

AMENDMENT NUMBER TWO TO PURCHASE AGREEMENT**(County – Diebold Election Systems, Inc.)**

This Amendment No. Two ("Amendment") is entered into as of this 12th day of October, 2004 (the "Amendment Date") between the County of Kern, a political subdivision of the State of California (the "County"), and Diebold Election Systems, Inc. (the "Contractor"). Capitalized terms used and not defined in this Amendment have the meanings ascribed to them in the Agreement (as defined below).

Recitals

Whereas, on November 12, 2002, County and Contractor entered into Kern County Agreement # 1027-2002, a purchase agreement for the purchase of a touch screen precinct and early voting system and optical scan mail and absentee voting system (the "Agreement"); and

Whereas, pursuant to that Agreement, the County accepted the Diebold R7 TSx touchscreen voting systems (hereinafter "AccuVote TSx"); and

Whereas, on March 30, 2004, the County and Contractor amended the Agreement to clarify its terms; and

Whereas, on April 30, 2004, the Secretary of State decertified the AccuVote TSx preventing the County from using that voting system; and

Whereas, because it is unable to use the AccuVote TSx, County desires to obtain an optical scan voting system and related services for the November 2004 election and thereafter, as described herein; and

Whereas, Contractor is willing to provide the County with such an optical scan voting system and related services on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, IT IS AGREED, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Agreement as follows.

A. The OS System Services and Deliverables

1. OS System. The Contractor will provide, at no additional cost to the County, for use in the November 2004 presidential election and any subsequent election taking place during the OS Period (as defined below), an AccuVote-Optical Scan election tabulation system (the "OS System"), comprising the AccuVote-OS hardware and AccuVote-OS software described in the Implementation Plan (as defined below).
2. OS Period. For purposes of this Amendment, "OS Period" means the period beginning on the Amendment Date and ending on the earlier of (a) December 1,

2006 or (b) one hundred eighty (180) days following the date on which the Contractor's AccuVote TSx Touchscreen DRE or another equivalent DRE reasonably acceptable to the County, is federally qualified and certified under California law.

3. OS Implementation. To implement the OS System, the Contractor shall provide the deliverables and services set forth in an OS System Project Implementation Plan to be developed, finalized and adopted by the Parties within 60 days after the Amendment Date (the "Implementation Plan"). The final Implementation Plan will include, at a minimum, the terms and conditions set forth in Exhibit A which is incorporated in full into this Amendment.
 - (a) As between Contractor and the County, Contractor owns the OS System and the County shall not hold itself out as the owner of the OS System. The County shall not, directly or through a third party, move any part of the OS System outside Kern County without Contractor's permission, or surrender control of, sell or grant a security interest in any part of the OS System.
 - (b) Contractor shall ensure that County has a fully paid-up, royalty-free, non-exclusive, non-transferable license to use the software and firmware included in the OS System to conduct elections in Kern County during the OS Period.
 - (c) The County shall use reasonable measures to avoid damage or loss to the OS System, normal wear and tear excepted.
 - (d) At the end of the OS Period, the County shall promptly return possession of all components of the OS System to Contractor (or make them available for retrieval by Contractor) at Contractor's expense.
4. OS System Warranty and Maintenance. Contractor represents and warrants to the County that, during the OS Period, the OS System will perform in accordance with its specifications, this Amendment and the Agreement. During the OS Period, the Contractor shall maintain the OS System in accordance with the maintenance terms of the Agreement at no additional charge to the County.

B. Reimbursement of Loan Payments

Contractor shall reimburse the County in full for each regularly scheduled loan payment made after October 1, 2004 and before December 31, 2006 pursuant to the "Payment Schedule" attached hereto as Exhibit B and incorporated in full by this reference. Such reimbursement payments shall be paid to County no later than ten (10) days after the County has provided Contractor with written documentation indicating that it has made the loan payment. Notwithstanding the foregoing, Contractor shall not be obligated to reimburse the County for any loan payment made by the County after the Secretary of

State certifies the AccuVote TSx and the County is no longer prohibited for using that voting system.

C. Additional Training

Rider D, Schedule 2 of the Agreement is hereby amended to require Contractor to provide on-site election preparation services through and including the November 2006 election.

