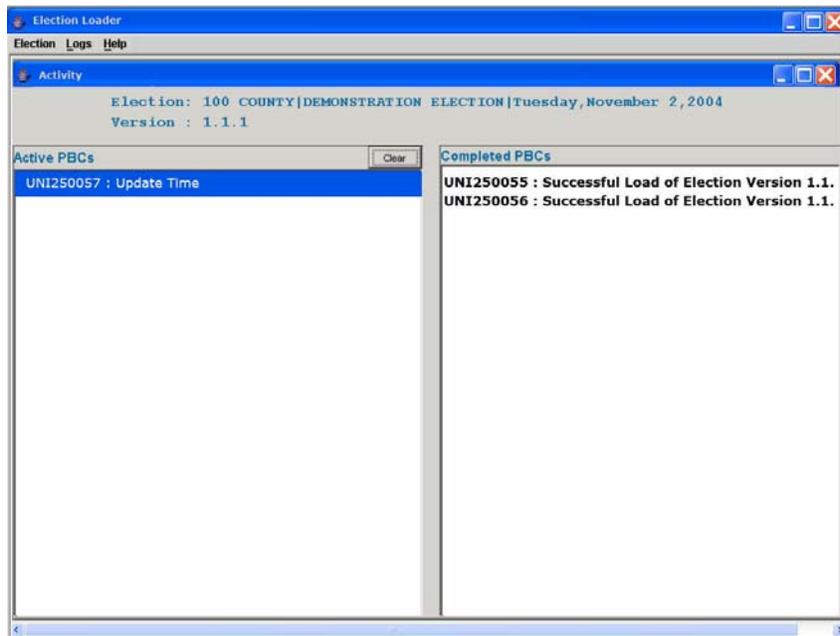


Figure 5B-5. Election Loader: PBR Status by PBR Machine Name

Table 5B-2, following provides a convenient snapshot of the time required to load 5,000 PBRs, depending on the size of an election.

Election Size	Load 6 PBRs	5,000 units 1 Loader	5,000 units 6 Loaders	5,000 units 10 Loaders
5 MB (minimum)	15 minutes	104 hours	17.3 hours	10.4 hours
20 MB (typical)	20 minutes	139 hours	23.1 hours	13.9 hours
200 MB (max)	35 minutes	243 hours	40.5 hours	24.3 hours

Table 5B-2. Time Required to Load 5,000 PBRs of Various Sizes of Elections

TEST AND PREPARE FOR DELIVERY

Technicians can run Logic and Accuracy (L&A) Tests and hardware diagnostics on the PBR units before the final election data is loaded. Complete procedures for these tests and for preparing the units for delivery to the polls are provided in the *Warehouse Technician’s Guide*.

4) Describe how the PBR System accounts for all hardware devices used by PBR Units to export ballot images. PBR System should be able to report all hardware devices created and identify any hardware devices not read by PBR System on election night.

ES&S RESPONSE

Ballot images from the ES&S InkaVote Precinct Ballot Reader are exported on Transport Media. Although the PBR system does not track which Transport Media hardware – delivered from the polls – have reported, it does provide precinct and PBR machine data with the exported voting results. The InkaVote Tally system maintains a list of all precincts where votes are being cast. As precinct results are being uploaded from the Transport Media - by Vote Converters - the InkaVote Tally system maintains a list of precincts that have and have not reported.



PROPOSED INVENTORY CONTROL SYSTEM

Alternatively, ES&S could develop a bar coding inventory control system – which falls outside the scope of this RFP – to track hardware.

- Each PBR currently has a unique serial number. The serial number is programmed into the PBR and, by procedure, printed on an exterior label;
- A serial number will be added to the Transport Media anchor file – a file identifying the device as part of the system – and, by procedure, could be printed on an exterior label;
- The current Election Loader(s) log PBR machines receive the election. The system could be modified to consolidate these logs within an inventory tracking system; after a spreadsheet of all PBRs loaded with election data has been created, the serial numbers of the Transport Media could then be added;
- Before the election — and when poll workers pick up PBRs at the warehouse or regional centers — the tracking system could be updated to reflect each unit's use and expected precinct location; and
- On Election Night, and as Transport Media are returned to the Central count location for processing, they would be scanned and reported as returned in the tracking system.

Table 5B-3, following, provides a graphic depiction of an optional equipment tracking process.

Precinct Ballot Counter Machine Allocation Table						
<i>PBR Serial Number</i>	<i>Transport Media ID#</i>	<i>Precinct Name</i>	<i>Delivered</i>	<i>Date</i>	<i>Received</i>	<i>Time</i>
UNI200000057	4000	Central	X	5/4/05		
UNI200000058	4001	High Town Library	X	5/4/05	X	8:00 PM
UNI200000059	4002	St. Mary's	X	5/5/05		
UNI200000060	4003	Grossmont High School	X	5/5/05	X	8:18 PM
UNI200000061	4004	San Miguel City Hall	X	5/6/05		
UNI200000062	4005	Greg Grey Academy	X	5/7/05		
UNI200000063	4006	Garnett Publishing	X	5/7/05	X	8:23 PM
UNI200000064	4007	Board of Elections	X	5/8/05		

Table 5B-3. Example of the Optional Inventory Tracking System



Figure 5B-6. Transport Media Inside Locked PBR Case Door

5) On election night, all ballot images created during the day must be exported from the PBR System to the InkaVote Tally System. Provide procedures to complete this in a 3 hour period. Include necessary hardware and appropriate staffing levels. Assume hardware devices used by PBR Units to export ballot images have already been transported to a central location by County staff.

ES&S RESPONSE

As Los Angeles County staff receives serialized Transport Media devices on Election Night, they perform the tasks shown in **Table 5B-4**, following; the table assumes that 5,000 Transport Media have been collected and are ready to be uploaded by Vote Converter PCs.

Task	Duration	Personnel	Hardware
Insert Transport Media into Vote Converter and monitor Vote Converter's upload of ballot images.	3 hours or less	34 Election Staff	34 Standard PCs *Assuming Los Angeles' current system employs 34 card readers networked to the central tabulation system: Windows XP OS Vote Converter software installed One or more USB 1.1, 2.0 ports CD-ROM Drive
Export ballot images into the InkaVote Tally System	Undefined	Undefined	Undefined

Table 5B-4. Transport Media Requirements



Election staff is stationed at each of the Vote Converter PCs, which are connected to a secure local area network to expedite the upload to the tally system. The staff inserts the Transport Media into the Vote Converter’s USB port and waits for a successful upload. The Vote Converter reads, decrypts, and processes the ballot image files. These files, from multiple Vote Converters, are simultaneously transferred to the InkaVote Tally System over an http connection. The exact process by which the InkaVote Tally System is notified and receives the data remains to be determined.

Figure 5B-7, following, demonstrates the graphical image during Converter upload activity.

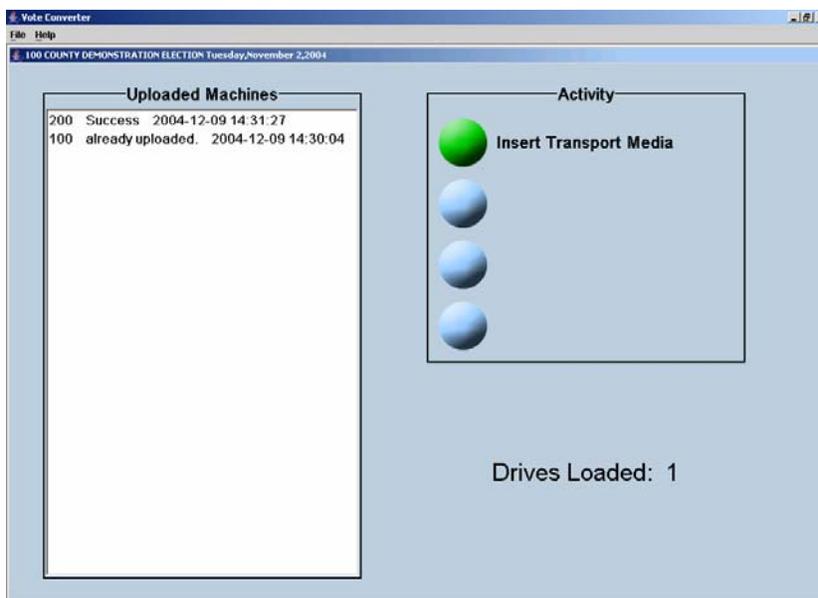


Figure 5B-7 Vote Converter: Upload Activity

Each ballot image in the PBR’s vote file is 172 bytes. A file of 1,000 ballot images takes approximately 20 seconds to read, decrypt, and transfer over the network. The amount of time it takes to process all Transport Media (TM) depends on the size of the vote file – the number of voters and length of the ballot – and the number of Vote Converters being used to import the data. **Table 5B-5**, following, provides a snapshot summary of file sizes and process times based on resource allocation.

Vote File Size on each TM	Time to Process at Vote Converter	5,000 TMs with 1 Converter PC	5,000 TMs with 34 Converter PCs
172K bytes (1,000 ballot images)	20 seconds	28 hours	30 minutes
860K bytes (5,000 ballot images)	1.25 minutes	104 hours	3 hours

Table 5B-5. Time to Process Transport Media

The physical interface and protocol between the InkaVote Tally System and Vote Converter will be defined with Los Angeles County upon contract award.

6) Describe safeguards used by PBR System to prevent test files from being used in production.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader currently allows only one election to be installed at a time: an actual election, a demonstration, or a pre-defined accuracy test – the current LAT. Any files or reports that result from a demonstration or test election are clearly labeled as such, and each election has a unique ID that identifies it across the ES&S InkaVote Precinct Ballot Reader system. Every time the PBR is restarted and a demonstration or test election is loaded, all vote files are cleared from the system. Demonstration or test files are never retained.

A modification will be made to the system so that an asterisk (*) – appearing in column 5 of Precinct header file – indicates the election being voted is a demonstration or test election.



8.0 PBR Requirements

1) Provide a description of the proposed PBR Unit and all components needed to meet the upgrade of InkaVote to HAVA requirements specified in this RFP.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader is a precinct voting system that scans marked ballot cards, validates them for overvotes and – optionally – undervotes, provides notification of ballot errors allowing voters to correct their ballot, and delivers Audio Ballots to visually impaired voters.

THE PBR UNIT

Each ES&S InkaVote Precinct Ballot Reader comes in a wheeled case. Poll workers easily install it on top of the Los Angeles County ballot box. The unit is pre-configured with all hardware and software and arrives ready to plug in and use.

The following components are contained within the PBR:

- PC – a Linux-based PC loaded with firmware that delivers the election and maintenance applications;
- Monitor – LCD monitor with touch screen panel;
- Report Printer – thermal receipt printer; and
- Ballot Reader – dual-headed optical mark reader.

Figure 5B-8, following, provides a transparent image of the ES&S InkaVote Precinct Ballot Reader case.



Figure 5B-8 Transparent View of the PBR Case

AUDIO BALLOT

A special case – convertible to a voting booth – includes headphones, the ADA-compliant keyboard, and the ballot printer. A single cable connects the Audio Ballot case to the PBR unit to provide power and software communication to the audio components.

Figure 5B-9, following depicts the PBR power configuration.

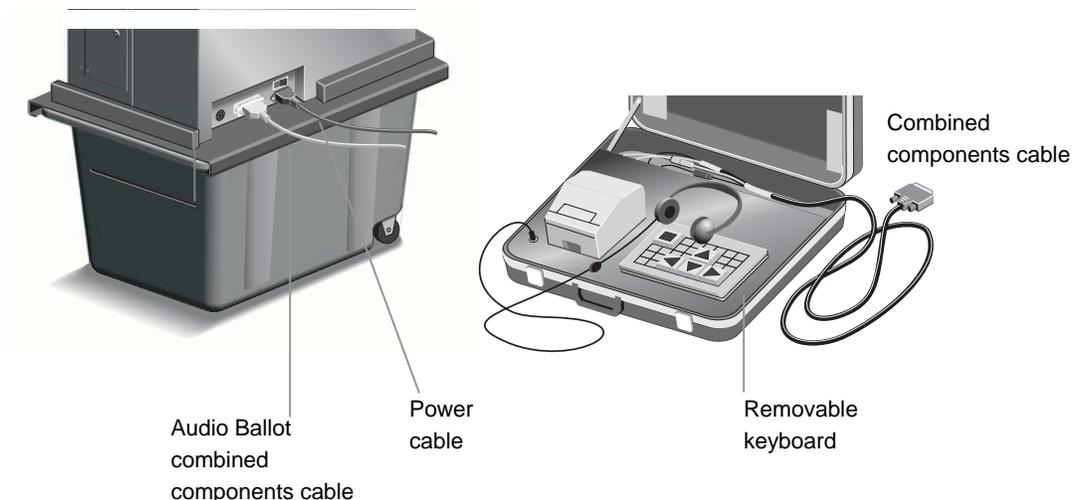


Figure 5B-9. PBR Power Configuration

The PBR delivers sound files through the headphones and receives voter response from the keyboard. The audio requires no additional data input or special configuration at the polls.

The PBR operator selects the voter’s precinct, party – if applicable –, and language to initiate the correct ballot style; the audio voter controls when the ballot narrative begins and the audio volume. The audio ballot may be canceled and restarted at any time; it is not recorded electronically. When the voter completes the ballot, a representation of the ballot prints and the voter inserts it in a privacy sleeve preparing to submit it to the PBR reader.

2) Fully describe functionality of PBR System for disabled voters in addition to blind and visually impaired voters.

ES&S RESPONSE

In addition to serving blind and visually impaired voters, the Audio Ballot serves voters who have trouble reading, are unable to stand at a booth, or have fine motor skill difficulties. Following is a list of features designed for the disabled voter in Los Angeles County.

- The keyboard is removable and can be placed in the voter's lap;
- The keys on the keyboard are large enough for a voter without fine motor control to make selections;
- The voter touches embossed shapes on the keyboard keys: arrow shapes recognizable to both Braille and non-Braille readers indicate forward and back navigation, up and down for candidate selection lists, and a "Select" key;
- The ballot is delivered in the voter's language;
- The voter is unable to overvote a contest, and is notified of undervotes at the conclusion of the ballot;
- At the conclusion of an audio session, an ES&S PBR ballot representation prints with the voter's selections. The voter inserts the slip into a privacy sleeve, then inserts the slip into the ballot reader slot; and
- On the PBR unit, "Insert ballot here" appears in Braille on the ballot reader slot.

3) Provide the maximum capacities of PBR System including: political parties; voting and total precincts; ballot styles; audio ballots; and ballot images.

ES&S RESPONSE

The currently qualified ES&S InkaVote Precinct Ballot Reader accepts a ballot card that supports seven (7) political parties. Changes to the configuration of the data area of the card will allow the card to read up to 100 political parties.

The qualified system supports 10,000 election precincts, will meet the requirements of up to 1000 contests, 2,000 candidates per election, 200 candidates per contest, 10 supported languages, and 7,000 ballot styles.

The PBR system supports audio for all ballot styles in all languages and without limitation.

4) Provide the dimensions and weights of PBR Units, cases and all additional components proposed.

ES&S RESPONSE

Following are the dimensions for the wheeled ES&S InkaVote Precinct Ballot Reader transport case:

- Dimensions of upper case closed: 20.2” height x 14.7” width x 26.3” length.
- Dimensions of ballot box base: 14.5” height x 19”width x 28” length
- Dimensions of system fully installed on ballot box: 34” height x 19” width x 28” length
- Weight: approximately 46 lbs.

Figure 5B-10, following, demonstrates the stackability and ease of assembly of the PBR case and ballot box.



Figure 5B-10. The ES&S InkaVote Precinct Ballot Reader Case and Ballot Box

5) What are the electrical and environmental (temperature, humidity, lighting, etc.) operating requirements of the PBR Units and all additional components?

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader case provides a single AC inlet with an on / off power switch on the case exterior and intended for use with the electrical power supply normally found in poll locations – 120 VAC, 60 Hz with a range of 100 – 240 V AC, 50-60 Hz. The normal operating current draw is approximately 2.0A. All components within the case are connected to this single power source. Components are installed in an “on” state and power on whenever the case power supply is plugged in and the switch is turned on.

OPERATIONAL ENVIRONMENT

- Temperatures of 41° to 95° F (5° to 35° C), which meet or exceed all required VSS Standards; and
- Non-condensing humidity of 30% to 80%; and
- Altitude to 10,000 feet (3,050 meters).

UPS BATTERY BACKUP

As an optional component, ES&S supplies an Uninterruptible Power Supply (UPS) as part of the ES&S InkaVote Precinct Ballot Reader system. The UPS provides surge protection and ensures the system will continue to run up to four hours while polling place power is unavailable. The UPS component is an APC BACK-UPS 650VA 230V.

OPERATIONS ENVIRONMENT

- Temperature 0°C to 40°C (32°F to 104°F); and
- Relative Humidity 0% to 95% - non-condensing.

ONLINE THERMAL DISSIPATION

- 25 BTU/Hr

6) How many ballots per minute can the PBR Unit optimally process?

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader processes voter ballots submitted at the poll location, at a rate of about 5 (five) seconds per ballot, including time for the voter to complete the action and move away. The PBR processes approximately 12 ballots per minute.

7) How many ballot images can a PBR Unit retain for a single election?

ES&S RESPONSE

One PBR retains 8,250 ballots for an election. This limit may be increased to 10,000 and is configurable to Los Angeles County's requirements.

8) Provide a description of the procedures to prepare the equipment for election use. Include one electronic copy of any manuals or other materials that exist for these processes.

ES&S RESPONSE

The following procedures provide a general outline for preparing equipment for election use. Detailed warehouse instructions are provided in the *Warehouse Technician's Guide*. The ES&S InkaVote Precinct Ballot Reader *Setup Sheets* provide instructions for setting up and packing the system.

The warehouse technician will:

- Prepare a Technician's List itemizing equipment and security serial numbers for each polling location (precinct);
- Install cleared Transport Media devices in each PBR;
- Run Logic and Accuracy (L&A) tests;
- Load the election;
- Test PBR components – conduct diagnostics - and election data by running a zero count report;
- Pack up and seal equipment - using serial numbered seals - for each poll location; and
- Organize PBR cases and ballot boxes for efficient delivery to poll locations.

9) Provide a description of how the PBR Unit is identified for the precincts that will be using it.

ES&S RESPONSE

The PBR units transported from the warehouse to the voting locations contain countywide election data. Each unit contains identical data and can be delivered to any of the precincts.

When performing unit startup on Election Day, the PBR asks the operator to insert a ballot card. The card sets the valid precincts – ballot styles – for the PBR unit, and the PBR displays the election title, the poll location, and precincts. A Zero Count report for the precinct(s) prints, and finally the election application screen appears. The Zero Count report states the poll location and precinct. In addition, an “About” screen is also available at any time from the election application’s “Admin” menu that provides the same location and precinct information.

The current system is being modified so that multiple ballot cards – valid for the election – will set the valid precinct or ballot style for the PBR. A poll worker inserts each ballot that will be voting on the PBR and receives a Zero Count for that precinct.

10) Provide a description of how the poll workers set up, activate, use, correct errors, shut down, and pack up the PBR Unit on Election Day. Include one electronic copy of any manuals or other materials that exist for these processes. Include both ballot checking and audio ballot processes.

ES&S RESPONSE

To set up the PBR, poll workers:

- Lift the ES&S PBR unit onto the ballot box, remove the case lid, and lift the touch screen as described in *Setup Sheet A*.
- Set up the Audio Ballot booth and connect its cable to the PBR unit, following instructions in *Setup Sheet C*.
- Plug in the PBR's single power cable and press the single on / off switch on the case's exterior.

To activate the PBR for voting:

- The poll worker inserts the ballot header card (**Figure 5B-11**, following) into the PBR's ballot reader slot to print Zero Count reports for each precinct; this will be modified so that a regular precinct ballot card is inserted for each precinct that will be voting on the unit, and each card inserted will cause a Zero Count to print. For detailed information, please refer to the *Election Day Poll Worker's Guide* and the *Election Day Operator's Guide*.



Figure 5B-11. Inserting the Ballot Card into the PBR

To use the PBR during voting (**Figure 5B-12**, following), the poll worker – also known as the operator:

- Monitors the PBR touch screen display;
- Helps voters with ballot validation and casting;
- Reprints the Ballot Alert in the voter’s language, if necessary;
- Initiates the “override” function, thereby allowing the voter to cast the ballot as is; and
- Initiates audio ballots for audio voters by selecting the voter’s precinct, party, and language - as applicable - and pressing Start. For detailed information, please refer to the *Election Day Operator’s Guide*.



Figure 5B-12. ES&S InkaVote Precinct Ballot Reader

To correct errors on the ES&S PBR, the poll worker:

- Notes the error message that appears on the ES&S InkaVote PBR screen;
- Calls the County hotline number displayed on the screen; and
- A technician ‘troubleshooter’ assists the poll worker, using the *Election Day Troubleshooter’s Guide*.

To shut down the PBR, the poll worker:

- Closes voting on the PBR unit; an Election Summary report prints;
- Switches off the PBR; and
- Removes the Transport Media.

For detailed information, please refer to the *Election Day Operator's Guide*.

To pack up equipment, the poll worker:

- Removes the PBR unit from the ballot box to access the ballots - see *Setup Sheet B*;
- Reconciles counted ballots, provisional and absentee ballots, spoiled ballots, and unused ballots against the voter rosters and package and seals the ballots according to County procedures - see the *Election Day Poll Worker's Guide*;
- Seals the Transport Media and Election Summary report in a precinct results envelope - see the *Election Day Poll Worker's Guide*;
- Packs up the PBR unit and Audio Ballot booth using *Setup Sheets B and C*; and
- Returns the fully packed PBR units, the results envelopes, ballots, and other materials – packed in the wheeled ballot box – to a central or drop-off location.

For detailed information, please refer to the *Election Day Poll Worker's Guide*.

11) Please describe how audio unit(s) are linked to and controlled by the PBR Unit at each polling place.

ES&S RESPONSE

The PBR delivers an Audio Ballot to a special Audio Ballot booth connected to the PBR unit by a single, multi-purpose cable. The booth includes headphones, a 5-key ADA-compliant keyboard, and a ballot printer. The PBR operator selects the audio voter's precinct, language, and party – as necessary – to generate the correct ballot style. When the voter is ready at the booth, the operator begins the audio narrative.

While the operator initiates the audio ballot, voters can continue to submit ballots at the PBR, and the operator is able to view the ballot reader status in the upper portion of the PBR screen. The Audio Ballot proceeds independently of ballot reading at the PBR unit.

The voter hears an audio narrative beginning with instructions in the voter's language. The voter may use this time to adjust the sound or request help. The voter controls exactly when the ballot begins and the first contest is read by pressing the right-arrow key twice. The voter may back up and change votes at any time or request that the operator restart the ballot. The operator presses Cancel to stop the ballot and can start it for the voter again at any time.

The ballot is not cast electronically from the Audio Ballot booth; instead, an InkaVote ballot representation is printed and inserted in the ballot reader slot.

For an Audio Ballot voter who appears on the registered voters roster, the ballot representation is inserted – as are all other ballots – into the ballot reader slot at the PBC unit for counting. For a provisional voter, the ballot representation is enclosed in a Provisional envelope – as are all other provisional ballots – and inserted in a separate, provisional / absentee ballot slot in the ballot box.

12) Polling places handling more than two election precincts may receive two or more PBR Units. Describe how proposed system will distinguish ballots for one election precinct scanned by multiple PBR Units.

ES&S RESPONSE

The poll worker at each precinct inserts the precinct identification card – an unvoted ballot – into the PBR to initialize voting for the particular precinct. If more than one precinct is being voted, the official inserts a second precinct identification card to activate the PBR for the second precinct. A Zero Count report prints for each precinct after the identification card is inserted.

Each ballot image identifies its voting precinct, the PBR tabulates results, and a report is printed at election close. When the PBR vote file is processed for export, the precinct identification for each ballot image is retained.

Once the polls have been closed and all tally files written to the Transport Media, the poll officials are able to manually sort ballot cards by the precinct identifiers at the bottom of each card.

13) InkaVote Tally requires all ballots for a single election precinct to be read behind a single precinct header record. Describe how proposed system will accomplish this requirement if ballots for a single election precinct can be read by multiple PBR Units.

ES&S RESPONSE

If multiple PBR's are used to scan ballots for a single election precinct, the PBR system is unable to consolidate results for that precinct. The Vote Converter simply uploads the vote file with ballot images to the InkaVote Tally system. It is unable to consolidate the ballots behind a single header. This requirement will require a custom consolidation utility. An Integrated or networked Vote Converter application will be defined and developed.

14) Describe and provide an example of the notification which will be given to voters to help them correct their ballot. Give examples of the notification for unreadable ballots, ballot errors, over-voted contests, and under-voted contests.

ES&S RESPONSE

The PBR notifies voters when overvotes, undervotes – **Figure 5B-13**, following - and no selections - **Figure 5B-14**, following - are made with a ballot alert report. The ballot alert report is initially printed only in English. Poll workers can reprint the ballot alert report in any of the previously defined languages.

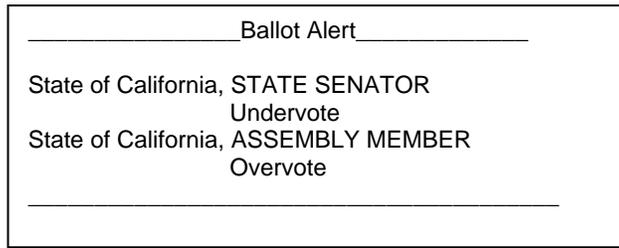


Figure 5B-13. Ballot Alert: One Under-voted Contest; One Over-voted Contest



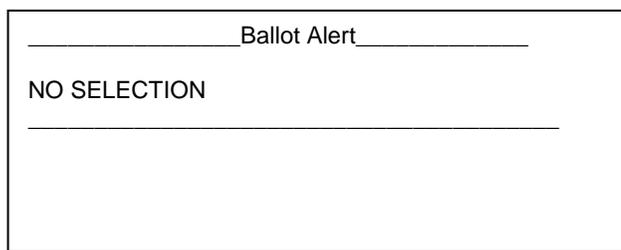


Figure 5B-14. Ballot Alert: No Selection
Made on the Ballot

Voters receive no notification for unreadable ballots. The ballot is returned to the voter, and the PBR alerts the poll worker with the message ‘Invalid Ballot’ or ‘Invalid Ballot Style’ on the screen. An invalid ballot is a card type that was not recognized by the PBR and an invalid ballot style is a ballot style that is not defined for the election.

15) When the voter is finished correcting their ballot and wants to cast it, poll workers can override the over-vote / under-vote validation features on the PBR Unit allowing the ballot to be processed even if it contains over and/or under votes. Describe how this will be accomplished.

ES&S RESPONSE

If a voter inserts a ballot in the PBR ballot reader slot and the ballot is returned with a ‘Ballot Alert’ report, the voter may request to re-submit the ballot ‘as is’. In this case, the PBR operator selects the Override button on the PBR touch screen. The voter re-inserts his / her ballot card and the ballot is cast. Overvoted contests are not counted – but are recorded as “overvoted” for reporting – and any votes for candidates in contests that are undervoted are counted.

By procedure, if the voter chooses to correct his or her ballot – and the ballot contains overvotes – the poll worker spoils the ballot and reissues a new, blank ballot for voting.

16) What safeguards exist to keep the ballot images safe from power failure, power surge or other problems?

ES&S RESPONSE

By design, the ES&S InkaVote Precinct Ballot Reader does not retain partially recorded data. If the PBR loses power, or if any part of the system fails before the data is written to the three separate media storage locations, the reader immediately returns the ballot to the voter. The ballot data is not recorded, and the voter may submit the ballot again.

If the PBR is restarted for any reason, the system compares its data files in the three storage locations, and if any file does not match the others, the recovery process occurs to return the files to the last known 'valid' state.

If a PBR should fail for any reason and cannot write data to any of its three memory locations, the data that resides on the Transport Media is used to restore the data onto a new PBR. The Transport Media is inserted into the 'clean' PBR and the system starts up and recovers data to all storage devices from the Transport Media.

Conversely, if a Transport Media fails, a 'clean' Transport Media is inserted and the system restarted to recover the data to the new media.

17) What type of non-volatile removable media are used by the PBR system? Is it reusable from one election to another? Can it be tested for physical and/or logical errors reliably before use? What is the media's MTBF (Mean Time Before Failure)?

ES&S RESPONSE

The PBR uses a removable USB flash, solid-state storage drive with 128MB capacity. The device is reusable between elections after being cleaned – clearing previous election data files. Upon startup, the Transport Media and other storage media are tested for read / write capability by the PBR. Data can be stored on the Transport Media without corruption for ten (10) years.

18) Describe the audit logs recorded by the PBR Unit and PBR System. What fields are captured and what actions cause an audit entry to be recorded?

ES&S RESPONSE

The PBR maintains two audit logs. (1) The PBR vote file – or Audit Trail – starts when voting opens and captures all ballot images as they are cast on the PBR. (2) The Administrative Log – or machine log – starts when the Election is loaded and captures all administrative actions performed on the machine, including operator actions, maintenance functions, and system messages. All Administrative log entries have a time stamp, action or error code, and message. **Appendix B** of the *InkaVote PBR Warehouse Technician's Guide* lists all valid codes.

19) Is the audit log printed by the unit or loaded on removable media for printing at the tally center or are both options provided? If audit logs are loaded on removable media, describe how the logs are encrypted and protected to prevent any changes.

ES&S RESPONSE

The audit logs can be printed from the PBR unit and are stored on the Transport Media to be used at the tally center. The vote file data is encrypted when it is written; the data stays encrypted until the Vote Converter decrypts it upon upload to the tally system. The Administrative Log is not encrypted, but is not accessible from the PBR other than through a read- or print-only interface on the PBR.

20) Describe any other information pertinent to the audit logs.

ES&S RESPONSE

Audit logs can be uploaded, filtered, viewed, and archived on the Election Converter.

9.0 Reporting

1) Provide both a list of all reports generated at all points in the proposed system and samples of all reports. Include reports used to verify the election data import, PBR configuration, and any other reports necessary for verification and operation of the system.

ES&S RESPONSE

Sample reports are provided on the following pages. PBR reports print on the report printer that is included in the PBR unit case. Reports generated by the Gateway Applications require election staff to ‘copy and paste’ the report view into a document that can be printed. Significantly, the Vote Converter does not create any reports.

REPORTS

The PBR precinct unit provides:

- Zero Count;
- Ballot Alert;
- Precinct Summary;
- Audit Trail; and
- Administrative Log.

The Election Converter provides:

- Audio Scripts;
- Sample Ballots;
- Undervote Office List; and
- Machine Logs.

The Election Loader provides:

- Election Properties;
- Election Log; and
- Machine Log.

ZERO COUNT REPORT (PBR)

The PBR prints a Zero Count – **Figure 5B-15**, following – on startup, after insertion of a precinct ballot card. A separate report prints for each precinct voting on the PBR unit.

Zero Count	
Liberty County General Election Nov 8, 2005	
Location: Happy Valley Elementary Report Printed: 11/08/2005 07:16:30 Machine Name: UNI250057 Diagnostics: Passed	
Public Count	0
Protective Count	277
Open Poll	
Close Poll	
Precinct 2983	
<hr/>	
Registered Voter Count	592
Votes this Precinct	0
PRESIDENTIAL PREFERENCE	
Vote for 1	Total: 0
THOMAS JEFFERSON (LIB)	0 00.00%
ABRAHAM LINCOLN (REP)	0 00.00%
JOHN F. KENNEDY (DEM)	0 00.00%

Figure 5B-15. Sample Zero Count Report

BALLOT ALERT REPORT (PBR)

The PBR prints a Ballot Alert – **Figure 5B-16**, following – when overvotes or undervotes are detected on a voter’s ballot.

Ballot Alert	
State of California, STATE SENATOR Undervote	
State of California, ASSEMBLY MEMBER Overvote	

Figure 5B-16. Sample Ballot Alert Report



ELECTION SUMMARY REPORT (PBR)

The PBR prints an Election Summary – **Figure 5B-17**, following – or tally for each precinct voting at close of voting.

