

**THIRD AMENDMENT TO THE AGREEMENT
FOR SOFTWARE LICENSE, SYSTEM UPGRADE, AND SUPPORT SERVICES
RELATED TO THE SAN MATEO COUNTY VOTE TABULATION SYSTEM**

THIS THIRD AMENDMENT AGREEMENT entered this _____ day of _____, 2003, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California (hereinafter "County"), located at 400 County Center, Redwood City, CA 94063, and Election Systems & Software, Inc., (hereinafter "Contractor" or "ES&S"), a Delaware corporation with its principal place of business located at 11208 John Galt Boulevard, Omaha, NE 68137;

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for the County or any Department thereof; and

WHEREAS, the Assessor-County Clerk-Recorder (hereinafter "Client"), including its Elections Division, is a Department of the County, and this Agreement is made on Client's behalf; and

WHEREAS, by agreement dated July 28, 1992, the County entered into an agreement (hereinafter "Original Agreement") with Business Records Corporation ("BRC") to lease computer hardware, to license software, and to provide support services for the Optech III-P Automated Vote Tabulation System for a term of six (6) years through June 30, 1998; and

WHEREAS, on April 22, 1997, the parties entered into the First Amendment to the Original Agreement, which, in part, extended the contract term to June 30, 2000; and

WHEREAS, in November, 1997, BRC sold its Elections Division to American Information Systems, Inc., which in turn formed a new company named Election Systems & Software, Inc., and assigned the responsibility of County's contract to this new company; and

WHEREAS on September 28, 1999, the parties entered into the Second Amendment to the Original Agreement, which, in part, (1) approved the assignment to ES&S, (2) changed the annual payment to an amount not to exceed \$260,844, (3) confirmed the transfer of hardware ownership to County as July 1, 2002, and (4) extended the contract term through December 31, 2003; and

WHEREAS, in order to maintain the continued accuracy and dependability of County's vote tabulation system, the parties desire to enter into a Third Amendment (hereinafter "Agreement") to the Original Agreement in order to (1) maintain equipment owned and used by Client, (2) extend the contract term through December 31, 2009, and (3) amend the contract amount to not more than \$255,528 annually.

NOW, THEREFORE, THE PARTIES HEREBY AGREE TO AMEND THE ORIGINAL AGREEMENT AS FOLLOWS:

1. The parties agree to amend Section 1.3 to read as follows:

The precinct hardware shall work in such a manner that when a ballot is cast in the equipment, the equipment and firmware shall automatically accept the ballot and tabulate the vote as indicated on the cast ballot. The "central count" hardware and software shall work in such a manner that vote totals from the accumulation stations will tally and be the accurate countywide total.

2. The parties agree to amend Section 1.5 to read as follows:

Hardware Maintenance. During the six (6)-year extension period, ES&S will maintain all hardware, including but not limited to, precinct Optech units, voting booths, and central accumulation equipment, in good working order at no additional cost to County. This will include a program of remedial/preventive maintenance as well as repair on an as-needed basis. Replacement parts if required during the extension period are included.

3. The parties agree to amend Section 1.8 to read as follows:

Equipment Storage. The County will store the hardware elements as previously described. All insurance and risk management concerns will be borne by County.

4. The parties agree to amend Section 1.9 to read as follows:

Ballot Quality Assurance. To assure that commercially printed Optech election ballots are in conformance with the specifications and tolerances required by the Optech Voting System, ES&S will work closely with any State-certified printer selected by County. This quality assurance is not limited to, but shall include, printer certification by ES&S prior to production runs and on-site check-up visits with County personnel if needed.

5. The parties agree to amend Section 1.10.5 to read as follows:

In concert with the continued use of the Optech Voting System, user training will be provided by ES&S in the form of refresher training on any or all facets of the Optech Voting System and the Unity Election System and its various elements. ES&S will charge \$500 per day for refresher training to be conducted at County's designated facility for up to ten (10) people. Training dates will be mutually agreed upon by ES&S and Client's Elections Manager.

6. The parties agree to amend Section 1.10.6 to read as follows:

Project Personnel.

In accordance with the Original Agreement, ES&S will take all reasonable steps to maintain all existing project team members in place during the duration of this Agreement. The

project team includes and is not limited to Steve Wang, Stephen Dennison, Jose Munguia, and Sonny Do on a non-exclusive basis. ES&S will make good faith efforts to ensure project continuity with regards to staffing and training throughout the term of this Agreement. In the event of a change in a project team member is required, ES&S shall designate and provide County with a replacement of substantially equivalent skills and experience as soon as reasonably practicable.

7. The parties agree to amend Section 3 to read as follows:

COSTS.

In consideration for software licensing and all support and maintenance services to be provided by ES&S during the term of this Agreement, County shall pay to ES&S an annual fee, subject to the following terms:

1. The amount of the annual fee shall be \$255,528, and total fees shall not exceed \$1,533,168 for the full contract term;
2. The annual fee amount shall remain the same throughout the six-year term;
3. The annual fee amount includes all applicable taxes;
4. The annual fee amount shall not be subject to further inflation or deflation adjustment during the term as extended;
5. ES&S shall submit an invoice to Client not later than July 1 of each year, beginning July 1, 2004, and said invoice shall be payable in full within thirty days thereafter;
6. County shall be and remain solely responsible for the acquisition, licensure, support, and/or costs of any third party hardware or software.

