

SIGNATURE CAPTURE AND COMPARISON EQUIPMENT AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made and entered into this 9th day of August, 2016, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Elections Systems & Software, LLC whose address is 11208 John Galt Boulevard, Omaha, NE 68137, hereinafter referred to as "CONTRACTOR". COUNTY AND CONTRACTOR may herein be referred to individually as "party" or collectively as "parties" or "Parties".

WITNESSETH:

WHEREAS, the Fresno County Clerk/Elections Department desires to engage the CONTRACTOR for the purpose of providing Signature Capture and Comparison Scanning Hardware and Software; and

WHEREAS, the Fresno County Clerk/Elections Department processes approximately 200,000 Vote by Mail ballot envelopes for each major election, dependent on the number of participating voters; and

WHEREAS, CONTRACTOR has the equipment, expertise, and resources to provide signature capture and comparison services; and

WHEREAS, CONTRACTOR shall provide ongoing maintenance and support services for the processing of absentee ballots during elections.

NOW THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

1. SERVICES

A. CONTRACTOR shall provide one (1) MBV 1000 Mail Ballot Verifier and one (1) MBV 2000 Mail Ballot Verifier with six (6) outsort bins to COUNTY.

B. CONTRACTOR shall perform all services and fulfill all responsibilities (1) as set forth in this Agreement including Exhibits A and B attached hereto and incorporated herein by reference and (2) as identified in COUNTY's Request for Proposal (RFP) No. 578-5389 dated October 20, 2015 and Addendum No. One (1) dated November 9, 2015, hereinafter collectively referred to as COUNTY's Revised RFP and CONTRACTOR's response to said Revised RFP, dated November 19, 2015, all incorporated herein by reference and made part of this Agreement.

1 C. In the event of any inconsistency among these documents, the inconsistency shall
2 be resolved by giving precedence in the following order of priority: 1) to this Agreement, including
3 Exhibits A, B, C but not including COUNTY's Revised RFP and CONTRACTOR's Response to the
4 Revised RFP, 2) to COUNTY's Revised RFP, 3) to the CONTRACTOR'S Response to the Revised
5 RFP. A copy of COUNTY's Revised RFP No. 578-5389, and CONTRACTOR's response, shall be
6 retained and made available during the term of this Agreement by COUNTY.

7 D. CONTRACTOR shall ensure that all services are in strict compliance with the
8 California Code of Elections and the Federal Help America Vote Act (HAVA) requirements.

9 **2. TERM**

10 This Agreement shall become effective on the 10th day of August, 2016 and shall
11 terminate on the 30th day of June, 2019 ("Initial Agreement Period"), and may be renewed for two
12 additional one (1) year periods through June 30, 2021 (each an "Optional Agreement Renewal Period"),
13 upon COUNTY providing written notice of renewal to CONTRACTOR. Such written notice must be
14 delivered a minimum of thirty (30) days prior to the next expiration date of this Agreement.

15 **3. TERMINATION**

16 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
17 provided thereunder, are contingent on the approval of funds by the appropriating government agency.
18 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
19 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

20 B. Breach of Contract - This Agreement may be terminated, in writing, at any time by
21 either party if the other party breaches any material provision hereof, including, but not limited to, (i)
22 failing to comply with any term of this Agreement, or (ii) improperly performing any service and such
23 breaching party does not cure any such breach hereunder within thirty (30) days after it receives written
24 notification thereof from the non-breaching party. Notwithstanding the foregoing, the COUNTY may
25 immediately suspend or terminate this Agreement in whole or in part, where in the determination of the
26 COUNTY there is an illegal or improper use of funds.

27 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY
28 of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR.

Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated on behalf of the COUNTY by the Fresno County Clerk-Registrar of Voters upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR. Notwithstanding the foregoing, COUNTY shall pay CONTRACTOR for all services provided up through the effective date of such termination.

4. COMPENSATION/INVOICING:

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as outlined in the Budget, attached hereto as Exhibit B, incorporated herein by reference and made part of this Agreement. CONTRACTOR shall submit invoices upon completion of services, in triplicate, to: County of Fresno, Department of County Clerk/Elections, 4525 E. Hamilton Ave., Fresno, CA 93702.