Election Summary	
Liberty County General Election	
Nov 8, 2005	
Location: Happy Valley Elementary	
Report Printed: 11/08/2005 18:18:30	
Machine Name: UNI250057	
Public Count	377
Protective Count	841
Open Poll	Tue Nov 05 08:36:27 PDT 2005
Close Poll	Tue Nov 05 20:36:27 PDT 2005
Precinct 2983	
<hr/>	
Registered Voter Count	592
Votes this Precinct	200
PRESIDENTIAL PREFERENCE	
Vote for 1	Total: 200
THOMAS JEFFERSON (LIB)	80 40.00%
ABRAHAM LINCOLN (REP)	80 40.00%
JOHN F. KENNEDY (DEM)	40 20.00%

Figure 5B-17. Sample Election Summary Report



AUDIT TRAIL REPORT - PBR VOTE FILE

A maintenance user can print the Audit Trail Report – **Figure 5B-18**, following – after the election has been closed on the PBR unit.

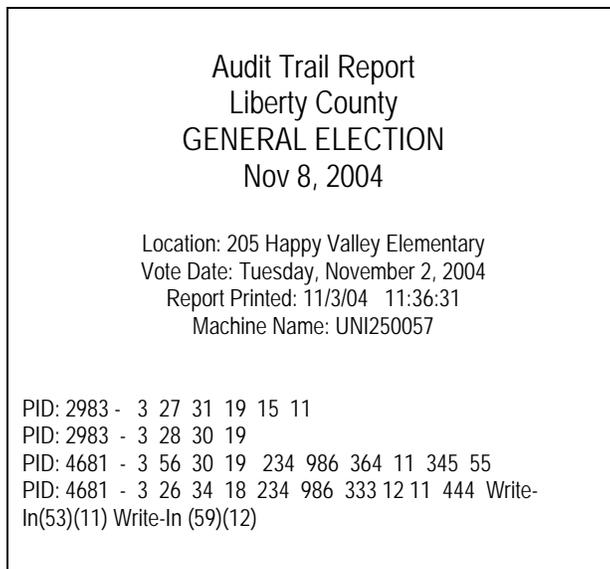


Figure 5B-18. Sample Audit Trail Report

ADMINISTRATIVE LOG REPORT (PBR)

The PBR captures user and system activities from the time the election was loaded until the next election is loaded in an Administrative Log – **Figure 5B-19**, following – which is also known as the Machine Log. A maintenance user can view this log on the PBR at any time.

```

Administrative Log
11/02/2004  02:19:20 PM

[ 2004-11-21 11:31:06.88 ] [317] Maintenance Login, voting open
[ 2004-11-21 11:31:06.83 ] [252] Login
[ 2004-11-21 11:30:42.395 ] [252] Login
[ 2004-11-21 11:30:42.385 ] [102] Cast Ballot, VU: READER
[ 2004-11-21 11:30:42.375 ] [370] Record vote
[ 2004-11-21 11:30:42.375 ] [258] Issue voter access number SUCCESS
[ 2004-11-21 11:30:42.374 ] [260] Issue voter access number
[ 2004-11-21 09:15:38.273 ] [102] Cast Ballot, VU: READER
[ 2004-11-21 09:00:38.273 ] [101] Record Vote
[ 2004-11-21 09:08:38.273 ] [258] Issue voter access number SUCCESS
[ 2004-11-21 09:00:00.103 ] [260] Issue voter access number
[ 2004-11-21 08:59:45.715 ] [260] Request Ballot READER
[ 2004-11-21 08:20:45.715 ] [260] Public Count: 0
    
```

Figure 5B-19. Sample Administrative Log Report

SOUND SCRIPTS - ELECTION CONVERTER

The Election Converter displays all sounds required for the audio ballot. **Table 5B-6**, following, displays three contest titles in three languages; en = English, es = Spanish, zh = Chinese. The narrator reads the script and the MP3 file is saved under the given filename.

Filename	Sound Script	Status	Accept
con_175_en.mp3	United States Representative United States Representative District 26	Uploaded	√
con_175_es.mp3	United States Representative United States Representative District 26	Uploaded	√
con_175_zh.mp3	United States Representative United States Representative District 26	Uploaded	√
con_176_en.mp3	United States Representative United States Representative District 27	Uploaded	√



con_176_es.mp3	United States Representative United States Representative District 27	Uploaded	√
con_176_zh.mp3	United States Representative United States Representative District 27	Uploaded	√
con_177_en.mp3	United States Representative United States Representative District 28	Uploaded	√
con_177_es.mp3	United States Representative United States Representative District 28	Uploaded	√
con_177_zh.mp3	United States Representative United States Representative District 28	Uploaded	√

Table 5B-6. Sound Scripts

SAMPLE BALLOTS - ELECTION CONVERTER

The Election Converter Ballot View allows election staff to select a precinct, party - if applicable, and language to view a particular ballot. **Figure 5B-20**, following depicts a ballot which is a portion of an English language ballot.



Ballot Style ID: 3

United States Representative District 25 Vote For:1
2 BOB CONOWAY
3 FRANK M CONSOLO JR
4 HOWARD P "BUCK" MCKEON
5 WRITE IN

State Offices Governor Vote For:1
8 GARY DAVID COPELAND
9 GRAY DAVIS
10 REINHOLD GULKE
11 BILL SIMON
12 IRIS ADAM
13 PETER MIGUEL CAMEJO
14 WRITE IN

Lieutenant Governor Vote For:1
28 JIM KING
29 BRUCE MCPHERSON
30 KALEE PRZYBYLAK
31 DONNA J WARREN
32 PAT WRIGHT
33 CRUZ M BUSTAMANTE
34 PAUL JERRY HANNOSH
35 WRITE IN

State Measure 60 Vote For:1
138 YES
139 NO

Figure 5B-20. Sample Ballot

UNDERVOTE OFFICE LIST - ELECTION CONVERTER

The Election Converter allows County staff to select contests for which the PBR will check for undervotes. The Undervote Check view – **Figure 5B-21**, following – reports all contests and whether or not they are selected for checking.



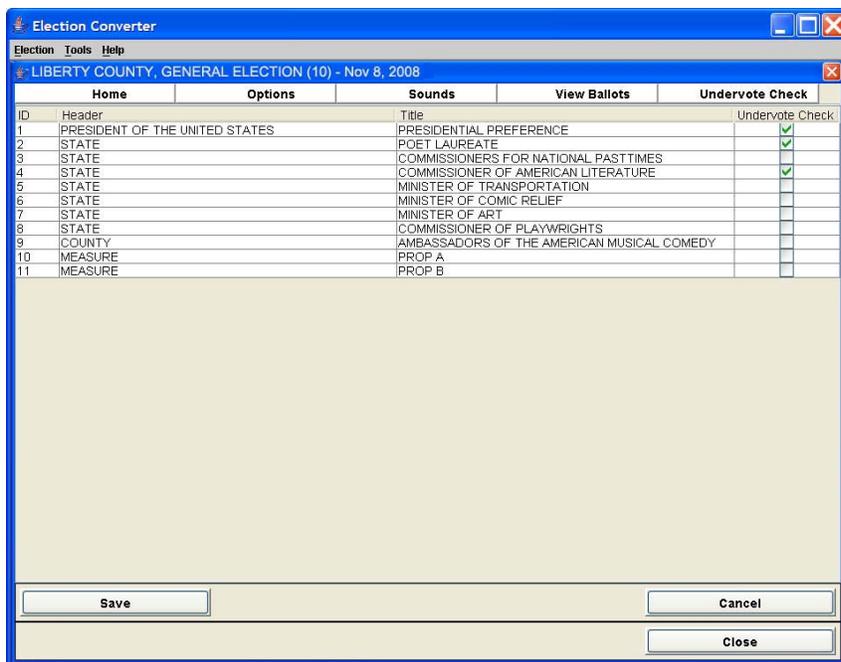


Figure 5B-21. Sample Election Converter Undervote Office List

MACHINE LOGS - ELECTION CONVERTER

The Election Converter Machine Logs – **Figure 5B-22**, following – are the same as the Administrative Logs that can be viewed and printed on the PBRs. The Election Converter, however, allows staff to view all logs by machine, system code(s) and/or election.

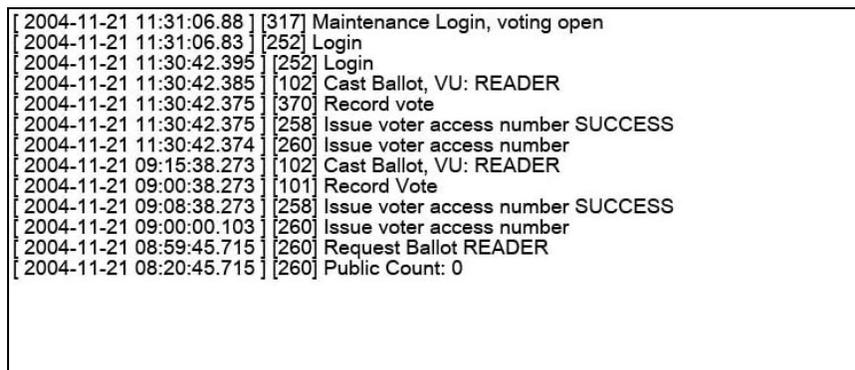


Figure 5B-22. Sample Machine Logs

ELECTION PROPERTIES - ELECTION LOADER

The Election Loader reports on properties that have been set in the Election Converter or imported for an election – **Figure 5B-23**, following.

```
TechSupportNumber=1-760-930-3633
NoSelection_ES=Ninguno Seleccionado
Undervote_ZH=00
DisablePassword=true
AllowValidate=false
DefaultLanguage=false
DebugEnabled=false
Overvote_ES=Exceso de Votos
Calibration=false
CheckUndervotes=2
TransportKey=*****
AllowAllBallots=true
ShowPrintErrorsButton=false
LogoBottomVanReceipt=inkalogo.bmp
TallyReportCopies=1
AutoPrintAudioReceipt=true
NoSelection_ZH=000
NoSelection=No Selection
AllowAllAudioBallots=true
Overvote=Overvote
LogoTopVanReceipt=flags_demo.bmp
AutoPrintReceipt=false
ShowPrintReceiptButton=false
```

Figure 5B-23. Sample Election Properties Report

ELECTION LOG

The Election Loader logs all loading activity for one election, identifying the machines loaded – **Figure 5B-24**, following.

```
[2004-11-08 16:49:42.931] [291] Load election started for PBC: UNI000002
[2004-11-08 16:49:42.971] [291] Load election started for PBC: UNI000003
[2004-11-08 16:49:42.981] [291] Load election started for PBC: UNI000004
[2004-11-08 16:49:42.981] [291] Load election started for PBC: UNI000006
[2004-11-08 16:49:49.641] [293] Successful load of Election Version: 1.1.1 for PBC: UNI000002
[2004-11-08 16:49:49.641] [293] Successful load of Election Version: 1.1.1 for PBC: UNI000003
[2004-11-08 16:49:49.641] [293] Successful load of Election Version: 1.1.1 for PBC: UNI000004
[2004-11-08 16:49:49.641] [293] Successful load of Election Version: 1.1.1 for PBC: UNI000006
```

Figure 5B-24. Sample Election Log

MACHINE LOG - ELECTION LOADER

The Election Loader logs all activities performed during election loading for each PBR machine. **Figure 5B-25**, following, demonstrates a partial log for one PBR's load process.

```
[2004-11-08 16:43:19.109] [291] Load election started
[2004-11-08 16:43:19.5] [900] Unknown Request flags.bmp
[2004-11-08 16:43:19.77] [601] Downloaded flags.bmp
[2004-11-08 16:43:20.131] [GET] Machine file upload inkalogo.bmp
[2004-11-08 16:43:20.411] [601] Downloaded inkalogo.bmp
[2004-11-08 16:43:20.671] [GET] Machine file upload Sounds.zip
[2004-11-08 16:43:22.464] [601] Downloaded Sounds.zip
[2004-11-08 16:43:22.724] [TIME] Update Time
[2004-11-08 16:43:22.995] [GET] Machine file upload Election.zip
[2004-11-08 16:43:23.285] [601] Downloaded Election.zip
[2004-11-08 16:43:23.545] [TIME] Update Time
[2004-11-08 16:43:23.826] [293] Successful load of Election Version: 1.1.1
[2004-11-08 16:49:42.931] [291] Load election started
[2004-11-08 16:49:42.961] [291] Load election started
[2004-11-08 16:49:43.211] [900] Unknown Request flags.bmp
[2004-11-08 16:49:43.251] [900] Unknown Request flags.bmp
[2004-11-08 16:49:43.282] [900] Unknown Request flags.bmp
[2004-11-08 16:49:43.282] [900] Unknown Request flags.bmp
[2004-11-08 16:49:43.322] [900] Unknown Request flags.bmp
[2004-11-08 16:49:43.482] [601] Downloaded flags.bmp
[2004-11-08 16:49:43.532] [601] Downloaded flags.bmp
[2004-11-08 16:49:43.622] [601] Downloaded flags.bmp
[2004-11-08 16:49:43.622] [601] Downloaded flags.bmp
[2004-11-08 16:49:43.622] [601] Downloaded flags.bmp
```

Figure 5B-25. Sample Machine Log

10.0 Warehouse Requirements

The proposal shall provide information relating to warehousing the equipment and standard maintenance. Include at least the following items in the proposal.

Storage and Transport Requirements

1) How much space does each individual unit take up? Provide dimensions and weights by component and for all components in a single transport case.

ES&S RESPONSE

Components for the system consist of a PBR case, an audio voting booth case, and the ballot box / transfer case. All components can be transferred to the polling location individually and have the following dimensions:

- PBR Unit: 20.2" height x 14.7" width x 26.3" length. Weight: approximately 46 lbs.
- Ballot box base: 14.5" height x 19" width x 28" length.
- New Accessible Voting Booth: 7.5" height x 26" width x 21.25" length. Weight: approximately 20 lbs.
- Existing DataVote Booth: 6.25" height x 24.25" width x 19.75" length. Weight: approximately 19.5 lbs.
- Dimensions of system fully installed and open on ballot box: 34" height x 19" width x 28" length.

ES&S will work with Los Angeles County personnel to develop a transfer case, which can be used to transport all the equipment to each precinct.

2) Describe optimum method of transporting devices to polling locations. Do individual cases have wheels?

ES&S RESPONSE

The PBR unit and the ballot box – filled with polling location supplies – are transported as separate units. The PBR unit has a pullout handle and wheels. One person can easily pull it into a location for setup. The ballot box also has a pullout handle and wheels so that one person can easily pull it.

The ADA audio booth has a handle – similar to a large briefcase – and the poll worker can carry it to the precinct poll locations.

3) Can PBR Units be stacked? If so, how many can be safely and securely stacked on top of each other?

ES&S RESPONSE

For safety reasons, the PBR units themselves cannot be stacked, but a rack warehousing system is being described in **Section 10.1.4**. ES&S is proposing a customized pallet, allowing for safe multiple staging that Los Angeles County may wish to consider as an option for future warehouse needs.

4) Describe the storage rack specifications for each type of component and spare parts. Describe the space required for setup and preparation of each component for an election. Recommend the number of simultaneous PBR Units to prepare at the same time and the estimated time needed for each component and unit.

ES&S RESPONSE

Los Angeles County may use a standard pallet size with multiple tiers for the ES&S InkaVote Precinct Ballot Reader units.



5) Provide an optimal warehousing plan for 5000 units including areas for device storage, device setup / testing / repair, and staging of devices ready for distribution to polls. Provide plans which fit three warehouse sizes: 10,000 SqFt; 20,000 SqFt; and 30,000 SqFt. Plans should include appropriate racking, stacking (provide dimensions), carts and other storage solutions as well as accommodations for transport both inside the warehouse and to delivery vehicles outside.

ES&S RESPONSE

For Los Angeles County’s convenience, ES&S is providing graphical depictions of an effective warehousing layout plan for 10,000 units – **Figure 5B-26**, following – and an optimal warehouse diagram for 30,000 units – **Figure 5B-27**, following.

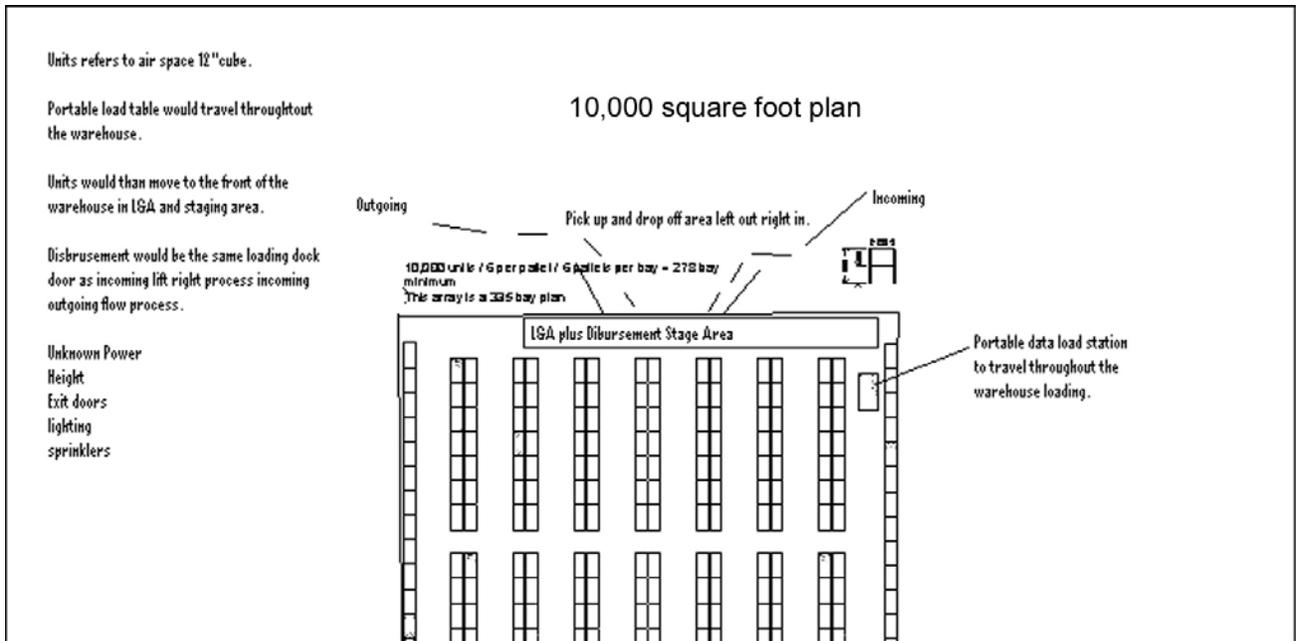


Figure 5B-26. Warehousing Diagram for 10,000 Voting Units



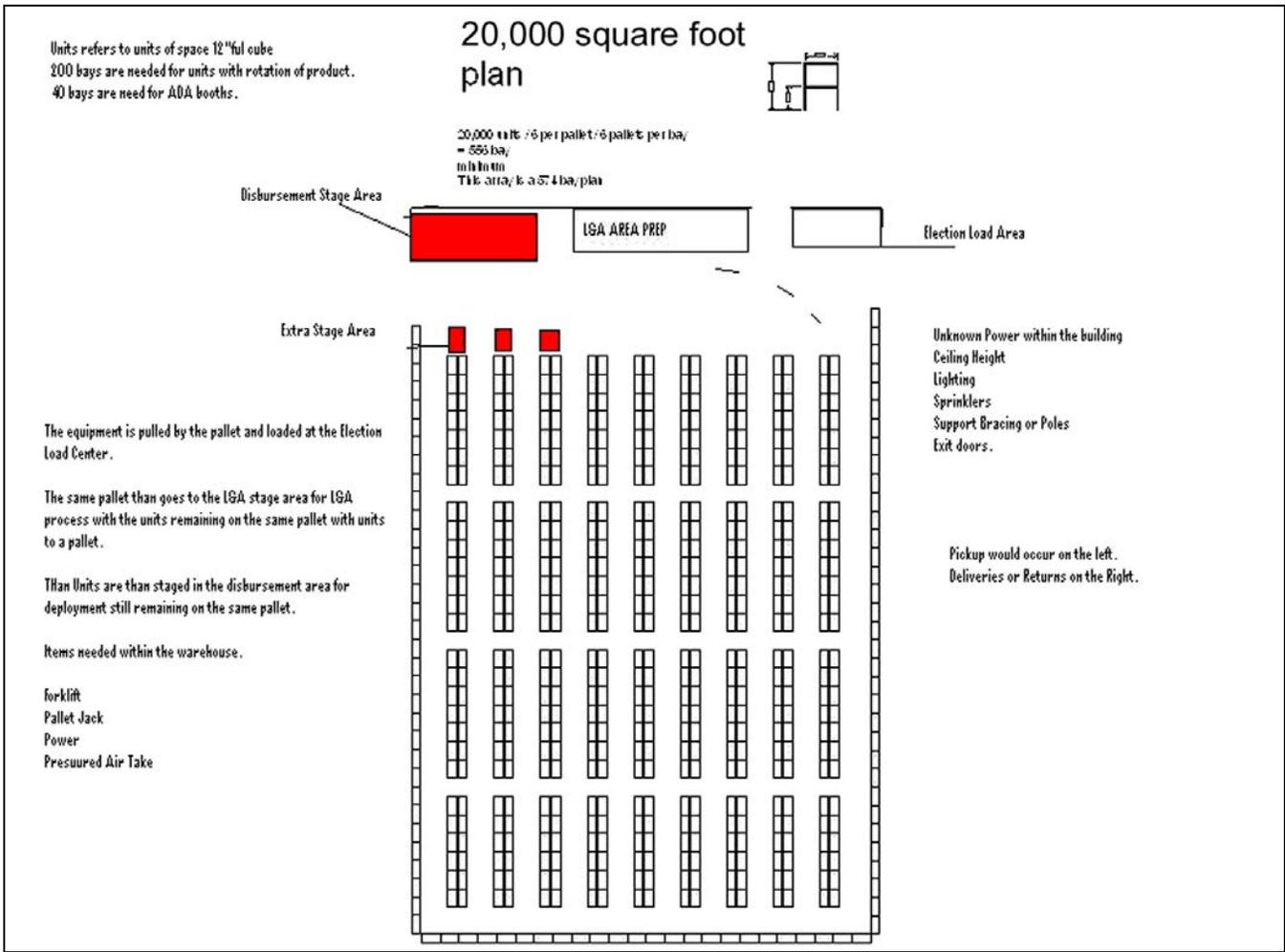


Figure 5B-27. Warehousing Diagram for 20,000 Voting Units

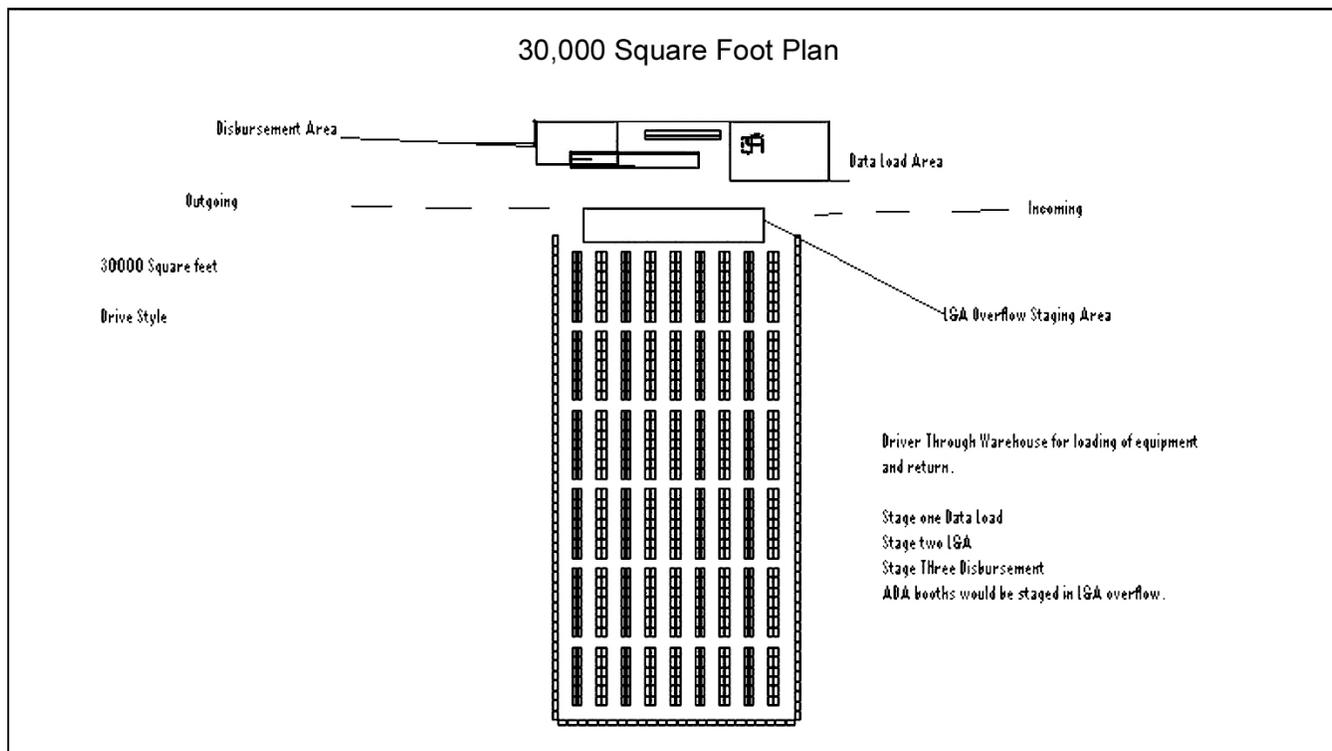


Figure 5B-28. Warehousing Diagram for 30,000 Voting Units

10.2 Environmental Requirements

- 1) Minimum and maximum storage temperatures.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader temperature storage requirements range from 32° to 140° F – 0° to 60° C.

Since the thermal paper used by the PBR's report printer and audio ballot printer can be an unstable product, the paper rolls should not be stored for a long period before being used. ES&S recommends storing printer paper separately in an environment that remains below 25° C. PBR reports and audio ballots printed on thermal paper have an expected legible lifetime of 5-7 years when stored in a proper environment.

2) Ventilation requirements.

ES&S RESPONSE

The stored ES&S InkaVote Precinct Ballot Reader tolerates ventilated standard warehouse conditions.

3) Dust restrictions, if any.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader includes a dust cover that protects it from dust in standard warehouse conditions.

4) Humidity restrictions, if any.

ES&S RESPONSE

Humidity restrictions include non-condensing humidity of 30% to 85%. Thermal paper rolls for the printers should be wrapped to protect the material from light and stored in 45% to 65% relative humidity.

5) Recommended fire suppression system.

ES&S RESPONSE

No electrical wiring should be placed within the racking. Although class three plastic will be present within the units' construction, ES&S believes that a standard high level sprinkler system with proper egress will be the only requirement necessary, as based upon the provided employee's evacuation plan.

6) Describe hazardous materials in any PBR System components.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader does not contain any hazardous materials.

10.3 Electrical Requirements

1) Storage and electrical requirements.

ES&S RESPONSE

There are no electrical requirements while the PBR remains in storage.

2) Setup requirements.

ES&S RESPONSE

For any warehouse maintenance or setup, the ES&S InkaVote Precinct Ballot Reader can operate with a normal electrical supply ordinarily found in warehouse environment – 120vac / 60hz.

3) Poll operating requirements.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader can operate with a standard 3 prong grounded outlet electrical supply typically found in polling places – 120vac/60hz.

4) Grounding requirement for all components.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader requires a standard US 15A, type B outlet with grounding pin.

5) What is the length of the power cord on the PBR Unit? Can it be connected to an electrical extension cord? If so, please provide minimum wire sizes and maximum length of extension cords usable by PBR Unit.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader comes with a standard 6-foot power cord. The PBR can be connected to an external electrical extension cord. The minimum wire size for an extension cord is 14 gauge wire with ground and the maximum length of the extension cord can be up to 25 feet.

10.4 Network Requirements

The Registrar-Recorder/County Clerk uses a Microsoft Windows 2000 TCP-IP network server environment.

1) Are there network requirements for loading data into or removing data from each component and PBR Unit? If so, please specify them in detail, and if not, state this and why.

ES&S RESPONSE

The ES&S InkaVote Precinct Ballot Reader loads elections onto PBRs using Election Loader software on a PC connected via a secure local area network to individual PBR units. The PBR is configured to look only for the Election Loader name - mapped to a specific IP address - when any network connection is detected. The Election Loader program at the other end listens on a port configured to prevent any other use. All communications in the PBR system use the http protocol on that network; no component requires special network configuration.

Figure 5B-29, following, graphically depicts that election loading requires a 10-base T, TCP/IP network consisting of a network hub and CAT-5 cable connecting the PBR units and the Election Loader PC to the hub.

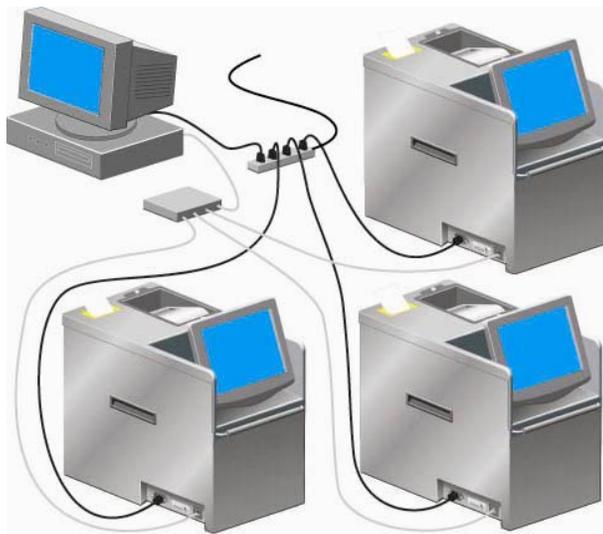


Figure 5B-29. Election Loader, Hub, and PBR Network

A custom rack with pallets containing built-in network hub and cabling can be provided separately to facilitate election loading.

Exporting votes from the PBR requires Vote Converter PCs networked to a central count system. The Vote Converter network uses a 100-base T, TCP/IP network. Vote Converters have a static IP address and require a presence on a network in order to pass all exported vote files to a common location where the InkaVote Tally system can access them.

Upon award, more information will be needed and collected to fully define the network and integrate the export process with Los Angeles County's existing tally system.

2) If network connections are required for component setup, how many are recommended for setup simultaneously and what network and/or server hardware configuration is assumed for this purpose? Provide complete specifications for a system capable of reliably setting up that many units at the same time.

ES&S RESPONSE

The Election Loader can be networked to any number of ES&S InkaVote Precinct Ballot Reader units. We recommend networking 12 PBRs to one loader, and if the custom rack option is used, it will be nine (9) PBRs to one loader. Multiple Election Loader PCs can be used and quickly moved from one set of PBRs to the next.

No network or server configuration is necessary on the Election Loader or the PBR. A network hub and CAT-5 cabling are the only requirements. All PBR units receive a static IP address in a specific range that can be determined by the customer. The IP assigned to PBR unit becomes part of the unit's unique identifying machine name and ID. The Election Loader is simply any PC system that fully implements the TCP/IP stack in the operating system to upload multiple units at a time. If more than 12 units will be loaded at once, more powerful Election Loader hardware may be required.

Election loading uses a 10-base T, TCP/IP network. Other hardware required includes a network hub and CAT-5 cable to connect each PBR unit and the Election Loader PC to the hub.

3) Specify the space required for this process.

ES&S RESPONSE

If the warehouse technician uses a laptop to load the election on racks of multiple ES&S InkaVote Precinct Ballot Readers, a minimal workstation space of approximately 3' by 3' will suffice. To load an election onto a single PBR, the floor space required is approximately 3' x 5'.