8. The parties agree to amend Section 4.1 to read as follows:

The term of this Agreement shall continue through December 31, 2009, unless terminated prior to the expiration date as provided in Section 8 of the Agreement. Each party hereto, as an accommodation to the other (and without any liability to the other as a result of the failure to do so), agrees to advise the other party not later than sixty (60) days prior to the expiration date of its intentions concerning renegotiation of the subject matter covered by this Agreement.

9. The parties agree to amend Section 4.2 to read as follows:

County currently holds title to the Optech Voting System hardware. ES&S shall retain ownership to all software licensed under the Agreement.

10. The parties agree to amend Section 4.5 to read as follows:

This agreement will include services for two countywide elections per year in even-numbered years and one election in odd-numbered years. Any special countywide, runoff or recall elections will be billed separately to County, at ES&S' then-current published costs.

11. The parties agree to delete Section 8.1(E).

12. The parties agree to amend Section 9.2 to read as follows:

Indemnification.

ES&S shall indemnify, defend and hold harmless County from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses and liabilities of, by, or with respect to third parties, which arise solely from ES&S' negligent performance of services under this Agreement. ES&S shall not be responsible for, and County shall indemnify, defend and hold harmless ES&S from and against, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses and liabilities of, by, or with respect to third parties, which arise solely from County's negligence. With respect to any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including reasonable attorney's fees) and liabilities of, by, or with respect to third parties, which arise from the joint or concurrent negligence of ES&S and County, each party shall assume responsibility in proportion to the degree of its respective fault. 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. 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.

The duty of Contractor to indemnify and save harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

13. The parties agree to amend Section 10.2 to read as follows:

Protection of System

ES&S shall, during the term of this Agreement, take all reasonable steps which may be necessary or advisable to protect from damage, destruction or other loss, any system hardware, or component thereof, or system software which is in the possession, custody or control of ES&S for any purpose.

ES&S shall work closely with Client to review, examine and implement procedures to ensure the integrity of the vote tabulation and reporting process. Before each election, ES&S shall provide a written version control document for all system software and firmware. ES&S shall cooperate fully with any system audit or security review conducted by County, the State of California, or any third party engaged at County's request.

Liquidated Damages

It is impractical and extremely difficult to fix the actual damages to Client which would result from the failure on the part of ES&S to perform its obligations to use only system components which are properly certified by the California Secretary of State. In the event that any audit finds that ES&S has used system components not properly certified by the California Secretary of State, ES&S agrees to pay the amount of \$250,000 to the Client as liquidated damages. The parties agree, and by execution of this Agreement, ES&S understands and agrees, that the amount set forth herein as

liquidated damages shall be presumed to be the amount of damages sustained by the Client because of the failure of ES&S to use only system components which are properly certified by the California Secretary of State.

Conversely, given the age of the voting tabulation equipment currently in place and the advancement of voting technology, County will indemnify and relieve ES&S from any obligation to comply with any new, legislatively mandated certification requirements of said equipment and firmware if they arise during the term of this Agreement.

To support the efficient operation of the Optech Voting System, ES&S shall continue to upgrade, improve and provide County with the latest software and firmware versions, released on a schedule defined by ES&S. All upgrades, improvements, or other system modifications shall be certified under concurrently existing compliance regimes issued by the State of California and the National Association of State Election Directors (NASSED).

In the event that new, legislatively mandated certification compliance requirements emerge, ES&S is not required to upgrade the existing hardware and firmware, but will offer the sale or rental of alternative OMR (optical scan/optical mark reader) and DRE (direct recording electronic) solutions to County for consideration.

14. The parties agree to amend Section 10.2.3 to read as follows:

Non-Discrimination.

- A. Discrimination by reason of disability. Section 504 applies only to Contractor who are providing services to members of the public. Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. General non-discrimination. No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. Equal employment opportunity. Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. Violation of non-discrimination provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - (i) termination of this Agreement;
 - (ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;

- (iii) liquidated damages of \$2,500 per violation;
- (iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

15. The parties agree to amend Section 12.3(b) to read as follows:

Notices.

- (b) If to Election Systems & Software, Inc.
Eric A. Anderson, Esq.
General Counsel
11208 John Galt Boulevard
Omaha, Nebraska 68137

16. The parties agree that all other terms and conditions of the Original Agreement and any past amendments are unchanged and remain in full force and effect. The parties further agree that in the event of any conflict between the terms of this Third Amendment and the original agreement and any past amendments, the terms of this Third Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto, by their duly Authorized representatives, have affixed their hands.

