



Los Angeles County **REGISTRAR-RECORDER/COUNTY CLERK**

DEAN C. LOGAN
Registrar-Recorder/County Clerk

December 20, 2011

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

Dear Supervisors:

**AMENDMENT NUMBER TWO TO AGREEMENT NUMBER 7100601 WITH
ELECTION SYSTEM & SOFTWARE, LLC. FOR HAVA REQUIRED INKAVOTE
ENHANCEMENT EQUIPMENT & SERVICES
(ALL DISTRICTS - 3 Votes)**

SUBJECT

Request approval of Amendment Number Two to the Agreement with Election Systems and Software, Inc. (ES&S) to accept ES&S change of corporation status from a "C-Corporation" to a "Limited Liability Corporation" (LLC), update provisions for Change Orders and Amendments and County mandated contracting requirements.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Chairman to sign the attached Amendment Number Two (Amendment) to Agreement Number 7100601 (Agreement) with ES&S LLC., which provides the County with voting equipment, software licenses, hardware and software maintenance and support services (collectively the PBR System), accepting ES&S's corporation status change from a C-Corporation to a limited liability corporation, delegating authority to the Registrar-Recorder/County Clerk (RR/CC) to execute amendments for changes that do not materially affect the Agreement, and updating County mandated contracting requirement (e.g. Warranty of Compliance with County's Defaulted Property Tax Reduction Program). There is no cost associated with Amendment Number Two and it will not impact the County General Fund.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to request your Board's written consent to recognize and accept ES&S's new corporation status as well as updating County mandated contracting requirement and to delegate authority to the RR/CC to execute amendments for non material changes. The PBR System allows 1) disabled voters, including those who are blind or visually impaired, to vote privately and independently at each polling place and 2) alert voters in the event of a blank ballot or an over-vote (voting for more candidates than is permitted in a contest) thereby allowing voters the opportunity to make corrections prior to casting their ballots. Approval of this recommended action will allow RR/CC to continue to receive services from ES&S and comply with HAVA requirements.

Implementation of Strategic Plan Goals

This request supports the County Strategic Plan as follows:

Goal No. 1: Operational Effectiveness: Maximize the effectiveness of processes, structure, and operations to support timely delivery of customer-oriented and efficient public services.

Strategy 2: Service Excellence: The PBR provides disabled voter, including those who are blind or visually impaired, to cast a ballot privately and independently and alerts all voters of any over-votes. The system has enhanced customer service to all voters due to the opportunity of having their ballots reviewed for errors prior to casting their ballot.

FISCAL IMPACT/FINANCING

There is no change to the Agreement maximum contract sum of \$45,184,766 as approved by your Board on April 18, 2006. Current expenditures total \$27,723,056 with a remaining balance of \$17,461,710 to continue maintenance and support services. There is no cost associated with the recommended Board action. There is no impact to net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On April 18, 2006, your Board authorized the Registrar-Recorder/County Clerk (RR/CC) to execute the Agreement with ES&S, Inc. upon the California Secretary of State (SOS) certification of the of the PBR System. The RR/CC executed the Agreement on April 25, 2006. The PBRs are used at the polls to meet federal HAVA requirements by allowing for second chance voting. The Audio Ballot Booth units are also used at the polls to meet federal HAVA requirements by assisting disabled or visually impaired

voters to vote privately and independently. To date, the PBR/ABB units are used in every precinct on Election Day; are used to train precinct officers and poll workers for Election Day assignments; and are loaned on an as-needed basis to the City of Los Angeles to assist in conducting City elections. ES&S notified RR/CC that it was undergoing a change of corporate entity and had changed its status from a C-Corporation to a Limited Liability Corporation. However, ES&S LLC retains the same Board of Directors, Chief Executive Officer and Chief Financial Officer. RR/CC has reviewed the appropriate financial data and other documents of ES&S LLC and finds that ES&S LLC is a responsible entity capable of continuing to carry out the terms of the Agreement.

This Board letter has been reviewed and approved by County Counsel and the Chief Information Office. Because this recommendation is not of technical nature but for approval to accept ES&S LLC's change in corporate status and other changes that do not materially affect the Agreement, a CIO analysis is not required. However, the CIO's office has reviewed this Board letter and provided the necessary feedback. Amendment Number Two has been reviewed and approved as to form by County Counsel.

In addition, the Agreement with ES&S is not a Proposition A contract and therefore not subject to the Living Wage Program.

CONTRACTING PROCESS

The recommended action is an amendment to an existing Agreement #7100601 with ES&S. Upon notification of the ES&S corporate status, the Department requested and received the necessary documents to identify the new corporate structure, Board members, principal parties, and financial documents to ensure no perceivable negative impact to the County. There was no additional contracting process.