Unless otherwise agreed to by the parties and as set forth in Exhibit B, in no event shall services performed under this Agreement be in excess of Two Hundred Sixty Four Thousand Nine Hundred Fifty Six and No/100 Dollars (\$264,956.00) for the period of August 10, 2016 through June 30, 2019. In no event shall services performed under this Agreement be in excess of Twenty Two Thousand Six Hundred Thirty and No/100 Dollars (\$22,630.00) for the period of July 1, 2019 through June 30, 2020. In no event shall services performed under this Agreement be in excess of Twenty Two Thousand Six Hundred Thirty and No/100 Dollars (\$22,630.00) for the period of July 1, 2020 through June 30, 2021. The maximum total compensation for services included in this Agreement from the period of August 10, 2016 through June 30, 2021, shall be Three Hundred Ten Thousand Two Hundred Sixteen and No/100 Dollars (\$310,216.00). It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

Payments shall be made by COUNTY to CONTRACTOR in arrears, for services

1 provided during the preceding month(s), within forty-five (45) days after the date of receipt by
2 COUNTY of CONTRACTOR's invoice.

3 **5. INDEPENDENT CONTRACTOR:**

4 In performance of the work, duties and obligations assumed by CONTRACTOR under this
5 Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the
6 CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an
7 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,
8 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no
9 right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its
10 work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify
11 that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

12 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and
13 the rules and regulations, if any, of governmental authorities having jurisdiction over matters the
14 subject thereof.

15 Because of its status as an independent contractor, CONTRACTOR shall have
16 absolutely no right to employment rights and benefits available to COUNTY employees.
17 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees
18 all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and
19 save COUNTY harmless from all matters relating to payment of CONTRACTOR'S employees,
20 including compliance with Social Security withholding and all other regulations governing such
21 matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing
22 services to others unrelated to the COUNTY or to this Agreement.

23 **6. MODIFICATION:**

24 Any matters of this Agreement may be modified from time to time by the written consent
25 of all the parties without, in any way, affecting the remainder.

26 **7. NON-ASSIGNMENT:**

27 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties
28 under this Agreement without the prior written consent of the other party.

1 **8. HOLD HARMLESS:**

2 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request,
3 defend the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages,
4 liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or
5 failure to perform, by CONTRACTOR, its officers, agents, or employees under this Agreement, and from
6 any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,
7 firm, or corporation who may be injured or damaged by the performance, or failure to perform, of
8 CONTRACTOR, its officers, agents, or employees under this Agreement.

9 **9. INSURANCE**

10 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR
11 or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the
12 following insurance policies throughout the term of this Agreement:

13 A. Commercial General Liability

14 Commercial General Liability Insurance with limits of not less than One Million
15 Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This
16 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
17 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
18 liability or any other liability insurance deemed necessary because of the nature of this Agreement.

19 B. Automobile Liability

20 Comprehensive Automobile Liability Insurance with limits for bodily injury of not
21 less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars
22 (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00),
23 or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00).
24 Coverage should include owned and non-owned vehicles used in connection with this Agreement.

25 C. Professional Liability

26 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
27 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million
28 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

1 D. Worker's Compensation

2 A policy of Worker's Compensation insurance as may be required by the
3 California Labor Code.

4 CONTRACTOR shall obtain endorsements to the Commercial General Liability
5 insurance naming the County of Fresno, its officers, agents, and employees, individually and
6 collectively, as additional insured, but only insofar as the operations under this Agreement are
7 concerned. Such coverage for additional insured shall apply as primary insurance and any other
8 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be
9 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
10 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
11 written notice given to COUNTY.

12 Within Thirty (30) days from the date CONTRACTOR executes this Agreement,
13 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
14 foregoing policies, as required herein, to the County of Fresno, County Clerk/Elections Department,
15 Attention: Business Office, 4525 E. Hamilton Ave., Fresno, CA 93702, stating that such insurance
16 coverage has been obtained and are in full force; that the County of Fresno, its officers, agents and
17 employees will not be responsible for any premiums on the policies; that such Commercial General
18 Liability insurance names the County of Fresno, its officers, agents and employees, individually and
19 collectively, as additional insured, but only insofar as the operations under this Agreement are
20 concerned; that such coverage for additional insured shall apply as primary insurance and any other
21 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be
22 excess only and not contributing with insurance provided under CONTRACTOR's policies herein; and
23 that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance,
24 written notice given to COUNTY.

25 In the event CONTRACTOR fails to keep in effect at all times insurance coverage
26 as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate
27 this Agreement upon the occurrence of such event.

28 All policies shall be with admitted insurers licensed to do business in the State of

California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

10. AUDITS AND INSPECTIONS:

The CONTRACTOR shall at any time during business hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the COUNTY and in no event more than once per each twelve (12) month period during the Term of this Agreement, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under Agreement (Government Code Section 8546.7).