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THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL EXECUTED
BY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

ELECTION SYSTEMS & SOFTWARE, INC. COUNTY OF SAN MATEO

By: _____
Tom O'Brien
Chief Financial Officer

By: _____
Mark Church, President
Board of Supervisors

Date: _____

Date: _____

PRODUCER AON Risk Services, Inc. of Nebraska Insurance Services CA License #0871006 11213 Davenport Suite 201 Omaha NE 68154 USA (402) 697-1400 FAX (402) 697-0017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED Election Systems & Software, Inc. Attn: Tom Harmon 11208 John Galt Blvd Omaha NE 68137 USA

INSURER A: Hartford Fire Insurance Co. INSURER B: INSURER C: INSURER D: INSURER E:

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFFECTIVE DATE, POLICY EXPIRATION DATE, LIMITS. Includes sections for General Liability, Automobile Liability, Garage Liability, Excess Liability, and Workers Compensation.

INSURED'S COPY Original sent directly to Certificate Holder.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS Certificate holder its officers, agents, employees and servants shall be named as additional insureds, as their interest may appear.

San Mateo County Attn: Warren Stocum 40 Tower Road San Mateo CA 94402 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE [Signature]

Holder Identifier: 570008610970 Certificate No.

Attachment to ACORD Certificate for Election Systems & Software, Inc.

The terms, conditions and provisions noted below are hereby attached to the captioned certificate as additional description of the coverage afforded by the insurer(s). This attachment does not contain all terms, conditions, coverages or exclusions contained in the policy.

INSURED

Election Systems & Software, Inc.
 Attn: Tom Harmon
 11208 John Galt Blvd
 Omaha NE 68137 USA

INSURER
INSURER
INSURER
INSURER
INSURER

ADDITIONAL POLICIES

If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER POLICY DESCRIPTION	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS
	AUTOMOBILE LIABILITY				
	<input checked="" type="checkbox"/> \$1000 coll				
	<input checked="" type="checkbox"/> \$1000 Comp				
	WORKERS COMPENSATION				
A		91WBGN2275	10/01/03	10/01/04	Stop Gap each person \$500,000
					Stop Gap each occur \$500,000
					Stop Gap aggregate \$500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: ELECTION SYSTEMS + Software, Inc.
Contact Person: Beverly J. Cavanaugh
Address: 11208 John Galt Blvd.
Omaha, Ne. 68137
Phone Number: 402-537-1117 Fax Number: 402-970-1277

II Employees

Does the Contractor have any employees? Yes ___ No
Does the Contractor provide benefits to spouses of employees? Yes ___ No

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
 Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
 No, the Contractor does not comply.
 The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 27th day of January, 2014 at Omaha Ne.
(City) (State)

Beverly J. Cavanaugh
Signature

Beverly J. Cavanaugh
Name (Please Print)

HR, Director
Title

47-0617567
Contractor Tax Identification Number

**THIRD AMENDMENT TO THE AGREEMENT
FOR SOFTWARE LICENSE, COMPUTER HARDWARE, AND SUPPORT SERVICES
FOR THE MEGA PROFILE™ VOTER REGISTRATION-ELECTION
MANAGEMENT SYSTEM**

THIS THIRD AMENDMENT AGREEMENT, entered this _____ day of _____, 2004, by and between the COUNTY OF SAN MATEO (hereinafter "County"), a political subdivision of the State of California, and Election Systems & Software, Inc. (hereinafter "Contractor" or "ES&S"), a Delaware corporation with its principal place of business located at 11208 John Galt Boulevard, Omaha, NE 68137;

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

WHEREAS, the Assessor-County Clerk-Recorder (hereinafter "Client") is a Department of the County, and is the intended recipient of Contractor's performance under this Agreement; and

WHEREAS, by agreement dated March 29, 1994 (hereinafter "Original Agreement"), County entered into a contract with Business Records Corporation (hereinafter "BRC") to provide software license, computer hardware and support services for a new voter registration and signature imaging retrieval system for a term of six (6) years through June 30, 2000; and

WHEREAS, on April 22, 1997, County and BRC agreed to the first amendment to the Original Agreement, which, in part, extended the contract term to June 30, 2002; and

WHEREAS, in November, 1997, BRC sold its Elections Division to American Information Systems, Inc., which, in turn, formed a new company named Election Systems & Software, Inc., and assigned the responsibility of County's contract to this new company; and

WHEREAS on September 28, 1999, the parties agreed to the second amendment to the Original Agreement, which, in part, (1) approved the assignment to ES&S, (2) amended the contract amount from \$84,000 to \$90,000, and (3) extended the contract term through December 31, 2003; and

WHEREAS, in order to maintain optimum accuracy, dependability, and efficiency in County's voter registration-election management system the parties desire to enter into a third amendment (hereinafter "Agreement" or "this Agreement") to the Original Agreement that will (1) upgrade certain software modules and functionalities, (2) provide for a migration plan to coordinate file conversion, implementation, and user training, (3) provide for on-site service and support for the upgraded system, (4) adjust the annual fee, and (5) extend the contract term through December 31, 2009;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES TO AMEND THE ORIGINAL AGREEMENT AS FOLLOWS:

1. **The parties agree to amend Section 2 in its entirety, to read as follows:**

Cost. In consideration for software licensing, upgrade hardware, and all support and maintenance services to be provided by ES&S, County shall pay an annual fee, as provided in Exhibit B hereto.

2. **The parties agree to amend Section 4 in its entirety, to read as follows:**

Hold Harmless.