IMPACT ON CURRENT SERVICES

Approval of the recommended Amendment will allow the RR/CC to continue uninterrupted services necessary to conducting Election Day activities.

CONCLUSION

Upon approval of the recommendation, it is requested that the Executive Officer/Clerk of the Board return one original stamped copy of the adopted Board letter to:

The Honorable Board of Supervisors
December 20, 2011
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County of Los Angeles Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201
Norwalk, CA 90650
Attention: Ngozi Ume, Manager
Finance and Management Division

Respectfully submitted,


DEAN C. LOGAN
Registrar-Recorder/County Clerk

DCL:NU:EB:yt

Attachment (1)

c: Chief Executive Office
County Counsel
Executive Officer, Board of Supervisors

**AMENDMENT NUMBER TWO
TO AGREEMENT NUMBER 7100601
BY AND BETWEEN
THE COUNTY OF LOS ANGELES AND
ELECTION SYSTEMS & SOFTWARE**

This Amendment Number Two (this "Amendment Number Two") to Agreement Number 7100601 dated April 25, 2006 (the "Agreement") by and between the County of Los Angeles ("County") and Election Systems and Software, Inc. ("Contractor") is made and entered into this _____ day of _____ 2011. County and Contractor are sometimes hereinafter referred to collectively as the "Parties" and each individually as a "Party."

WITNESSETH:

WHEREAS, the Agreement was originally approved by the County's Board of Supervisors on April 18, 2006 and executed by the Registrar-Recorder/County Clerk on April 25, 2006;

WHEREAS, under that certain Change Notice Number One to the Agreement dated June 2, 2006, the Agreement was amended to revise County's Project Manager;

WHEREAS, under that certain Change Notice Number Two to the Agreement dated September 15, 2006, the Agreement was further amended to, among other things: (i) revise Contractor's Project Manager; and (ii) replace Paragraph 21 (Notices) with a new Paragraph 21 (Notices);

WHEREAS, under that certain Change Notice Number Three to the Agreement dated May 16, 2008, the Agreement was further amended to purchase fifty (50) replacement lids for the Precinct Ballot Readers (PBR);

WHEREAS, under that certain Amendment Number One to the Agreement dated December 15, 2009, the Agreement was further amended to, among other things; (i) delete all tasks and deliverables in reference to Phase II of the Statement of Work; (ii) re-allocate funds for Other Professional Services; (iii) replace Exhibit B (Price Schedule) with a new Exhibit B (Price and Schedule of Payments) (Revised September 1, 2009) to reflect the changes in the Statement of Work;

WHEREAS, Contractor and County wish to further amend the Agreement to among other things, (i) change Election System & Software, Inc., to Election System & Software, LLC; and (ii) Delete and replace Paragraph 6.1.5 to the Agreement; and (iii) add Paragraph 60 (Warranty of Compliance with the County's Property Tax Reduction Program) of Exhibit A (Additional Terms and Conditions) to the Agreement; (iv) add Paragraph 61 (Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program) of Exhibit A (Additional Terms and Conditions) to the Agreement; and (v) add Exhibit Q (Certificate of Compliance with the County's Defaulted Property Tax Reduction Program) to the Agreement; and

WHEREAS, this Amendment Number Two is made pursuant to Paragraph 6 (Change Orders and Amendments) of the Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agreement, as previously amended, is hereby further amended as follows:

1. Election System & Software, Inc., wherever it appears in the Agreement or any attachment or Exhibit there to shall now read: Election System & Software, LLC. ("ES&S LLC"). ES&S LLC hereby confirms that it maintains its original Board of Directors and principal parties and shall continue to be responsible for all rights, responsibilities, duties, covenants and conditions required of Contractor under the terms of the Agreement, including all Change Orders and Amendments thereto.
2. Paragraph 6 (Change Orders and Amendments), Paragraph 6.1.5 is deleted in its entirety and shall be replaced with a new Paragraph 6 (Change Orders and Amendments), Paragraph 6.1.5 which shall read as follows:

"6.1.5. Notwithstanding any other provision of this Paragraph 6 (Change Orders and Amendments) or Paragraph 7 (Termination for Convenience) of Exhibit A (Additional Terms and Conditions), for any change which does not materially affect the scope of Work, period of performance, amount of payments, or any other term or condition included under this Agreement, an Amendment shall be executed by County Project Director and Contractor Project Director. Additionally, County Project Director, with written concurrence of the CEO and County Counsel, shall take all appropriate action to carry out any orders of the Board relating to this Agreement, and, for this purpose, the Registrar, with written concurrence of the CEO and County Counsel, is authorized to: (a) issue written notices of partial or total termination or suspension of this Agreement pursuant to Paragraph 7 (Termination for Convenience; Suspension) of Exhibit A (Additional Terms and Conditions) without further action by the Board, and (b) prepare and sign amendments to this Agreement which reduce the Statement of Work and the Maximum Contract Sum without further action by the Board.