11. NOTICES:

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

Brandi L. Orth, County Clerk
County Clerk/Elections Department
2221 Kern Street
Fresno, CA 93721

CONTRACTOR

Election Systems & Software, LLC
Attention: Office of General Counsel
11208 John Galt Boulevard
Omaha, NE 68137

Any and all notices between the COUNTY and the CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal services, when deposited in the United States Mail, postage prepaid, addressed to such party.

12. GOVERNING LAW

The parties agree that for the purposes of venue, performance under this Agreement is to be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

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1 **13. DISCLOSURE OF SELF DEALING TRANSACTIONS**

2 This provision is only applicable if the CONTRACTOR is operating as a corporation (a
3 for-profit or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes
4 its status to operate as a corporation.

5 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
6 transactions that they are a party to while CONTRACTOR is providing goods or performing services
7 under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is
8 a party and in which one or more of its directors has a material financial interest. Members of the Board of
9 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
10 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit C, and incorporated herein by
11 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
12 immediately thereafter.

13 **14. ENTIRE AGREEMENT**

14 This Agreement including all Exhibits, COUNTY's Revised RFP No. 578-5389, and
15 CONTRACTOR's response thereto, constitutes the entire agreement between CONTRACTOR and
16 COUNTY with respect to the subject matter hereof and supersedes all previous agreement negotiations,
17 proposals, commitments, writings, advertisements, publications and understandings of any nature
18 whatsoever unless expressly included in this Agreement.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
2 hereinabove written.

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4 ATTEST:

5 **CONTRACTOR:**

COUNTY OF FRESNO

6 ELECTION SYSTEMS &
7 SOFTWARE, LLC

8 By 

By 

Chairman, Board of Supervisors

9 Print Name: Richard J. Labask.

10 Title: VP of Finance
11 Chairman of the Board, or
12 President, or any Vice President

13 Date: 6-29-16

BERNICE E. SEIDEL, Clerk
Board of Supervisors

14
15 By 

By Susan Bishop, Deputy

16 Print Name: Heather Brown

17 Title: CFO
18 Secretary (of Corporation), or
19 any Assistant Secretary, or
20 Chief Financial Officer, or
21 any Assistant Treasurer

22 Date: 6-29-16

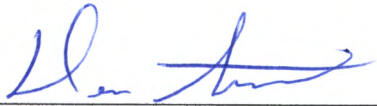
**PLEASE SEE ADDITIONAL
SIGNATURE PAGE ATTACHED**

23
24 Mailing Address:

25 Election Systems & Software, LLC
26 11208 John Galt Blvd.
27 Omaha, NE 68137
28 (877) 377-8683
Contact: Chief Operating Officer

1 APPROVED AS TO LEGAL FORM:
2 DANIEL C. CEDERBORG, COUNTY COUNSEL

3
4 By



5 APPROVED AS TO ACCOUNTING FORM:
6 VICKI CROW, C.P.A., AUDITOR-CONTROLLER/
7 TREASURER-TAX COLLECTOR

8
9 By



10
11 COUNTY CLERK/ELECTIONS DEPARTMENT
12 REVIEWED AND RECOMMENDED FOR APPROVAL:

13
14 By



15 Brandi L. Orth, County Clerk/Registrar
16 of Voters

17 FOR ACCOUNTING USE ONLY:

18
19 Fund/Subclass: 0001/10000
20 Organization No.: 28500500
21 Account/Program: 8300/91262

22
23 BLO:dr
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SUMMARY OF SERVICES

ORGANIZATION: Election Systems & Software, LLC

ADDRESS: 11208 John Galt Boulevard, Omaha, NE 68137

MANAGERS: Val Guyett, Vice President, Business Development

CONTACT: Phone: (360) 481-5490

PRODUCT & SERVICES: Signature Capture and Comparison Equipment, Maintenance and Support

INITIAL AGREEMENT PERIOD: August 10, 2016 – June 30, 2019

OPTIONAL AGREEMENT RENEWAL PERIODS: July 1, 2019 – June 30, 2020
July 1, 2020 – June 30, 2021

AGREEMENT AMOUNTS: \$264,956.00 for the period of August 10, 2016 – June 30, 2019
\$22,630.00 for the period of July 1, 2019 – June 30, 2020
\$22,630.00 for the period of July 1, 2020 – June 30, 2021

TOTAL AGREEMENT AMOUNT: \$310,216.00 (August 10, 2016 – June 30, 2021)