ES&S shall indemnify, defend and hold harmless County from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses and liabilities of, by, or with respect to third parties, which arise solely from ES&S' negligent performance of services under this Agreement. ES&S shall not be responsible for, and County shall indemnify, defend and hold harmless ES&S from and against, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses and liabilities of, by, or with respect to third parties, which arise solely from County's negligence. With respect to any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including reasonable attorney's fees) and liabilities of, by, or with respect to third parties, which arise from the joint or concurrent negligence of ES&S and County, each party shall assume responsibility in proportion to the degree of its respective fault. 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. 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.

The duty of Contractor to indemnify and save harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

3. **The parties agree to amend Section 11(A)(2) to read as follows:**

Interpretation and Enforcement.

2. In the case of Contractor, to:

Election Systems & Software, Inc.
Attn.: General Counsel
11208 John Galt Boulevard
Omaha, Nebraska 68137

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4. The parties agree to amend Section 13 to read as follows:

This Agreement may be terminated by either party at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, reports, and materials (hereinafter "materials") prepared by ES&S under this Agreement shall become the property of County and shall be promptly delivered to Client. Upon termination, ES&S may make and retain a copy of such materials. Subject to availability of funding, ES&S shall be entitled to receive payment for work and services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work and services completed to those required by the Agreement.

5. The parties agree to amend Section 14 in its entirety, to read as follows:

Term of the Agreement. The term of the Agreement shall continue through December 31, 2009, unless terminated prior to the expiration date as provided in Section 13 herein. Each party hereto, as an accommodation to the other (and without any liability to the other as a result of the failure to do so), agrees to advise the other party not later than sixty (60) days prior to the expiration date of its intentions concerning renegotiation of the subject matter covered by this Agreement.

6. The parties agree to amend Exhibit "A" to as follows:

A. The following paragraph is added at the end of Section 1.0 of Exhibit A:

ES&S reserves the right, as technology advances, to replace or upgrade any or all equipment with newer, more productive models, should the parties deem it in their mutual interest.

B. The following paragraphs are added at the end of Section 2.0 of Exhibit A:

ES&S shall provide County with an upgrade of the current San Mateo MEGA Profile Platform to ES&S' National MEGA Profile Platform ("NMPP"). ES&S shall provide County with specified functional enhancements ("NMPP Enhancements") as mutually agreed and set forth in Exhibit A-1, attached hereto and incorporated herein by reference.

Software License Extension. All voter registration software used by County remains the proprietary property of ES&S as established in the Original Agreement. Included in the above price and term, ES&S will continue licensing the Voter Registration Software and Documentation to County in accordance with the terms of the Original Agreement. County acknowledges that, after December 31, 2009 or upon termination of this Agreement, it must enter into an annual standard Software License Agreement (SLA) in order to continue to use the ES&S proprietary Voter Registration Software and Documentation. The annual cost of the annual SLA shall be agreed upon by the parties prior to expiration of the Agreement as extended hereunder.

C. The following Section 6.0 is added to Exhibit "A":

Migration Plan. ES&S shall provide the NMPP Enhancements to the County in accordance with the Migration Plan jointly developed and agreed upon by Client and ES&S and attached hereto in final form as Exhibit "A-2," attached hereto and incorporated herein by reference. The Migration Plan shall provide for timing and coordination between Client and ES&S for all file conversion work, installation of all NMPP Enhancements, and training to be provided in connection therewith.

D. The following Section 7.0 is added to Exhibit "A":

Service Plan. ES&S shall provide on-site support services for service and support of the NMPP Voter Registration System hardware and software during the term of the Agreement as extended hereunder. ES&S will initially relocate and assign Steve Dennison to Client's office in San Mateo on a non-exclusive basis to provide and perform such services and support. Mr. Dennison will also be cross-trained to provide services and support under ES&S' current agreement for a vote tabulation system with County. Mr. Dennison will not be solely dedicated, nor assigned exclusively, to County to provide services and support under the Agreement and shall be and remain available for use and assignment by ES&S to other voter registration clients of ES&S, as long as such other use and assignment does not directly conflict or interfere with ES&S' satisfactory provision of services and support hereunder. Notwithstanding the foregoing provisions, it is the parties' intention that Mr. Dennison shall serve Client exclusively approximately sixty (60) percent of his time, and shall be available to other ES&S customers not more than approximately forty (40) percent of his time.

In the event that Mr. Dennison leaves ES&S' employment for any reason during the term of the Agreement as extended hereunder, ES&S shall designate and provide County with a replacement on-site support services representative with substantially equivalent skills and experience as soon as reasonably practicable. Client shall provide ES&S with an adequate work area within its physical facilities, equipped with sufficient electrical power, telephone equipment and telephone communications capability.

E. Exhibit "A-1" is added to Exhibit "A":

Exhibit "A" is hereby supplemented by the addition of Exhibit "A-1," attached hereto and incorporated herein by this reference, consisting of a table of "NMPP Enhancements" to be implemented.

F. Exhibit "A-2" is added to Exhibit "A":

Exhibit "A" is hereby supplemented by the addition of Exhibit "A-2," attached hereto and incorporated herein by this reference, consisting of a "Migration Plan" detailing the implementation project plan for the system upgrade.