ATTACHMENT D1 - GROUP FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Election_Id	1	4	4	N	Election Designation
Ballot_Grp	5	9	5	N	Ballot Group Number
Contest_Party	10	11	2	N	Contest Party
Contest_Id	12	16	5	N	Unique Contest Identifier
Cand_Meas_Id	17	21	5	N	Unique Candidate Measure Identifier
Cand_Meas_Pch	22	26	5	N	Punch Position

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D2 - CONTEST FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Election_Id	1	4	4	N	Election Designation
Contest_party	5	6	2	N	Party of Contest
Contest_Id	7	11	5	N	Unique Contest Identifier
Contest_Blt_Div	12	16	5	N	Contest Ballot Division
Contest_Type	17	17	1	A	Contest Type "C" Candidate "M" Measure "R" Measure portion of recall
Contest_Vote_For	18	20	3	N	Vote For Number of the contest
Contest_Over_Chk	21	21	1	A	"Y" or "N" - Check for Overvotes
Contest_Undr_Chk	22	22	1	A	"Y" or "N" - Check for Undervotes
Contest_Bc_Ctr	23	27	5	N	Contest Ballots Cast Counter
Contest_Ou_Ctr	28	32	5	N	Contest Over Counter
Contest_Un_Ctr	33	37	5	N	Contest Under Counter
Contest_Pct_Ctr	38	42	5	N	Contest Precinct Reporting Counter
Contest_Cands	43	45	3	N	Number of candidates in contest
Contest_Text_Ln	46	47	2	N	Text Line Number 1 - 99
Contest_Text	48	147	100	AN	Contest/Measure Text

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D3 - CANDIDATE FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Election_id	1	4	4	N	Election Descriptor
Candidate_Pty	5	6	2	N	Candidate Party Number
Candidate_Cont_Id	7	11	5	N	Candidates Contest Number
Candidate_Id	12	16	5	N	Candidates Unique Id
Candidate_Ctr	17	21	5	N	Candidates Counter Number
Candidate_Pty_Off	22	23	2	N	Candidates Party Affiliation
Candidate_Name	24	83	60	AN	Candidates Long Name
Candidate_Occ	84	143	60	AN	Candidates Occupation

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D4 - PRECINCT FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Election_Id	1	4	4	N	Election Designation
Prec_Serial	5	8	4	N	Precinct Serial Number
Prec_Group	9	13	5	N	Precinct Group Number
Prec_City	14	16	3	N	Precinct City Code
Prec_Prec_No	17	20	4	N	Precinct Number
Prec_Sub	21	21	1	A	Precinct Sub
Prec_CIC	22	24	3	N	Precinct Check In Center
Prec_Route	25	27	3	N	Precinct Route Number
Prec_Stop	28	30	3	N	Precinct Stop Number
Prec_Name	31	60	30	AN	Precinct Name

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D5 - PARTY NAME FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Party_Number	1	2	2	N	Party Number
Party_Code	3	3	1	AN	Party code on ballot
Party_Text	4	63	60	AN	Party Name or Description

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D6 - BALLOT DIVISION FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Ballot_Div_Code	1	2	2	N	Ballot Division Number
Ballot_Div_Text	3	62	60	AN	Ballot Division Text

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D7 - ELECTION TITLE FILE

<u>Label Name</u>	<u>From</u>	<u>To</u>	<u>Length</u>	<u>Type</u>	<u>Description</u>
Election_Id	1	4	4	N	Election Designation
Election_Title	5	54	50	A	Election Title
Election_Date	55	64	10	AN	Election Date mm/dd/yyyy
Election_Type	65	65	1	A	Election Type P - Primary Election G - General Election

* Type N = Numeric, A = Alphabetic, AN = Alpha Numeric



ATTACHMENT D8 - COLUMN BINARY FORMAT BALLOT IMAGE FILE

Record Size: 160 bytes

Party I.D., Ballot Group Number and/or Precinct I.D. to be defined at a later time.
Displacement 1 through 7 are reserved.

<u>Punch Pos</u>	<u>Displacement 0 - 159</u>	<u>Bit Mask</u>	<u>Punch Pos</u>	<u>Displacement 0 - 159</u>	<u>Bit Mask</u>
1	158	x'20'	48	32	x'10'
2	152	x'20'	49	26	x'10'
3	146	x'20'	50	20	x'10'
4	140	x'20'	51	14	x'10'
5	134	x'20'	52	8	x'10'
6	128	x'20'	53	158	x'08'
7	122	x'20'	54	152	x'08'
8	116	x'20'	55	146	x'08'
9	110	x'20'	56	140	x'08'
10	104	x'20'	57	134	x'08'
11	98	x'20'	58	128	x'08'
12	92	x'20'	59	122	x'08'
13	86	x'20'	60	116	x'08'
14	80	x'20'	61	110	x'08'
15	74	x'20'	62	104	x'08'
16	68	x'20'	63	98	x'08'
17	62	x'20'	64	92	x'08'
18	56	x'20'	65	86	x'08'
19	50	x'20'	66	80	x'08'
20	44	x'20'	67	74	x'08'
21	38	x'20'	68	68	x'08'
22	32	x'20'	69	62	x'08'
23	26	x'20'	70	56	x'08'
24	20	x'20'	71	50	x'08'
25	14	x'20'	72	44	x'08'
26	8	x'20'	73	38	x'08'
27	158	x'10'	74	32	x'08'
28	152	x'10'	75	26	x'08'
29	146	x'10'	76	20	x'08'
30	140	x'10'	77	14	x'08'
31	134	x'10'	78	8	x'08'
32	128	x'10'	79	158	x'08'
33	122	x'10'	80	152	x'04'
34	116	x'10'	81	146	x'04'
35	110	x'10'	82	140	x'04'
36	104	x'10'	83	134	x'04'
37	98	x'10'	84	128	x'04'
38	92	x'10'	85	122	x'04'
39	86	x'10'	86	116	x'04'
40	80	x'10'	87	110	x'04'
41	74	x'10'	88	104	x'04'
42	68	x'10'	89	98	x'04'
43	62	x'10'	90	92	x'04'
44	56	x'10'	91	86	x'04'
45	50	x'10'	92	80	x'04'
46	44	x'10'	93	74	x'04'
47	38	x'10'	94	68	x'04'



Section 5B – Exhibit D, Requirements

<u>Punch Pos</u>	<u>Displacement 0 - 159</u>	<u>Bit Mask</u>	<u>Punch Pos</u>	<u>Displacement 0 - 159</u>	<u>Bit Mask</u>
95	62	x'04'	150	44	x'01'
96	56	x'04'	151	38	x'01'
97	50	x'04'	152	32	x'01'
98	44	x'04'	153	26	x'01'
99	38	x'04'	154	20	x'01'
100	32	x'04'	155	14	x'01'
101	26	x'04'	156	8	x'01'
102	20	x'04'	157	159	x'20'
103	14	x'04'	158	153	x'20'
104	8	x'04'	159	147	x'20'
105	158	x'02'	160	141	x'20'
106	152	x'02'	161	135	x'20'
107	146	x'02'	162	129	x'20'
108	140	x'02'	163	123	x'20'
109	134	x'02'	164	117	x'20'
110	128	x'02'	165	111	x'20'
111	122	x'02'	166	105	x'20'
112	116	x'02'	167	99	x'20'
113	110	x'02'	168	93	x'20'
114	104	x'02'	169	87	x'20'
115	98	x'02'	170	81	x'20'
116	92	x'02'	171	75	x'20'
117	86	x'02'	172	69	x'20'
118	80	x'02'	173	63	x'20'
119	74	x'02'	174	57	x'20'
120	68	x'02'	175	51	x'20'
121	62	x'02'	176	45	x'20'
122	56	x'02'	177	39	x'20'
123	50	x'02'	178	33	x'20'
124	44	x'02'	179	27	x'20'
125	38	x'02'	180	21	x'20'
126	32	x'02'	181	15	x'20'
127	26	x'02'	182	9	x'20'
128	20	x'02'	183	159	x'10'
129	14	x'02'	184	153	x'10'
130	8	x'02'	185	147	x'10'
131	158	x'01'	186	141	x'10'
132	152	x'01'	187	135	x'10'
133	146	x'01'	188	129	x'10'
134	140	x'01'	189	123	x'10'
135	134	x'01'	190	117	x'10'
136	128	x'01'	191	111	x'10'
137	122	x'01'	192	105	x'10'
138	116	x'01'	193	99	x'10'
139	110	x'01'	194	93	x'10'
140	104	x'01'	195	87	x'10'
141	98	x'01'	196	81	x'10'
142	92	x'01'	197	75	x'10'
143	86	x'01'	198	69	x'10'
144	80	x'01'	199	63	x'10'
145	74	x'01'	200	57	x'10'
146	68	x'01'	201	51	x'10'
147	62	x'01'	202	45	x'10'
148	56	x'01'	203	39	x'10'
149	50	x'01'	204	33	x'10'

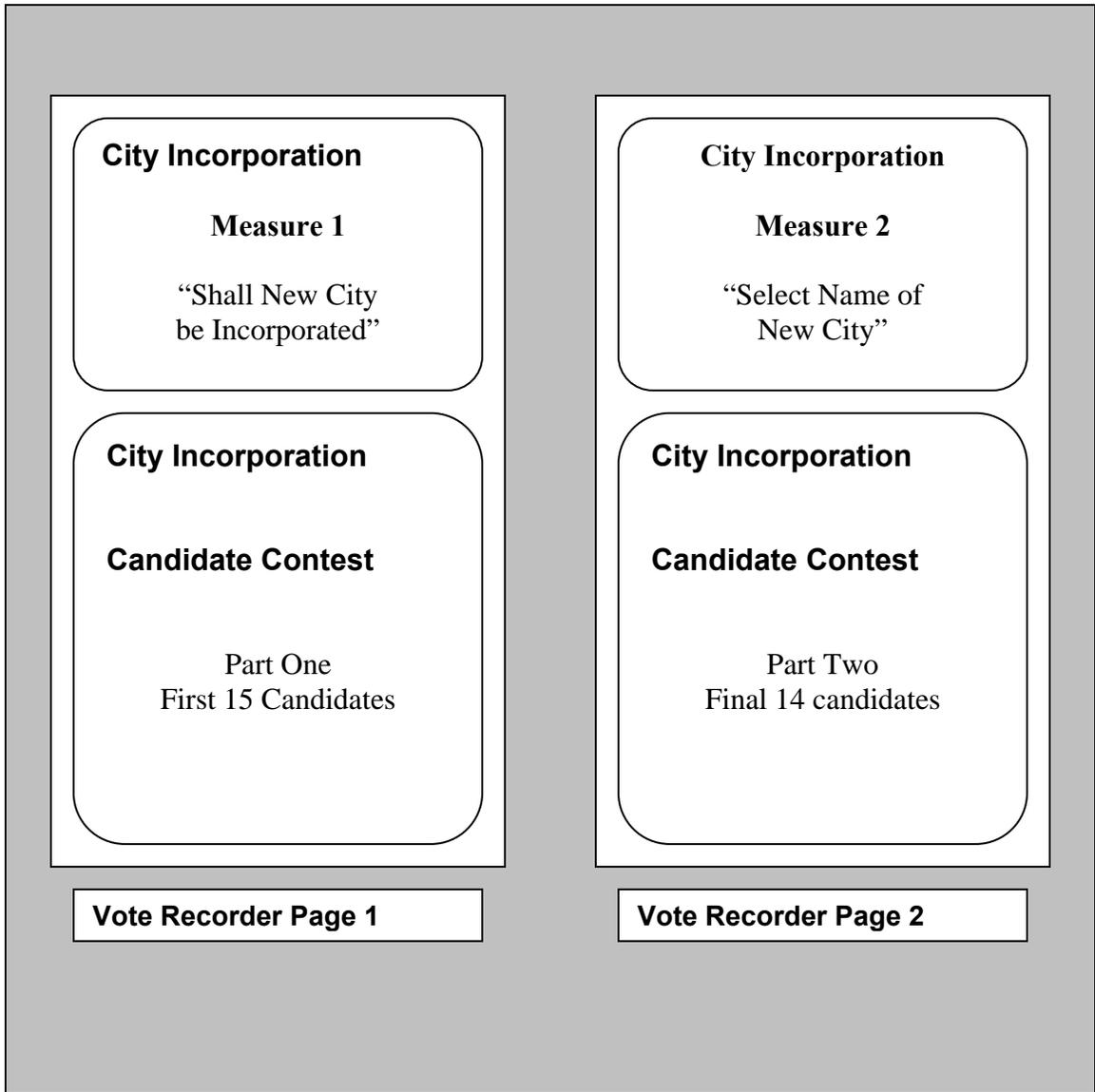


Section 5B – Exhibit D, Requirements

<u>Punch Pos</u>	<u>Displacement 0 - 159</u>	<u>Bit Mask</u>	<u>Punch Pos</u>	<u>Displacement 0 - 159</u>	<u>Bit Mask</u>
205	27	x'10'	259	15	x'04'
206	21	x'10'	260	9	x'04'
207	15	x'10'	261	159	x'02'
208	9	x'10'	262	153	x'02'
209	159	x'08'	263	147	x'02'
210	153	x'08'	264	141	x'02'
211	147	x'08'	265	135	x'02'
212	141	x'08'	266	129	x'02'
213	135	x'08'	267	123	x'02'
214	129	x'08'	268	117	x'02'
215	123	x'08'	269	111	x'02'
216	117	x'08'	270	105	x'02'
217	111	x'08'	271	99	x'02'
218	105	x'08'	272	93	x'02'
219	99	x'08'	273	87	x'02'
220	93	x'08'	274	81	x'02'
221	87	x'08'	275	75	x'02'
222	81	x'08'	276	69	x'02'
223	75	x'08'	277	63	x'02'
224	69	x'08'	278	57	x'02'
225	63	x'08'	279	51	x'02'
226	57	x'08'	280	45	x'02'
227	51	x'08'	281	39	x'02'
228	45	x'08'	282	33	x'02'
229	39	x'08'	283	27	x'02'
230	33	x'08'	284	21	x'02'
231	27	x'08'	285	15	x'02'
232	21	x'08'	286	9	x'02'
233	15	x'08'	287	159	x'01'
234	9	x'08'	288	153	x'01'
235	159	x'08'	289	147	x'01'
236	153	x'04'	290	141	x'01'
237	147	x'04'	291	135	x'01'
238	141	x'04'	292	129	x'01'
239	135	x'04'	293	123	x'01'
240	129	x'04'	294	117	x'01'
241	123	x'04'	295	111	x'01'
242	117	x'04'	296	105	x'01'
243	111	x'04'	297	99	x'01'
244	105	x'04'	298	93	x'01'
245	99	x'04'	299	87	x'01'
246	93	x'04'	300	81	x'01'
247	87	x'04'	301	75	x'01'
248	81	x'04'	302	69	x'01'
249	75	x'04'	303	63	x'01'
250	69	x'04'	304	57	x'01'
251	63	x'04'	305	51	x'01'
252	57	x'04'	306	45	x'01'
253	51	x'04'	307	39	x'01'
254	45	x'04'	308	33	x'01'
255	39	x'04'	309	27	x'01'
256	33	x'04'	310	21	x'01'
257	27	x'04'	311	15	x'01'
258	21	x'04'	312	9	x'01'



ATTACHMENT D9 - EXAMPLE OF NON-SEQUENTIAL CONTESTS



ATTACHMENT D10 - SAMPLE BALLOT PROOF LIST REPORT

GENERAL ELECTION, November 05, 2002				Dec 14, 2004 10:41:36AM		
Los Angeles County				Page: 1		
Sample Ballot Proof List						
Device Type:	DT1					
Ballot Group:	1					
Page	Race (Id)			Vote For	1	
1	GOVERNOR(10)			Counter	Low	High
	Punch Position	Candidate				
	2	BILL SIMON		9	4	10
	3	REINHOLD GULKE		4	4	10
	4	GRAY DAVIS		5	4	10
	5	IRIS ADAM		6	4	10
	6	PETER M CAMEJO		7	4	10
	7	GARY D COPELAND		8	4	10
	LEUTENANT GOVERNOR(20)			Vote For	1	
	Punch Position	Candidate		Counter	Low	High
	8	PAUL JERRY HANNOSH		15	15	22
	9	BRUCE MC PHERSON		16	15	22
	10	KALEE PRZYBYLAK		17	15	22
	11	CRUZ M BUSTAMANTE		18	15	22
	12	JIM KING		19	15	22
	13	DONNA J WARREN		20	15	22
	14	PAT WRIGHT		21	15	22
	SECRETARY OF STATE(30)			Vote For	1	
	Punch Position	Candidate		Counter	Low	High
	15	EDWARD C NOONAN		27	27	34
	16	LOUISE M ALLISON		28	27	34
	17	KEITH OLBERG		29	27	34
	18	KEVIN SHELLEY		30	27	34
	19	V SHARPE-GEISLER		31	27	34
	20	LARRY SHoup		32	27	34
	21	GAIL K LIGHTFOOT		33	27	34
Page	Race (Id)			Vote For	1	
2	CONTROLLER(40)			Counter	Low	High
	Punch Position	Candidate				
	28	TOM MCCLINTOCK		39	39	44
	29	ERNEST F VANCE		40	39	44
	30	J CARLOS AGUIRRE		41	39	44
	31	STEVE WESTLY		42	39	44
	32	LAURA WELLS		43	39	44
	TREASURER(50)			Vote For	1	
	Punch Position	Candidate		Counter	Low	High
	33	JEANNE ROSENMEIER		54	49	55
	34	SYLVIA VALENTINE		49	49	55
	35	NATHAN E JOHNSON		50	49	55
	36	PHIL ANGELES		51	49	55
	37	GREG CONLON		52	49	55
	38	MARIAN SMITHSON		53	49	55
	ATTORNEY GENERAL(60)			Vote For	1	
	Punch Position	Candidate		Counter	Low	High
	39	GLEN F MOWRER		60	60	65
	40	ED KUWATCH		61	60	65
	41	DICK ACKERMAN		62	60	65
	42	DIANE B TEMPLIN		63	60	65
	43	BILL LOCKYER		64	60	65

Full examples of this report are provided electronically. The non-partisan example is in file “General 2002 Sample Ballot Proof List.pdf” and the partisan example is in file “Primary 2004 Sample Ballot Proof List.pdf”

The non-partisan example shows all contests in each ballot group with candidates rotated as appropriate. The partisan example shows the same information by ballot group within each device type. Device type corresponds to the InkaVote ballot voting device used in the polling places. A device can have one or more parties on it. Usually Device Type 1 has Democratic contests, Device Type 2 has Republican contests, Device Type 3 has minor party contests, and Device Type 4 has minor party contests if all minor parties do not fit on Device Type 3. Non-partisan contests will appear after the partisan contests on each Device.



Attachment D11 - Audio Import Ballot Cross-Reference Report

MM/DD/YYYY	PRIMARY ELECTION, March 2, 2004		Page: 1	
HH:MM:SS	Audio Import Ballot Cross-Reference Report		LANGUAGE	
DATA TYPE	ID#	DATA ELEMENT	AUDIO FILENAME	
			IMPORTED	
Election Title				
	99999	Election Title	<i>filename+extension</i>	Y
	99999	Election Date	<i>filename+extension</i>	Y
Ballot Division Elements				
	99999	BallotDivText-1	<i>filename+extension</i>	Y
	99999	BallotDivText-2	<i>filename+extension</i>	Y
	
	99999	BallotDivText-n	<i>filename+extension</i>	Y
	n	Total Ballot Division Elements		
Ballot Instruction Elements				
	99999	BallotInstrText-1	<i>filename+extension</i>	Y
	99999	BallotInstrText-2	<i>filename+extension</i>	Y
	
	99999	BallotInstrText-n	<i>filename+extension</i>	Y
	n	Total Ballot Instruction Elements		
Party Name Elements				
	99999	PartyText-1	<i>filename+extension</i>	Y
	99999	PartyText-2	<i>filename+extension</i>	Y
	
	99999	PartyText-n	<i>filename+extension</i>	Y
	n	Total Party Name Elements		
Contest Elements				
	99999	ContestText-1	<i>filename+extension</i>	Y
	99999	ContestText-2	<i>filename+extension</i>	Y
	
	99999	ContestText-n	<i>filename+extension</i>	Y
	n	Total Contest Elements		
Candidate Elements				
	99999	CandidateText-1	<i>filename+extension</i>	Y
	99999	CandidateText-2	<i>filename+extension</i>	Y
	
	99999	CandidateText-n	<i>filename+extension</i>	Y
	n	Total Candidate Elements		
TOTAL AUDIO BALLOT ELEMENTS: 99999				

The IMPORTED column is blank if the audio file has not been imported.



Attachment D12 - Election Configuration Import - XML Schema

➤ ELECTION (ROOT XML)	Description
● ELECTIONID	The system generated id number that uniquely identifies this election
● DATE	The date of the election
● BALLOTBYPARTY	Does this election have separate ballot styles depending on a persons party (Y/N)
● ISPRESIDENTIAL	Is this election a secret primary? (Y/N) only applicable if BALLOTBYPARTY = Y
● ALLOWSTRAIGHTVOTE	Is straight party voting allowed in this election
➤ ELECTIONTYPE	The type of election (primary, runoff etc). Does not affect the display of the election
➤ JURISDICTION	The name of the county running the election
➤ TITLE	The title of the election, generally the Jurisdiction - Election Type and Election Date (long)
➤ LANGUAGES	The list of languages that are supported by this jurisdiction for this election
● DEFAULT	The id of the default language
➤ LANGUAGE	A language supported for this election by the system for this election
● ID	The id code of the language that uniquely identifies it in the system
➤ NAME	The name of the language in the default language
➤ TRANSLATION	The name of the language in its own form
➤ ISIMAGE	Is this a Unicode language that will require the system to display images instead of text
➤ PARTIES	The list of political parties recognized by this jurisdiction
➤ PARTY	A political party that is recognized by this jurisdiction
● PARTYID	The unique id of this party
● STRAIGHTVOTING	Does this party allow straight voting if it is supported by this election
➤ PARTYNAME	The name of the party
➤ PARTYABBREV	The abbreviation of this party
➤ CONTESTS	
➤ CONTEST	
● CONTESTID	The system generated unique id for this contest
● ISMEASURE	Is this contest a measure (Y N)
● ISRECALL	Is this contest an Recall contest (Y N)
● ISINSTANTRUNOFF	Is this contest an instant run off contest(Y N)
● RUNOFFLEVELS	How many levels are allowed for this instant runoff contest. A value of 0 means the voters must rank every candidate.

● PRECURSORID	If the contest is a recall contest, there may be to parts. (A yes/no and a replacement) This field associated the contest with the one that comes before it.
● ALLOWSTRAIGHTVOTE	Does this contest allow for a straight party vote where allowed
● ALLOWWRITEIN	Does this contest allow write ins
● VOTEFOR	Number of candidates that a voter should vote for in this contest 1...N
➤ HEADER	The header of the contest, generally associated with the district
➤ TITLE	The title of the contest, ie office name or proposition name
➤ DESCRIPTION	The description of the contest, only used for displaying measures
● DISTRICTID	The ID number of the District that contains this contest
➤ CANDIDATE	
● CANDIDATEID	The system generated unique id for this candidate
● PARTYID	The party id associated with this candidate. Can be null
➤ NAME	The name of the candidate (can be yes or no as well)
➤ DESCRIPTION	The description of the candidate (ie, businessman) not used in measures
● ISVALIDWRITEIN	If write ins are allowed, is this candidate a valid write in. Not sent out to the precincts
➤ BALLOTSTYLES	
➤ BALLOTSTLYE	
● BALLOTSTYLEID	The ID of this ballotstyle, system generated, it is used to associate the ballot style with a precinct portion
➤ BALLOT	
● PARTYID	If the election is ballot by party this would be party id, for general this is 0 for Non-Partisan
➤ CONTESTORDER	
● WRITEINPOSITIONS	The positions (if any) used for write in candidates in a comma delimited list
● CONTESTID	The id of a contest associated with this ballotstyle and party
● ORDER	The order in which the contests are displayed
➤ CANDIDATEORDER	
● CANDIDATEID	candidate id for the candidates associated with this contest in this ballot style
● ORDER	The order in which the candidates are display for THIS ballot style



● POSITION	The physical position on the card which corresponds to the candidate for THIS ballot style
➤ PRECINCTS	
➤ PRECINCT	A list on precinct-portions (1..N) that are consolidated to this polling location
● PRECINCTID	The system generated value that uniquely identifies this precinct-portion to the system
● ISKEY	If there are multiple precincts with the same ballot style this is the precinct that they get reported under. Totals must be aggregate
➤ PRECINCT	The ID number assigned to this precinct by the jurisdiction
➤ PORTION	If the precinct is split into portions, this is the portion id of associated with this unique precinct id
➤ PRECINCTNAME	The name of this precinct, as it is known by the jurisdiction
➤ BALLOTSTYLEID	The ballotstyle that is associated to this precinct



Attachment D13 - Ballot Pre-Punch Examples

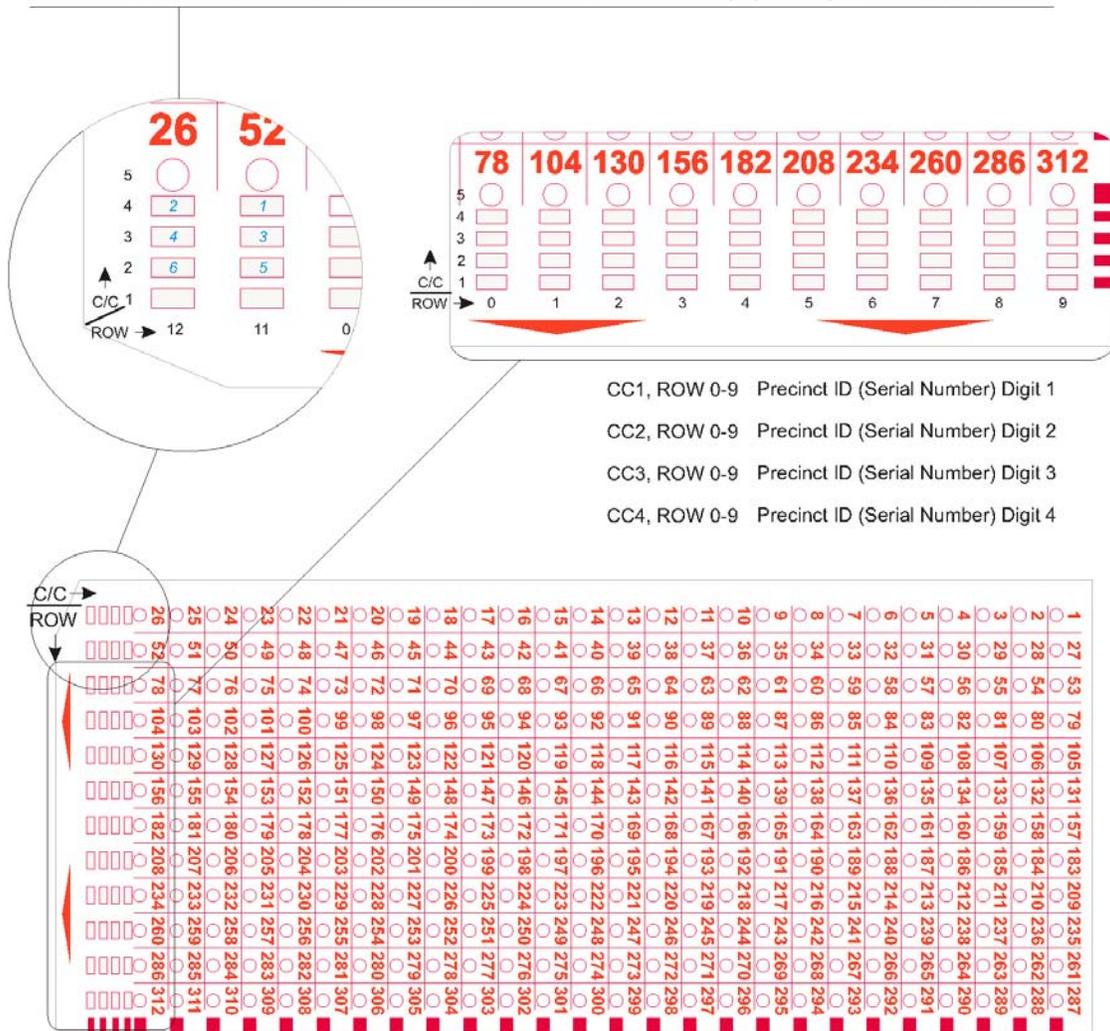
Punch Position Definition Table

Rev. 4
8/16/2005

- CC1, ROW 12 Unused by LA County, ADA Ballot Slip Identifier
- CC1, ROW 11 Unused by LA County, Absentee Identifier
- CC2, ROW 12 PartyUnit_ID, Bit 6, 32 (X000 00)
- CC2, ROW 11 PartyUnit_ID, Bit 5, 16 (0X00 00)
- CC3, ROW 12 PartyUnit_ID, Bit 4, 08 (00X0 00)
- CC3, ROW 11 PartyUnit_ID, Bit 3, 04 (000X 00)
- CC4, ROW 12 PartyUnit_ID, Bit 2, 02 (0000 X0)
- CC4, ROW 11 PartyUnit_ID, Bit 1, 01 (0000 0X)

PartyUnit_ID Table

NonPartisan	val=0	BitMap=(0000 00)	Bit=none
DEM	val=32	BitMap=(1000 00)	Bit=6
REP	val=16	BitMap=(0100 00)	Bit=5
Minor1 (Al)	val=01	BitMap=(0000 01)	Bit=1
Minor2 (GR)	val=02	BitMap=(0000 10)	Bit=2
Minor3 (LIB)	val=03	BitMap=(0000 11)	Bit=1,2
Minor4 (NL)	val=04	BitMap=(0001 00)	Bit=3
Minor5 (PF)	val=05	BitMap=(0001 01)	Bit=1,3
Minor15 (x)	val=15	BitMap=(0011 11)	Bit=1,2,3,4
MultiUnitNP	val=49	BitMap=(1100 01)	Bit=1,5,6
MultiUnitP1	val=50	BitMap=(1100 10)	Bit=2,5,6
MultiUnitP2	val=51	BitMap=(1100 11)	Bit=1,2,5,6
MutiUnitPX	val=63	BitMap=(1111 11)	Bit=1,2,3,4,5,6



- CC1, ROW 0-9 Precinct ID (Serial Number) Digit 1
- CC2, ROW 0-9 Precinct ID (Serial Number) Digit 2
- CC3, ROW 0-9 Precinct ID (Serial Number) Digit 3
- CC4, ROW 0-9 Precinct ID (Serial Number) Digit 4



Attachment D14 - Precinct Header Card Import File Layout

```
01 PHF-RECORD.
   05 PHF-PREC-TYPE          PIC X(4).
   05 PHF-PREC-76.
   10 PHF-LA-FLAG           PIC X.
   10 PHF-PREC-ID.
       15 FILLER             PIC X(002).
       15 PHF-CITY-CODE      PIC X(003).
       15 FILLER             PIC X(005).
   10 FILLER                 PIC X.
   10 PHF-DISK-ID           PIC 9(5).
   10 FILLER                 PIC X.
   10 PHF-GROUP-NO         PIC 9(4).
   10 FILLER                 PIC X(2).
   10 PHF-PART-LAYOUT      PIC 9(4).
   10 PHF-NP-LAYOUT        PIC 9(4).
   10 PHF-UNIT-LAYOUTS     PIC 9(4). OCCURS 8 TIMES.
       15 PHF-UNIT-L         PIC 9(4).
   10 FILLER                 PIC X(2).
   10 PHF-ROUTE-STOP.
       15 PHF-ROUTE          PIC X(3).
       15 PHF-STOP           PIC X(3).
   10 PHF-BALLOT-STORAGE-LOC REDEFINES PHF-ROUTE-STOP.
       15 PHF-BSL-SYSTEM     PIC X(2).
       15 PHF-BSL-FILE       PIC X(2).
       15 PHF-BSL-TRAY       PIC X(1).
       15 FILLER             PIC X(1).
   10 PHF-JOB-NO           PIC X(4).
```

* PHF-PREC-TYPE CAN BE 'PREC', 'ABSN', 'NEWR', 'TEST'

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT E

MAINTENANCE & SUPPORT SERVICES

HAVA REQUIRED INKAVOTE ENHANCEMENT

Maintenance & Support Services

1.0 General.

- 1.1 Exhibit References. As used in this Exhibit E (Maintenance & Support Services), references to a Paragraph without specific reference to another Exhibit or the base document are references to the Paragraphs of this Exhibit E.