I. Summary of Services

Election Systems & Software, LLC (ES&S) will provide the following equipment to meet the requirements as outlined in the Fresno County CA 578-5389 Signature Capture and Comparison RFP and vendor's response to the RFP:

1. (1) Mail Ballot Verifier (MBV) 2000 System
 - a. Friction Feeder
 - b. Transport
 - i. Thickness detector
 - ii. Image Camera
 - c. MBV Computer
 - i. Image Capture Software
 - ii. Barcode Scanning Software
 - iii. No Signature Detect Software
 - iv. Sort Scheme Software
 - v. Label Printer
 - d. (6) Wide Divert Bins
 - e. Cover for MBV 2000

- f. Extended Envelope Stacker
2. (1) Mail Ballot Verifier (MBV) 1000 System
 - a. Friction Feeder
 - b. Transport
 - i. Thickness detector
 - ii. Image Camera
 - iii. Integrated Divert Bin
 - c. MBV Computer
 - i. Image Capture Software
 - ii. Barcode Scanning Software
 - iii. No Signature Detect Software
 - iv. Label Printer
 - d. Extended Envelope Stacker
 - e. (1) Mobile Cart for MBV 1000 to hold laser printer and supplies, and organize cables and cords
 - f. Cover for MBV 1000
 3. (1) Centralized MBV Server
 - a. Automated Signature Recognition Software
 - b. Side by Side Comparison Client
 - c. Report Printer

The equipment configurations provided will meet the following stated functional requirements in the Fresno County CA 578-5389 Signature Capture and Comparison RFP:

Includes scanning hardware with the capability to scan Vote by Mail ballot envelopes and perform the following functions:

Scan and capture voter ID barcode
 Scan and capture envelope and signature images
 Log envelope as received
 Endorse (customizable) & date/time stamp envelope
 Separate envelopes that may need manual intervention

Be capable of generating an output file, with voter ID and voter's envelope signature, to be matched with voter registration data in EIMS® and used in the Automated Signature Capture and Comparison process.

Be capable of updating the Vote by Mail ballot envelope output file with status values so that the system can use the output file to update voter registration records. The system will successfully interface with DFM Associates' EIMS®.

Be configurable for various ballot envelope sizes and designs, including multiple signature locations in one pass.

Be configurable for thickness detection.

Have an option for sort/pass with the ability to customize sorting definition (e.g. signature discrepancy and no signature). Note: Please explain the sort options available in your system.
Provide configurable reports for batch id and piece status.
Provide tested/proven Automated Signature Capture and Comparison software, which can automatically compare a voter's ballot envelope signature with the voter registration signature.
Be configurable to meet or exceed a state established acceptance threshold for signature acceptance.
Provide user activity log records that include full description of all human intervention during the Automated Signature Capture and Comparison process.
Provide an audit function to verify the accuracy of machine accepted and rejected signatures.
Identify returned ballot envelopes for manual review when the signature does not meet the acceptance threshold level, is unreadable, or is missing.
Create a record when the signature does not meet the acceptance threshold level.
Provide sufficient report capability for the election officials to ascertain the status of any and all Vote by Mail ballot envelopes in each stage of the Vote by Mail ballot process tracked by the system.
Store sufficient data in an unalterable system audit log file to allow the auditing of all operations.
Use a real time clock that will continue to run during a power loss.
Provide an environment whereby all databases and data are maintained with provisions for operational security, access control and auditability.

ESS further agrees to provide the following levels of service and support:

Include availability of vendor support personnel to assist in scanning hardware and software installation and setup onsite or from a remote help desk.
Include availability of vendor supported onsite training personnel to train County users.
Include availability of self-study user training via internet or other media.

Provide 24-hour available technical support for all system components beginning E-29 and continuing until E+10.
Make equipment parts and supplies available through at least June 30, 2021.
No fee or limitation shall be placed on any electronic file, report or representation of the vote produced by vendor devices or software.
Include documented instructions for troubleshooting.
Include user and technical documentation.

4. General Terms

ES&S is the owner of certain mail ballot verifier equipment and software as set forth herein and County has agreed to purchase and license the mail ballot verifier equipment and related software and services from ES&S for use in Fresno, CA.

Definitions. "Documentation" means the operating instructions, user manuals or training materials for the ES&S Equipment and ES&S Software. "ES&S Equipment" means ES&S' hardware or other ES&S proprietary equipment. "ES&S Software" means ES&S' proprietary mail ballot verifier software and all Updates delivered to County under this Agreement, unless licensed pursuant to a separate written agreement.