7. The parties agree to amend Exhibit "B" in its entirety, to read as follows:

In consideration for software licensing, upgrade hardware, and all support and maintenance

services to be provided by ES&S during the term of this Agreement, County shall pay to ES&S an annual fee, subject to the following terms:

1. The amount of the annual fee shall be \$131,800, and total fees shall not exceed \$790,800 for the full contract term;
2. The annual fee amount shall remain the same throughout the six-year term;
3. The annual fee amount includes all applicable taxes;
4. The annual fee amount shall not be subject to further inflation or deflation adjustment during the term as extended;
5. ES&S shall submit an invoice to Client not later than July 1 of each year, beginning July 1, 2004, and said invoice shall be payable in full within thirty days thereafter;
6. County shall be and remain solely responsible for the acquisition, licensure, support, and/or costs of any third party hardware or software.

8. The parties agree to delete Exhibit "C" in its entirety.

9. The parties agree to amend Exhibit "E" as follows:

Exhibit "E" is hereby supplemented by the addition of Exhibit "E-1," attached hereto and incorporated herein by this reference, consisting of a two-page, high level description of the key features of the NMPP upgrade to be implemented under this Agreement.

10. The parties agree to amend Exhibit "F" in its entirety, to read as follows:

Non-Discrimination.

- A. Discrimination by reason of disability. Section 504 applies only to Contractor who are providing services to members of the public. Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. General non-discrimination. No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. Equal employment opportunity. Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. Violation of non-discrimination provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to

- (i) termination of this Agreement;
- (ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
- (iii) liquidated damages of \$2,500 per violation;
- (iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

11. The parties agree that all other terms and conditions of the Original Agreement and of any past amendments are unchanged and remain in full force and effect. The parties further agree that in the event of any conflict between the terms of this Third Amendment and the original agreement and any past amendments, the terms of this Third Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL EXECUTED
BY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

ELECTION SYSTEMS & SOFTWARE, INC.

COUNTY OF SAN MATEO

By: _____
Tom O'Brien, Chief Financial Officer

By: _____
Mark Church, President
Board of Supervisors

Date: _____

Date: _____

**EXHIBIT A-1:
NMPP ENHANCEMENTS**

ID	Unit Area	Description
P4	Voter module	Data Entry – Modify Data Entry Screen to match CA Registration Form Exactly.
P7	Voter module	Data Entry – Put citycode before zipcode and use it to auto-populate the necessary information.
P8	Voter module	Data Entry – Set a default area code when Phone is set to 10 digits. Permit overwrite of this field if different area code is necessary.
P10	Voter module	NVRA – Add search ability on the NVRA Sources screen to enable the user to search for entered sources. This will streamline the process of entering Affidavit tracking information for existing sources.
P14	Absentee	System Speed on Save – Decrease 2-second delay between clicking “Save” and a return to the main Request Screen, when saving the Absentee record.
P15	Petition	Unregistered Signers – When checking a petition, add a screen that permits user to enter an unregistered voter’s name and address; write this information to a table and then create a process from which mailing labels can be generated.
S4	Polling Place	a. Capture record of polling places used in past elections (relevant only if 4(a) above is implemented). b. Provide toggle for “Do we have a key?” c. Eagle Delivery Routing Report: Shows Polling Place delivery times, address, phone, etc, and “Do we have a key?”
S7	Precincts	Mail Ballot Precinct toggle
S9	AB	AV labels need to be re-formatted to add a label that shows a summary of total labels by ballot style when printing labels
S13	Petitions	In the Petitions Module, user should be able to make adjustment on the petition module itself, without using time-consuming SQL programming scripts. Examples: a) Adjustments to Page and Line items need to be able to be brought up by accessing the petition table itself. b) Adding or subtracting changes where users have made errors. c) Adjusting tally should be automatic if petition can be accessed individually; for example, user should be able to access petition, page and line number, input the voter’s information and make the adjustments there, in the petition module.
S14	Petitions	Provide a choice prompt when trying to locate a voter and the signature is not yet indexed or attached to the voter file. (Example: “Do you want to accept – yes, no, or cancel options). This is one of the functions that produces many of the SQL script changes, usually taking one to two days to process and is very time consuming, especially when there is more than one petition to process.

S15	Petitions	Provide link to and population of MS Word mailing labels for all signers challenged on Petition Module as "NR" (not registered), to allow mailing of voter registration card (VRC). Permits outreach to individuals who claim to be registered but are not; avoids manual typing.
S16	Petitions	Should be able to choose to duplex printing option for reports generated from the petition module. Note: Client might be able to provide solution.
1.4	Voter	User-defined macros for keystrokes. Time-savers.
2.1	Rpt/Note	Generation of missing information letters (a.k.a. "Pend" status letters – missing DOB, POB, CDL or ID#, Last 4 digits of SSN, address, signature, etc.)
2.3	Rpt/Note	Ability to update forms with ease
3.2	NVRA	Import and processes NCOA data (electronically) into various categories: In-County and Out-of-County moves, Not Registered.
3.3	NVRA	Export NR file for Secretary of State or in-house VRC mailing
3.4	NVRA	Tracking of VRC distribution, by Affidavit # & Organizations
6.7	PW	Supply routing or office pickup
7.2	Polling Place	Link with voter adds – wants to be a poll worker
7.9	Polling Place	Payroll – toggle for public (no pay) facility
9.1	HAVA	Last 4 SSN digits input
9.2	HAVA	Pending Notices for missing info
9.3	HAVA	Flag for first-time voters in California. ability to Flag voters on Rosters & AV labels
12.1	AB	Barcode scanning for signature verification process
12.2	AB	Mail Ballot Component – integration with official ballot layout.
12.4	AB	Tracks AV ballot issues and re-issues: Suspend feature for better tracking
12.5	AB	Provisional ballot signature check and automatic voting history upon acceptance to eliminate processes