D. Contractor's Contractual Obligations

1. Obligations During OS Period. Contingent upon the Contractor's continuing to provide the OS System during the OS Period and its full performance of all its obligations under this Amendment, the County agrees that Contractor has fulfilled its contractual obligation to provide a federally qualified and state-certified touch screen unit (including Contractor's TSx, or another equivalent touch screen unit reasonably acceptable to County) during the OS Period. Except as set forth in Section 2 below, the Contractor will be solely responsible for the costs of obtaining federal qualification and state certification of the AccuVote TSx touch screen unit (or such other voting unit as may be approved by County).
2. Voter Verifiable Paper Audit Trail. Notwithstanding Section 1 above, but subject to subsections (a),(b) and (c) below, the County shall pay the Contractor for any additional equipment required in order to provide a voter verified paper audit trail (the "Additional Equipment"). The County's payment obligations with respect to such Additional Equipment is subject to the following limitations:
 - (a) Payment by the County for the Additional Equipment shall not be due and payable to the Contractor unless, until, and only to the extent that, federal and/or state funds are received by the County to pay for the Additional Equipment, other than the Voting Modernization Board and other funding described in the following paragraph (b).
 - (b) No portion of the approximately \$2, 278, 285 allocated by the Voting Modernization Board but not yet received by the County, nor any state or federal funding received by the County prior to the date of this Amendment, will be considered funding available for Additional Equipment, and therefore no portion of such funding will be paid to the Contractor for any Additional Equipment.
 - (c) If any state or federal funds are made available (other than the funds described in subsection (b) above), payment by the County for the Additional Equipment shall not exceed the federal and/or state funds actually received by the County.


E. General

This Amendment is incorporated in the Agreement as of the Amendment Date. Except for the changes set forth in this Amendment, and Amendment No. 1, all other terms and conditions of the Contract remain in full force and effect. For purposes of this Amendment only, the Parties hereby waive the preparation of exhibits to the Agreement Riders otherwise required by the terms of Section 32 and Rider P.


The Parties have executed this Amendment on the day and year first written above.

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REVIEWED & RECOMMENDED
FOR APPROVAL

By: 
Ann Barnett
Auditor Controller, County Clerk


COUNTY OF KERN


Jon McQuiston
Board of Supervisors
"County"

APPROVED AS TO FORM
COUNTY COUNSEL

By: 
Deputy

DIEBOLD ELECTION SYSTEMS
INC.


DAVE BRAD DIEBOLD OPERATIONS
Federal Tax Id: 85 0394190
"Contractor"

APPROVED AS TO CONTENT
COUNTY ADMINISTRATIVE OFFICE
INFORMATION TECHNOLOGY
SERVICES DIVISION


By: 
Bill Barnhart
Contracts Manager

EXHIBIT A

IMPLEMENTATION PLAN REQUIREMENTS

The County will conduct, and the Contractor will provide deliverables and assistance for, a partial central tally optical scan election in November 2004, in accordance with a project implementation plan to be developed by the parties as provided in the Amendment (the "Implementation Plan"). Unless otherwise agreed, in writing, by the County's Auditor-Controller- County Clerk ("ROV"), the Implementation Plan will contain, at a minimum, the terms and conditions outlined below. For subsequent elections during the OS Period, the Parties shall, no later than 90 days prior to the election, develop, finalize and adopt a new Implementation Plan. Contractor shall have the same obligations with respect to the new Implementation Plan as the Implementation Plan for the November, 2004 election except to the extent that the ROV agrees in writing to lessen those requirements.

- A. Management of Election.** For the avoidance of doubt, while the Contractor will assist the County in conducting the election as provided herein, the County will have sole and final authority for all aspects of the election. The election will be conducted by solely County-authorized staff and poll workers and all determinations relating to the election will be made by the County.
- B. Deliverables.** The Contractor will provide the following equipment and peripherals at no additional cost to the County.
1. 90 AccuVote Optical Scan machines (the "OS Units"), each incorporating a certified version of the Contractor's operating system.
 2. 770 128k memory cards.
 3. 80 standard black plastic ballot boxes.
 4. 2,340 standard privacy voting booths.
 5. 160 ADA voting booths.
 6. 720 ballot box tamper seals.
 7. 3,500 ballot marking pens.
 8. 3,500 ballot secrecy sleeves.
 9. 90 AVOS carrying cases.
 10. 150 numbered spring lock seals.
 11. 90 key rings with spiral wrist band.
 12. 100 ballot ender cards.