Purchase Terms; Use. Subject to the terms and conditions of this Agreement, ES&S agrees to sell, and County agrees to purchase, the ES&S Equipment herein. Title to the Equipment shall pass to County when County has paid ES&S the total amount set forth in Exhibit B for the Initial Agreement Period (August 10, 2016 – June 30, 2017). The warranty, license and phone support shall be provided to County throughout the Initial Agreement Period and Optional Agreement Renewal Periods (August 10, 2016 – June 30, 2021) at costs detailed in Exhibit B.

Grant of Licenses. Subject to the terms and conditions of this Agreement, ES&S hereby grants to County nonexclusive, nontransferable licenses to use the ES&S Software on page 1 of 1 of this Exhibit A and any Documentation for the Mail Ballot Verifiers (MBV 1000 and MBV2000). The licenses allow County to use (but not copy) the ES&S Software and the Documentation in the course of operating the ES&S Equipment and solely for the purposes of managing the vote by mail process in Fresno County. The licenses granted in this section do not permit County to use the source code for the ES&S Software.

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

- a) Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;

- b) Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party, including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for County (including, but not limited to, any ballot printing, coding, programming or ballot layout services) without ES&S's prior written consent; or
- c) Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or
- d) Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which ES&S owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

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

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

certified versions of ES&S Software in accordance with applicable law. County shall pay ES&S for any Update which is required due to a change in local law.

Delivery; Risk of Loss; Insurance. ES&S anticipates shipping the ES&S Equipment and ES&S Software to County in a timely manner according to the Implementation Target Dates identified in this Exhibit A. The Delivery Dates are merely estimates and may be revised by ES&S because of delays in executing this Agreement, changes requested by County, and other events outside of ES&S's control. ES&S will notify County of revisions to the Delivery Dates as soon as ES&S becomes aware of such revisions. Risk of loss for the ES&S Equipment and ES&S Software shall pass to County when such items are delivered to County's designated location. Upon transfer of risk of loss to County, County shall be responsible for obtaining and maintaining sufficient casualty insurance on the ES&S Equipment and ES&S Software. Shipping and installation costs are included in the purchase price.

Installation of ES&S Equipment and ES&S Software. County acknowledges and agrees that the ES&S Equipment and ES&S Software provided by ES&S hereunder shall only be used by the County to perform the services contemplated under this Agreement and not for any other purpose. County will provide, at its own expense, a site adequate in space and design for installation, operation and storage of the ES&S Equipment, ES&S Software and consumable items. County shall be responsible for providing a site that has all necessary electric current outlets, circuits, and wiring for the ES&S Equipment. ES&S may, but shall not be required to, inspect the site and advise on its acceptability before any ES&S Equipment or ES&S Software is installed. ES&S shall have no liability for actual site preparation or for any costs, damages or claims arising out of the installation of any ES&S Equipment or ES&S Software at a site not meeting ES&S' specifications.

Maintenance & Support

a. **ES&S Equipment and ES&S Software.** ES&S agrees that during the Term of the Agreement, ES&S shall maintain the ES&S Equipment and ES&S Software in good working condition in order allow the County to use the ES&S Equipment and ES&S Software in accordance with its Documentation, wear and tear excepted ("Normal Working Condition"). If a defect or malfunction occurs in any ES&S Equipment and/or ES&S Software while it is under normal use and service, County shall promptly notify ES&S, and ES&S shall use reasonable efforts to restore the item to Normal Working Condition as soon as practicable. ES&S shall repair or replace any item of ES&S Equipment and ES&S Software at ES&S' or the County's designated location as determined by ES&S in its sole discretion. If a defect or malfunction occurs in any ES&S Equipment and ES&S Software as a result of (1) repairs, changes, modifications or alterations not authorized or approved by ES&S, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by ES&S or (3) causes beyond the reasonable control of ES&S or County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, rodent infestation, and utility or communication interruptions, County shall pay ES&S for any maintenance services at ES&S' then-current rates, as well as for the cost of all parts used in connection with the performance of such maintenance services.

b. **Technical Support.** In addition to providing those services set forth in this Exhibit A,

ES&S shall provide the County with technical help desk support.

Disclaimer of Warranties. Except as otherwise set forth herein, ES &S expressly disclaims all warranties, whether express or implied, which are not specifically set forth in this agreement, including but not limited to, any implied warranties of merchantability or fitness for a particular purpose.