EXHIBIT A-2: MIGRATION PLAN

San Mateo County, CA Mega Upgrade Project Plan
Actual dates, durations, and tasks will be finalized upon contract execution & final scope agreement.

ID	Task Name	Duration	Start	Finish
1	San Mateo County, CA - Deployment of National MegaProfile Platform (HMPP)	178.5 d	1/5/04	5/30/04
2	Phase 1 - Base product HMPP	177 d	1/5/04	5/7/04
3	Project-Start pending contract execution	0 d	1/5/04	1/5/04
4	Project kick-off	2 d	1/5/04	1/6/04
5	Review & revise project plan as needed	1 d	1/7/04	1/7/04
6	Complete base HMPP development & QA activities	92 d	1/6/04	3/30/04
7	San Mateo Presidential Primary	0 d	3/20/04	3/20/04
8	Data Migration	12 d	3/31/04	4/11/04
9	Extract data out from existing CA 32 bit code	2 d	3/31/04	4/1/04
10	Perform data migration - CA 32 bit to HMPP	10 d	4/2/04	4/16/04
11	Developer based National Mega Profile Platform	0 d	4/1/04	4/1/04
12	Install HMPP & test	2 d	4/1/04	4/2/04
13	Base HMPP training	5 d	4/30/04	4/30/04
14	San Mateo production ready - HMPP base code	0 d	4/30/04	4/30/04
15	Project Status Reviews	178.5 d	1/5/04	5/7/04
32	Phase 2 - San Mateo enhanced HMPP	88.5 d	4/12/04	8/26/04
63	Custom feature Enhancement Analysis / Scope Initialization - Phase 1	17 d	4/12/04	5/6/04
54	Solidify Requirements & defining	5 d	4/12/04	4/16/04
55	Design Specifications	10 d	4/12/04	4/23/04
56	Customer Review and Sign-Off	5 d	4/26/04	4/30/04
57	Algorithm specs reviewed & approved	0 d	4/30/04	4/30/04
58	Review project plan & modify as required	2 d	4/30/04	5/4/04
59	System Development & Quality Assurance	73.5 d	6/2/04	8/16/04
60	Development of Necessary Medications	70 d	6/2/04	8/10/04
61	Pattern Regression Testing on Software	10.5 d	8/2/04	8/16/04
62	Software Deployment	6 d	8/16/04	8/26/04
63	Install Enhanced HMPP application	1 d	8/16/04	8/17/04
64	Verify System Set-Up, Configuration, & Test	3 d	8/17/04	8/20/04
65	Training - Enhanced HMPP application	3 d	8/23/04	8/26/04
66	County Ave on Enhanced HMPP	0 d	8/26/04	8/26/04
67	Post Implementation Testing	10 d	8/26/04	9/3/04
68	Post Implementation Acceptance Testing	10 d	8/26/04	9/3/04
69	HMPP acceptance (per exhibit A) signed	0 d	9/3/04	9/3/04