13. 100 AV printer ribbons.
14. 150 AV paper rolls.
15. 25 diagnostic ballots.
16. 250 Famous Names demonstration ballots.
17. 2 Famous Names memory cards.
18. 1 PCI 8/em Digi Multiport RJ45.
19. 8 25' CAT5 ethernet cable.
20. 8 RJ45 to DB9 female adapters.
21. 6 loop back connectors.

C. Logistics. The County has determined that the central tally election will be conducted as outlined below:

1. Voters in Kern County will vote at one of three types of voting centers:
 - (a) Voting locations that have no OS Units (“Non-OS Voting Locations”).
 - (b) Voting locations that have OS Units but are not regional ballot collection locations (“OS Voting Locations”).
 - (c) Voting locations that have OS Units and are also regional ballot-collection centers (“Regional Collection Centers”) .
2. A main tally location (“Main Tally Location”) will be used to scan voted ballots from Non-OS Voting Locations in the Bakersfield area onto memory cards and also to upload election memory card votes from the OS Voting Locations in the Bakersfield area to the Contractor’s GEMS application for tabulation.
3. At Non-OS Voting Locations, paper ballots cast by voters will be collected by poll workers. After the polls close, the poll workers will place the ballots in ballot bags and label and seal the bags. The poll workers will deliver the bags to the applicable Regional Collection Center designated by the ROV.
4. At OS Voting Locations, paper ballots cast by voters will be scanned by the voter into an OS Unit, which records the vote onto a memory card and deposits the voted ballot into a ballot box. After the polls close, the poll workers will place the ballots and the memory cards in ballot bags and label and seal the bags. The poll workers will then deliver the bags to one of the Regional Collection Centers or to the Main Tally Location, as directed by the ROV.

5. At Regional Collection Centers, paper ballots cast by voters will be scanned by the voter into an OS Unit, which records the vote onto a memory card and deposits the voted ballot into a ballot box. After the polls close, the poll workers will place the ballots and the memory cards in ballot bags and label and seal the bags. The poll workers will then deliver the bags to the Regional Collection Center's ballot receiving area, as designated by the ROV, for upload to the GEMS application for tabulation. Regional Collection Centers will also receive ballots cast at Non-OS Voting Centers. These ballots will be received and processed by County election personnel as described in Items 6 and 7 below.
6. County election personnel at the Regional Collection Centers' receiving areas will take delivery of ballot bags from the poll worker staff at the designated ballot receiving area and verify each bag's content and correct labeling with such staff. Such receiving personnel will then assign each ballot bag to one or more OS Units for processing in accordance with instructions provided by the ROV.
7. County election personnel manning OS Units at the Regional Collection Centers will receive the ballot bags and may scan the ballots. The scanning will be performed in runs, the results of which will be loaded on memory cards. The runs will be pre-defined, and the scanned results allocated to each memory card, as determined by the ROV.
8. The GEMS election management application will reside on a server located at the Main Tally Location or at such other location as may be direct by the ROV. Memory card election data received at the Regional Collection Locations or at the Main Tally Location will be uploaded by County election personnel into the GEMS application for tabulation.

D. Election Support. At its expense, the Contractor will provide the following election support services.

1. Prior to the election, the Contractor will provide assistance as reasonably requested by the County in setting up and testing the OS Units.
2. On election night, the Contractor will provide up to 10 trained Contractor employees on-site at Regional Collection Centers or at the Main Tally Location, as directed by the ROV. Such Contractor personnel will provide technical and operational assistance as reasonably requested by the County in processing ballots and tabulating election results.

E. Training

1. The Contractor will provide training in the operation of the OS Units to County personnel who will operate the OS Units on election night.