- 1.2 Warranty Period Services. During the PBR System Warranty Period for the PBR System, and additionally during the Additional Goods and Services Warranty Period and Additional PBR Unit Warranty Period with respect to such items, Contractor shall provide all Maintenance & Support Services, including the Warranty Period Services as defined in Paragraph 3, without additional charge, for all PBR System Hardware and PBR System Software, including Additional PBR Units and Additional Goods and Services provided that such Maintenance & Support Services are not required as a result of (i) changes, modifications or alterations not authorized or approved by Contractor, or (ii) accident, theft, vandalism, abuse or use that is not in accordance with instructions or specifications furnished by Contractor. In the event Maintenance and Support Services are required as a result of the occurrence of events set forth in items (i) or (ii) in the immediately preceding sentence, Contractor shall provide such Maintenance and Support Services to the County at the hourly rates and parts prices set forth in Exhibit B (Price and Schedule of Payments).

- 1.3 Post-Warranty Services. After termination of the applicable Warranty Period, County may elect, by notice to Contractor and payment of the amounts specified in Exhibit B (Price and Schedule of Payments) for PBR System Software Maintenance & Support Services and PBR System Hardware Maintenance & Support Services, respectively, to continue to receive Maintenance & Support Services for all PBR System Software, all PBR System Hardware, or both. Upon such election by County, Contractor shall provide the support so elected, in each case subject to adjustment, offset, and credits, and otherwise in accordance with the terms of this Agreement, including this Exhibit E.

2.0 Basic Maintenance & Support Services

As provided by and to the extent set forth in Paragraphs 1.2 and 1.3 of this Exhibit E, and otherwise in this Agreement, Contractor shall provide the following Maintenance & Support Services during the Term:

- 2.1 General Services. Contractor shall correct all Deficiencies in all PBR System Hardware and/or PBR System Software (subject in either instance to Section 2.7 (Third Party Software and Hardware Support)), provide user support for all errors (whether caused by Deficiencies or user error) arising during use of the PBR System Software and PBR System Hardware through the help desk and other technical and administrative staff, provide complete PBR System documentation, and if requested by County conduct user and administrator training for County regarding any Updates as part of the Maintenance & Support Services. Contractor shall provide such training at the hourly rates set forth in Exhibit B. County acknowledges and agrees that Contractor's obligation to repair or replace any component of the PBR System Hardware in the course of providing Maintenance & Support Services applies (i) for the duration of the PBR System Hardware Maintenance & Support Period, and (ii) for the duration of the Term if such repair or replacement is necessary in order for Contractor to provide PBR System Software Maintenance & Support in accordance with the terms hereof (e.g. if a software remedy requires replacement of a component of the PBR Unit, such repair will be made in the course of providing PBR System Software Maintenance & Support), except that such obligation under this clause (ii) does not alter, amend or in any way expand Contractor's obligations under Paragraph 21 (Compliance with Law) of Exhibit A (Additional Terms and Conditions).
- 2.2 Help Desk. Contractor shall provide telephone response through its help desk each Business Day between 6:00 A.M. and 3:00 P.M. Pacific Standard Time and between 6:00 A.M. and 10:00 P.M. PST during Important Election Work Periods and Critical Election Work Periods as defined in Chart E1, and shall also provide PBR System user assistance by email. Contractor shall ensure sufficient staffing of the help desk during help desk hours such that any call or email received during such help desk hours receive a substantive response, as defined in Chart E1, within the Diagnosis Timeframe described in Chart E1.

Staff providing service at the help desk shall be trained in the operation, maintenance and repair of the PBR System, in the determination of the source of errors in usage of the PBR System (whether caused by user error or malfunction), and to provide guidance to County personnel in the use of all components of the PBR System. Staff providing service at the help desk shall furthermore have ready access to test hardware and software allowing testing and/or verification of any County reported Deficiencies.

- 2.3 Contractor Staff. Contractor shall ensure the appropriate technical support staff and management shall be available for maintenance, repair or support that cannot be accomplished via the help desk staff.
- 2.4 Documentation. Contractor shall maintain a maintenance history for all PBR System Hardware and PBR System Software items serviced.
- 2.5 Secure Online Support. Secure online support services shall be hosted and maintained by Contractor for problem diagnosis and resolution, software updates and documentation releases.
- 2.6 Updates. Contractor shall provide Updates as required pursuant to the Agreement, including for the correction of Deficiencies, or the Contractor deems necessary and useful to the performance of the PBR System. Without limiting in any way the requirements of the Agreement or Exhibit A (Additional Terms and Conditions), any changes to the PBR System Software that are required in order to comply with applicable Election Laws and Regulations during the Term of the Agreement shall be made through Updates at no additional charge to County.
- 2.7 Third Party Software and Hardware Support. With respect to any reported Deficiency in Third Party Software or Third Party Hardware components as defined in the Agreement or error in the use thereof, Contractor shall (i) make reasonable efforts to diagnose the Deficiency, (ii) assist County with remedying the Deficiency or user error, as further detailed below, (iii) assist County with obtaining support or warranty service from the third party vendor or warranty service provider in respect of such components; and (iv) remedy any Deficiency in the PBR System arising from any defect in or misconfiguration of any such third party components.

If any Deficiency in Third Party Software is not promptly remedied by the warranty service provider or author of such component, Contractor shall promptly ameliorate any Deficiency in the PBR System Software arising therefrom, in full accordance with its obligations to maintain the PBR System hereunder. For avoidance of doubt, Contractor's duties with respect to such Third Party Software shall not include modifying the Source Code of such Third Party Software to correct Deficiencies therein. However, by way of example and without limitation, Contractor's duties in respect of the PBR System Software shall include (i) ensuring compatibility

between all Third Party Software components and the PBR System, if necessary by modifying the PBR System Software to maintain such compatibility, (ii) remediation of any Deficiencies related to the configuration of any Third Party Software components as used in the PBR System, and (iii) development of software workarounds in the PBR System Software for bugs, errors, or other defects in the Third Party Software which cause the PBR System not to perform in accordance with Specifications or otherwise which cause the PBR System to exhibit Deficiencies.

- 2.8 Problem Log Tracking. Contractor shall create and update an automated problem log, which shall be reviewed and revised at least weekly for follow up on unresolved issues. The problem log shall include the following:
- a. Problem Number (a unique ID assigned by Contractor)
 - b. Date and time reported
 - c. County employee or affiliate reporting the problem and phone number
 - d. Contractor personnel receiving the initial County contact regarding the problem
 - e. Description of the problem
 - f. Service Level assigned to problem
 - g. Error Level assigned to problem
 - h. Resolution status and estimated fix date (completed by Contractor)
 - i. Resolution plan (completed by Contractor).
 - j. Resolution description and date resolved (completed by Contractor)
 - k. A log of each individual contact between County and Contractor regarding the problem, including the date, time, County and Contractor personnel names for each contact, textual summaries of phone calls, and copies of all related email text and other correspondence.

3.0 Warranty Period Services

- 3.1 On Site Support. During the PBR System Warranty Period, on-site support personnel technically competent to fully support and repair the PBR Units and other components of the PBR System shall be provided at no additional charge to County during all Service Level 2 support periods as specified in Chart E1, for up to sixteen (16) hours per day.
- 3.2 Expedited PBR System Hardware Repair. If, at any time during the applicable Warranty Period or otherwise during the PBR System Hardware Maintenance & Support Period, Contractor is unable to repair any component of PBR System Hardware on-site at County, or at Contractor's request, County agrees to ship by overnight shipment any PBR System Hardware needing repair to Contractor for repair at Contractor's expense. All such required repairs are to be completed within the timeframe specified in Chart E1 without additional cost to County. Contractor shall return such PBR System Hardware at its expense by overnight shipment.

4.0 System Error Levels

- 4.1 Error Level 1. Error Level 1 issues shall include minor imperfections, routine repair and replacement of failed equipment or modules, questions and minor software upgrades. Additionally, an issue may be assigned to Error Level 1 if the issue impacts County's use of any component of the PBR System but without causing any loss of functionality or operability.
- 4.2 Error Level 2. Error Level 2 issues shall include those resulting in a loss of functionality or operability of any component of the PBR System, but for which a workaround acceptable to County is developed within the Diagnosis Timeframe specified on Chart E-1.
- 4.3 Error Level 3. Error Level 3 issues shall include those resulting in a loss of functionality or operability of any component of the PBR System, for which a workaround acceptable to County is not developed within the Diagnosis Timeframe specified on Chart E1.

5.0 Support Levels

Varying levels of support for the PBR System and its components are required depending on when issues are identified in relation to an Election date. Chart E1 identifies Support Levels and required Contractor response times by Error Level and Support Level, and for avoidance of

doubt, except where otherwise noted, these response times are measured in calendar days rather than Business Days.

5.1 Support Level 1. Issues occurring during the Important Election Work Periods listed in Chart E1 require Support Level 1 service. In the event of a special Election, County shall notify Contractor of the need for support as soon as possible.

5.2 Support Level 2. Issues occurring during the Critical Election Work Periods listed in Chart E1 require Support Level 2 service. In the event of a special Election, County shall notify Contractor of the need for support as soon as possible. Contractor shall make commercially reasonable efforts to provide Support Level 2 service beginning as close as possible to the date service is requested even if such date is less than the timeframe identified in Chart E1. During Support Level 2 events, Contractor must commit to continual work, including the reassignment of staff to bring resolution as quickly as possible within the time required.

On its own initiative, or on the request of Contractor which may be accepted or rejected in County Project Director’s sole discretion, County may elect to treat problems occurring during Support Level 2 service periods as requiring Support Level 1 service. Any such election by County shall not incur additional fees, and this may occur only when delayed problem resolution will not negatively affect the performance of the PBR System, or any part thereof, during the related Election.

Chart E1

Support and System Error Levels: Required Response Timeframes				
Support Level	Description	Error Level	Diagnosis Timeframe*	Resolution Timeframe**
1	Important Election Work Periods	1	Two days	One week
		2	Two hours	Two days
		3	Two hours	Two days
<u>Applicable Times:</u> 1) County-wide and UDEL Elections: E-120 (Election Day minus 120 days) through completion of official canvass or recounts 2) Special Elections: E-60 (or three weeks after notification of special Election date by County) through completion of official canvass or recounts.				

2	Critical Election Work Periods.	1	Four hours	Two days
		2	One hour	One day
		3	One hour	One day
<p><u>Applicable Times:</u></p> <ol style="list-style-type: none"> 1) ABL production run (E-59 to E-54) 2) Load Election data in PBR System and PBR Units (E-29 to E-25) 3) Absentee ballot processing (E-3 to E-1) 4) Election Day support and Election night processing with additional time restrictions (see Paragraph 6.2 part d) 5) Scheduled tally update processing (E+3, E+7, E+10, E+14, E+17, and E+21) 				
<p>* The Diagnosis Timeframe for a reported issue will be met when Contractor provides a substantive response to the issue. A substantive response includes, at a minimum, a clearly worded description of the issue and an estimate of what will be done to resolve the issue within the associated Resolution Timeframe. Response times for Resolution Timeframe and Diagnosis Timeframe purposes shall each be measured from the time of County's report of the issue to Contractor.</p>				
<p>** The allotted time periods for allowable Diagnosis Timeframe and Resolution Timeframe on any reported issue in accordance with this Chart E1 shall begin:</p> <ul style="list-style-type: none"> • At the time of first attempt to reach Contractor regarding the particular condition reported, if by phone, by email or fax sent during the Business Day, or by email or fax sent at any time during an Important Election Work Period or Critical Election Work Period. 				

6.0 Resolution Time Credits

6.1 General. Without limiting any other rights and remedies available to County, either pursuant to the Agreement, at law, or in equity, credit shall accrue to the County under this Exhibit E for Contractor's failure to provide timely corrective Maintenance & Support Services to remedy any Deficiencies, as described in more detail below ("Resolution Time Credit").

PBR System Hardware

During the PBR System Warranty Period and any subsequent periods the County is paying for and receiving PBR System Hardware Maintenance & Support, if Contractor fails to provide corrective maintenance within the Resolution Timeframe as set forth on Chart E1 of this Exhibit, County shall be entitled to Resolution Time Credit in the amount of thirty-seven dollars and fifty cents (\$37.50) per affected PBR Unit for each day the error or malfunction continues beyond the designated Resolution Timeframe in Chart E1 up to an annual maximum of five hundred thousand dollars (\$500,000.00). The Resolution Time Credit shall apply only to those PBR Units for which Contractor fails to provide corrective maintenance on a timely basis in accordance with Chart E1.

PBR System Software

During the PBR System Warranty Period and any subsequent periods the County is paying for and receiving PBR System Software Maintenance & Support, if Contractor fails to provide corrective maintenance within the Resolution Timeframe as set forth on Chart E1 of this Exhibit, County shall be entitled to Resolution Time Credit in the amount of \$2,500 per day for each day the error or malfunction continues beyond the designated Resolution Timeframe in Chart E1 up to an annual maximum of seventy-five thousand dollars (\$75,000.00). The Resolution Time Credit shall apply to any PBR System Software which Contractor fails to provide corrective maintenance on a timely basis in accordance with Chart E1.

6.2 RTC Accrual Timing and Payment. The initial Resolution Time Credit for failure to provide timely corrective maintenance on an issue shall accrue, in full with no pro-ration, at one minute after the expiration of the Resolution Timeframe for the related issue shown on Chart E1, and Resolution Time Credit will continue to accrue in respect of such issue for each 24 hours the issue remains unresolved thereafter. All amounts payable to the County as Resolution Time Credit under this Exhibit shall be subject to withholding from payments in respect of future invoices pursuant to Paragraph 10 of the Agreement, and County also reserves the right to seek direct reimbursement from Contractor, with such reimbursement to be due within 30 days of notification of Contractor by the County that such amounts are due and payable. Such notification shall be in writing and provided to the address designated for legal notices after the award. Without limiting or otherwise altering Contractor's obligations in respect of the PBR System, or County's other remedies hereunder, no Resolution Time Credit shall accrue as to any particular Deficiency during the time period between (a) when Contractor has corrected or provided a workaround for such Deficiency and such correction or workaround has been accepted by County as fully remediating the Deficiency, and (b) the issuance of any required Federal or State certification or recertification of the PBR System or any portion thereof in respect of such completed correction. By way of example and without limitation, if a software source code change is required in order to correct a Deficiency, Resolution Time Credits shall not accrue after the required source code corrections have been made or another workaround has been provided, in each case accepted by County as fully correcting the Deficiency.

6.3 Exceptions. For the avoidance of doubt, notwithstanding anything in this Agreement to the contrary, no Resolution Time Credit shall accrue with respect to any deficiency in any item of PBR System Hardware unless such item is within its Warranty Period or otherwise within the PBR System Hardware Maintenance & Support Period, and no Resolution Time Credit shall accrue with respect to any deficiency in any item of PBR System Software unless such item is within its Warranty Period or County has elected to receive PBR System Software Maintenance & Support.

Additionally, to the extent any error or malfunction results from use of the PBR System by County other than as instructed in writing by Contractor, County shall not be entitled to any Resolution Time Credit, for such period of misuse and any further time required for correction of errors resulting therefrom, provided that Contractor shall notify County, in writing, of the details of the alleged misuse within five (5) days of Contractor's discovery of the alleged misuse. County shall review such alleged misuse and shall notify Contractor in writing, within five (5) days, of County's agreement or disagreement with Contractor's allegation(s). In the event County disagrees with Contractor's allegation(s) of misuse, County Project Director is entitled to apply Resolution Time Credit as detailed in this Exhibit E, subject to the provisions of Paragraph 2.3 (Dispute Resolution Procedure) of Exhibit A (Additional Terms and Conditions).

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT F

THIRD PARTY HARDWARE AND SOFTWARE

HAVA Required InkaVote Enhancement Agreement Third Party Hardware and Software¹

Application	Third Party Hardware	Third Party Operating System	Third Party Software	Third Party License (Information Only)
Election Converter	Pentium 4 grade processor, 2.6Ghz or current market availability. 1GB MB RAM 16X 4.7GB DVD +R/-RW drive 4 USB Ports 10/100 Network 40GB HDD Sound card.	Microsoft XP Professional	MySQL Database, Jasper Reports, Free TTS (Text to Speech), Java JRE, Java Help	Unisyn provides a MySQL license for the database
Election Loader	Pentium 4 grade processor, 2.6Ghz or current market availability. 128MB MB RAM 16X/40X DVD-ROM drive 10/100 Network 40GB HDD	Microsoft XP Professional	Java JRE, Java Help	
Vote Converter	Pentium 4 grade processor, 2.6Ghz or current market availability. 128MB MB RAM 16X/40X DVD-ROM drive 10/100 Network 40GB HDD	Microsoft XP Professional	Java JRE, Java Help	

¹ Note: Notwithstanding anything else in the Agreement to the contrary, no component of the PBR Unit is to be deemed Third Party Software or Third Party Hardware for the purpose of Maintenance and Support Services or otherwise.

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT H

FORM OF ESCROW AGREEMENT

HAVA REQUIRED INKAVOTE ENHANCEMENT

FORM OF ESCROW AGREEMENT

Master Deposit Account Number _____

This agreement (the "Agreement") is entered into by and between Election Systems & Software, Inc., located at 11208 John Galt Boulevard, Omaha, NE 68137 ("Depositor") and by any additional party signing the Preferred Beneficiary Acceptance Form attached as Schedule C to this Agreement ("Preferred Beneficiary") and by Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain") on this ___ day of _____, 200_ (the "Effective Date"). Preferred Beneficiary, Depositor, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

A. Depositor and Preferred Beneficiary have entered or will enter into a license and related services agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as the "License Agreement").

B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of elections and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.

D. Depositor and Preferred Beneficiary desire to establish an escrow with Iron Mountain to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.

E. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States Bankruptcy Code, Section 365(n).

F. The Parties understand and agree that this Agreement is subject to the provisions of Chapter 6, §§ 206010 et seq. of the California Code of Regulations.

ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the Parties, Depositor shall deliver to Iron Mountain the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement. Depositor and Preferred Beneficiary shall prepare and sign the form attached hereto as Schedule A. Iron Mountain shall have no obligation with respect to the preparation, signing or delivery of Schedule A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to Iron Mountain, Depositor shall conspicuously label for identification each document, magnetic tape,

disk, or other tangible media upon which the Deposit Materials are written or stored. The identifying label shall include Depositor's name, the product name, and the product version number. Additionally, Depositor shall complete a Schedule B to this Agreement listing each such tangible media by the item label description, the type of media and the quantity. The Schedule B shall be signed by Depositor and delivered to Iron Mountain with the Deposit Materials. Unless and until Depositor makes the initial deposit with Iron Mountain, Iron Mountain shall have no obligation with respect to this Agreement, except the obligation to notify the Parties regarding the status of the account as required in Section 2.2 below.

1.3 Depositor's Certification of Initial Deposit. Within five business days of Depositor's initial deposit of the Deposit Materials, Depositor shall provide written certification in accordance with title 2, section 20641 of the California Code of Regulations to Preferred Beneficiary (with a copy to the California Secretary of State) that Depositor has placed the Deposit Materials in escrow. Such certification shall include complete, fully executed copy of the Schedule B completed in connection with the initial deposit.

1.4 Iron Mountain's Notification of Initial Deposit. Within five business days of Depositor's initial deposit of the Deposit Materials, Iron Mountain shall provide written notice of such initial deposit to the California Secretary of State at the address provided by Depositor on the Authorized Person(s) / Notices Table and in accordance with title 2, sections 20650(b) and 20650(d) of the California Code of Regulations. Such notice shall include Depositor's name and shall also include a complete, fully executed copy of this Agreement and a complete, fully executed copy of the Schedule B completed in connection with Depositor's initial deposit.

1.5 Deposit Inspection. When Iron Mountain receives the Deposit Materials and the corresponding Schedule B, Iron Mountain will conduct a deposit inspection by visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the corresponding Schedule B. In addition to the deposit inspection, Preferred Beneficiary may elect to cause a verification of the Deposit Materials in accordance with Section 1.9 below.

1.6 Acceptance of Deposit. At completion of the deposit inspection, if Iron Mountain determines that the labeling of the tangible media matches the item descriptions and quantity on Schedule B, Iron Mountain will date and sign Schedule B and mail a copy thereof to Depositor and Preferred Beneficiary (with a copy to the California Secretary of State). If Iron Mountain determines that the labeling does not match the item descriptions or quantity on Schedule B, Iron Mountain will (a) note the discrepancies in writing on Schedule B; (b) date and sign Schedule B with the exceptions noted; and (c) mail a copy of Schedule B to Depositor and Preferred Beneficiary. Iron Mountain's acceptance of the deposit occurs upon the signing of Schedule B by Iron Mountain. Delivery of each signed Schedule B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by Iron Mountain.

1.7 Depositor's Representations. Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with Iron Mountain;

- c. With respect to all of the Deposit Materials, Depositor has the right and authority to grant to Iron Mountain and Preferred Beneficiary the rights as provided in this Agreement;
- d. The Deposit Materials are not subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Depositor's creditors;
- e. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement or Schedule A, as the case may be; and
- f. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

1.8 Verification. Preferred Beneficiary shall have the right, at Preferred Beneficiary's expense, to cause a verification of any Deposit Materials. Preferred Beneficiary shall notify Depositor and Iron Mountain of Preferred Beneficiary's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Deposit Materials. If a verification is elected after the Deposit Materials have been delivered to Iron Mountain, then only Iron Mountain, or at Iron Mountain's election an independent person or company selected and supervised by Iron Mountain, may perform the verification.

1.9 Deposit Updates. Depositor shall update the Deposit Materials within five business days of providing to Preferred Beneficiary any upgrades, updates, enhancements, revisions, improvements, bug fixes, patches, customizations, or modifications to the software licensed to Preferred Beneficiary pursuant to the License Agreement (collectively, "Supplemental Materials"). Depositor shall further update the Deposit Materials within five business days of issuing to Preferred Beneficiary any new version release of the software licensed to Preferred Beneficiary pursuant to the License Agreement, whether the new version release incorporates previously provided Supplemental Materials or adds new ones. Any new version release shall also be considered Supplemental Materials. Any Supplemental Materials shall be added to the existing deposit account that holds the Deposit Materials, but at all times shall remain separately identified. Depositor shall deposit any Supplemental Materials in accordance with Sections 1.1 and 1.2 above. For every deposit of Supplemental Materials, Depositor shall clearly label each document, magnetic tape, disk, or other tangible media upon which the Supplemental Materials are written or stored. The label shall include Depositor's name, the product name, and the version number. Depositor shall then prepare and sign a new Schedule B listing all Supplemental Materials for a particular deposit. Within five business days of any deposit of Supplemental Materials, Depositor shall provide notice to Preferred Beneficiary (with a copy to the California Secretary of State) of such deposit. Such notice shall include a copy of Schedule B executed in connection with the update to the Deposit Materials. Iron Mountain shall process any deposit of Supplemental Materials and provide all applicable notices thereof in accordance with Sections 1.5 and 1.6 above and shall further create an independent record that will

document the activity for each Schedule B. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any Supplemental Materials.

1.10 Removal of Deposit Materials. The Deposit Materials may be removed or exchanged only in accordance with title 2, sections 20670, 20681(b), and 20681(e) of the California Code of Regulations and upon Iron Mountain's receipt of written instructions signed by Depositor and Preferred Beneficiary (and Iron Mountain shall forward a copy to the California Secretary of State), or as otherwise provided in this Agreement.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. Iron Mountain shall maintain the Deposit Materials in a secure, environmentally safe, locked facility which is accessible only to authorized representatives of Iron Mountain. Iron Mountain shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement, Iron Mountain shall not disclose, transfer, make available, or use the Deposit Materials. Iron Mountain shall not disclose the content of this Agreement to any third party except as required by the terms of this Agreement and title 2, sections 20650 and 20670 of the California Code of Regulations. However, Depositor may provide the California Secretary of State with a copy of this Agreement and all Exhibits and Preferred Beneficiary Acceptance Forms. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, or upon a finding by the California Secretary of State that Iron Mountain is unwilling or unable to maintain the Deposit Materials in escrow in compliance with title 2, sections 20660-63 and 20670-72 of the California Code of Regulations, Iron Mountain will immediately notify the Parties unless prohibited by law. It shall be the responsibility of Depositor or Preferred Beneficiary, at each's discretion, to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will not be required to disobey any order from a court or other judicial tribunal. (See Section 8.5 below for notices of requested orders.)

2.2 Status Reports. Iron Mountain shall provide to Depositor and Preferred Beneficiary access to the Iron Mountain real-time, on-line portal to view data and documentation relative to the escrow agreement, including a copy of this Agreement and complete deposit transaction history from the first deposit transaction to the current status. For avoidance of doubt, payment history is not currently available via the on-line portal. Upon request, Iron Mountain will provide ad hoc status reports to Depositor and Preferred Beneficiary. For avoidance of doubt, the availability of status reports does not affect any other Iron Mountain obligation to provide notices pursuant to the express provisions of this Agreement.

2.3 Retention of Deposit Materials.

- a. Pursuant to title 2, section 20681(b)(1) of the California Code of Regulations, Iron Mountain shall retain any and all records and other documentation it maintains with respect to this Agreement for the later of (i) the term of this Agreement, and (ii) twenty two (22) months following

any election in which the Deposit Materials (*i.e.* the object code and software that is compiled by the Deposit Materials) were used.

- b. Additionally, if the California Secretary of State informs Iron Mountain that an election contest, or a criminal prosecution involving fraudulent use of the ballot tally computer program to which the Deposit Materials relates, has been timely commenced, then pursuant to title 2, section 20681(b)(2) and subject to continued payment of fees to Iron Mountain pursuant to Section 7.2 of this Agreement, Iron Mountain shall not release the original of the Deposit Materials until the later of (i) twenty two (22) months following such election, or (ii) the California Secretary of State has determined and notified Iron Mountain that the necessity for retention has ended.

2.4 Audit Rights. During the term of this Agreement, Depositor and Preferred Beneficiary shall each have the right to inspect the written records of Iron Mountain pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

ARTICLE 3 -- GRANT OF RIGHTS TO IRON MOUNTAIN

3.1 Title to Media. Depositor hereby transfers to Iron Mountain the title to the media upon which the proprietary technology and materials are written or stored. However, this transfer does not include the ownership of the proprietary technology and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.

3.2 Right to Make Copies. Iron Mountain shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by Iron Mountain. With all Deposit Materials submitted to Iron Mountain, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including, but not limited to, the hardware and/or software needed. With the exception of copies requested by the California Secretary of State, which shall not pay for copies, any copying expenses incurred by Iron Mountain as a result of a request to copy will be borne by the Party requesting the copies. Alternatively, Iron Mountain may notify Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for Iron Mountain to perform this Agreement.

3.3 Right to Transfer Upon Release. Depositor hereby grants to Iron Mountain the right to transfer a copy of the Deposit Materials to Preferred Beneficiary upon any release of the Deposit Materials for use by Preferred Beneficiary in accordance with Section 4.5. Except upon such a release or as otherwise provided in this Agreement or by applicable law, judicial order, or regulation, Iron Mountain shall not transfer the Deposit Materials.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the occurrence of any of following:

- a. Depositor's failure to carry out its obligations imposed on it pursuant to the License Agreement; or
- b. Depositor's failure to continue to do business in the ordinary course.

4.2 Filing For Release. In the event that Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary shall notify Iron Mountain of the occurrence. Such notice shall specify the particular Release Condition and shall identify, by Schedule B number, the Deposit Materials to be released. Upon receipt of such notice, Iron Mountain shall promptly notify Depositor and the California Secretary of State and shall provide a copy of Preferred Beneficiary's notice to each of Depositor and the California Secretary of State by overnight express mail (by commercial or U.S. Postal Service).

4.3 Contrary Instructions. From the date Iron Mountain mails the notice requesting release of the Deposit Materials, Depositor shall have ten business days to deliver to Iron Mountain contrary instructions ("Contrary Instructions"). For purposes of this Section, Contrary Instructions shall mean delivery by certified mail to Iron Mountain by Depositor, with a copy to Preferred Beneficiary and to the California Secretary of State, of an affidavit or declaration stating that a Release Condition has either not occurred or no longer exists. Upon receipt of Contrary Instructions, Iron Mountain shall send a copy to Preferred Beneficiary by overnight express mail (by commercial or U.S. Postal Service). Additionally, Iron Mountain shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to Section 8.3 of this Agreement. Subject to Section 5.2 of this Agreement, Iron Mountain will continue to store the Deposit Materials without release pursuant to this Section 4 pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 8.3; or (c) order of a court.

4.4 Release of Deposit. If Iron Mountain does not receive Contrary Instructions from the Depositor, Iron Mountain is authorized to release a copy of the requested Deposit Materials to the Preferred Beneficiary. However, Iron Mountain is entitled to receive any fees due to Iron Mountain before making the release. Any copying expense in excess of \$300 will be chargeable to Preferred Beneficiary.

4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release the release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement.

4.6 Continuation of Agreement. Unless the Parties jointly notify Iron Mountain otherwise, no release pursuant to this Section 4 of a copy of the Deposit Materials, in whole or in part, shall be deemed to terminate, or shall cause the termination of, this Agreement as to any Party, including the Preferred Beneficiary receiving the Deposit Materials, and all obligations of Iron Mountain

in respect of the Deposit Materials shall continue in full force and effect in accordance with the terms herein.

4.7 Order to Release Deposit Material at the Request of the Secretary of State of California. Should the Secretary of State of California order release of the Deposit Materials pursuant to Section 20638, Iron Mountain shall deliver them within the specified time period of 24 hours of receipt of the order.

ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one year beginning as of the date of this Agreement. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor and Preferred Beneficiary jointly instruct Iron Mountain in writing that the Agreement is terminated, provided, that if the California Secretary of State has informed the Depositor or Preferred Beneficiary of an investigation or other proceeding related to this Agreement, then Depositor or Preferred Beneficiary is not permitted to terminate this Agreement for the twenty two (22) month period following any election conducted using the Deposit Materials; or (b) Iron Mountain instructs Depositor and Preferred Beneficiary in writing that the Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3. If the Deposit Materials are subject to another escrow agreement with Iron Mountain, Iron Mountain reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to Iron Mountain by Depositor, Iron Mountain shall provide written notice of delinquency to all Parties. Either Depositor or Preferred Beneficiary shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) days of the date of such notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to Depositor and Preferred Beneficiary (with a copy to the California Secretary of State). Iron Mountain shall have no obligation to take any action under this Agreement so long as any payment due to Iron Mountain remains unpaid. The payment by Preferred Beneficiary of any amounts to Iron Mountain pursuant to this Section 5.2 shall not constitute a waiver of, nor prejudice, any of Preferred Beneficiary's rights and remedies under the License Agreement, or at law or in equity, in respect of Depositor's nonpayment hereunder.

5.3 Termination by Resignation. Iron Mountain reserves the right to terminate this Agreement, for any reason, by providing Depositor and Preferred Beneficiary (with a copy to the California Secretary of State) with 60-days' written notice of its intent to terminate this Agreement. Within the 60-day period, the Depositor and Preferred Beneficiary may provide Iron Mountain with joint written instructions authorizing Iron Mountain to forward the Deposit Materials to another escrow company and/or agent or other designated recipient. If Iron Mountain does not receive said joint written instructions within 60 days of the date of Iron Mountain's written termination notice, then Iron Mountain shall destroy, return or otherwise deliver the Deposit Materials in accordance with Section 5.4.

5.4 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions and to the restrictions imposed by Section 2.3 of this Agreement, upon termination of this Agreement, Iron Mountain shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, Iron Mountain may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. Iron Mountain shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with Iron Mountain or if all Deposit Materials have been released to the Preferred Beneficiary in accordance with Section 4.4.

5.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's Representations (Section 1.7);
- b. Retention of Deposit Materials (Section 2.3);
- c. The provisions regarding Financial Interest (Article 6);
- d. The obligations of confidentiality with respect to the Deposit Materials;
- e. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Deposit Materials has occurred prior to termination;
- f. The obligation to pay Iron Mountain any fees and expenses due;
- g. The provisions regarding Liability and Disputes (Article 8); and
- h. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 – FINANCIAL INTEREST

6.1 Financial Interest Representations.

- a. Iron Mountain's Representations. Iron Mountain represents that Iron Mountain, its officers, and directors do not hold or exercise any direct or indirect financial interest in Depositor. Notwithstanding the foregoing, Iron Mountain's officers or directors may acquire or hold directly or indirectly, solely for investment purposes, securities in Depositor, provided that any such officer or director exercises no control of the purchase or sale decisions in respect of such security (e.g., such securities are held in a mutual fund or in a discretionary brokerage account over which investors have no ability to specify purchases or sales of individual securities).