Limitation of Liability. Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to County arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. Any action by County against ES&S must be commenced within one (1) year after the cause of action has accrued. By entering into this Agreement, County agrees to accept responsibility for (a) the selection of the ES&S Equipment and ES&S Software to achieve County's intended results; (b) the use of the ES&S Equipment and ES&S Software; (c) the results obtained from the use of the ES&S Equipment and ES&S Software; (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the ES&S Equipment or ES&S Software; (e) errors that arise from mechanical or electronic component failures that are not covered under warranty or not subject to maintenance efforts or cure under this Agreement; or (f) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of ES&S to perform its obligations under this Agreement.

Proprietary Rights. County acknowledges and agrees as follows:

- a. ES&S owns the ES&S Software, all Documentation and training materials provided by ES&S, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the ES&S Equipment. County has the right to use the aforementioned items to the extent specified in this Agreement. ES&S also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of ES&S that are protected by law and are of substantial value to ES&S.
- b. County shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the ES&S Equipment or ES&S Software.
- c. County shall keep the ES&S Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the ES&S Equipment, the ES&S Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

Indemnification. To the fullest extent permitted under applicable law, County shall indemnify and hold harmless ES&S from and against any and all claims, damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to the following: Any claim that any of the ES&S Equipment or ES&S Software infringes upon any third party's

copyright, trademark or patent existing as of the date hereof (a "Third Party Infringement Claim") resulting from (i) County's failure to timely or properly install and use any Update provided to it by ES&S; (ii) the use of any ES&S Equipment or ES&S Software in combination with other equipment, hardware or software not meeting ES&S' specifications for use with such ES&S Equipment or ES&S Software; or (iii) County's modification or alteration of any item of ES&S Equipment or ES&S Software without the prior written consent of ES&S; Any claims by Third Parties arising out of or relating to the use or misuse by County, its employees and any other persons under its authority or control ("County's Representatives") of any Third Party Items; and Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of County's Representatives. ES&S shall notify County immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section, and hereby gives County full and complete authority, and shall provide such information and assistance as is necessary (at County's expense with respect to reasonable out-of-pocket costs), to enable County to defend, compromise or settle any such claim.

Taxes; Interest. County shall provide ES&S with proof of its tax-exempt status. If County does not provide such proof, it shall pay, or shall reimburse ES&S for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement; provided, however, County shall in no event be liable for taxes imposed on or measured by ES&S' income. If County disputes the applicability of any tax to be paid pursuant to this Section, it shall pay the tax and may thereafter seek a refund. Any undisputed payment not paid by County to ES&S when due shall be subject to the California Prompt Payment Act.

Excusable Nonperformance. Except for obligations to make payments hereunder, if either party is delayed or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with County, at County's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

Current Vote Remote System. ES&S shall maintain the AVES Scanners currently used by the County as a back-up system during the implementation of the new MBV1000 and MBV2000 models for the November 2016 election. ES&S shall ensure that software integration with EIMS® is operational during the November 2016 election for the current AVES Scanners and the new MBV1000 and MBV2000 models.

Support Services. The support services to be provided by ES&S during the Initial Term, a description of such services and total fees are described in Table 1 - Support and Installation Services. County acknowledges that ES&S's fees for support services are based on the descriptions listed in the table on the following page, and that a change in the descriptions may require ES&S to change the fees charged to County. For purposes of ES&S's provision of Support Services under this Agreement, a "Service Day" shall mean the performance of any

agreed upon Support Services on or off of County's facilities, as applicable, by one (1) ES&S employee, contractor or agent on any one (1) calendar day or four hour portion thereof. By way of example, "ten Service Days" could be used by County through the provision of Support Services by one (1) ES&S employee, contractor or agent on each of ten different calendar days, two (2) ES&S employees, contractors or agents on each of five (5) different calendar days, or ten (10) ES&S employees, contractors or agents on one (1) calendar day.