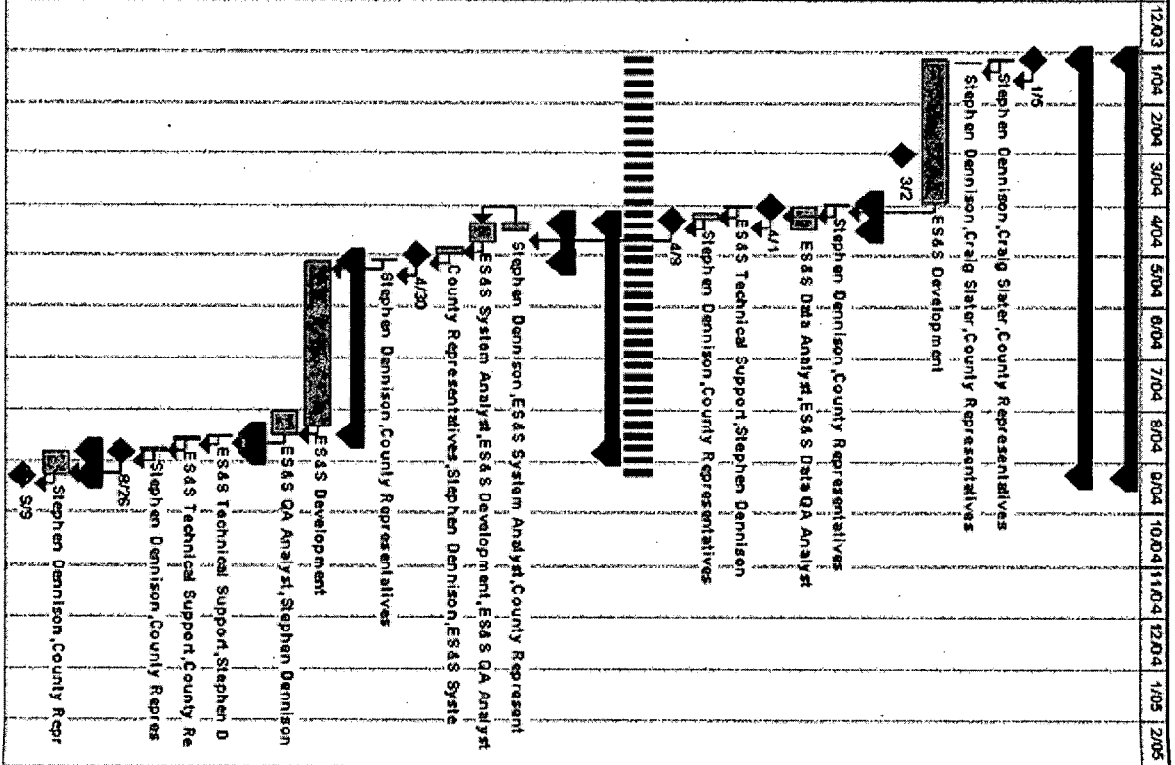


Exhibit B - San Mateo CA
 Page 1 of 1

Summary
 TASK

Progress
 Requiring Task

Milestone

EXHIBIT E-1: HIGH-LEVEL DESCRIPTION OF SYSTEM UPGRADE

(2 pages)



Better Elections Every Day

MEGA Profile™

VOTER REGISTRATION ELECTION MANAGEMENT SYSTEM

MegaProfile® is a robust Windows®-based voter registration and election management system designed by Election Systems & Software, Inc. (ES&S) to put today's technology to its best advantage...working for you.

Created specifically for medium to large jurisdictions, MegaProfile consists of fully-integrated modules that enable jurisdictions to support each major election process function to include voter registration, candidate filing and qualification, and petition validation. Absentee and early voting, voter history maintenance, election worker and polling place management, and results reporting are also securely supported.

Additional MegaProfile functionality includes document imaging, street address validation, form letter template creation, election statistics and history retention, and system security.

Service and Support

MegaProfile is supported by over sixty ES&S election management professionals dedicated specifically to voter registration.

- Comprehensive training program and tools
- Software enhancements and upgrades
- System and procedure documentation - including complete User Guide information with each software upgrade
- Dedicated 24/7 customer support
- User Group meeting facilitation and coordination

Features and Benefits

MegaProfile is a user-friendly solution that is Feature-rich, Flexible, and Fast.

- Windows application in both a client-server and web-enabled environment
- Integrates with ES&S tabulation products - DRE, OMR, and Punch Card
- Easily understood toolbars and pull-down menus for quick navigation
- Election set-up wizard for easy creation of election templates
- State customization
- Attaches any scanned documents to a registrant record, including a signature or driver's license
- Registrant entry, signature clipping and registration card storage in one step
- Manages your registrant list in compliance with NVRA
- NCOA and Secretary of State interface
- Internet-enabled - facilitates early voting, polling place management, and reporting

GIS Interface

The optional Geographic Information System (GIS) interface allows for a bi-directional data exchange between GIS maps and MegaProfile voter registration data enabling the seamless updating of registrant, street file, and jurisdiction information.

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11200 John Galt Blvd. • Omaha, NE 68137 USA
Phone: 402.593.0101 • Toll Free U.S.: 1.800.247.8683
Fax: 402.593.8107 • www.esvote.com

MEGA Profile

Networking Environment

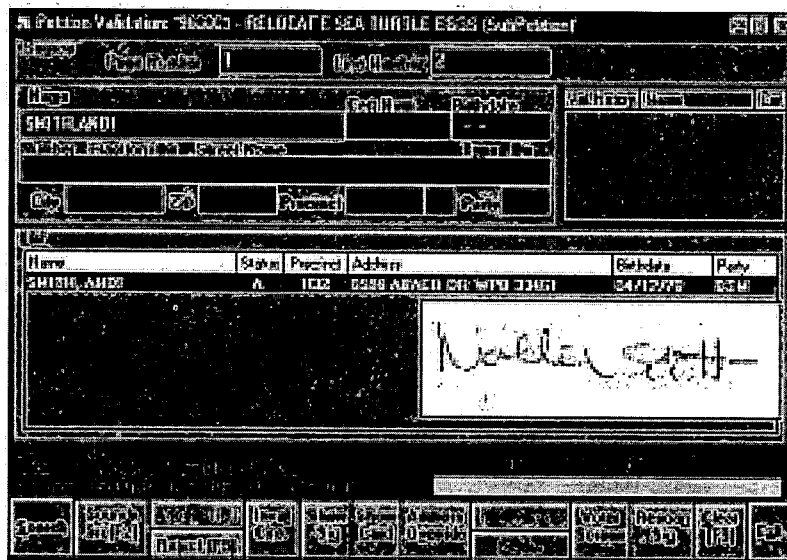
The EES&S MegaProfile® Voter Registration Election Management application is designed to operate in a client-server environment over both a TCP/IP-based Local Area Network (LAN) and Wide Area Network (WAN) to communicate with imaging, print, storage, and database servers.