- b. Depositor's Representations. Depositor represents that Depositor, its officers, and directors do not hold or exercise any direct or indirect financial interest in Iron Mountain.

6.2 Financial Interest Affirmative Covenants.

- a. Iron Mountain's Affirmative Covenants. Iron Mountain covenants that if it develops a financial interest in Depositor, Iron Mountain shall:
 - i. Advise Depositor of the financial interest;
 - ii. Immediately notify Preferred Beneficiary of the financial interest; and
 - iii. Transfer the Deposit Materials to another certified escrow company which has no financial interest in Depositor.

- a. Depositor's Affirmative Covenants. Depositor covenants that if it develops a financial interest in Iron Mountain, Depositor shall:
 - i. Advise Iron Mountain of the financial interest;
 - ii. Immediately notify Preferred Beneficiary of the financial interest; and
 - iii. As allowed by the terms of this Agreement, instruct Iron Mountain to transfer the Deposit Materials to another certified escrow company which has no financial interest in Depositor and has been approved by Preferred Beneficiary.

ARTICLE 7 -- IRON MOUNTAIN'S FEES

7.1 Fee Schedule. Depositor agrees to pay Iron Mountain its standard fees and expenses applicable to the services provided. Iron Mountain shall notify Depositor at least ninety (90) days prior to any increase in fees. For any service not listed on Iron Mountain's standard fee schedule, Iron Mountain will provide a quote prior to rendering the service, if requested.

7.2 Payment Terms. Iron Mountain shall not be required to perform any service unless the payment for such service and any outstanding balances owed to Iron Mountain are paid in full. Fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. Payments on all renewal and services invoices are due net thirty (30) days from date of invoice. If invoiced fees are not paid, Iron Mountain may terminate this Agreement in accordance with Section 5.2.

ARTICLE 8 -- LIABILITY AND DISPUTES

8.1 Right to Rely on Instructions. Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine. Iron Mountain may assume that any employee of a Party who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Iron Mountain shall not be responsible for failure to act as a result of causes beyond the reasonable control of Iron Mountain.

8.2 Indemnity, Limitation of Liability, and Consequential Damages Waiver.

(a) Indemnity. Depositor and Iron Mountain shall defend, indemnify and hold harmless the other, its corporate affiliates and its respective officers, directors, employees, and agents and its respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

(b) Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT, (II) LIABILITY FOR DEATH OR BODILY INJURY, (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE DEPOSIT MATERIALS), (IV) THEFT, OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) Consequential Damages Waiver. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

8.3 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be resolved by arbitration under the Commercial Rules of the American Arbitration Association. Three arbitrators shall be selected. Depositor and Preferred Beneficiary shall each select one arbitrator and the two chosen arbitrators shall select the third arbitrator, or failing agreement on the selection of the third arbitrator, the American Arbitration Association shall select the third arbitrator. However, if Iron Mountain is a party to the arbitration, Iron Mountain shall select the third arbitrator. Depositor and Preferred Beneficiary agree that arbitration will take place in Los Angeles County, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.

8.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

8.5 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Iron Mountain to take, or refrain from taking any action, that party shall:

- a. Give Iron Mountain at least five business days' prior notice of the hearing, unless the nature of the request or requested order makes such notice impracticable;
- b. Include in any such order that, as a precondition to Iron Mountain's obligation, Iron Mountain be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that Iron Mountain not be required to deliver the original (as opposed to a copy) of the Deposit Materials if Iron Mountain may need to retain the original in its possession to fulfill any of its other duties.

8.6 No Liability for the State of California or its Secretary of State. Neither the State of California nor its Secretary of State shall be responsible for any of the fees claimed by Depositor, Preferred Beneficiary, or Iron Mountain to establish this Agreement. Further, neither the State of California nor its Secretary of State is a party to this Agreement and shall not incur any liability for the actions of the Parties.

ARTICLE 9 -- GENERAL PROVISIONS

9.1 Entire Agreement. This Agreement, which includes Schedules A, B, C, and D described herein, embodies the entire understanding among the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. Iron Mountain is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. Iron Mountain's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the Parties hereto, except that Schedule A need not be signed by Iron Mountain, Schedule B need not be signed by Preferred Beneficiary, Schedule C need only be signed by the Parties identified on the Form, and Schedule D need not be signed by the Preferred Beneficiary.

9.2 Notices. All notices regarding release of Deposit Materials or termination of this Agreement shall be in writing and sent by commercial express mail or certified mail. All other notices, including invoices, payments, and other documents and communications, shall be sent by commercial express mail or by regular mail to the individuals and Parties at the addresses provided by the Parties ("Authorized Persons/Notices Table") (see the signature page and Preferred Beneficiary Acceptance Form). Depositor and Preferred Beneficiary shall also have access to account data via the online portal maintained at the Iron Mountain Website. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of address. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services. The Parties recognize and agree that the California Code of Regulations imposes obligations relating to notice that may conflict with the provisions of this Section 9.2. In such case, the Parties shall comply with the more stringent requirement, but in all cases, comply with the provisions of the California Code of Regulations.

9.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

9.4 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of parties.

9.5 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to

which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

9.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[signature page follows]

ELECTION SYSTEM & SOFTWARE, INC.

**IRON MOUNTAIN INTELLECTUAL
PROPERTY MANAGEMENT, INC.**

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	ipmcontracts@ironmountain.com

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent pursuant to Section 9.2 to the appropriate address set forth below.

PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS		EMAIL ADDRESS	
STREET ADDRESS 1		STREET ADDRESS 1	
PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

California Secretary of State

NOTICES TABLE

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TITLE:		TITLE:	
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PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent pursuant to Section 9.2 to the appropriate address set forth below.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS 1	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmcontracts@ironmountain.com OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

SCHEDULE A

MATERIALS TO BE DEPOSITED

Account Number _____

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to Iron Mountain shall consist of the following:

Depositor

Preferred Beneficiary

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**SCHEDULE B
DEPOSIT MATERIAL DESCRIPTION**

COMPANY NAME: _____ ESCROW ACCOUNT NUMBER: _____

DEPOSIT NAME _____ AND DEPOSIT VERSION _____ (Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Internet File Transfer			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? Yes or No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Schedule B via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc.
Attn: Vault Administration
2100 Norcross Parkway, Suite 150
Norcross, GA 30071
Telephone: (770) 239-9200
Facsimile: (770) 239-9201

SCHEDULE C

Preferred Beneficiary Acceptance Form

Deposit Account Number: _____

Depositor, Beneficiary and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"), hereby acknowledge that Election Systems & Software, Inc. is the **Depositor** referred to in the Escrow Agreement that supports Deposit Account Number: _____ with Iron Mountain as the escrow agent and the County of Los Angeles is the **Preferred Beneficiary** enrolling under this Agreement. **Iron Mountain, Preferred Beneficiary and Depositor** each hereby agrees to be bound by all provisions of such Agreement except as amended below.

1. As between Depositor, Iron Mountain, and the Preferred Beneficiary set forth on this Schedule C, Section 4.1 of the Master Escrow Agreement is hereby deleted and replaced with the following:

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the occurrence of any of the following:

- a. Preferred Beneficiary has terminated the License Agreement under any of the following provisions with respect to Depositor:
 - i. Paragraph 5 (Termination for Insolvency) of Exhibit A to the License Agreement (Additional Terms and Conditions);
 - ii. Paragraph 6 (Termination for Default) of Exhibit A (Additional Terms and Conditions) with respect to Contractor's breach of Maintenance & Support Services obligations;
- b. Depositor has discontinued Maintenance & Support Services provided under Exhibit E to the License Agreement (Maintenance & Support Services), provided the discontinuation of Maintenance & Support Services to Preferred Beneficiary is not based on Preferred Beneficiary's nonpayment of an any undisputed Maintenance & Support Fee accrued thereunder; or
- c. Depositor has impermissibly assigned an obligation under the License Agreement to a third party without the prior written approval of Preferred Beneficiary.

2. Additionally, as between Depositor, Iron Mountain, and the Preferred Beneficiary set forth on this Schedule C, new section 8.2(d) is added as follows:

8.2(d). No Change of Relationship. NOTWITHSTANDING THE FOREGOING SECTIONS 8.2(b) OR 8.2(c), OR ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, NEITHER THIS SECTION 8.2 NOR ANY OTHER PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO WAIVE, REDUCE, OR LIMIT IN ANY WAY ANY DAMAGES ACCRUING BETWEEN DEPOSITOR AND PREFERRED BENEFICIARY, WHICH ARE ACKNOWLEDGED AND AGREED BETWEEN DEPOSITOR AND PREFERRED BENEFICIARY TO BE CONTROLLED EXCLUSIVELY BY THE LICENSE AGREEMENT BETWEEN THEM AND NOT BY THIS AGREEMENT.

PREFERRED BENEFICIARY COMPANY NAME: COUNTY OF LOS ANGELES

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent pursuant to Section 9.2 to the appropriate address set forth below. Please complete all information as applicable. Incomplete information may result in a delay of processing.

PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS		EMAIL ADDRESS	
STREET ADDRESS		STREET ADDRESS	
PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

PAYING PARTY COMPANY NAME: ELECTION SYSTEMS & SOFTWARE, INC.

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS 1	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmcontracts@ironmountain.com OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

NOTE: SIGNATURE BLOCKS FOLLOW ON THE NEXT PAGE

DEPOSITOR

<i>SIGNATURE:</i>	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

PREFERRED BENEFICIARY

Signature:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

Signature:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	ipmcontracts@ironmountain.com

SCHEDULE D

AUXILIARY DEPOSIT ACCOUNT TO MASTER ESCROW AGREEMENT

(NOTE: TO BE COMPLETED ONLY IF DEPOSITOR ESTABLISHED A MASTER ESCROW AGREEMENT)

Master Deposit Account Number: _____

Auxiliary Account Number _____

Election Systems & Software, Inc. (“**Depositor**”) has entered into a Master Escrow Agreement with Iron Mountain Intellectual Property Management, Inc. (“**Iron Mountain**”). Pursuant to that Agreement, Depositor may deposit certain Deposit Material with Iron Mountain.

Depositor desires that new Deposit Material be held in a separate account and be maintained separately from the initial account. By execution of this Schedule D, Iron Mountain will establish a separate account for the new Deposit Material. The new account will be referenced by the following name:

_____.

Depositor hereby agrees that all terms and conditions of the existing Master Escrow Agreement previously entered into by Depositor and Iron Mountain will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

DEPOSITOR

**IRON MOUNTAIN INTELLECTUAL
PROPERTY MANAGEMENT, INC.**

<i>SIGNATURE:</i>	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

Signature:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	ipmcontracts@ironmountain.com

AUTHORIZED PERSON(S)/NOTICES TABLE

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POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT J

PREAPPROVED SUBCONTRACTORS

HAVA REQUIRED INKAVOTE ENHANCEMENT

PREAPPROVED SUBCONTRACTORS

1. Unisyn Voting Solutions, Inc.
2131 Faraday Avenue
Carlsbad, California 92008-7252

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT J-1

AGREEMENT REGARDING SUBCONTRACTED SERVICES

HAVA REQUIRED INKAVOTE ENHANCEMENT

AGREEMENT REGARDING SUBCONTRACTED SERVICES

THIS SUBCONTRACT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__, by and between Election Systems & Software, Inc., located at 11208 John Galt Boulevard, Omaha, Nebraska 68137 ("Contractor"), and _____, a _____ formed under the laws of _____ and located at _____ ("Subcontractor").

WHEREAS, Contractor has entered into Los Angeles County Contract No. _____ (the "Prime Contract") with the County of Los Angeles, State of California (hereafter "County") pursuant to which Contractor is providing certain enhancements to County's voting system and related services to County, as more fully described in the Prime Contract; and

WHEREAS, in order to fulfill all of its obligations to County under the Prime Contract, Contractor desires to engage Subcontractor to perform work in the area of development of and support for the PBR System; and

WHEREAS, Subcontractor desires to perform such work in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, Contractor and Subcontractor agree as follows:

1. APPLICABLE DOCUMENTS:

1.1 Interpretation:

Exhibits 1, 2, 2A, and 3 are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents of any task, subtask, deliverable, goods, service, or other work, or otherwise, between the Prime Contract and the body of this Agreement and the Exhibits thereto, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Prime Contract and then to the body of this Agreement and to the Exhibits according to the following priority:

- 1.1.1. The body of this Agreement
- 1.1.2. Exhibit 1 - Statement of Work
- 1.1.3. Exhibit 2 - Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement
- 1.1.4. Exhibit 2A - Assignment and Transfer of Copyright
- 1.1.5. Exhibit - Subcontractor's EEO Certification

1.2 Entire Agreement:

The body of this Agreement, and the Exhibits thereto, shall constitute the complete and exclusive statement of understanding between the parties which supersedes all previous agreements,

written or oral, and all communications between the parties relating to the subject matter of this Agreement.

1.3 Definitions:

Unless otherwise expressly defined in this Agreement, all capitalized terms shall have the meanings as set forth in the Prime Contract.

2. PRIME CONTRACT:

Notwithstanding any other provision of this Agreement, this Agreement is a subcontract under the Prime Contract and each and all of the provisions of the Prime Contract and any Amendments thereto shall extend to and be binding upon the parties to this Agreement.

3. WORK:

Pursuant to the provisions of this Agreement, Subcontractor shall fully provide, complete and deliver on time all the tasks, subtasks, deliverables, goods, services, and other work set forth in Exhibit 1 (Statement of Work). Time is of the essence of Subcontractor's performance hereunder.

4. PERSONNEL:

4.1 All Subcontractor personnel performing work under this Agreement shall be subject to the prior and continuing approval of Contractor and County. County Project Director may require replacement, in the exercise of reasonable discretion and with an articulable basis for such determination, of any member of Subcontractor's staff performing, or offering to perform, work hereunder. If at any time during the term of this Agreement, any Subcontractor personnel is not approved by County, then Subcontractor shall, immediately upon receipt of written or oral notice from Contractor or County, replace such personnel with substitute qualified personnel or take such other action as requested thereby.

4.2 Subcontractor shall endeavor to assure continuity during the Initial Term of Subcontractor personnel performing key functions under this Agreement. In the event Subcontractor should ever need to remove any staff from performing work under this Agreement, Subcontractor shall provide Contractor and County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, in which case such notice shall be provided to each Contractor and County at Subcontractor's earliest opportunity. Subcontractor shall furthermore in such event work with Contractor and County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Subcontractor shall fill any vacancy in its personnel performing work hereunder with individuals having qualifications at least equivalent to those of personnel being replaced.

4.3 Subcontractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. Contractor and County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, and local taxes, or

other compensation benefits, or taxes, for any personnel provided by or on behalf of Subcontractor.

4.4 Subcontractor understands and agrees that all persons performing work under this Agreement are, for purposes of workers' compensation liability, the sole employees of Subcontractor and not employees of Contractor or County. Subcontractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of Subcontractor pursuant to this Agreement.

4.5 Subcontractor shall obtain an executed Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement (Exhibit 2) for each of its employees performing work under this Agreement. Such agreements shall be delivered to County's Chief Administrative Office, Workers Compensation Division, Claims Section, 3333 Wilshire Blvd., Suite 1000, Los Angeles, CA 90010, on or immediately after the effective date of this Agreement but in no event later than the date any such employee first performs work under this Agreement.

5. COMPENSATION:

Contractor shall be solely liable and responsible for any and all payments and other compensation to Subcontractor and its officers, employees, and agents. County shall have no liability or responsibility whatsoever for any payment or other compensation of Subcontractor or its officers, employees, and agents. Without limiting the foregoing, Subcontractor disclaims any right to seek any payment from County for any and all compensation or recovery of any of its costs, or to assert any lien against County (including but not limited to any lien on any goods, services, or other work rendered hereunder), its assets or rights in the any software or system or any element thereof, on account thereof.

6. TERM:

The term of this Agreement shall commence on the last date of signature hereto and shall continue until termination of the Prime Contract, unless (a) sooner terminated, in whole or in part, as provided in this Agreement, or (b) the Agreement is assumed by County pursuant to the terms of Paragraph 10 of this Agreement.

7. TERMINATION BY COUNTY:

This Agreement shall terminate, in whole or in part, upon receipt by Contractor of written notice from County that County no longer approves the continuation of the whole or any part of this Agreement.

8. THIRD PARTY BENEFICIARY:

Contractor and Subcontractor understand and agree that this Agreement is entered into for the benefit of County and that County is hereby expressly made a third party beneficiary of this Agreement.

9. AMENDMENTS:

The provisions of the body of this Agreement and the Exhibits thereto shall not be changed in any way or waived by Contractor or Subcontractor without the prior written consent of County, and any waiver or change not so approved shall be null and void. No changes to the body of this Agreement or the Exhibits hereto, nor any waiver of any term or condition herein shall be valid or effective unless made in the form of a written Amendment which is approved in writing by County and which is formally executed by authorized officials of Contractor and Subcontractor.

10. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION:

This Agreement, or any interest therein, including, but not limited to, any claim for monies due or to become due with respect thereto, shall not be assigned or delegated, or both, by Contractor or Subcontractor, and any assignment or delegation shall be null and void, except that in the event of termination of the Prime Contract, County may elect on written notice to Subcontractor to assume all of Contractor's rights in this Agreement, such assumption being treated for all purposes as a permitted assignment of the Agreement to County by Contractor.

11. PROHIBITION AGAINST SUBCONTRACTING:

No performance of this Agreement, or any part thereof, shall be subcontracted by Subcontractor, and any subcontract shall be null and void.

12. INDEMNIFICATION AND INSURANCE:

12.1 Indemnification. Subcontractor shall indemnify, defend, and hold harmless County, its districts administered by County, its designees who use the PBR System to conduct Elections in accordance with Paragraph 14.2 (License) of the Prime Contract, and their elected and appointed officers, employees, and agents (the "County Indemnitees") from and against any and all liability (whether arising under a theory of contract, statute, strict liability or product liability), including damages, losses, demands, claims, actions, fees, costs, and expenses (including defense costs and legal, accounting, and other expert witness, consulting and professional fees), in any way arising from, connected with or related to Subcontractor's, or any of its respective agents', employees', officers', directors' or shareholders' breach of this Agreement, the performance or nonperformance of the PBR System, or acts, errors or omissions in the performance of services or provision of products hereunder, except that such hold harmless obligation (but not the obligation to defend) does not apply to the extent of damages or liability caused by County's employees or agents (other than Contractor or Subcontractor) gross negligence or intentional misconduct. Any legal defense pursuant to Subcontractor's indemnification obligations under this Paragraph 12 (Indemnification and Insurance) shall be conducted by Subcontractor and performed by counsel selected by Subcontractor and approved by County in writing, which approval shall not be unreasonably withheld or delayed. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its cost and expense, except that in the event Subcontractor fails to provide County with a full and adequate defense, as required by law and this Agreement, County shall be entitled to reimbursement for all such costs and expenses. Subcontractor shall not without County's

prior written approval, accept any settlement, or enter a plea of guilty or *nolo contendere*, to any charge or claim that results in other than a monetary judgment against County Indemnitees, which monetary judgment shall not exceed Subcontractor's ability to pay and which shall be paid by Subcontractor. Except for such liability as may arise in connection with either or any (a) Infringement Claims under Paragraph 15, (b) claims for personal injury or death, and (c) claims arising from Subcontractor's or its employees', subcontractors' or agents' gross negligence or intentional misconduct, Subcontractor's total liability to County arising out of or relating to the Agreement shall not exceed the Maximum Contract Sum, nor include special, consequential, or indirect damages in excess of ten percent (10%) of the Maximum Contract Sum, even if Subcontractor is advised of the possibility of such damages.

12.2 Insurance:

Without limiting either party's indemnification of the other and during the term of this Agreement, or either party's indemnification and defense of County Indemnities, Subcontractor shall provide and maintain at its own expense the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to County and shall be primary to and not contributing with any other insurance maintained by County. Certificates or other evidence of coverage shall be delivered to County's Project Director at the address set forth below prior to commencing services under this Agreement, shall specifically identify this Agreement, and shall: (i) contain the express condition that County is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance, (ii) clearly evidence all coverages required by this Agreement, (iii) include copies of the additional insured endorsement to the commercial general liability policy, naming all County Indemnitees as insureds for all activities arising from this Agreement, and (iv) identify any deductibles or self-insured retentions for County's approval. County retains the right to require Subcontractor to reduce or eliminate such deductibles or self-insured retentions as they apply to County Indemnitees, or, require Subcontractor to provide a bond guaranteeing payment of all such retained losses and related costs, including expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the state of California.

Address for Certificates of Insurance:

County of Los Angeles
Registrar-Recorder/County Clerk
Contracts Section
12400 Imperial Highway, Room 5203
Norwalk, CA 90650

12.2.1. Required Coverage. Such insurance shall be endorsed naming the County of Los Angeles as an additional insured and shall include:

1. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

<u>COVERAGE</u>	<u>LIMIT</u>
General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$2 million
Personal and Advertising Injury	\$2 million
Each Occurrence of above	\$1 million

2. Professional liability insurance covering any liability arising from any error, omission, commission, negligent, or wrongful act of Subcontractor, its officers, agents, or employees, in the performance of work hereunder, with a limit of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate. Such coverage shall be maintained for a period of not less than two (2) years, or the policy shall be endorsed to provide an extended reporting period of not less than two (2) years, following the expiration or termination of the Agreement.

3. Intellectual property insurance covering any actual or alleged infringement of any copyright, patent or other rights of third parties, and any actual or alleged trade secret disclosure or misappropriation with a limit no less than two million dollars (\$2 million) per occurrence. If this insurance is written on a claims made form, Subcontractor shall either (1) maintain such insurance through the period ending two (2) years following the expiration or termination of this Agreement or (2) obtain an endorsement on such insurance that provides an extended reporting period of not less than two (2) years following the termination or expiration of this Agreement or insurance policy, whichever is longer or (3) replace such claims made insurance with equivalent coverage of the per occurrence form that covers the entire Term.

4. Auto liability insurance (written on an ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all “owned”, “non-owned”, and “hired” vehicles, or coverage for “any auto”.

5. Workers’ compensation insurance in an amount and form required by the California Labor Code (or the labor code of any other applicable state), covering all persons for which Contractor or Subcontractor is responsible and all risks to such persons under the Agreement. Such insurance shall include employer’s liability coverage with limits no less than one million dollars (\$1 million) per accident, \$1 million disease-policy limit, and \$1 million disease-each employee.

12.2.2. Notification of Incidents, Claims or Suits. Subcontractor shall report to County:

(i) any accident or incident relating to services performed under the Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Subcontractor or County. Such report shall be made in writing within twenty-four (24) hours of occurrence.

(ii) any third party claim or lawsuit filed against Subcontractor arising from or related to services performed by Contractor or Subcontractor under the Agreement. Such report shall be made in writing within twenty-four (24) hours of the earlier of service of process of such claim or lawsuit, or Contractor otherwise has knowledge of such claim or lawsuit.

(iii) any injury to a Subcontractor staff member which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County Project Director. Such report shall be made in writing within twenty-four (24) hours of occurrence.

13. RECORDS AND AUDITS:

13.1 Subcontractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Subcontractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Subcontractor agrees that County, or its duly authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Agreement provided such access rights do not constitute an unlawful invasion of the privacy rights of any Subcontractor employee and would not in the reasonable opinion of Subcontractor subject Subcontractor to legal liability. All such material, including, but not limited to, all financial records, time cards and other employment records, and proprietary data and information, shall be kept and maintained by Subcontractor and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter unless written permission of County is given to dispose of any such material prior to such time. All such material shall be maintained by Subcontractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Subcontractor shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

13.2 In the event that an audit is conducted of Subcontractor specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Subcontractor or otherwise, then Subcontractor shall file a copy of such audit report with County's Auditor Controller and County Project Director within thirty (30) days of Subcontractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement.

13.3 Failure on the part of Subcontractor to comply with the provisions of this Paragraph 13 shall constitute a material breach of this Agreement upon which Contractor may immediately terminate or suspend this Agreement.

14. PROPRIETARY CONSIDERATIONS AND CONFIDENTIALITY:

14.1 General. Subject to the disclosure requirements of the Public Records Act, Subcontractor shall maintain the confidentiality of all records and information obtained from County or Contractor or developed pursuant to this Agreement during the course of

Subcontractor's performance under the Agreement, in accordance with all applicable federal, state, and local laws, regulations, ordinances, guidelines, and directives relating to confidentiality. Subcontractor shall keep confidential any personally identifiable information regarding voters, and shall use such information only in connection with Subcontractor's performance under the Agreement. In addition, Subcontractor shall not reproduce, distribute, or disclose to any person or entity any information identifying, characterizing, or relating to any risk, threat, vulnerability, weakness, or problem regarding data security or maintenance in County's computer systems, or to any safeguard, countermeasure, or contingency plan, policy or procedure for data security contemplated or implemented by County, without County's express prior written consent. Subcontractor shall inform all of its directors, officers, shareholders, employees, and agents providing services hereunder of the confidentiality provisions of the Agreement. Subcontractor shall provide to County an executed Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement (attached hereto as Exhibit 2) for each of its employees performing work under this Agreement. Notwithstanding anything herein to the contrary, Subcontractor acknowledges and agrees that it is responsible for any breach of the obligations of confidentiality set forth herein by any person or entity to whom Subcontractor discloses such confidential information.

14.2 Disclosure of Information.

14.2.1. With respect to any confidential information obtained by Contractor pursuant to the Agreement, Contractor shall: (a) not use any such records or information for any purpose whatsoever other than carrying out the express terms of the Agreement; (b) promptly transmit to County all requests for disclosure of any such records or information; (c) not disclose, except as otherwise specifically permitted by the Agreement, any such records or information to any person or organization other than County without County's prior written authorization that the records are, or information is, releasable; and (d) at the expiration or termination of the Agreement, return all such records and information to County or maintain such records and information according to the written procedures sent to Contractor by County for this purpose.

14.2.2. Without limiting the generality of Paragraph 14.2.1 of this Agreement, in the event Subcontractor receives any court or administrative agency order, service of process, or request by any person or entity (other than Subcontractor's professionals) for disclosure of any such details, Subcontractor shall immediately notify County Project Director. Thereafter, Subcontractor shall comply with such order, process, or request only to the extent required by applicable law and to the extent disclosure is based on the written advice of Subcontractor's legal counsel that disclosure, and the scope and extent thereof, is required pursuant to the foregoing. Notwithstanding the preceding sentence, to the extent permitted by law, Subcontractor shall delay such compliance and cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief.

14.3 Subcontractor Information. Any and all confidential or proprietary information which is developed or was originally acquired by Subcontractor outside the scope of this Agreement, which Subcontractor desires to use hereunder, and which Subcontractor considers to be proprietary or confidential, must be specifically identified by Subcontractor to County's Project Director as proprietary or confidential, and shall be plainly and prominently marked by Subcontractor as "proprietary" or "confidential." County shall undertake reasonably to maintain

the confidentiality of materials marked by Subcontractor as “proprietary” or “confidential.” Notwithstanding any other provision of this Agreement, County shall not be obligated in any way under this Agreement for:

14.3.1. Any of Subcontractor’s proprietary and/or confidential materials not plainly and prominently marked with restrictive legends; and

14.3.2. Any disclosure of any materials which County determines it is required to make under the California Public Records Act or otherwise by law. County shall use reasonable efforts to notify Subcontractor as soon as is reasonably practicable of a California Public Records Act request for information County reasonably believes may require the disclosure of information marked as proprietary or confidential by Subcontractor under this Agreement, and shall cooperate reasonably with Subcontractor, at Subcontractor’s expense, in any effort by Subcontractor to secure confidential treatment of such information or otherwise restrict the disclosure thereof, provided such action does not cause County to be in violation of the California Public Records Act, as reasonably determined by County. Cooperation may include requesting legally permissible extensions of time (if requested by Subcontractor), providing copies or a description of the records considered for disclosure, and abiding by any judicial order obtained in respect of such records. Should Subcontractor's efforts to restrict release of information in any judicial proceeding fail, Subcontractor agrees to pay all mandatory attorney's fees imposed pursuant to Government Code Section 6259.

14.4 Use of County Name. In recognizing Subcontractor’s need to identify its services and related clients to sustain itself, County shall not inhibit Subcontractor from publishing its role under the Prime Contract and this Agreement under the following conditions:

14.4.1. Subcontractor shall develop all publicity material in a professional manner.

14.4.2. Subcontractor shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County Project Director, which shall not be unreasonably withheld or delayed during the Term.

14.4.3. From and after the Effective Date, Subcontractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been approved under the Agreement to perform services under the Prime Contract with Contractor, provided that the requirements of this Paragraph 14.4 (Use of County Name) (other than the requirements set forth in Paragraph 14.4.2) shall apply.

14.4.4. Notwithstanding anything herein to the contrary, County reserves the right to object to any use of County’s name and Subcontractor shall cure promptly and prospectively any use of County’s name that has been objected to by County.

14.5 Protection of Public Record Data.

14.5.1. No Ownership by Subcontractor. Neither Subcontractor nor Contractor, nor their employees or agents, shall have any ownership rights or interest in any Public Record Data that they possess, modify, or create pursuant to this Agreement or the Prime Contract, or any

modifications thereto or derivatives thereof, all of which shall, at all times and for all purposes, remain the property of County.

14.5.2. No Impairment by Subcontractor. Neither Subcontractor, nor its employees or agents, shall impair the integrity of any Public Record Data that they possess or create.

14.5.3. California Public Records Act. Any Public Record Data that is provided to Subcontractor or its employees or agents, shall remain a public record for purposes of the California Public Records Act. Subcontractor and its employees and agents, shall have a joint and several obligation to comply with the obligations of County under the California Public Records Act as amended, with regard to the Public Record Data and the management, handling, retention, destruction, transfer, and disposal thereof. Subject to Paragraph 14.2.2, the determination of whether Subcontractor is compelled to disclose any such data shall be made solely by County. In the event of a conflict between the disclosure provisions of the California Public Records Act, or any other law, and this Agreement, the provisions of such law shall prevail.

14.5.4. Limitations on Disclosure. Neither Subcontractor nor its employees or agents, shall disclose to the public any Public Record Data that they possess, modify, or create pursuant to this Agreement and which County: (i) is prohibited in all cases from disclosing pursuant to federal, State, or County law or regulation; (ii) may disclose pursuant to federal, State, or County law or regulation only to certain persons or under certain conditions; or (iii) may withhold from disclosure pursuant to federal, State, or County law or regulation. In no event shall Subcontractor or its employees or agents, sell, market, or otherwise profit in any manner from the disclosure or use of any Public Record Data.

14.6 Notification. If Subcontractor learns of any violations of this Paragraph 14 (Proprietary Considerations and Confidentiality), it shall promptly (and in no event later than seven (7) days after learning of such violation) notify County Project Manager of such violation. In the event of any disclosure, loss, or destruction of confidential information, the receiving party shall immediately notify the disclosing party.

14.7 Injunctive Relief. Subcontractor acknowledges that a breach by Subcontractor of this Paragraph 14 (Proprietary Considerations and Confidentiality) may result in irreparable injury to County that may not be adequately compensated by monetary damages and that, in addition to County's other rights under the Agreement and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 14 (Proprietary Considerations and Confidentiality).