(i) Such notices of partial or total termination or suspension shall be authorized under the following conditions:

(A) Notices shall be in compliance with all applicable federal, state and County laws, rules, regulations, ordinances, guidelines, and directives.

(B) The Department shall obtain approval of the CEO and County Counsel for any notice.

(C) The Department shall file a copy of all notices with the Executive Office of the Board within fifteen (15) days after execution of each notice.

(ii) Such Amendments which reduce the Statement of Work and the Maximum Contract Sum shall be authorized under the following conditions:

(A) Notices shall be in compliance with all applicable federal, state and County laws, rules, regulations, ordinances, guidelines, and directives.

(B) The Board has appropriated sufficient funds for purposes of such amendments.

(C) The Department shall obtain approval of the CEO and County Counsel for any such amendment.

(D) The Department shall file a copy of all such amendments with the Executive Office of the Board within fifteen (15) days after execution of each amendment."

3. Paragraph 60 (Warranty of Compliance with County's Property Tax Reduction Program), of Exhibit A (Additional Terms and Conditions) is hereby added to read as follows:

"60 Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206."

4. Paragraph 61 (Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program), of Exhibit A (Additional Terms and Conditions) is hereby added to read as follows:

"61 Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 60 "Warranty of Compliance with County's Defaulted

Property Tax Reduction Program" shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206."

5. Add Exhibit Q (Certificate of Compliance with the County's Defaulted Property Tax Reduction Program), to the Agreement.
6. Except as otherwise provided under this Amendment Number Two, the Agreement, as previously amended, and incorporating all preambles and recitals set forth herein and therein, shall remain unchanged and in full force and effect.

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**AMENDMENT NUMBER TWO
TO AGREEMENT NUMBER 7100601
BY AND BETWEEN
THE COUNTY OF LOS ANGELES AND
ELECTION SYSTEMS & SOFTWARE**

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment Number Two to be subscribed on its behalf by the Mayor of said Board and the Contractor has subscribed the same through its duly authorized officer as of the day, month and year first above written. The person signing on behalf of Contractor warrant under penalty of perjury that he or she is authorized to bind the Contractor.

ELECTION SYSTEMS & SOFTWARE, LLC

By _____


AUTHORIZED SIGNATURE

Richard J. Jablonski
PRINT OR TYPE NAME

V.P. of Finance
TITLE

COUNTY OF LOS ANGELES

ATTEST:

Sachi Hamai
Executive Officer-Clerk
Of the Board of Supervisors

By: _____

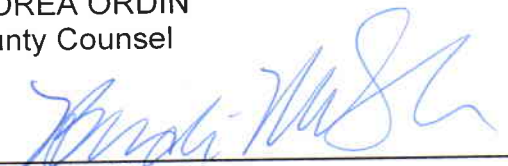
Zev Yaroslavsky, Chairman
Board of Supervisors

By: _____

APPROVED AS TO FORM:

ANDREA ORDIN
County Counsel

By _____


Brandi Miles Moore
Deputy County Counsel

REQUIRED FORMS EXHIBIT Q

CERTIFICATION OF COMPLIANCE WITH THE COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Company Name: <u>ELECTION SYSTEMS & SOFTWARE LLC</u>			
Company Address: <u>11208 John GALT BLVD.</u>			
City: <u>DMAHA</u>	State: <u>NE</u>	Zip Code: <u>68137</u>	
Telephone Number: <u>402-592-0101</u>	Email address: <u>djjablonski@essvote.com</u>		
Solicitation/Contract For _____ Services:			

The Proposer/Bidder/Contractor certifies that:

It is familiar with the terms of the County of Los Angeles Defaulted Property Tax Reduction Program, Los Angeles County Code Chapter 2.206; **AND**

To the best of its knowledge, after a reasonable inquiry, the Proposer/Bidder/Contractor is not in default, as that term is defined in Los Angeles County Code Section 2.206.020.E, on any Los Angeles County property tax obligation; **AND**

The Proposer/Bidder/Contractor agrees to comply with the County's Defaulted Property Tax Reduction Program during the term of any awarded contract.

- OR -

I am exempt from the County of Los Angeles Defaulted Property Tax Reduction Program, pursuant to Los Angeles County Code Section 2.206.060, for the following reason:

I declare under penalty of perjury under the laws of the State of California that the information stated above is true and correct.

Print Name: <u>RICHARD JABLONSKI</u>	Title: <u>VP of Finance</u>
Signature: <u>[Handwritten Signature]</u>	Date: <u>11/17/2011</u>

Date: 11/17/2011