- (a) Such training will consist of classes conducted for up to 100 individuals, comprising County operational personnel, field representatives and inspectors.
 - (b) Each class will be for approximately 25 trainees and will be approximately 60 to 90 minutes in duration
 - (c) Each OS Unit trainee will receive one copy of written training materials regarding the operation of the OS Units.
2. The Contractor will also provide training and written training materials for up to 10 County election personnel regarding uploading memory card results to the GEMS application for tabulation.

F. Allocation of Responsibilities

- 1. The County will designate the locations constituting the Regional Collection Centers and the Main Tally Location. The Contractor will advise the County regarding the logistical requirements (e.g., space, power, loading docs, etc.) for Regional Collection Centers and for the Main Tally Location.
- 2. The County will be responsible for building the database from which the various ballot forms required for the election will be prepared. The County will make the final database available at such time as necessary to permit completion of ballot printing in a timely manner.
- 3. The Contractor will bear the expense of printing, packaging, delivery and all other production costs for election ballots, with the exception of absentee ballots, mail-in ballots and logic and accuracy test ballots, for which the County will bear all such costs.
- 4. The ballots will be printed in the English and Spanish languages. The number of ballots printed will be a reasonable number in light of the voting population. The parties understand that the United States Department of Justice is currently reviewing the County's obligations regarding bilingual election materials. The number of ballots to be printed in Spanish or in English and Spanish will be as directed by the United States Department of Justice.
- 5. The County will be responsible for instructions to the printer regarding the organization of ballot printing runs, the labeling of boxes containing the printed ballots and instructions regarding delivery of the ballots to the County offices.
- 6. The County will be responsible for delivering the correct ballot forms to each of the various precincts.

7. The County will bear election costs not specified as borne by the Contractor in this Exhibit A.

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EXHIBIT B

09/17/2004 14:35 FAX 6618683809
 09/17/04 FRI 10:10 FAX 8683529

KERN COUNTY COUNSEL
 AUDITOR CONTROLLER

006/006
 002

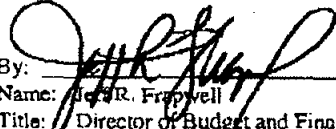
Lease Number: 01837
 Equipment Schedule: 01

PAYMENT SCHEDULE

The Funding Date with respect to the above referenced Equipment Group shall be 03/20/2003. The Annual Interest Rate applicable to the Equipment Group shall be 2.99%. Lessee will make Rental Payments each consisting of Principal and Interest as set forth below for a term of 7 years. The first Rental Payment is due on 09/01/2003 and subsequent payments are due semi-annually on like date thereafter.

Payment Number	Payment Date	Total Payment	Principal Component	Interest Component	Prepayment Price *
1	09/01/03	\$ 126,914.28	\$ 105,602.77	\$ 21,311.51	\$ 1,563,867.09
2	03/01/04	126,914.28	104,647.79	22,266.49	1,453,986.91
3	09/01/04	126,914.28	106,212.28	20,702.00	1,342,464.02
4	03/01/05	126,914.28	107,800.15	19,114.13	1,229,273.86
5	09/01/05	126,914.28	109,411.76	17,502.52	1,114,391.51
6	03/01/06	126,914.28	111,047.47	15,866.81	997,791.67
7	09/01/06	126,914.28	112,707.63	14,206.65	879,448.66
8	03/01/07	126,914.28	114,392.61	12,521.67	759,336.43
9	09/01/07	126,914.28	116,102.78	10,811.50	637,428.51
10	03/01/08	126,914.28	117,838.51	9,075.77	513,698.07
11	09/01/08	126,914.28	119,600.20	7,314.08	388,117.86
12	03/01/09	126,914.28	121,388.22	5,526.06	260,660.23
13	09/01/09	126,914.28	123,202.98	3,711.31	131,297.10
14	03/01/10	126,914.28	125,044.86	1,869.42	0.00
TOTALS		\$ 1,776,799.92	\$ 1,595,000.00	\$ 181,799.92	

COUNTY OF KERN,
 Lessee

By: 
 Name: Jeff R. Frappwell
 Title: Director of Budget and Finance
 Date: 3-20-03

* After payment of Rental Payment due on such date.