14.8 Proprietary Considerations.

14.8.1. County Product. Subcontractor agrees that all plans, reports, acceptance test criteria, acceptance test plans, the SOW, the Project Control Document, the Requirements, departmental procedures and processes, data, and information and other similar materials developed by County, Contractor, or Subcontractor pursuant to and for delivery to County under the Prime Contract and this Agreement (collectively "County Product"), and all copyrights, patent rights, trade secret rights and other proprietary rights therein shall be the sole property of

County; provided, however, that County Product shall not include any intellectual property of Contractor or Subcontractor which does not become the property of County under the Prime Contract. Subcontractor hereby assigns and transfers to County all of Subcontractor's right, title, and interest in and to all County Product developed under this Agreement. Notwithstanding such County ownership, during and for a minimum of seven (7) years subsequent to the Term, Subcontractor shall retain possession of all working papers prepared by Subcontractor for the purposes of this Agreement or, if solely related to County Product, shall return such papers to County, at County's request, and to the extent such working papers are no longer needed for Subcontractor to perform its obligations hereunder. County shall have the right to inspect any and all such working papers in Subcontractor's possession during this period, make copies thereof, and use the working papers and the information contained therein, solely for its internal use and subject to provisions of confidentiality under this Paragraph 14 (Proprietary Considerations and Confidentiality). To the extent that such County Product developed by Subcontractor may be made generally applicable to the provision of election systems and services, Subcontractor is hereby granted a perpetual, nonexclusive, and irrevocable license to use such County Product, including the right to modify, reproduce, make derivative works from, and sublicense, so long as such use does not reveal confidential material of County and otherwise complies with Paragraph 14 (Proprietary Considerations and Confidentiality).

14.8.2. Further Assistance. Upon request of County, Subcontractor shall execute all documents requested by County and shall perform all other acts requested by County to assign and transfer to, and vest in, County all of Subcontractor's right, title and interest in and to the County Product.

14.8.3. Copyright of County Product. As to County Product, if requested in writing by County's Project Director, Subcontractor shall affix the following notice to applicable County Product developed under this Agreement: "©copyright 200_ (or such other date of first publication), County of Los Angeles. All rights reserved". Subcontractor shall affix such notice as directed by County.

14.8.4. Protection of County Product. Subcontractor shall protect the security of and keep confidential all County Product obtained or developed under this Agreement to the extent such County Product is of a confidential nature. Further, Subcontractor shall use all such security measures that a prudent contractor operating in Subcontractor's industry would use to protect all such County Product from loss or damage by any cause, including fire and theft, which measures shall at least equal the degree of care Subcontractor applies to the treatment of its own similar materials.

15. INTELLECTUAL PROPERTY INDEMNIFICATION:

15.1 Subcontractor shall indemnify, defend, and hold harmless County Indemnitees pursuant to Paragraph 12.1 (Indemnification) of this Exhibit, from and against any and all liability (alleged or actual), including damages, losses, costs, fees and other expenses (including defense costs and legal, accounting and other expert, consulting, attorney or other professional fees), for or by reason of any actual or alleged infringement of any patent, copyright, trademark, or other proprietary rights of any third party, or any actual or alleged trade secret disclosure or misappropriation, arising from or related to the operation and utilization of the work performed

and goods and services rendered under this Agreement (collectively referred to as “Infringement Claims”). Subcontractor shall have no obligation to County under this Paragraph 15 (Intellectual Property Indemnification) to the extent any damages or losses arising under or resulting from an infringement claim are caused by use by County of the PBR System other than in accordance with the Prime Contract, the Specifications or other applicable Documentation.

15.2 Without limiting the foregoing, in the event County Project Director becomes aware that ongoing use of the PBR System or any part of it is the subject of any Infringement Claim that might preclude or impair County’s use of the PBR System or any part of it (*e.g.*, injunctive relief), or that County’s continued use of the PBR System or any part of it may subject it to punitive damages or statutory penalties or other costs or expenses, County shall give notice to Subcontractor of such facts. Upon notice of such facts, Subcontractor shall, at no cost to County, and in cooperation with Contractor, either (a) procure the right, by license or otherwise, for County to continue to use the affected portion of the PBR System, with the same ownership and license rights hereunder, as applicable, or (b) to the extent Contractor and Subcontractor are unable to procure such right, replace or modify the affected portion of the PBR System with product of equivalent quality and performance capabilities, in County’s reasonable determination, to become non-infringing. If Subcontractor fails to complete the remedial acts set forth above within sixty (60) days of the date of the notice from County, or if completion is not possible despite Subcontractor’s commercially reasonable efforts (in concert with those of Contractor) within such sixty (60) day period, and County has not approved in writing (such approval not to be unreasonably withheld) Subcontractor’s plan of completing such remediation, then, in either instance County shall have the right without limiting any other rights or remedies that County may have under the Agreement or at law or equity, to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the PBR System. Subcontractor shall indemnify and hold County harmless for all amounts paid and all-direct and indirect costs associated with such remedial acts.

16. WARRANTIES:

16.1 Subcontractor represents, warrants, covenants, and agrees that Subcontractor shall promptly correct any and all defects, errors, or omissions in the tasks, subtasks, deliverables, goods, services, and other work provided pursuant to this Agreement in order to conform and comply with all specifications, requirements, descriptions, standards, and representations set forth in this Agreement. The correction of any such defects, errors or omissions shall be at no cost to Contractor or County.

16.2 Subcontractor further represents, warrants, covenants, and agrees that:

- A. Subcontractor shall strictly comply with the specifications, requirements, descriptions, standards, and representations (including, but not limited to, deliverable documentation, performance capabilities, accuracy, completeness, characteristics, configurations, standards, functions and requirements applicable to professional software design operating meeting industry standards) set forth in this Agreement, (including Exhibit 1 (Statement of Work)), and in the Prime Contract.

- B. All tasks, subtasks, deliverables, goods, services, and other work shall be provided and/or performed in a timely and professional manner by qualified personnel.
- C. Any software or data analysis used by Subcontractor shall be available to Contractor and County during the term of this Agreement and for a period of five (5) years thereafter, provided that this warranty shall only apply to software or data analysis owned by or under the control of Subcontractor and related to this Agreement;
- D. All tasks, subtasks, deliverables, goods, services and other work shall be completed in accordance with this Agreement (including Exhibit 1 (Statement of Work)), the Prime Contract, industry standards, deliverable documentation and manufacturers' specifications.
- E. All hardware and software provided under this Agreement shall perform according to the specifications and other requirements as set forth in Exhibit 1 (Statement of Work) to this Agreement. Without limitation of the foregoing, all hardware and software shall be free from all deficiencies, as determined by County.
- F. All documentation developed under this Agreement shall be uniform in appearance in terms of font, print size, paper color, binding style, and the like.
- G. Subcontractor shall not intentionally introduce into any software or any County system any disabling code, "worm", or other device which would or could have effect of compromising the security of County's confidential information or hampering, interfering with or otherwise adversely affecting County's operations or County's use of any software or system at any County facility.
- H. Subcontractor shall use its best efforts to prevent viruses from being incorporated or introduced into any software or system in use at any County facility.

17. COMPLIANCE WITH APPLICABLE LAW:

17.1 Subcontractor hereby represents, warrants and covenants that Subcontractor's activities hereunder shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, guidelines, and directives, including all applicable Election Laws and Regulations, and all provisions required thereby to be included in the Agreement are hereby incorporated herein by reference. Unless provided otherwise under the Agreement, Subcontractor shall have up to fifteen (15) days to correct any noncompliance with County rules, regulations, ordinances, guidelines, and directives following notice from County including written copies of such applicable rules, regulations, ordinances, guidelines and directives. For the avoidance of doubt, the cure period provided for herein shall not relieve or reduce Subcontractor's indemnification obligations under Paragraph 12.1 (Indemnification) of this Agreement with respect to any third party claim.

17.2 Subcontractor and Contractor each acknowledge and agree to the following provision, required by the California Secretary of State in connection with the purchase the PBR System under the Prime Contract:

Pursuant to this Agreement and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal statutes, regulations, rules and requirements, including, but not limited to, those voting system requirements set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002, that are in effect as of the date of this Agreement. Further, voting systems shall also comply with all applicable state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of the California Elections Code or the Help America Vote Act of 2002 or other applicable state or federal law when appropriate, that are in effect as of the date of this Agreement, including but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005. This does not include future final court interpretations of existing state or federal law not in effect as of the date of this Agreement.

Voting system manufacturers and/or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement, of any voting system or its component parts, found to be necessary for certification or to otherwise bring the system into compliance.

Any voting system purchased with funds allocated by the Secretary of State's Office shall meet all applicable state and federal standards, regulations and requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002 that are in effect as of the date of this (application, agreement, contract, etc.), including, but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

17.3 County acknowledges that Subcontractor is not required, under this Paragraph 17, or otherwise under this Agreement to provide changes to the PBR System Hardware, or modifications, retrofits, or replacements of such hardware, at its cost, in order to achieve or maintain compliance with a change in applicable federal, state, or local laws, rules, regulations, ordinances, guidelines, or directives, including a change in all applicable Election Laws and Regulations.

18. **FAIR LABOR STANDARDS:** Subcontractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless Contractor and County, their officers, employees and agents from any and all claims, demands,

damages, liabilities, losses, costs, and expenses, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Subcontractor's employees for which Contractor or County may be found jointly or solely liable. Any legal defense pursuant to SUBCONTRACTOR's indemnification obligations under this Paragraph 18 shall be conducted by SUBCONTRACTOR and performed by counsel selected by SUBCONTRACTOR and approved by County in writing, which approval shall not be unreasonably withheld or conditioned, nor unduly delayed. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event SUBCONTRACTOR fails to provide County with a full and adequate defense, as County determines in its sole discretion, County shall be entitled to retain its own counsel and reimbursement from SUBCONTRACTOR for all such costs and expenses incurred by County in doing so. SUBCONTRACTOR shall not have the right to enter into any settlement, agree to any injunction or make any admission, in each case, on behalf of County without County's prior written approval.

19. RESTRICTIONS ON LOBBYING:

19.1 Federal Funds Projects:

Subcontractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations.

19.2 All Projects:

Subcontractor and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Subcontractor, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Subcontractor or any County lobbyist or County lobbying firm retained by Subcontractor to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this Agreement upon which County may immediately terminate or suspend this Agreement.

20. NONDISCRIMINATION AND AFFIRMATIVE ACTION:

20.1 Subcontractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries or holding companies are and will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

20.2 Subcontractor shall certify to, and comply with, the provisions of Exhibit (Subcontractor's EEO Certification).

20.3 Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

20.4 Subcontractor certifies and agrees that it will deal with its subcontractors, bidders or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap.

20.5 Subcontractor certifies and agrees that it, its affiliates, subsidiaries or holding companies, will comply with all applicable Federal and State laws and regulations, including, but not limited to:

- i. Title VII, Civil Rights Act of 1964;
- ii. Section 504, Rehabilitation Act of 1973;
- iii. Age Discrimination Act of 1975;
- iv. Title IX, Education Amendments of 1973, as applicable;
- v. Title 43, Part 17, Code of Federal Regulations, Subparts A & B; and
- vi. The Americans with Disabilities Act;

and that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, this Agreement or under any project, program, or activity supported by this Agreement.

20.6 Subcontractor shall allow County representatives access to its employment records during regular business hours to verify compliance with the provisions of this Paragraph 20 when so requested by County.

20.7 If County finds that any of the provisions of this Paragraph 20 have been violated, such violation shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Subcontractor has violated State or Federal anti-discrimination laws or regulations shall constitute a finding by County that Subcontractor has violated the anti-discrimination provisions of this Agreement.

20.8 The parties agree that in the event Subcontractor violates the anti-discrimination provisions of this Agreement, County shall, at its option, be entitled to the sum of Five Hundred Dollars (\$500) pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

21. EMPLOYMENT ELIGIBILITY VERIFICATION:

Subcontractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth by Federal and State statutes and regulations. Subcontractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status

required by Federal and State statutes and regulations as they currently exist and as they may be hereafter amended. Subcontractor shall retain all such documentation for the period prescribed by law. Subcontractor shall indemnify, defend and hold harmless County, its officers and employees, from and against any employer sanctions and any other claims, demands, damages, liabilities, losses, costs, and expenses which may be assessed against or incurred by Subcontractor or County in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder. Any legal defense pursuant to Subcontractor's indemnification obligations under this Paragraph 20 shall be conducted by Subcontractor and performed by counsel selected by Subcontractor and approved by County in writing. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Subcontractor fails to provide County with a full and adequate defense, as County determines in its sole discretion, County shall be entitled to retain its own counsel and reimbursement from Subcontractor for all such costs and expenses incurred by County in doing so. Subcontractor shall not have the right to enter into any settlement, agree to any injunction or make any admission, in each case, on behalf of County without County's prior written approval.

22. SUBCONTRACTOR PERFORMANCE DURING CIVIL UNREST OR DISASTER:

Subcontractor recognizes that the health facilities maintained by County provide services essential to the residents of the communities they serve, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other provision of this Agreement, full performance by Subcontractor during any riot, insurrection, civil unrest, natural disaster, or similar event is not excused if such performance remains physically possible without unreasonable risk. During any such event in which the health or safety of any Subcontractor's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely.

23. CAPTIONS AND PARAGRAPH HEADINGS:

Captions and paragraph headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing this Agreement.

24. WAIVER:

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of any party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 24 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

25. GOVERNING LAW, JURISDICTION AND VENUE:

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to agreements made and to be performed within that State. Without limiting the foregoing, Contractor and Subcontractor intend that this Agreement shall be

subject to the provisions of the Uniform Commercial Code as enacted in California, and the parties hereto shall retain all of their rights and remedies thereunder. Contractor and Subcontractor agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

26. SEVERABILITY:

If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective. In the event that one or more of the provisions of this Agreement is found to be invalid, illegal or unenforceable in any respect, such provision shall be deemed deleted herefrom and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

27. AUTHORIZATION WARRANTY:

Subcontractor represents and warrants that the person executing this Agreement for Subcontractor is an authorized agent who has actual authority to bind Subcontractor to each and every term, condition, and obligation of this Agreement and that all requirements of Subcontractor have been fulfilled to provide such actual authority.

28. NOTICES:

All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (1) by hand with signed receipt, (2) by first-class registered or certified mail, postage prepaid, or (3) by facsimile transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of facsimile transmission if followed by timely confirmation mailing. Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party.

A. If to Contractor:

Election Systems & Software, Inc.
11208 John Galt Boulevard
Omaha, NE 68137
Attention: Office of General Counsel
Facsimile: (402) 970-1291

With copies to County, addressed as follows:

Chief Deputy to the Registrar
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Head, Management Services
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201

B. If to Subcontractor:

[Contact Person]
[Subcontractor Name]
[Address]
[Telephone]
[Email]

With copies to County, addressed as follows:

Chief Deputy to the Registrar
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Head, Management Services
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201

C. If to County:

Chief Deputy to the Registrar
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Head, Management Services
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201
Norwalk, CA 90650

29. TERMINATION FOR IMPROPER CONSIDERATION:

County may, by written notice to Subcontractor, immediately terminate the right of Subcontractor to proceed under this Agreement, if it is found that consideration, in any form, was offered or given by Subcontractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment or extension of this Agreement or the making of any determination with respect to Subcontractor's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Subcontractor as it could pursue in the event of default of Contractor or Subcontractor.

Subcontractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

30. COUNTY'S QUALITY ASSURANCE PLAN:

County or its agent will evaluate Subcontractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Subcontractor's compliance with all Agreement terms and performance standards. Subcontractor deficiencies which County determines are severe or continuing and that may place performance of the Prime Contract in jeopardy if not corrected will be reported to County's Board of Supervisors. The report will include improvement / corrective action measures taken by County, Contractor and Subcontractor. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties against Contractor as specified in the Prime Contract.

31. SUBCONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM:

Subcontractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Subcontractor's duty under this Agreement to comply with all applicable provisions of law, Subcontractor warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 U.S.C. Section 653(a)) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Division ("CSSD") Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

32. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM:

Failure of Subcontractor to maintain compliance with the requirements set forth in Paragraph 31 (Subcontractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Subcontractor under and material breach of this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by County (whether through CSSD or otherwise) shall be grounds upon which County's Board of Supervisors may terminate this Agreement pursuant to this Paragraph 7 (Termination).

33. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT:

Subcontractor shall notify its employees that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

34. COMPLIANCE WITH JURY SERVICE PROGRAM:

34.1 Jury Service Program: This Agreement is subject to the provisions of County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code. A copy of the Jury Service Program is available on the Internet at ordlink.com/codes/lacounty for printing purposes.

34.2 Written Employee Jury Service Policy:

34.2.1. Unless Subcontractor has demonstrated to County's satisfaction either that Subcontractor is not a "Subcontractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Subcontractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Subcontractor shall have and adhere to a written policy that provides that its employees shall receive from Subcontractor, on an annual basis, no less than five (5) days of regular pay for actual jury service served. Subcontractor's policy may further provide that employees deposit any fees received for such jury service with Subcontractor or that Subcontractor deduct from the employee's regular pay the fees received for jury service.

34.2.2. For the purposes of this Paragraph 34, and as set forth in the Jury Service Program provision of the County Code: "subcontractor" shall mean a person, partnership, corporation, or other entity, that has a subcontract with a County contractor, and has received, or will receive, an aggregate sum of Fifty Thousand Dollars (\$50,000) or more in any twelve (12) month period under one (1) or more County contracts or subcontracts; "employee" shall mean any California resident who is a full-time employee of a subcontractor; and "full-time" shall mean forty (40) hours or more worked per week, or a lesser number of hours, if: 1) the lesser number is a recognized industry standard as determined by County, or 2) the subcontractor has a long-standing practice that defines the lesser number of hours as full-time.

Full-time employees providing short-term temporary services of ninety (90) days or less within a twelve (12) month period are not considered full-time for purposes of the Jury Service Program.

34.2.3. If Subcontractor is not required to comply with the Jury Service Program on the effective date of this Agreement, Subcontractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Subcontractor shall immediately notify County if Subcontractor at any time either comes within the Jury Service Program's definition of "subcontractor," or if Subcontractor no longer qualifies for an exception to the Jury Service Program. In either event, Subcontractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during this Agreement term, and at its sole discretion, that Subcontractor demonstrate to County's satisfaction that Subcontractor either continues to remain outside of the Jury Service Program's definition of "subcontractor" and/or that Subcontractor continues to qualify for an exception to the Jury Service Program.

34.2.4. Subcontractor's violation of this Paragraph 34 may constitute a material breach of this Agreement. In the event of such breach, County may, in its sole discretion, terminate this Agreement and/or bar Subcontractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

35. NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW:

Subcontractor shall notify and provide to its employees a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

36. SUBCONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW:

Subcontractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Subcontractor understands that it is County's policy to encourage all County contractors and subcontractors to voluntarily post County's "Safely Surrendered Baby Law" poster in a prominent position at the contractors' and subcontractors' respective places of business. County's Department of Children and Family Services will supply Subcontractor with the poster to be used.

37. RECYCLED-CONTENT BOND PAPER:

Consistent with County's Board of Supervisors' policy to reduce the amount of solid waste deposited at County landfills, Subcontractor, agrees to use recycled-content paper to the maximum extent possible in connecting with the services to be performed by Subcontractor under this Agreement.

38. SUBCONTRACTOR RESPONSIBILITY AND DEBARMENT:

38.1 A responsible subcontractor is a subcontractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is County's policy to conduct business only with responsible subcontractors.

38.2 Subcontractor is hereby notified that this Agreement is a contract subject to Chapter 2.202 of the Los Angeles County Code, as may be amended during the term of this Agreement.

38.3 Any termination of this Agreement by County under this Paragraph 38 shall not, in and of itself, be deemed or construed to be a termination by County for default under Paragraph 6 (Termination for Default) of Exhibit A to the Prime Contract or be deemed or construed to entitle County to exercise any right or remedies under Paragraph 6 (Termination for Default) of Exhibit A to the Prime Contract, and shall not be deemed or construed to limit the rights or remedies of either party under this Agreement or at law.

39. SURVIVAL:

The following provisions of this Agreement shall survive its expiration or termination for any reason:

- 1 Applicable Documents
- 2 Prime Contract
- 4.3 Personnel
- 4.4 Personnel
- 4.5 Personnel
- 5 Compensation
- 8 Third Party Beneficiary
- 10 Prohibition Against Assignment and Delegation
- 12 Indemnification and Insurance
- 13 Records and Audits
- 14 Proprietary Considerations and Confidentiality
- 15 Intellectual Property Indemnification
- 16 Warranties
- 17 Compliance With Applicable Law
- 18 Fair Labor Standards
- 20 Nondiscrimination and Affirmative Action
- 21 Employment Eligibility Verification
- 23 Captions and Paragraph Headings
- 24 Waiver
- 25 Governing Law, Jurisdiction and Venue
- 26 Severability
- 27 Authorization Warranty
- 28 Notices
- 29 Termination for Improper Consideration
- 39 Survival

SUBCONTRACT AGREEMENT TO County AGREEMENT #

IN WITNESS WHEREOF, Contractor and Subcontractor have caused this Agreement to be signed by their duly authorized officers on the day and year first set forth hereinabove.

Contractor

Subcontractor:

Election Systems & Software, Inc.

By _____

Name:
Title:

By _____

Name:
Title:

Exhibit 1

Statement of Work

(To be prepared by Contractor
and Subcontractor)

Exhibit 2

Subcontractor Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement

(PART 1 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

GENERAL INFORMATION

Your employer referenced above has entered into a Subcontract with the above-referenced Contractor to provide certain services to the County of Los Angeles (hereafter sometimes "County") under the above-referenced County Contract between the above-referenced Contractor and the County. The County requires your signature on this Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement.

EMPLOYEE ACKNOWLEDGMENT

I understand and agree that the above-referenced Subcontractor is my sole employer for purposes of this employment. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf during the period of this employment.

I understand and agree that I am not an employee of the County for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County during the period of this employment. I understand and agree that I do not have and will not acquire any rights or benefits from the County pursuant to any agreement between any person or entity and the County.

CONFIDENTIALITY

You may be involved with work pertaining to services provided by the County and, if so, you may have access to confidential data, information and materials pertaining to persons and/or entities receiving services from the County and to persons who are inmates of the County. In addition, you may also have access to confidential data, information and materials which are owned and/or copyrighted by the County, the above-referenced Contractor or other vendors doing business with the County. The County as well as you have a legal obligation to protect all such confidential data, information and materials in its possession, especially data and information concerning health, criminal, inmate and welfare recipient records and proprietary information and materials. If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality.

EXHIBIT 2

**SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY AND COPYRIGHT
ASSIGNMENT AGREEMENT**

(PART 2 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

of such data, information and materials. Consequently, you must sign this Agreement as a condition of your work to be provided by your employer for the County. Please read this Agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data, information or materials obtained while performing work related to the above-referenced County Contract. I agree to forward all requests for the disclosure or release of any data, information or materials received by me to the Contractor's Project Manager for the above-referenced County Contract and to my immediate supervisor.

I agree to protect from loss and to keep confidential all health, criminal and welfare recipient records and all data, information and materials pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, vendor proprietary information, and all other original materials produced, created or provided to or by me as related to the above-referenced County Contract. I agree to protect these confidential items against disclosure to other than my employer or County employees who have a need to know the information. I agree that if proprietary data, information and materials of the County, the above-referenced Contractor, or other vendors doing business with the County is provided to me during this employment, I shall keep such data, information and materials confidential.

I agree to report any and all violations of the above-referenced County Contract or this Agreement by myself and/or by any other person of which I become aware to the Contractor's Project Manager for the above referenced County Contract and to my immediate supervisor. I agree to return all confidential data, information and materials to my immediate supervisor upon completion of the Subcontract, or termination of my employment with my employer, whichever occurs first.

EXHIBIT 2

**SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY AND COPYRIGHT
ASSIGNMENT AGREEMENT**

(PART 3 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

COPYRIGHT ASSIGNMENT

I agree that all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, data and other information and/or tools of all types, developed or acquired by me in whole or in part pursuant to the above-referenced County Contract, and all works based thereon, incorporated therein, or derived therefrom, shall be the sole property of the County. In this connection, I hereby assign and transfer to the County in perpetuity for all purposes all my right, title and interest in and to all such items, including, but not limited to, all unrestricted and exclusive copyrights, patent rights, trade secret rights, and all renewals and extensions thereof.

Whenever requested by the County, I agree to promptly execute and deliver to the County all papers, instruments and other documents requested by the County, and to promptly perform all other acts requested by the County to carry out the terms of this Agreement, including, but not limited to, executing an assignment and transfer of copyright in the form substantially similar to Exhibit 2A, attached hereto and incorporated herein by reference.

The County shall have the right to register all copyrights in the name of the County of Los Angeles and shall have the right to assign, license, or otherwise transfer any and all of the County's right, title, and interest, including, but not limited to, copyrights, in and to the items described above.

EXHIBIT 2

**SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY AND COPYRIGHT
ASSIGNMENT AGREEMENT**

(PART 4 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

I acknowledge that violation of this Agreement will subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

Name: _____
(Subcontractor Employee's Signature)

Date: _____

Name: _____
(Print Subcontractor Employee's Name)

Social Security Number: _____

Working Title: _____

Original: Contractor
Copy: Subcontractor Employee

Exhibit 2A

ASSIGNMENT AND TRANSFER OF COPYRIGHT

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, _____, an individual (hereafter "Grantor"), does hereby assign, grant, convey and transfer to the County of Los Angeles, California (hereafter "Grantee") and its successors and assigns throughout the world in perpetuity, all of Grantor's right, title and interest of every kind and nature in and to all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, data, and other information and/or tools of all types (including, without limitation, those items listed on Schedule A, attached hereto and incorporated herein by reference), developed under the Agreement and the Subcontract described below, including, without limitation, all right, title and interest in and to all copyrights and works protectable by copyright and all renewals and extensions thereof (collectively referred to herein as "Works") and in and to all copyrights and right, title and interest of every kind or nature, without limitation, in and to all works based thereon, incorporated in, derived from, or related to, the Works or from which the Works are derived.

Without limiting the generality of the foregoing, the aforesaid conveyance and assignment shall include, but is not limited to, all prior choses-in-action, at law, in equity and otherwise, the right to recover all damages and other sums, and the right to other relief allowed or awarded at law, in equity, by statute or otherwise.

_____ and Grantee have entered into Los Angeles County Agreement Number _____ for _____, dated _____, and any amendments thereto (collectively referred to herein as "Agreement").

Pursuant to the Agreement, _____ and _____ have entered into a Subcontract Agreement for _____, dated _____, and any amendments thereto (collectively referred to herein as "Subcontract").

GRANTOR: _____
(Signature)

DATE: ____/____/____

NAME: _____
(Print)

WORKING TITLE: _____

**SCHEDULE A
TO
EXHIBIT 2A**

(To Be Completed By County)

STATE OF CALIFORNIA)
) ss.
County OF LOS ANGELES)

On _____, 20 ____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual that executed the within Assignment and Transfer of Copyright.

WITNESS my hand and official seal.

NOTARY PUBLIC

Exhibit 3

Subcontractor'S EEO CERTIFICATION

Subcontractor's Name

Address

Internal Revenue Service Employer Identification Number

GENERAL

In accordance with Paragraph 4.32.010 of the Code of the County of Los Angeles, the above-referenced Subcontractor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

Subcontractor'S CERTIFICATION

- | | | | |
|----|--|---------------------------------|--------------------------------|
| 1. | The subcontractor has a written policy statement prohibiting discrimination in all phases of employment. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |
| 2. | The Subcontractor periodically conducts a self analysis or utilization analysis of its work force. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |
| 3. | The Subcontractor has a system for determining if its employment practices are discriminatory against protected groups. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |
| 4. | Where problem areas are identified in employment practices, the Subcontractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |

Name and title of signer

Signature

Date

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT K

FORM SUBCONTRACT

HAVA REQUIRED INKAVOTE ENHANCEMENT

AGREEMENT REGARDING SUBCONTRACTED SERVICES

THIS SUBCONTRACT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__, by and between Election Systems & Software, Inc., located at 11208 John Galt Boulevard, Omaha, Nebraska 68137 ("Contractor"), and _____, a _____ formed under the laws of _____ and located at _____ ("Subcontractor").

WHEREAS, Contractor has entered into Los Angeles County Contract No. _____ (the "Prime Contract") with the County of Los Angeles, State of California (hereafter "County") pursuant to which Contractor is providing certain enhancements to County's voting system and related services to County, as more fully described in the Prime Contract; and

WHEREAS, in order to fulfill all of its obligations to County under the Prime Contract, Contractor desires to engage Subcontractor to perform work in the area of development of and support for the PBR System; and

WHEREAS, Subcontractor desires to perform such work in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, Contractor and Subcontractor agree as follows:

1. APPLICABLE DOCUMENTS:

1.1 Interpretation:

Exhibits 1, 2, 3, 3A, and 4 are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents of any task, subtask, deliverable, goods, service, or other work, or otherwise, between the Prime Contract and the body of this Agreement and the Exhibits thereto, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Prime Contract and then to the body of this Agreement and to the Exhibits according to the following priority:

1.1.1. The body of this Agreement

1.1.2. Exhibit 1 - Statement of Work [*Contractor to complete*]

1.1.3. Exhibit 2 - Additional Terms and Conditions [*Name of Alt. Agmt If Applicable*]

1.1.4. Exhibit 3 - Subcontractor Employee Acknowledgment, Confidentiality and

Copyright Assignment Agreement

1.1.5. Exhibit 3A - Assignment and Transfer of Copyright

1.1.6. Exhibit 4 - Subcontractor's EEO Certification

1.2 Entire Agreement:

The body of this Agreement, and the Exhibits thereto, shall constitute the complete and exclusive statement of understanding between the parties which supersedes all previous agreements,

written or oral, and all communications between the parties relating to the subject matter of this Agreement.

1.3 Definitions:

Unless otherwise expressly defined in this Agreement, all capitalized terms shall have the meanings as set forth in the Prime Contract.

2. PRIME CONTRACT:

Notwithstanding any other provision of this Agreement, this Agreement is a subcontract under the Prime Contract and each and all of the provisions of the Prime Contract and any Amendments thereto shall extend to and be binding upon the parties to this Agreement.

3. WORK:

Pursuant to the provisions of this Agreement, Subcontractor shall fully provide, complete and deliver on time all the tasks, subtasks, deliverables, goods, services, and other work set forth in Exhibit 1 (Statement of Work). Time is of the essence of Subcontractor's performance hereunder.

4. PERSONNEL:

4.1 All Subcontractor personnel performing work under this Agreement shall be subject to the prior and continuing approval of Contractor and County. County Project Director may require replacement, in the exercise of reasonable discretion and with an articulable basis for such determination, of any member of Subcontractor's staff performing, or offering to perform, work hereunder. If at any time during the term of this Agreement, any Subcontractor personnel is not approved by County, then Subcontractor shall, immediately upon receipt of written or oral notice from Contractor or County, replace such personnel with substitute qualified personnel or take such other action as requested thereby.

4.2 Subcontractor shall endeavor to assure continuity during the Initial Term of Subcontractor personnel performing key functions under this Agreement. In the event Subcontractor should ever need to remove any staff from performing work under this Agreement, Subcontractor shall provide Contractor and County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, in which case such notice shall be provided to each Contractor and County at Subcontractor's earliest opportunity. Subcontractor shall furthermore in such event work with Contractor and County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Subcontractor shall fill any vacancy in its personnel performing work hereunder with individuals having qualifications at least equivalent to those of personnel being replaced.

4.3 Subcontractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. Contractor and County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, and local taxes, or

other compensation benefits, or taxes, for any personnel provided by or on behalf of Subcontractor.

4.4 Subcontractor understands and agrees that all persons performing work under this Agreement are, for purposes of workers' compensation liability, the sole employees of Subcontractor and not employees of Contractor or County. Subcontractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of Subcontractor pursuant to this Agreement.

4.5 Subcontractor shall obtain an executed Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement (Exhibit 3) for each of its employees performing work under this Agreement. Such agreements shall be delivered to County's Chief Administrative Office, Workers Compensation Division, Claims Section, 3333 Wilshire Blvd., Suite 1000, Los Angeles, CA 90010, on or immediately after the effective date of this Agreement but in no event later than the date any such employee first performs work under this Agreement.

5. COMPENSATION:

All compensation to Subcontractor under this Agreement shall be paid by Contractor and shall be as set forth in Exhibit 2 (Additional Terms and Conditions [*Substitute Alternate Agreement Name If Applicable*]). Contractor shall be solely liable and responsible for any and all payments and other compensation to Subcontractor and its officers, employees, and agents. County shall have no liability or responsibility whatsoever for any payment or other compensation of Subcontractor or its officers, employees, and agents. Without limiting the foregoing, Subcontractor disclaims any right to seek any payment from County for any and all compensation or recovery of any of its costs, or to assert any lien against County (including but not limited to any lien on any goods, services, or other work rendered hereunder), its assets or rights in the any software or system or any element thereof, on account thereof.