Table 1 - Support and Installation Services

Support Services Role/Function	Area of Work or Description	Primary Responsibility	Fee
Training	<p>Training will be provided on a pre-scheduled basis. Number and length of training sessions will be mutually agreed upon in advanced. County agrees to provide a facility to hold training sessions. Levels of training include:</p> <p>1st level (operator) training</p> <ul style="list-style-type: none"> - Provides sufficient skills to operate the system, replace consumables, clear jams. <p>2nd level (lead) training</p> <ul style="list-style-type: none"> - Involves more in depth troubleshooting knowledge including aligning feeder, understanding communication issues with VR systems, and production of reports. <p>Technical training to IT or operations staff</p> <ul style="list-style-type: none"> - Involves a complete understanding of system architecture and operations. <p>Refresher training can be provided in advance of each election on a mutually agreeable timeframe at the then current rate per day. The rate for refresher training is currently \$1,575.00 per day (FY 2016-17).</p>	ES&S	Included
Hardware and Software Maintenance	<p>Software Maintenance</p> <ul style="list-style-type: none"> • Technical software support hotline • Installation of any new Updates • Testing and validation of all Updates <p>Hardware Maintenance</p> <ul style="list-style-type: none"> • Technical support and repair of all hardware components • Break/Fix maintenance on the Mail Ballot Verifier system • All labor 	ES&S	On-site support is billed separately on a fee-for-service basis at a rate of \$8,000 per 100 hours. Time is calculated portal to portal.
	Total Support Service Fees		Included

Support Services/ Installation Role/Function	Area of Work or Description	Primary Responsibility
Installation – Mail Ballot Verifier System	ES&S will inspect and install the Mail Verifier Systems at County's designated location to ensure it is operating properly and within specifications. Installation shall be completed in a timely manner.	ES&S
	Total Installation Fees: Included	

Implementation Target Dates

Date	Task	Days	Owner
9-Jun	Site survey- Kick off meeting	1	ES&S/County
30-Jun	Finalize Agreement terms	1	ES&S/County
5-Jul	Begin manufacturing	70	ES&S/County
19-Jul	Receive test EIMS Data file	1	County/DFM
19-Jul	Receive printed test envelopes	1	County
26-Jul	Insert test envelopes	2	ES&S/County
9-Aug	Board reviews and approves Agreement	1	County
The parties acknowledge and agree that the following tasks and implementation target dates are subject to the Board approving the Agreement on August 9, 2016. In the event the Board does not approve the Agreement on August 9, 2016, the following tasks and implementation target dates are subject to change by ES&S which may affect the County's ability to use the system for the November 8, 2016 election.			
15-Aug	Test system using sample material	15	ES&S
19-Aug	Provide export data/images to DFM	1	ES&S
6-Sep	Complete system testing	2	ES&S
7-Sep	System package and crated	1	ES&S
14-Sep	Equipment shipped to County	4	ES&S
19-Sep	Equipment delivered to County	1	ES&S
19-Sep	Equipment assembled	1	ES&S
20-Sep	Hardware/material process testing	2	ES&S
21-Sep	Establish/test network communications	1	ES&S
22-Sep	End to end system testing	2	ES&S
29-Sep	Operator training	1	ES&S/County
30-Sep	Mock election	1	ES&S/County
30-Sep	Ready for live operations	1	ES&S/County
11-Oct	On-site support for UOCAVA	2	ES&S
17-Oct	On-site support for perm mailing	3	ES&S
8-Nov	On-site support - Election Day	2	ES&S

Pricing and Payment Terms

<u>Equipment Costs</u>	
Equipment as Configured (MBV 1000 and MBV 2000)	\$191,796
Installation and training	\$9,900
Subtotal	\$201,696
Discount	(\$5,000)
Total Equipment Cost	\$196,696
<u>Annual Support Costs</u>	
<u>Year 1 (August 10, 2016 through June 30, 2017)</u>	
Parts Warranty	\$0
Software Warranty/ License	\$0
Phone Support	\$0
Onsite support (100 hour block of time, fee for service)/Additional Services*	\$8,000
Automatic Signature Recognition (ASR) Overage Fee (fee for service). Includes an additional 150,000 ballots at \$.10 per ballot**	\$15,000
	\$23,000
<u>Year 2 (July 1, 2017 through June 30, 2018)</u>	
Parts Warranty	\$6,250
Software Warranty/ License	\$16,380
Phone Support	\$0
Annual cost post warranty	\$22,630
<u>Year 3 (July 1, 2018 through June 30, 2019)</u>	
Parts Warranty	\$6,250
Software Warranty/ License	\$16,380
Phone Support	\$0
Annual cost post warranty	\$22,630
Total Years 1-3 (August 10, 2016 through June 30, 2019)	\$264,956
<u>Optional Year 4 (July 1, 2019 through June 30, 2020)</u>	
Parts Warranty	\$6,250
Software Warranty/ License	\$16,380
Phone Support	\$0
Annual cost post warranty	\$22,630
<u>Optional Year 5 (July 1, 2020 through June 30, 2021)</u>	
Parts Warranty	\$6,250
Software Warranty/ License	\$16,380
Phone Support	\$0
Annual cost post warranty	\$22,630
Total Years 1-5 (August 10, 2016 – June 30, 2021)	\$310,216