Employing a Microsoft® Windows-based network using Windows 2000 Server and Windows 98 / 2000 clients creates both a stable and fault-tolerant network.

Operating System

The MegaProfile system operates on an NT or 2000 Network. It is a scalable system that can handle at least 200 concurrent users dependent upon the size of the server.

Oracle®—the relational database utilized with the MegaProfile system—is capable of handling a large number of multiple users without impacting the process efficiency of the application.



This is a sample of the MegaProfile Partition Validation screen which includes a digital signature image.

©1999 EES&S

PRODUCER
Aon Risk Services, Inc. of Nebraska
Insurance Services CA License #0B71006
11213 Davenport
Suite 201
Omaha NE 68154 USA

(402) 697-1400 FAX (402) 697-0017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Election Systems & Software, Inc.
ATTN: Tom Harmon
11208 John Galt Blvd
Omaha NE 68137 USA

INSURER A: Hartford Fire Insurance Co.
INSURER B:
INSURER C:
INSURER D:
INSURER E:

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YY)	POLICY EXPIRATION DATE(MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	91UUNGW5292	10/01/03	10/01/04	EACH OCCURRENCE	\$1,000,000
				FIRE DAMAGE(Any one fire)	\$300,000	
				MED EXP (Any one person)	\$10,000	
				PERSONAL & ADV INJURY	\$1,000,000	
				GENERAL AGGREGATE	\$2,000,000	
				PRODUCTS - COMP/OP AGG	\$2,000,000	
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON OWNED AUTOS <input checked="" type="checkbox"/> \$1,000 Comp. Ded. <input checked="" type="checkbox"/> \$1,000 Coll. Ded.	91UUNGW5292	10/01/03	10/01/04	COMBINED SINGLE LIMIT (Per accident)	\$1,000,000
				BODILY INJURY (Per person)		
				BODILY INJURY (Per accident)		
				PROPERTY DAMAGE (Per accident)		
	GARAGE LIABILITY			AUTO ONLY - EA ACCIDENT		
	<input type="checkbox"/> ANY AUTO			OTHER THAN AUTO ONLY: EA ACC		
				AGG		
	EXCESS LIABILITY			EACH OCCURRENCE		
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE			AGGREGATE		
	<input type="checkbox"/> DEDUCTIBLE					
	<input type="checkbox"/> RETENTION					
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	91WBGN2275	10/01/03	10/01/04	WC STATUTORY LIMITS	OTH-ER
				E.L. EACH ACCIDENT	\$500,000	
				E.L. DISEASE-POLICY LIMIT	\$500,000	
				E.L. DISEASE-EA EMPLOYEE	\$500,000	
	OTHER					

INSURED'S COPY
Original sent directly
to Certificate Holder.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Certificate holder its officers, agents, employees and servants shall be named as additional insureds, as their interest may appear.

San Mateo County
Attn: Warren Slocum
40 Tower Road
San Mateo CA 94402 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE *Tom Harmon*

Certificate No. 570008810970 Holder Identifier :

Attachment to ACORD Certificate for Election Systems & Software, Inc.

The terms, conditions and provisions noted below are hereby attached to the captioned certificate as additional description of the coverage afforded by the insurer(s). This attachment does not contain all terms, conditions, coverages or exclusions contained in the policy.

INSURED

Election Systems & Software, Inc.
 Attn: Tom Harmon
 11208 John Galt Blvd
 Omaha NE 68137 USA

INSURER
INSURER
INSURER
INSURER
INSURER

ADDITIONAL POLICIES

If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER POLICY DESCRIPTION	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
	AUTOMOBILE LIABILITY					
	<input checked="" type="checkbox"/> \$1000 Coll					
	<input checked="" type="checkbox"/> \$1000 Comp					
	WORKERS COMPENSATION					
A		91WBGN2275	10/01/03	10/01/04	Stop Gap each person	\$500,000
					Stop Gap each occur	\$500,000
					Stop Gap aggregate	\$500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: ELECTION SYSTEMS + SOFTWARE, Inc.
Contact Person: Beverly J. Carranough
Address: 11208 John Galt Blvd.
Amador, Ne. 68737
Phone Number: 402-537-1117 Fax Number: 402-970-1277

II Employees

Does the Contractor have any employees? X Yes ___ No
Does the Contractor provide benefits to spouses of employees? X Yes ___ No

III Equal Benefits Compliance (Check one)

- X Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
No, the Contractor does not comply.
The Contractor is under a collective bargaining agreement which began on ___ (date) and expires on ___ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 27th day of January, 2004 at Amador, Ne. (City) (State)

Beverly J. Carranough
Signature

Beverly J. Carranough
Name (Please Print)

HR Director
Title

47-0617567
Contractor Tax Identification Number