6. TERM:

The term of this Agreement shall commence on the last date of signature hereto and shall continue until termination of the Prime Contract, unless (a) sooner terminated, in whole or in part, as provided in this Agreement, or (b) the Agreement is assumed by County pursuant to the terms of Paragraph 10 of this Agreement.

7. TERMINATION BY COUNTY:

This Agreement shall terminate, in whole or in part, upon receipt by Contractor of written notice from County that County no longer approves the continuation of the whole or any part of this Agreement.

8. THIRD PARTY BENEFICIARY:

Contractor and Subcontractor understand and agree that this Agreement is entered into for the benefit of County and that County is hereby expressly made a third party beneficiary of this Agreement.

9. AMENDMENTS:

The provisions of the body of this Agreement and the Exhibits thereto shall not be changed in any way or waived by Contractor or Subcontractor without the prior written consent of County, and any waiver or change not so approved shall be null and void. No changes to the body of this Agreement or the Exhibits hereto, nor any waiver of any term or condition herein shall be valid or effective unless made in the form of a written Amendment which is approved in writing by County and which is formally executed by authorized officials of Contractor and Subcontractor.

10. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION:

This Agreement, or any interest therein, including, but not limited to, any claim for monies due or to become due with respect thereto, shall not be assigned or delegated, or both, by Contractor or Subcontractor, and any assignment or delegation shall be null and void, except that in the event of termination of the Prime Contract, County may elect on written notice to Subcontractor to assume all of Contractor's rights in this Agreement, such assumption being treated for all purposes as a permitted assignment of the Agreement to County by Contractor.

11. PROHIBITION AGAINST SUBCONTRACTING:

No performance of this Agreement, or any part thereof, shall be subcontracted by Subcontractor, and any subcontract shall be null and void.

12. INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND:

12.1 Indemnification. Subcontractor shall indemnify, defend, and hold harmless County, its districts administered by County, its designees who use the PBR System to conduct Elections in accordance with Paragraph 14.2 (License) of the Prime Contract, and their elected and appointed officers, employees, and agents (the "County Indemnitees") from and against any and all liability (whether arising under a theory of contract, statute, strict liability or product liability), including damages, losses, demands, claims, actions, fees, costs, and expenses (including defense costs and legal, accounting, and other expert witness, consulting and professional fees), in any way arising from, connected with or related to Subcontractor's, or any of its respective agents', employees', officers', directors' or shareholders' breach of this Agreement, the performance or nonperformance of the PBR System, or acts, errors or omissions in the performance of services or provision of products hereunder, except that such hold harmless obligation (but not the obligation to defend) does not apply to the extent of damages or liability caused by County's employees or agents (other than Contractor or Subcontractor) gross negligence or intentional misconduct. Any legal defense pursuant to Subcontractor's indemnification obligations under this Paragraph 12 (Indemnification, Insurance and Performance Bond) shall be conducted by Subcontractor and performed by counsel selected by

Subcontractor and approved by County in writing, which approval shall not be unreasonably withheld or delayed. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its cost and expense, except that in the event Subcontractor fails to provide County with a full and adequate defense, as required by law and this Agreement, County shall be entitled to reimbursement for all such costs and expenses. Subcontractor shall not without County's prior written approval, accept any settlement, or enter a plea of guilty or *nolo contendere*, to any charge or claim that results in other than a monetary judgment against County Indemnitees, which monetary judgment shall not exceed Subcontractor's ability to pay and which shall be paid by Subcontractor. Except for such liability as may arise in connection with either or any (a) Infringement Claims under Paragraph 15, (b) claims for personal injury or death, and (c) claims arising from Subcontractor's or its employees', subcontractors' or agents' gross negligence or intentional misconduct, Subcontractor's total liability to County arising out of or relating to the Agreement shall not exceed the Maximum Contract Sum, nor include special, consequential, or indirect damages in excess of ten percent (10%) of the Maximum Contract Sum, even if Subcontractor is advised of the possibility of such damages.

12.2 Insurance:

Without limiting either party's indemnification of the other and during the term of this Agreement, or either party's indemnification and defense of County Indemnities, Subcontractor shall provide and maintain at its own expense the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to County and shall be primary to and not contributing with any other insurance maintained by County. Certificates or other evidence of coverage shall be delivered to County's Project Director at the address set forth below prior to commencing services under this Agreement, shall specifically identify this Agreement, and shall: (i) contain the express condition that County is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance, (ii) clearly evidence all coverages required by this Agreement, (iii) include copies of the additional insured endorsement to the commercial general liability policy, naming all County Indemnitees as insureds for all activities arising from this Agreement, and (iv) identify any deductibles or self-insured retentions for County's approval. County retains the right to require Subcontractor to reduce or eliminate such deductibles or self-insured retentions as they apply to County Indemnitees, or, require Subcontractor to provide a bond guaranteeing payment of all such retained losses and related costs, including expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the state of California.

Address for Certificates of Insurance:

County of Los Angeles
Registrar-Recorder/County Clerk
Contracts Section
12400 Imperial Highway, Room 5203
Norwalk, CA 90650

12.2.1. Required Coverage. Such insurance shall be endorsed naming the County of Los Angeles as an additional insured and shall include:

1. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

<u>COVERAGE</u>	<u>LIMIT</u>
General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$2 million
Personal and Advertising Injury	\$2 million
Each Occurrence of above	\$1 million

2. Professional liability insurance covering any liability arising from any error, omission, commission, negligent, or wrongful act of Subcontractor, its officers, agents, or employees, in the performance of work hereunder, with a limit of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate. Such coverage shall be maintained for a period of not less than two (2) years, or the policy shall be endorsed to provide an extended reporting period of not less than two (2) years, following the expiration or termination of the Agreement.

3. Intellectual property insurance covering any actual or alleged infringement of any copyright, patent or other rights of third parties, and any actual or alleged trade secret disclosure or misappropriation with a limit no less than two million dollars (\$2 million) per occurrence. If this insurance is written on a claims made form, Subcontractor shall either (1) maintain such insurance through the period ending two (2) years following the expiration or termination of this Agreement or (2) obtain an endorsement on such insurance that provides an extended reporting period of not less than two (2) years following the termination or expiration of this Agreement or insurance policy, whichever is longer or (3) replace such claims made insurance with equivalent coverage of the per occurrence form that covers the entire Term.

4. Auto liability insurance (written on an ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all “owned”, “non-owned”, and “hired” vehicles, or coverage for “any auto”.

5. Workers’ compensation insurance in an amount and form required by the California Labor Code (or the labor code of any other applicable state), covering all persons for which Contractor or Subcontractor is responsible and all risks to such persons under the Agreement. Such insurance shall include employer’s liability coverage with limits no less than one million dollars (\$1 million) per accident, \$1 million disease-policy limit, and \$1 million disease-each employee.

12.2.2. Notification of Incidents, Claims or Suits. Subcontractor shall report to County:

(i) any accident or incident relating to services performed under the Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Subcontractor or County. Such

report shall be made in writing within twenty-four (24) hours of occurrence.

(ii) any third party claim or lawsuit filed against Subcontractor arising from or related to services performed by Contractor or Subcontractor under the Agreement. Such report shall be made in writing within twenty-four (24) hours of the earlier of service of process of such claim or lawsuit, or Contractor otherwise has knowledge of such claim or lawsuit.

(iii) any injury to a Subcontractor staff member which occurs on County property. This report shall be submitted on a County “Non-employee Injury Report” to the County Project Director. Such report shall be made in writing within twenty-four (24) hours of occurrence.

12.3 Performance Bond. Subcontractor shall furnish to County within ten (10) business days after the Effective Date, a performance bond substantially in the form attached to the Prime Contract as Exhibit P (Performance Bond), in an amount equal to ten percent (10%) of the Maximum Contract Sum under the Prime Contract. Such Performance Bond shall at all times be in form and substance satisfactory to County, including the conditions for payment to County under such Performance Bond. Prior to acceptance of Subcontractor’s Performance Bond, Subcontractor shall submit the form of the proposed performance bond for approval by County’s Treasurer and Tax Collector. Both the initial expense and the annual premiums or fees associated with continuation of the Performance Bond shall be paid by Subcontractor.

12.3.1. The Performance Bond shall be maintained by Subcontractor in full force and effect until PBR System Acceptance under the Prime Contract. Any modification, extension, or termination of this Agreement shall in no way release Subcontractor or the issuer under such Performance Bond from any of their obligations under such Performance Bond.

12.3.2. The Performance Bond shall secure Subcontractor’s timely performance of all Subcontractor’s work and deliverables in accordance with Exhibit 1 (Statement of Work), and shall secure any and all damages, costs and expenses, resulting from Subcontractor’s default in the performance of the Agreement.

12.3.3. Without limiting the ability of County’s Treasurer and Tax Collector to otherwise make a claim against the Performance Bond in accordance with this Paragraph 12.3.3, if the Performance Bond is set to expire (and will not be renewed, automatically or otherwise) prior to the completion of the tasks, subtasks, deliverables, goods, services, and other work set forth in Exhibit 1 (Statement of Work) to this Agreement, and Subcontractor has not secured a replacement Performance Bond acceptable to County’s Treasurer and Tax Collector, no later than ten (10) working days prior to the expiration of such Performance Bond, then County shall be entitled to make a claim in full on such Performance Bond one (1) working day prior to the expiration thereof. The proceeds of such claim on the Performance Bond paid pursuant to this Paragraph 12.3.3 shall be held in trust by County or, alternatively, without limiting any of County’s other rights and remedies permitted under this Agreement, at law or in equity, may be

applied by County as a credit toward any amounts due to County by Subcontractor pursuant to Paragraph 12.3.4.

12.3.4. In the event of a termination by County pursuant to Paragraph 7 (Termination by County), County shall be entitled to make a claim against such Performance Bond up to the full amount of such Performance Bond for any outstanding damage assessments made by County against Subcontractor. Upon County's delivery of a claim to the surety under the Performance Bond, and regardless of whether Subcontractor disputes the factual basis for County's assertion of such termination, County shall be entitled to receive, and the surety shall pay to County, any amount up to the full amount under the Performance Bond. The amounts received in respect of such claim by County under the Performance Bond shall be applied to Subcontractor's liability for any direct, administrative and excess costs incurred by County in obtaining similar services in respect of the tasks, subtasks, deliverables, goods, services, and other work set forth in Exhibit 1 (Statement of Work) to this Agreement. In addition, upon such a termination, County may seek any other remedies permitted under the Prime Contract, or this Agreement, or available at law or in equity. The foregoing shall not limit Subcontractor's right to dispute the amount of damages alleged by County in respect thereof.

12.3.5. Failure to Procure and Maintain Insurance or Performance Bond. Failure on the part of Subcontractor to procure and maintain all the required insurance and Performance Bond shall constitute a material breach of this Agreement upon which County may terminate the Agreement pursuant to Paragraph 7 (Termination by County) and seek all remedies available hereunder, at law, and in equity, or alternatively, County may purchase such required insurance coverage and debit Contractor pursuant to Paragraph 6.3 (Completion of Work) of Exhibit A to the Prime Contract.

13. RECORDS AND AUDITS:

13.1 Subcontractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Subcontractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Subcontractor agrees that County, or its duly authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Agreement provided such access rights do not constitute an unlawful invasion of the privacy rights of any Subcontractor employee and would not in the reasonable opinion of Subcontractor subject Subcontractor to legal liability. All such material, including, but not limited to, all financial records, time cards and other employment records, and proprietary data and information, shall be kept and maintained by Subcontractor and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter unless written permission of County is given to dispose of any such material prior to such time. All such material shall be maintained by Subcontractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Subcontractor shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

13.2 In the event that an audit is conducted of Subcontractor specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Subcontractor or otherwise, then Subcontractor shall file a copy of such audit report with County's Auditor Controller and County Project Director within thirty (30) days of Subcontractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement.

13.3 Failure on the part of Subcontractor to comply with the provisions of this Paragraph 13 shall constitute a material breach of this Agreement upon which Contractor may immediately terminate or suspend this Agreement.

14. PROPRIETARY CONSIDERATIONS AND CONFIDENTIALITY:

14.1 General. Subject to the disclosure requirements of the Public Records Act, Subcontractor shall maintain the confidentiality of all records and information obtained from County or Contractor or developed pursuant to this Agreement during the course of Subcontractor's performance under the Agreement, in accordance with all applicable federal, state, and local laws, regulations, ordinances, guidelines, and directives relating to confidentiality. Subcontractor shall keep confidential any personally identifiable information regarding voters, and shall use such information only in connection with Subcontractor's performance under the Agreement. In addition, Subcontractor shall not reproduce, distribute, or disclose to any person or entity any information identifying, characterizing, or relating to any risk, threat, vulnerability, weakness, or problem regarding data security or maintenance in County's computer systems, or to any safeguard, countermeasure, or contingency plan, policy or procedure for data security contemplated or implemented by County, without County's express prior written consent. Subcontractor shall inform all of its directors, officers, shareholders, employees, and agents providing services hereunder of the confidentiality provisions of the Agreement. Subcontractor shall provide to County an executed Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement (attached hereto as Exhibit 3) for each of its employees performing work under this Agreement. Notwithstanding anything herein to the contrary, Subcontractor acknowledges and agrees that it is responsible for any breach of the obligations of confidentiality set forth herein by any person or entity to whom Subcontractor discloses such confidential information.

14.2 Disclosure of Information.

14.2.1. With respect to any confidential information obtained by Contractor pursuant to the Agreement, Contractor shall: (a) not use any such records or information for any purpose whatsoever other than carrying out the express terms of the Agreement; (b) promptly transmit to County all requests for disclosure of any such records or information; (c) not disclose, except as otherwise specifically permitted by the Agreement, any such records or information to any person or organization other than County without County's prior written authorization that the records are, or information is, releasable; and (d) at the expiration or termination of the Agreement, return all such records and information to County or maintain such records and information according to the written procedures sent to Contractor by County for this purpose.

14.2.2. Without limiting the generality of Paragraph 14.2.1 of this Agreement, in the event Subcontractor receives any court or administrative agency order, service of process, or request by any person or entity (other than Subcontractor's professionals) for disclosure of any such details, Subcontractor shall immediately notify County Project Director. Thereafter, Subcontractor shall comply with such order, process, or request only to the extent required by applicable law and to the extent disclosure is based on the written advice of Subcontractor's legal counsel that disclosure, and the scope and extent thereof, is required pursuant to the foregoing. Notwithstanding the preceding sentence, to the extent permitted by law, Subcontractor shall delay such compliance and cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief.

14.3 Subcontractor Information. Any and all confidential or proprietary information which is developed or was originally acquired by Subcontractor outside the scope of this Agreement, which Subcontractor desires to use hereunder, and which Subcontractor considers to be proprietary or confidential, must be specifically identified by Subcontractor to County's Project Director as proprietary or confidential, and shall be plainly and prominently marked by Subcontractor as "proprietary" or "confidential." County shall undertake reasonably to maintain the confidentiality of materials marked by Subcontractor as "proprietary" or "confidential." Notwithstanding any other provision of this Agreement, County shall not be obligated in any way under this Agreement for:

14.3.1. Any of Subcontractor's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends; and

14.3.2. Any disclosure of any materials which County determines it is required to make under the California Public Records Act or otherwise by law. County shall use reasonable efforts to notify Subcontractor as soon as is reasonably practicable of a California Public Records Act request for information County reasonably believes may require the disclosure of information marked as proprietary or confidential by Subcontractor under this Agreement, and shall cooperate reasonably with Subcontractor, at Subcontractor's expense, in any effort by Subcontractor to secure confidential treatment of such information or otherwise restrict the disclosure thereof, provided such action does not cause County to be in violation of the California Public Records Act, as reasonably determined by County. Cooperation may include requesting legally permissible extensions of time (if requested by Subcontractor), providing copies or a description of the records considered for disclosure, and abiding by any judicial order obtained in respect of such records. Should Subcontractor's efforts to restrict release of information in any judicial proceeding fail, Subcontractor agrees to pay all mandatory attorney's fees imposed pursuant to Government Code Section 6259.

14.4 Use of County Name. In recognizing Subcontractor's need to identify its services and related clients to sustain itself, County shall not inhibit Subcontractor from publishing its role under the Prime Contract and this Agreement under the following conditions:

14.4.1. Subcontractor shall develop all publicity material in a professional manner.

14.4.2. Subcontractor shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior

written consent of County Project Director, which shall not be unreasonably withheld or delayed during the Term.

14.4.3. From and after the Effective Date, Subcontractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been approved under the Agreement to perform services under the Prime Contract with Contractor, provided that the requirements of this Paragraph 14.4 (Use of County Name) (other than the requirements set forth in Paragraph 14.4.2) shall apply.

14.4.4. Notwithstanding anything herein to the contrary, County reserves the right to object to any use of County's name and Subcontractor shall cure promptly and prospectively any use of County's name that has been objected to by County.

14.5 Protection of Public Record Data.

14.5.1. No Ownership by Subcontractor. Neither Subcontractor nor Contractor, nor their employees or agents, shall have any ownership rights or interest in any Public Record Data that they possess, modify, or create pursuant to this Agreement or the Prime Contract, or any modifications thereto or derivatives thereof, all of which shall, at all times and for all purposes, remain the property of County.

14.5.2. No Impairment by Subcontractor. Neither Subcontractor, nor its employees or agents, shall impair the integrity of any Public Record Data that they possess or create.

14.5.3. California Public Records Act. Any Public Record Data that is provided to Subcontractor or its employees or agents, shall remain a public record for purposes of the California Public Records Act. Subcontractor and its employees and agents, shall have a joint and several obligation to comply with the obligations of County under the California Public Records Act as amended, with regard to the Public Record Data and the management, handling, retention, destruction, transfer, and disposal thereof. Subject to Paragraph 14.2.2, the determination of whether Subcontractor is compelled to disclose any such data shall be made solely by County. In the event of a conflict between the disclosure provisions of the California Public Records Act, or any other law, and this Agreement, the provisions of such law shall prevail.

14.5.4. Limitations on Disclosure. Neither Subcontractor nor its employees or agents, shall disclose to the public any Public Record Data that they possess, modify, or create pursuant to this Agreement and which County: (i) is prohibited in all cases from disclosing pursuant to federal, State, or County law or regulation; (ii) may disclose pursuant to federal, State, or County law or regulation only to certain persons or under certain conditions; or (iii) may withhold from disclosure pursuant to federal, State, or County law or regulation. In no event shall Subcontractor or its employees or agents, sell, market, or otherwise profit in any manner from the disclosure or use of any Public Record Data.

14.6 Notification. If Subcontractor learns of any violations of this Paragraph 14 (Proprietary Considerations and Confidentiality), it shall promptly (and in no event later than seven (7) days after learning of such violation) notify County Project Manager of such violation.

In the event of any disclosure, loss, or destruction of confidential information, the receiving party shall immediately notify the disclosing party.

14.7 Injunctive Relief. Subcontractor acknowledges that a breach by Subcontractor of this Paragraph 14 (Proprietary Considerations and Confidentiality) may result in irreparable injury to County that may not be adequately compensated by monetary damages and that, in addition to County's other rights under the Agreement and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 14 (Proprietary Considerations and Confidentiality).

14.8 Proprietary Considerations.

14.8.1. County Product. Subcontractor agrees that all plans, reports, acceptance test criteria, acceptance test plans, the SOW, the Project Control Document, the Requirements, departmental procedures and processes, data, and information and other similar materials developed by County, Contractor, or Subcontractor pursuant to and for delivery to County under the Prime Contract and this Agreement (collectively "County Product"), and all copyrights, patent rights, trade secret rights and other proprietary rights therein shall be the sole property of County. Subcontractor hereby assigns and transfers to County all of Subcontractor's right, title, and interest in and to all County Product developed under this Agreement. Notwithstanding such County ownership, during and for a minimum of seven (7) years subsequent to the Term, Subcontractor shall retain possession of all working papers prepared by Subcontractor for the purposes of this Agreement or, if solely related to County Product, shall return such papers to County, at County's request, and to the extent such working papers are no longer needed for Subcontractor to perform its obligations hereunder. County shall have the right to inspect any and all such working papers in Subcontractor's possession during this period, make copies thereof, and use the working papers and the information contained therein, solely for its internal use and subject to provisions of confidentiality under this Paragraph 14 (Proprietary Considerations and Confidentiality). To the extent that such County Product developed by Subcontractor may be made generally applicable to the provision of election systems and services, Subcontractor is hereby granted a perpetual, nonexclusive, and irrevocable license to use such County Product, including the right to modify, reproduce, make derivative works from, and sublicense, so long as such use does not reveal confidential material of County and otherwise complies with Paragraph 14 (Proprietary Considerations and Confidentiality).

14.8.2. Further Assistance. Upon request of County, Subcontractor shall execute all documents requested by County and shall perform all other acts requested by County to assign and transfer to, and vest in, County all of Subcontractor's right, title and interest in and to the County Product.

14.8.3. Copyright of County Product. As to County Product, if requested in writing by County's Project Director, Subcontractor shall affix the following notice to applicable County Product developed under this Agreement: "©copyright 200_ (or such other date of first publication), County of Los Angeles. All rights reserved". Subcontractor shall affix such notice as directed by County.

14.8.4. Protection of County Product. Subcontractor shall protect the security of and keep confidential all County Product obtained or developed under this Agreement to the extent such County Product is of a confidential nature. Further, Subcontractor shall use all such security measures that a prudent contractor operating in Subcontractor's industry would use to protect all such County Product from loss or damage by any cause, including fire and theft, which measures shall at least equal the degree of care Subcontractor applies to the treatment of its own similar materials.

15. INTELLECTUAL PROPERTY INDEMNIFICATION:

15.1 Subcontractor shall indemnify, defend, and hold harmless County Indemnitees pursuant to Paragraph 12.1 (Indemnification) of this Exhibit, from and against any and all liability (alleged or actual), including damages, losses, costs, fees and other expenses (including defense costs and legal, accounting and other expert, consulting, attorney or other professional fees), for or by reason of any actual or alleged infringement of any patent, copyright, trademark, or other proprietary rights of any third party, or any actual or alleged trade secret disclosure or misappropriation, arising from or related to the operation and utilization of the work performed and goods and services rendered under this Agreement (collectively referred to as "Infringement Claims"). Subcontractor shall have no obligation to County under this Paragraph 15 (Intellectual Property Indemnification) to the extent any damages or losses arising under or resulting from an infringement claim are caused by use by County of the PBR System other than in accordance with the Prime Contract, the Specifications or other applicable Documentation.

15.2 Without limiting the foregoing, in the event County Project Director becomes aware that ongoing use of the PBR System or any part of it is the subject of any Infringement Claim that might preclude or impair County's use of the PBR System or any part of it (*e.g.*, injunctive relief), or that County's continued use of the PBR System or any part of it may subject it to punitive damages or statutory penalties or other costs or expenses, County shall give notice to Subcontractor of such facts. Upon notice of such facts, Subcontractor shall, at no cost to County, and in cooperation with Contractor, either (a) procure the right, by license or otherwise, for County to continue to use the affected portion of the PBR System, with the same ownership and license rights hereunder, as applicable, or (b) to the extent Contractor and Subcontractor are unable to procure such right, replace or modify the affected portion of the PBR System with product of equivalent quality and performance capabilities, in County's reasonable determination, to become non-infringing. If Subcontractor fails to complete the remedial acts set forth above within sixty (60) days of the date of the notice from County, or if completion is not possible despite Subcontractor's commercially reasonable efforts (in concert with those of Contractor) within such sixty (60) day period, and County has not approved in writing (such approval not to be unreasonably withheld) Subcontractor's plan of completing such remediation, then, in either instance County shall have the right without limiting any other rights or remedies that County may have under the Agreement or at law or equity, to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the PBR System. Subcontractor shall indemnify and hold County harmless for all amounts paid and all-direct and indirect costs associated with such remedial acts.

16. WARRANTIES:

16.1 Subcontractor represents, warrants, covenants, and agrees that Subcontractor shall promptly correct any and all defects, errors, or omissions in the tasks, subtasks, deliverables, goods, services, and other work provided pursuant to this Agreement in order to conform and comply with all specifications, requirements, descriptions, standards, and representations set forth in this Agreement. The correction of any such defects, errors or omissions shall be at no cost to Contractor or County.

16.2 Subcontractor further represents, warrants, covenants, and agrees that:

- A. Subcontractor shall strictly comply with the specifications, requirements, descriptions, standards, and representations (including, but not limited to, deliverable documentation, performance capabilities, accuracy, completeness, characteristics, configurations, standards, functions and requirements applicable to professional software design operating meeting industry standards) set forth in this Agreement, (including Exhibit 1 (Statement of Work)), and in the Prime Contract.
- B. All tasks, subtasks, deliverables, goods, services, and other work shall be provided and/or performed in a timely and professional manner by qualified personnel.
- C. Any software or data analysis used by Subcontractor shall be available to Contractor and County during the term of this Agreement and for a period of five (5) years thereafter, provided that this warranty shall only apply to software or data analysis owned by or under the control of Subcontractor and related to this Agreement;
- D. All tasks, subtasks, deliverables, goods, services and other work shall be completed in accordance with this Agreement (including Exhibit 1 (Statement of Work)), the Prime Contract, industry standards, deliverable documentation and manufacturers' specifications.
- E. All hardware and software provided under this Agreement shall perform according to the specifications and other requirements as set forth in Exhibit 1 (Statement of Work) to this Agreement. Without limitation of the foregoing, all hardware and software shall be free from all deficiencies, as determined by County.
- F. All documentation developed under this Agreement shall be uniform in appearance in terms of font, print size, paper color, binding style, and the like.
- G. Subcontractor shall not intentionally introduce into any software or any County system any disabling code, "worm", or other device which would or could have effect of compromising the security of County's confidential information or hampering, interfering with or otherwise adversely affecting County's operations or County's use of any software or system at any County facility.
- H. Subcontractor shall use its best efforts to prevent viruses from being incorporated or introduced into any software or system in use at any County facility.

17. COMPLIANCE WITH APPLICABLE LAW:

17.1 Subcontractor hereby represents, warrants and covenants that Subcontractor's activities hereunder shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, guidelines, and directives, including all applicable Election Laws and Regulations, and all provisions required thereby to be included in the Agreement are hereby incorporated herein by reference. Unless provided otherwise under the Agreement, Subcontractor shall have up to fifteen (15) days to correct any noncompliance with County rules, regulations, ordinances, guidelines, and directives following notice from County including written copies of such applicable rules, regulations, ordinances, guidelines and directives. For the avoidance of doubt, the cure period provided for herein shall not relieve or reduce Subcontractor's indemnification obligations under Paragraph 12.1 (Indemnification) of this Agreement with respect to any third party claim.

17.2 Subcontractor and Contractor each acknowledge and agree to the following provision, required by the California Secretary of State in connection with the purchase the PBR System under the Prime Contract:

Pursuant to this Agreement and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal statutes, regulations, rules and requirements, including, but not limited to, those voting system requirements set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002, that are in effect as of the date of this Agreement. Further, voting systems shall also comply with all applicable state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of the California Elections Code or the Help America Vote Act of 2002 or other applicable state or federal law when appropriate, that are in effect as of the date of this Agreement, including but not limited to, the 2002 Voting system Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005. This does not include future final court interpretations of existing state or federal law not in effect as of the date of this Agreement.

Voting system manufacturers and/or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement, of any voting system or its component parts, found to be necessary for certification or to otherwise bring the system into compliance.

Any voting system purchased with funds allocated by the Secretary of State's Office shall meet all applicable state and federal standards, regulations and

requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002 that are in effect as of the date of this (application, agreement, contract, etc.), including, but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

18. FAIR LABOR STANDARDS: Subcontractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless Contractor and County, their officers, employees and agents from any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Subcontractor's employees for which Contractor or County may be found jointly or solely liable. Any legal defense pursuant to SUBCONTRACTOR's indemnification obligations under this Paragraph 17 shall be conducted by SUBCONTRACTOR and performed by counsel selected by SUBCONTRACTOR and approved by County in writing. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event SUBCONTRACTOR fails to provide County with a full and adequate defense, as County determines in its sole discretion, County shall be entitled to retain its own counsel and reimbursement from SUBCONTRACTOR for all such costs and expenses incurred by County in doing so. SUBCONTRACTOR shall not have the right to enter into any settlement, agree to any injunction or make any admission, in each case, on behalf of County without County's prior written approval.

19. RESTRICTIONS ON LOBBYING:

19.1 Federal Funds Projects:

Subcontractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations.

19.2 All Projects:

Subcontractor and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Subcontractor, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Subcontractor or any County lobbyist or County lobbying firm retained by Subcontractor to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this Agreement upon which County may immediately terminate or suspend this Agreement.

20. NONDISCRIMINATION AND AFFIRMATIVE ACTION:

20.1 Subcontractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries or holding companies are and will be treated equally without regard to or because of

race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

20.2 Subcontractor shall certify to, and comply with, the provisions of Exhibit 4 (Subcontractor's EEO Certification).

20.3 Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

20.4 Subcontractor certifies and agrees that it will deal with its subcontractors, bidders or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap.

20.5 Subcontractor certifies and agrees that it, its affiliates, subsidiaries or holding companies, will comply with all applicable Federal and State laws and regulations, including, but not limited to:

- i. Title VII, Civil Rights Act of 1964;
- ii. Section 504, Rehabilitation Act of 1973;
- iii. Age Discrimination Act of 1975;
- iv. Title IX, Education Amendments of 1973, as applicable;
- v. Title 43, Part 17, Code of Federal Regulations, Subparts A & B; and
- vi. The Americans with Disabilities Act;

and that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, this Agreement or under any project, program, or activity supported by this Agreement.

20.6 Subcontractor shall allow County representatives access to its employment records during regular business hours to verify compliance with the provisions of this Paragraph 20 when so requested by County.

20.7 If County finds that any of the provisions of this Paragraph 20 have been violated, such violation shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Subcontractor has violated State or Federal anti-discrimination laws or regulations shall constitute a finding by County that Subcontractor has violated the anti-discrimination provisions of this Agreement.

20.8 The parties agree that in the event Subcontractor violates the anti-discrimination provisions of this Agreement, County shall, at its option, be entitled to the sum of Five Hundred Dollars (\$500) pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

21. EMPLOYMENT ELIGIBILITY VERIFICATION:

Subcontractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth by Federal and State statutes and regulations. Subcontractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations as they currently exist and as they may be hereafter amended. Subcontractor shall retain all such documentation for the period prescribed by law. Subcontractor shall indemnify, defend and hold harmless County, its officers and employees, from and against any employer sanctions and any other claims, demands, damages, liabilities, losses, costs, and expenses which may be assessed against or incurred by Subcontractor or County in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder. Any legal defense pursuant to Subcontractor's indemnification obligations under this Paragraph 20 shall be conducted by Subcontractor and performed by counsel selected by Subcontractor and approved by County in writing. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Subcontractor fails to provide County with a full and adequate defense, as County determines in its sole discretion, County shall be entitled to retain its own counsel and reimbursement from Subcontractor for all such costs and expenses incurred by County in doing so. Subcontractor shall not have the right to enter into any settlement, agree to any injunction or make any admission, in each case, on behalf of County without County's prior written approval.

22. SUBCONTRACTOR PERFORMANCE DURING CIVIL UNREST OR DISASTER:

Subcontractor recognizes that the health facilities maintained by County provide services essential to the residents of the communities they serve, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other provision of this Agreement, full performance by Subcontractor during any riot, insurrection, civil unrest, natural disaster, or similar event is not excused if such performance remains physically possible without unreasonable risk. During any such event in which the health or safety of any Subcontractor's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely.

23. CAPTIONS AND PARAGRAPH HEADINGS:

Captions and paragraph headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing this Agreement.