The costs include the following:

1. One (1) MBV 1000 Transport with Feeder, Image Camera, Printer, Divert and Output Conveyor
2. One (1) MBV 2000 Transport with Feeder, Image Camera, Printer, 2 Divert and Output Conveyor
3. One (1) Mobile Cart for MBV 1000 to hold laser printer and supplies, and organize cables and cords
4. Covers for MBV 1000 and MBV 2000
5. Four (4) additional MBV 2000 Sort bins
6. Two (2) thickness detectors
7. One (1) MBV Network Computer (required for multiple machines or side by side comparison module)
8. Printer and Software training
9. Installation and Acceptance Testing
10. Software License and Support
11. No Signature detection
12. MBV Image Capture Software
13. MBV Side-Side Comparison Module
14. Automated Signature Recognition Module
15. VR System Integration
16. Shipping and Handling
17. Post warranty maintenance and support
18. Post warranty Parts Coverage
19. Usage of the equipment for up to 200,000 unique voter envelopes per year. There is a cost of \$.10 per piece for each unique voter envelope processed in excess of this amount.

The costs also include 100 hours of on-site service support time, to be used solely at the discretion of the county at any time during years 1-5. Hours will be billed on a fee-for-service basis and County will be credited for any unused hours. Unused hours may also rollover to the following years as needed by County. On-site service support time is calculated portal to portal with a minimum 4 hours per call. Additional service support time can be acquired in increments of 100 hours. County may use the Onsite support/Additional Services account (\$8,000) to purchase supplemental services from ES&S as needed by County (i.e. labor or professional services such as support, training, refresher training, report customization, etc.). Such additional services requested by the County other than service calls shall be billed at ES&S' then current rates for the applicable service requested. Refresher training can be provided in advance of each election on a mutually agreeable timeframe at the then current rate per day (currently \$1,575.00 per day in FY 2016-17).

Payment Schedule

Year 1: \$219,696.00 due within forty-five (45) Calendar Days after delivery of one (1) MBV 1000 Mail Ballot Verifier and one (1) MBV 2000 Mail Ballot Verifier with six (6) outsort bins to County. This amount includes 1st year Software License, parts warranty, 100 hours of on-call support and a fee-for-service account for ASR overage fees. County shall receive a certified hard copy of the title to the equipment within 21 business days of payment for Year 1 in the amount of \$219,696.00.

Year 2: \$22,630 for annual software license and parts warranty is due July 1, 2017

Year 3: \$22,630 for annual software license and parts warranty is due July 1, 2018.

Year 4: \$22,630 for annual software license and parts warranty is due July 1, 2019, if Renewal Option is exercised.

Year 5: \$22,630 for annual software license and parts warranty is due July 1, 2020, if Renewal Option is exercised.

Processing Fees are due within forty-five (45) days of receipt of ES&S invoice. Invoicing shall follow the applicable election. Processing fees include 200,000 ballots processed per each twelve (12) month period during the Initial Agreement Period and any Optional Agreement Renewal Period. In the event the County exceeds 200,000 ballots per fiscal year (July 1st – June 30th) processed during any twelve month period during the Initial Agreement Period and any Optional Agreement Renewal Period, each ballot processed in excess of 200,000 ballots shall be charged to the County at the rate of \$0.10 per ballot and shall be due and payable by the County on a fee-for-service basis. The maximum overage fee shall be \$15,000 per fiscal year.

*Onsite Support/Additional Services (fee for service) – County shall pay \$8,000 for Onsite Support/Additional Services in the Agreement. This amount shall be paid by County in accordance with the payment terms set forth above. Any unused amount will carry over to the following Agreement years (Years 2-5) until the remaining balance is zero or until the completion of the Agreement. The County shall be provided a refund of any unused amount within ten (10) days of the completion of the Agreement. The County shall replenish this account if needed and no later than sixty (60) days of receipt of notice by ES&S. An amendment to the Agreement may be required to replenish this account.

**ASR Overage Fee (fee for service) – County shall pay \$15,000 for ASR overage fees in the Agreement. This amount shall be paid by County in accordance with the payment terms set forth above. Any unused amount will carry over to the following Agreement years (Years 2-5) until the remaining balance is zero or until the completion of the Agreement. The County shall be provided a refund of any unused amount within ten (10) days of the completion of the Agreement. The County shall replenish this account if needed and no later than sixty (60) days of receipt of notice by ES&S. An amendment to the Agreement may be required to replenish this account.

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	