24. WAIVER:

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of any party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 24 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

25. GOVERNING LAW, JURISDICTION AND VENUE:

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to agreements made and to be performed within that State. Without limiting the foregoing, Contractor and Subcontractor intend that this Agreement shall be subject to the provisions of the Uniform Commercial Code as enacted in California, and the parties hereto shall retain all of their rights and remedies thereunder. Contractor and Subcontractor agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

26. SEVERABILITY:

If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective. In the event that one or more of the provisions of this Agreement is found to be invalid, illegal or unenforceable in any respect, such provision shall be deemed deleted herefrom and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

27. AUTHORIZATION WARRANTY:

Subcontractor represents and warrants that the person executing this Agreement for Subcontractor is an authorized agent who has actual authority to bind Subcontractor to each and every term, condition, and obligation of this Agreement and that all requirements of Subcontractor have been fulfilled to provide such actual authority.

28. NOTICES:

All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (1) by hand with signed receipt, (2) by first-class registered or certified mail, postage prepaid, or (3) by facsimile transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of

facsimile transmission if followed by timely confirmation mailing. Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party.

A. If to Contractor:

Election Systems & Software, Inc.
11208 John Galt Boulevard
Omaha, NE 68137
Attention: Office of General Counsel
Facsimile: (402) 970-1291

With copies to County, addressed as follows:

Chief Deputy to the Registrar
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Head, Management Services
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201

B. If to Subcontractor:

[Contact Person]
[Subcontractor Name]
[Address]
[Telephone]
[Email]

With copies to County, addressed as follows:

Chief Deputy to the Registrar
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Head, Management Services
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201

C. If to County:

Chief Deputy to the Registrar
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7001
Norwalk, CA 90650

with a copy to:

Head, Management Services
County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201
Norwalk, CA 90650

29. TERMINATION FOR IMPROPER CONSIDERATION:

County may, by written notice to Subcontractor, immediately terminate the right of Subcontractor to proceed under this Agreement, if it is found that consideration, in any form, was offered or given by Subcontractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment or extension of this Agreement or the making of any determination with respect to Subcontractor's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Subcontractor as it could pursue in the event of default of Contractor or Subcontractor.

Subcontractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

30. COUNTY'S QUALITY ASSURANCE PLAN:

County or its agent will evaluate Subcontractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Subcontractor's compliance with all Agreement terms and performance standards. Subcontractor deficiencies which County determines are severe or continuing and that may place performance of the Prime Contract in jeopardy if not corrected will be reported to County's Board of Supervisors. The report will include improvement / corrective action measures taken by County, Contractor and Subcontractor. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties against Contractor as specified in the Prime Contract.

31. SUBCONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM:

Subcontractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Subcontractor's duty under this Agreement to comply with all applicable provisions of law, Subcontractor warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 U.S.C. Section 653(a)) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Division ("CSSD") Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

32. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM:

Failure of Subcontractor to maintain compliance with the requirements set forth in Paragraph 31 (Subcontractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Subcontractor under and material breach of this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by County (whether through CSSD or otherwise) shall be grounds upon which County's Board of Supervisors may terminate this Agreement pursuant to this Paragraph 7 (Termination).

33. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT:

Subcontractor shall notify its employees that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

34. COMPLIANCE WITH JURY SERVICE PROGRAM:

34.1 Jury Service Program: This Agreement is subject to the provisions of County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code. A copy of the Jury Service Program is available on the Internet at ordlink.com/codes/lacounty for printing purposes.

34.2 Written Employee Jury Service Policy:

34.2.1. Unless Subcontractor has demonstrated to County's satisfaction either that Subcontractor is not a "Subcontractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Subcontractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Subcontractor shall have and adhere to a written policy that provides that its employees shall receive from Subcontractor, on an annual basis, no less than five (5) days of regular pay for actual jury service served. Subcontractor's policy may further provide that employees deposit any fees received for such jury service with Subcontractor or that Subcontractor deduct from the employee's regular pay the fees received for jury service.

34.2.2. For the purposes of this Paragraph 34, and as set forth in the Jury Service Program provision of the County Code: "subcontractor" shall mean a person, partnership, corporation, or other entity, that has a subcontract with a County contractor, and has received, or will receive, an aggregate sum of Fifty Thousand Dollars (\$50,000) or more in any twelve (12) month period under one (1) or more County contracts or subcontracts; "employee" shall mean any California resident who is a full-time employee of a subcontractor; and "full-time" shall mean forty (40) hours or more worked per week, or a lesser number of hours, if: 1) the lesser number is a recognized industry standard as determined by County, or 2) the subcontractor has a long-standing practice that defines the lesser number of hours as full-time.

Full-time employees providing short-term temporary services of ninety (90) days or less within a twelve (12) month period are not considered full-time for purposes of the Jury Service Program.

34.2.3. If Subcontractor is not required to comply with the Jury Service Program on the effective date of this Agreement, Subcontractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Subcontractor shall immediately notify County if Subcontractor at any time either comes within the Jury Service Program's definition of "subcontractor," or if Subcontractor no longer qualifies for an exception to the Jury Service Program. In either event, Subcontractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during this Agreement term, and at its sole discretion, that Subcontractor demonstrate

to County's satisfaction that Subcontractor either continues to remain outside of the Jury Service Program's definition of "subcontractor" and/or that Subcontractor continues to qualify for an exception to the Jury Service Program.

34.2.4. Subcontractor's violation of this Paragraph 34 may constitute a material breach of this Agreement. In the event of such breach, County may, in its sole discretion, terminate this Agreement and/or bar Subcontractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

35. NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW:

Subcontractor shall notify and provide to its employees a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

36. SUBCONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW:

Subcontractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Subcontractor understands that it is County's policy to encourage all County contractors and subcontractors to voluntarily post County's "Safely Surrendered Baby Law" poster in a prominent position at the contractors' and subcontractors' respective places of business. County's Department of Children and Family Services will supply Subcontractor with the poster to be used.

37. RECYCLED-CONTENT BOND PAPER:

Consistent with County's Board of Supervisors' policy to reduce the amount of solid waste deposited at County landfills, Subcontractor, agrees to use recycled-content paper to the maximum extent possible in connecting with the services to be performed by Subcontractor under this Agreement.

38. SUBCONTRACTOR RESPONSIBILITY AND DEBARMENT:

38.1 A responsible subcontractor is a subcontractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is County's policy to conduct business only with responsible subcontractors.

38.2 Subcontractor is hereby notified that this Agreement is a contract subject to Chapter 2.202 of the Los Angeles County Code, as may be amended during the term of this Agreement.

38.3 Any termination of this Agreement by County under this Paragraph 38 shall not, in and of itself, be deemed or construed to be a termination by County for default under Paragraph 6 (Termination for Default) of Exhibit A to the Prime Contract or be deemed or construed to entitle County to exercise any right or remedies under Paragraph 6 (Termination for

Default) of Exhibit A to the Prime Contract, and shall not be deemed or construed to limit the rights or remedies of either party under this Agreement or at law.

39. SURVIVAL:

The following provisions of this Agreement shall survive its expiration or termination for any reason:

- 1 Applicable Documents
- 2 Prime Contract
- 4.3 Personnel
- 4.4 Personnel
- 4.5 Personnel
- 8 Third Party Beneficiary
- 12 Indemnification, Insurance and Performance Bond
- 13 Records and Audits
- 14 Proprietary Considerations and Confidentiality
- 15 Intellectual Property Indemnification
- 16 Warranties
- 17 Compliance With Applicable Law
- 18 Fair Labor Standards
- 20 Nondiscrimination and Affirmative Action
- 21 Employment Eligibility Verification
- 23 Captions and Paragraph Headings
- 24 Waiver
- 25 Governing Law, Jurisdiction and Venue
- 26 Severability
- 27 Authorization Warranty
- 28 Notices
- 29 Termination for Improper Consideration
- 39 Survival

SUBCONTRACT AGREEMENT TO County AGREEMENT #

IN WITNESS WHEREOF, Contractor and Subcontractor have caused this Agreement to be signed by their duly authorized officers on the day and year first set forth hereinabove.

Contractor

Subcontractor:

Election Systems & Software, Inc.

By _____

Name:
Title:

By _____

Name:
Title:

Exhibit 1

Statement of Work

(To be prepared by Contractor
and Subcontractor)

Exhibit 2

Additional Terms and Conditions

[Fill In Alternate Agreement Name and Attach If Applicable]

(To be prepared by Contractor
and Subcontractor)

Exhibit 3

Subcontractor Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement

(PART 1 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

GENERAL INFORMATION

Your employer referenced above has entered into a Subcontract with the above-referenced Contractor to provide certain services to the County of Los Angeles (hereafter sometimes "County") under the above-referenced County Contract between the above-referenced Contractor and the County. The County requires your signature on this Subcontractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement.

EMPLOYEE ACKNOWLEDGMENT

I understand and agree that the above-referenced Subcontractor is my sole employer for purposes of this employment. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf during the period of this employment.

I understand and agree that I am not an employee of the County for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County during the period of this employment. I understand and agree that I do not have and will not acquire any rights or benefits from the County pursuant to any agreement between any person or entity and the County.

CONFIDENTIALITY

You may be involved with work pertaining to services provided by the County and, if so, you may have access to confidential data, information and materials pertaining to persons and/or entities receiving services from the County and to persons who are inmates of the County. In addition, you may also have access to confidential data, information and materials which are owned and/or copyrighted by the County, the above-referenced Contractor or other vendors doing business with the County. The County as well as you have a legal obligation to protect all such confidential data, information and materials in its possession, especially data and information concerning health, criminal, inmate and welfare recipient records and proprietary information and materials. If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality.

EXHIBIT 3
TO
EXHIBIT I (REQUIRED SUBCONTRACT PROVISIONS)

**SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY AND COPYRIGHT
ASSIGNMENT AGREEMENT**

(PART 2 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

of such data, information and materials. Consequently, you must sign this Agreement as a condition of your work to be provided by your employer for the County. Please read this Agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data, information or materials obtained while performing work related to the above-referenced County Contract. I agree to forward all requests for the disclosure or release of any data, information or materials received by me to the Contractor's Project Manager for the above-referenced County Contract and to my immediate supervisor.

I agree to protect from loss and to keep confidential all health, criminal and welfare recipient records and all data, information and materials pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, vendor proprietary information, and all other original materials produced, created or provided to or by me as related to the above-referenced County Contract. I agree to protect these confidential items against disclosure to other than my employer or County employees who have a need to know the information. I agree that if proprietary data, information and materials of the County, the above-referenced Contractor, or other vendors doing business with the County is provided to me during this employment, I shall keep such data, information and materials confidential.

I agree to report any and all violations of the above-referenced County Contract or this Agreement by myself and/or by any other person of which I become aware to the Contractor's Project Manager for the above referenced County Contract and to my immediate supervisor. I agree to return all confidential data, information and materials to my immediate supervisor upon completion of the Subcontract, or termination of my employment with my employer, whichever occurs first.

EXHIBIT 3
TO
EXHIBIT I (REQUIRED SUBCONTRACT PROVISIONS)

**SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY AND COPYRIGHT
ASSIGNMENT AGREEMENT**

(PART 3 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

COPYRIGHT ASSIGNMENT

I agree that all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, data and other information and/or tools of all types, developed or acquired by me in whole or in part pursuant to the above-referenced County Contract, and all works based thereon, incorporated therein, or derived therefrom, shall be the sole property of the County. In this connection, I hereby assign and transfer to the County in perpetuity for all purposes all my right, title and interest in and to all such items, including, but not limited to, all unrestricted and exclusive copyrights, patent rights, trade secret rights, and all renewals and extensions thereof.

Whenever requested by the County, I agree to promptly execute and deliver to the County all papers, instruments and other documents requested by the County, and to promptly perform all other acts requested by the County to carry out the terms of this Agreement, including, but not limited to, executing an assignment and transfer of copyright in the form substantially similar to Exhibit 3A, attached hereto and incorporated herein by reference.

The County shall have the right to register all copyrights in the name of the County of Los Angeles and shall have the right to assign, license, or otherwise transfer any and all of the County's right, title, and interest, including, but not limited to, copyrights, in and to the items described above.

EXHIBIT 3
TO
EXHIBIT I (REQUIRED SUBCONTRACT PROVISIONS)

**SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY AND COPYRIGHT
ASSIGNMENT AGREEMENT**

(PART 4 OF 4)

PROJECT NAME _____

SUBCONTRACTOR/EMPLOYER NAME: _____

LOS ANGELES COUNTY CONTRACT NUMBER _____

I acknowledge that violation of this Agreement will subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

Name: _____
(Subcontractor Employee's Signature)

Date: _____

Name: _____
(Print Subcontractor Employee's Name)

Social Security Number: _____

Working Title: _____

Original: Contractor
Copy: Subcontractor Employee

Exhibit 3A

ASSIGNMENT AND TRANSFER OF COPYRIGHT

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, _____, an individual (hereafter "Grantor"), does hereby assign, grant, convey and transfer to the County of Los Angeles, California (hereafter "Grantee") and its successors and assigns throughout the world in perpetuity, all of Grantor's right, title and interest of every kind and nature in and to all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, data, and other information and/or tools of all types (including, without limitation, those items listed on Schedule A, attached hereto and incorporated herein by reference), developed under the Agreement and the Subcontract described below, including, without limitation, all right, title and interest in and to all copyrights and works protectable by copyright and all renewals and extensions thereof (collectively referred to herein as "Works") and in and to all copyrights and right, title and interest of every kind or nature, without limitation, in and to all works based thereon, incorporated in, derived from, or related to, the Works or from which the Works are derived.

Without limiting the generality of the foregoing, the aforesaid conveyance and assignment shall include, but is not limited to, all prior choses-in-action, at law, in equity and otherwise, the right to recover all damages and other sums, and the right to other relief allowed or awarded at law, in equity, by statute or otherwise.

_____ and Grantee have entered into Los Angeles County Agreement Number _____ for _____, dated _____, and any amendments thereto (collectively referred to herein as "Agreement").

Pursuant to the Agreement, _____ and _____ have entered into a Subcontract Agreement for _____, dated _____, and any amendments thereto (collectively referred to herein as "Subcontract").

GRANTOR: _____
(Signature)

DATE: ____/____/____

NAME: _____
(Print)

WORKING TITLE: _____

**SCHEDULE A
TO
EXHIBIT 3**

(To Be Completed By County)

STATE OF CALIFORNIA)
) ss.
County OF LOS ANGELES)

On _____, 20 ____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual that executed the within Assignment and Transfer of Copyright.

WITNESS my hand and official seal.

NOTARY PUBLIC

Exhibit 4

Subcontractor'S EEO CERTIFICATION

Subcontractor's Name

Address

Internal Revenue Service Employer Identification Number

GENERAL

In accordance with Paragraph 4.32.010 of the Code of the County of Los Angeles, the above-referenced Subcontractor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

Subcontractor'S CERTIFICATION

- | | | | |
|----|--|---------------------------------|--------------------------------|
| 1. | The subcontractor has a written policy statement prohibiting discrimination in all phases of employment. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |
| 2. | The Subcontractor periodically conducts a self analysis or utilization analysis of its work force. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |
| 3. | The Subcontractor has a system for determining if its employment practices are discriminatory against protected groups. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |
| 4. | Where problem areas are identified in employment practices, the Subcontractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. | YES
<input type="checkbox"/> | NO
<input type="checkbox"/> |

Name and title of signer

Signature

Date

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT L

INVOICE DISCREPANCY REPORT

HAVA REQUIRED INKAVOTE ENHANCEMENT

**HAVA REQUIRED INKAVOTE ENHANCEMENT AGREEMENT
INVOICE DISCREPANCY REPORT**

1. **ISSUE:**

Today's Date: _____

Contractor: _____

Phone Number: _____

Name: _____

Date of Subject Invoice: _____

Invoice Number of Subject Invoice: _____

Total Value of Subject Invoice: _____

Disputed Value of Subject Invoice: _____

Description of Disputed Charges: _____

2. **REVIEWED/SIGNED:**

Signed: _____ Date: _____

County Project Director (CPD)

3. **CONTRACTOR RESPONSE** (completed by Contractor's Project Manager) _____

Date received from CPD: _____

Explanation regarding Disputed Charges: _____

Corrective Action Taken: _____

Signed: _____ Date: _____

Contractor Project Director

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT M

CHANGE ORDER

HAVA REQUIRED INKAVOTE ENHANCEMENT

**LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK
HAVA REQUIRED INKAVOTE ENHANCEMENT CHANGE ORDER**

Capitalized terms used in this Change Order without definition have the meanings given to such terms in that certain Agreement No. [_____] (the “Agreement”), or if not defined therein, in that certain Statement of Work attached as Exhibit C to the Agreement (the “Statement of Work”).

REQUESTOR INFORMATION

Request Date:

Return Date:

Requested by:

Organization:

Prepared by:

Change Type – Circle One

Requirements

Design

Other

PART 1: CHANGE INFORMATION FROM REQUESTOR

1 Proposed Change Summary Description And References: Describes the change being proposed and clearly identifies whether the change is product-related, organizational, or procedural in nature. Any reference material that will assist the reviewers should be identified and attached, including any change to the Project Control Document. If the proposed change relates to Tasks, Subtasks and/or Deliverables set forth in the Statement of Work, lists all such Tasks, Subtasks and Deliverables.

2 Change Completion Dates: Provides a completion schedule for the proposed change, including (a) any dates by which such change (i) is scheduled to and (ii) must be completed, and an explanation for such completion dates, (b) any post-completion acceptance period, and (c) if the proposed change relates to Tasks or Deliverables set forth in the Statement of Work, a revised Task and Deliverable completion schedule under the Statement of Work (i.e., other than the Work requested under the Change Order).

3 Justification: Discusses why the change is being proposed and includes (a) a cost benefit analysis of such

change, including any cost savings to be realized by County from the nonperformance of any Work that is to be supplanted by the Work to be performed under the Change Order, and (b) a discussion of how the proposed change is outside of the scope of Work set forth in the Agreement and the Statement of Work. In other words, how will County and Contractor benefit from the change and why County is not already entitled to the change under the Agreement and the Statement of Work, at no additional cost. By Contractor Project Director's signature to this Part I, Contractor certifies that the proposed change is outside of the scope of Work set forth in the Agreement and the Statement of Work.

- 4 Impact Of Not Implementing The Proposed Change:** Discusses the adverse impact, if any, on County and Contractor of not implementing the proposed change.

- 5 Staff and Personnel Hours:** Sets forth the number, title, and types or names of staff required to complete the proposed change and the number of estimated personnel hours on a by person by person basis in a detailed and itemized list.

- 6 Cost of Hardware, Software and Other Materials:** Sets forth a fixed price for all hardware, software, and other materials required to complete the proposed Work in a detailed and itemized list..

- 7 Price and Schedule of Payments for Proposed Change:** Sets forth a fixed price for completion and delivery of the proposed change, including both materials as set forth in #6 and personnel hours as set forth in #5 (calculated using the Hourly Labor Rate or Daily Labor Rate, as applicable).

- 8 Pool Dollars:** Includes (a) the balance of Pool Dollars both before and after giving effect to the proposed change, and (b) the amount of Pool Dollars allocated to such Change Order. Note that the amount of Pool Dollars allocated to such Change Order shall not exceed the fixed price set forth in item 7 above.

9 Alternatives: Lists at least one alternative (more if possible) to the proposed change, and indicate why the proposed change is preferred. Attach any supporting documentation that helps to clarify the proposed change.

10 Risks and Schedule Impact: Lists any risks to Tasks, Subtasks and/or Deliverables that may arise as a result of the change. In particular, note any projected change to, impact on or risk to the schedules for any Key Deliverable, including PBR System Acceptance.

Signature of Requestor: _____

For each Change Order, when Part I is complete, the requestor shall submit the Change Order to County Project Manager. At that time, a control number will be assigned so that the Change Order can be tracked to completion.

All outstanding Change Orders will be reviewed on a regular basis by County Project Director.

PART 2: COUNTY APPROVAL

County Approver Signature: _____

County Approver Name: _____

Action: Approve: Reject:

Comments:

If approving schedule changes to Key Deliverables, then with the required written concurrence of the Registrar:

Registrar's Signature: _____

Action: Approve: Reject:

Comments:

Contractor Project Director Signature: _____

Date: _____

On execution of the Change Order in accordance with Paragraph 6 (Change Orders and Amendments) of the Agreement, the following provision will apply to the Change Order:

Ratification of the Agreement. Except as expressly modified by this Change Order, the terms and provisions of the Agreement and related documentation, including Exhibit A (Additional Terms and Conditions) to the Agreement, shall continue in full force and effect and shall control the effect and interpretation of this Change Order, including Paragraph 56 (Governing Law, Jurisdiction, and Venue) of Exhibit A (Additional Terms and Conditions). All references in the Agreement and related documentation to "the Agreement", "this Agreement", "hereunder", "hereof" or words of like import shall mean and be the Agreement, as expressly modified by this Change Order.

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT N

CONTRACTOR'S EMPLOYEE ACKNOWLEDGEMENT, CONFIDENTIALITY & ASSIGNMENT AGREEMENT

HAVA REQUIRED INKAVOTE ENHANCEMENT

**CONTRACTOR'S EMPLOYEE ACKNOWLEDGEMENT,
CONFIDENTIALITY & ASSIGNMENT AGREEMENT**

(Note: This certification is to be executed and maintained on file with CONTRACTOR's executed Contract. It shall be made available to COUNTY upon request. Work cannot begin on the Contract until this document has been executed)

CONTRACTOR NAME

Contract No: _____

Employee Name: _____

GENERAL INFORMATION:

Your employer referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires your signature on this CONTRACTOR's Employee Acknowledgement, Confidentiality & Assignment Agreement.

EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the CONTRACTOR referenced above is my sole employer for purposes of the above-referenced contract. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced contract.

I understand and agree that I am not an employee of the County of Los Angeles for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

I understand and agree that I may be required to undergo a background and security investigation(s) administered by my employer. Such investigations shall consist of a statewide criminal background check and a motor vehicle check. I understand that to the extent consistent with applicable federal and state laws, I will not be able work under the above referenced contract if I have any felony convictions or outstanding warrants. I further understand that I may not work under the above referenced contract if I have been convicted of a misdemeanor within the last five (5) years, or convicted of multiple misdemeanors prior to the last five (5) years. I understand and agree that my continued

CONTRACTOR Name: _____ Contract No. _____
Employee Name: _____

performance of work under the above-referenced contract is contingent upon my passing any and all such investigations. I understand and agree that my failure to pass any such investigation shall result in my immediate release from performance under this and/or any future Los Angeles County contract.

CONFIDENTIALITY AGREEMENT:

I may be involved with work pertaining to services provided by the County of Los Angeles and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, I may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. I understand that if I am involved in County work, the County must ensure that I, to, will protect the confidentiality of such data and information. Consequently, I understand that I must sign this agreement as a condition of my work to be provided by my employer for the County. I have read this agreement and have taken due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between my employer and the County of Los Angeles. I agree to forward all requests for the release of any data or information received by me to my immediate supervisor.

I agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, CONTRACTOR proprietary information and all other original materials produced, created, or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than my employer or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me during this employment, I shall keep such information confidential.

I agree to report to my immediate supervisor any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to my immediate supervisor upon completion of this contract or termination of my employment with my employer, whichever occurs first.

ASSIGNMENT AGREEMENT:

As used in this Agreement, "Works" means (a) any inventions, trade secrets, ideas, original works of authorship or Confidential Information (as defined below) that I conceive, develop, discover or make in whole or in part during my employment with CONTRACTOR which relates to the above-referenced agreement, (b) any inventions, trade secrets, ideas, original works of authorship or Confidential Information (as defined

CONTRACTOR Name: _____ Contract No. _____
Employee Name: _____

below) that I conceive, develop, discover or make in whole or in part during or after my employment with CONTRACTOR which are made through the use of any of CONTRACTOR's equipment, facilities, supplies, trade secrets or time, or which result from any work I perform for CONTRACTOR, and (c) any part or aspect of any of the foregoing. "Confidential Information" means all information or material disclosed to or known by me as a consequence of my employment with CONTRACTOR, including third party information or information disclosed by County that CONTRACTOR treats as confidential, and any information disclosed to or developed by me or embodied in or relating to the Works.

All Works shall belong exclusively to CONTRACTOR whether or not fixed in a tangible medium of expression. Without limiting the foregoing, to the maximum extent permitted under applicable law, all Works shall be deemed to be "works made for hire" under the United States Copyright Act, and CONTRACTOR shall be deemed to be the author thereof.

If and to the extent any Works are determined not to constitute "works made for hire," or if any rights in the Works do not accrue to CONTRACTOR as a work made for hire, I irrevocably assign and transfer to CONTRACTOR to the maximum extent permitted by law all right, title and interest in the Works, including all copyrights, patents, trade secret rights, and other proprietary rights in or relating to the Works. Without limiting the foregoing, I irrevocably assign and transfer to CONTRACTOR all economic rights to the Works, including the exclusive and unrestricted right to reproduce, manufacture, use, adapt, modify, publish, distribute, sublicense, publicly perform and communicate, translate, lease, import, export, transfer, convey and otherwise exploit the Works.

I expressly acknowledge and agree that I wish to remain anonymous and not to have my name or any pseudonym used in connection with the Works.

I expressly approve any and all modifications, uses, publications and other exploitation of the Works that CONTRACTOR or any successor or transferee of CONTRACTOR may elect to make, and I expressly agree that no such modifications, uses, publications or exploitations will or may cause harm to my honor or reputation, or will be deemed to constitute a distortion or mutilation of the Works.

I agree to provide any assistance reasonably requested by CONTRACTOR, now and in the future, to obtain United States or foreign letters patent and copyright registrations covering inventions and original works of authorship belonging or assigned to CONTRACTOR. I shall execute any transfers of ownership of letters patent or assignments of copyrights or other proprietary rights transferred or assigned hereunder (including short form assignments intended for recording with the U.S. Copyright Office, the U.S. Patent and Trademark Office, or any other entity). If CONTRACTOR is unable for any reason whatsoever, including my mental or physical incapacity, to secure my signature to apply for or to pursue any application for any United States or foreign letters patent or copyright registrations or on any document transferring or assigning any patent, copyright or other proprietary right that I am obligated to transfer or assign, I

CONTRACTOR Name: _____ Contract No. _____
Employee Name: _____

irrevocably designate and appoint CONTRACTOR and its duly authorized officers and agents as my agent and attorney in fact, to act for and on its behalf and stead to execute and file any such applications and documents and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations or transfers or assignments thereof or of any other proprietary rights with the same legal force and effect as if executed by me. This appointment is coupled with an interest and is irrevocable.

This Agreement shall be construed in accordance with the provisions of Section 2870 of the California Labor Code (the text of which follows) relating to inventions made by an employee. Accordingly, this Agreement is not intended and shall not be interpreted to assign to or vest in CONTRACTOR any of my rights in any inventions developed entirely on my own time without using CONTRACTOR's equipment, supplies, facilities, or trade secret information, except for those inventions that either relate at the time of conception or reduction to practice of the invention to CONTRACTOR's business or the actual or demonstrably anticipated research or development of CONTRACTOR, or result from any work I performed for CONTRACTOR.

California Labor Code Section 2870. Employment Agreements; Assignment of Rights

(a) Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

I acknowledge that violation of this Agreement may cause irreparable harm to County, which may not be compensated by monetary damages, and may subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal and equitable redress, including, without limitation, injunctive relief.

SIGNATURE: _____

DATE: _____

PRINTED NAME: _____

POSITION: _____

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT O

TASK/DELIVERABLE ACCEPTANCE CERTIFICATE

HAVA REQUIRED INKAVOTE ENHANCEMENT

TASK/DELIVERABLE ACCEPTANCE CERTIFICATE

(Contractor Name and Address)		TRANSMITTAL DATE
TASK/DELIVERABLE ACCEPTANCE CERTIFICATE		CONTRACT NUMBER
		TITLE
FROM:	TO:	
_____ Contractor's Project Director (Signature Required)	County Project Director, _____	
Contractor hereby certifies to County that as of the date of this Task/Deliverable Acceptance Certificate, it has satisfied all conditions precedent in the Agreement (including the Exhibits thereto, the Project Control Document and any applicable Change Orders) to the completion of the Tasks and delivery of the Deliverables set forth below, including (i) satisfaction of all completion criteria applicable to such Tasks and Deliverables, and (ii) County's approval of all Work performed in connection with such Tasks and Deliverables. Contractor further represents and warrants that the Work performed in respect of such Tasks and Deliverables has been completed in accordance with Exhibit C (Statement of Work), Exhibit D (Requirements), the Project Control Document, and any applicable Change Orders. County's approval and signature constitutes an acceptance of the Tasks and Deliverables listed below.		
TASK DESCRIPTION (including Task and Subtask numbers as set forth in the Statement of Work, Project Control Document and any applicable Change Orders)	DELIVERABLES (including Deliverable numbers as set forth in the Statement of Work, Project Control Document and any applicable Change Orders)	
Comments:		
Attached hereto is a copy of all supporting documentation required pursuant to the Agreement, the Project Control Document, Exhibit C (Statement of Work), Exhibit D (Requirements), and any applicable Change Order(s), including any additional documentation reasonably requested by County.		
County Acceptance:		
NAME _____	SIGNATURE _____	DATE _____
County's Project Director		

County of Los Angeles
Registrar-Recorder/County Clerk

EXHIBIT P

FORM OF PERFORMANCE AND PAYMENT BOND

HAVA REQUIRED INKAVOTE ENHANCEMENT

FORM OF PERFORMANCE AND PAYMENT BOND

Amount \$ _____

KNOW ALL PEOPLE BY THESE PRESENTS,

That we, Election Systems & Software, Inc. (“Principal”), as Principal and _____

_____ (“Surety”), as Surety, are held and firmly bound unto the County of Los Angeles (“Obligee”), in the sum of _____ Dollars (\$ _____), for the payment of which we, the said Principal and said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal entered into a certain Contract with the Obligee, dated _____ for enhancements to and maintenance and support of Obligee’s InkaVote voting system (“Contract”) in accordance with the terms and conditions of said Contract, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounded Principal shall well and truly keep, do and perform each and every, all and singular, the matters and things in said Contract set forth and specified to be by said Principal kept, done and performed, at the times and in the manner in said Contract specified, or shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal so to do, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect.

The Performance and Payment Bond shall remain in full force and effect until PBR System Acceptance (as identified in the Statement of Work and described in the Agreement).

Obligee shall provide copies to Surety of any notice (to the address set forth below) to Principal of default or termination under the Agreement. Surety shall have fifteen (15) days following receipt of any notice of default to investigate and to respond by either ensuring performance or releasing the bond, at Surety’s option. Surety hereby guarantees that, upon Obligee’s termination of the Contract in whole or in part pursuant to Paragraph 6 (Termination for Default) of Exhibit A (Additional Terms and Conditions) to the Contract, Surety shall promptly pay to Obligee all losses and damages, up to the limit of this Performance Bond, which Obligee states are sustained by reason of failure or default on the part of Principal.

Any suit under this Performance Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

This Performance Bond shall be enforceable against Surety, its successors and assigns.

No delay on the part of Obligee in exercising any right, power or privilege under this Performance Bond or failure to exercise the same shall operate as a waiver of or otherwise affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Surety hereby waives all and any of the following:

- (a) notice of any change or amendment, including but not limited to extensions or accelerations of time for performance, to the Contract, or to related subcontracts, purchase orders and other obligations;
- (b) to the extent not required above, all presentments, demands for performance, notices of non-performance, protests, partial payment or non-payment of all or any part of the obligations guaranteed by this Performance Bond;
- (c) any right to require Obligee to proceed against Principal or any other person, to proceed against, apply or exhaust any security held from any person for all or any part of the obligations guaranteed by this Performance Bond, or to pursue any other remedy in Obligee's power whatsoever;
- (d) any defense arising by reason of the invalidity, illegality or lack of enforceability of the obligation to perform or pay all or any part of the obligations contained in the Contract or guaranteed by this Performance Bond, or by reason of any lack of authority, or by reason of any act or omission of Principal or others which directly or indirectly results in the discharge or release of all or any part of the obligations guaranteed by this Performance Bond, whether by operation of law or otherwise;
- (e) any defense based upon or arising out of any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against Principal or any other person, including any discharge of, or bar against collecting or otherwise enforcing performance of, all or any part of the obligations guaranteed by this Performance Bond (including any interest), in or as a result of any such proceeding.

Sealed with our seals and dated this _____ day of _____, 2006.

[PRINCIPAL]

Name:
Title:

[SURETY]

Name:
Title: