

**CONTRACT BETWEEN STATE OF
WYOMING, SECRETARY OF STATE'S OFFICE,
AND ELECTION SYSTEMS & SOFTWARE, INC.**

1. Parties. The parties to this Contract (each a "Party" and collectively, the "Parties") are the Wyoming Secretary of State's Office, whose address is State Capitol, 200 West 24th Street, Cheyenne, Wyoming 82002 (hereinafter "State") and Election Systems & Software, Inc., which has an office at 11208 John Galt Boulevard, Omaha, Nebraska 68137 (hereinafter "Contractor"). This Contract is effective upon execution by each Party and receipt of all necessary approvals.

2. Purpose of Contract. The purpose of this Contract is for Contractor to supply voter tabulation equipment and related software and services for County Clerks in Wyoming Counties. Such equipment must function in accordance with applicable state and federal laws at the time of delivery for the purpose of conducting elections. The systems, equipment, services and negotiated prices for each County are listed in Appendices A, B, C, D, E, F, G, H, I, J and K.

3. Overview. This Contract is entered into by the State using Federal Funding provided under Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 (HAVA) and Wyoming matching funds. Purchases are based on noncompetitive negotiations with Contractor following a determination that competition was not feasible based on the uniqueness of the voting system, equipment and services and recommendations of the Wyoming Counties. The type and quantity of qualified voting and management systems to be purchased by the State for use in the County were selected by each Wyoming County in cooperation and consultation with, and approval by, the State, and a Committee of Wyoming County Clerks, following extensive review, demonstrations of HAVA qualified voting systems, review of literature and specifications and subsequent discussion with voting system vendors. The administrator of the Department of Administration and Information, and the Governor have approved this Contract.

The systems and equipment purchased by the State will be delivered to, tested and accepted by each County in accordance with a timetable agreed to by each County and Contractor, but no later than December 15, 2005. Mutually agreed upon requirements and obligations between State and County for initial deployment, testing and acceptance, conveyance of title, maintenance and utilization for future elections are reflected by a separate Memorandum of Understanding which will be entered into by each County and the State, a sample of which is attached hereto as Appendix I. Items and services,

including warranties and training, purchased under this Contract shall be the property of the County for which they were purchased.

The systems, equipment and services are warranted by Contractor to have been tested and certified by independent testing authorities under the 2002 Voluntary Voting System Standards promulgated by the Federal Election Commission. Failure to meet the provisions of HAVA may result in the State being in non-compliance with the law and may necessitate the return of federal funds as outlined in Section 102(d) of P.L. 107-252.

4. Definition of Terms.

A. "County or Counties" as listed in Wyo. Stat. § 18-1-101, means either one or any number of Wyoming Counties, collectively, for whom the State is purchasing Equipment and Software.

B. "Documentation" means the operating instructions, user manuals or training materials for the Equipment and Software.

C. "EAC" means the Election Assistance Commission, as established and operating under HAVA.

D. "Equipment" means ES&S Equipment and Third Party hardware or equipment.

E. "ES&S Equipment" means ES&S' proprietary hardware or other equipment.

F. "ES&S Firmware" means ES&S' proprietary operating software that is resident on the ES&S Equipment.

G. "ES&S Hardware Maintenance Services" and "ES&S Software Maintenance and Support" means those services described on Appendix F.

H. "ES&S Software" means ES&S' proprietary election software (including the ES&S Firmware), all Updates and items delivered to Counties under this Contract, unless licensed pursuant to a separate written agreement.

I. "NASED" means the National Association of State Election Directors.

J. "NIST" means the National Institute of Standards and Technology

K. "Object Code" means the machine code generated by a source code language processor such as an assembler or compiler, the files of which may be immediately executable or require linking with other object code files or libraries in order to produce a complete executable program.

L. "Proposal" means that certain document entitled Enhancing the State of Wyoming Election Process, dated April 20, 2005, and letter from the Wyoming Secretary of State to Contractor dated March 31, 2005 and accompanying Attachments A and B, all of which are attached hereto as Appendix J.

M. "Services" means the Equipment, related Software, training and Services associated with providing, setting up and maintaining the Equipment and Software.

N. "Software" means ES&S Software and Third Party software.

O. "Source Code" means the formal programming language in which a computer program is written by a programmer, which can be compiled automatically into object code.

P. "Third Party Items" means those items of equipment manufactured by third party manufacturers other than CONTRACTOR and set forth on Appendix D.

5. Term of Contract . This Contract is effective when all Parties have executed it and all required approvals have been granted. The term of the Contract for delivery, acceptance and payment of Equipment and Software is from the Effective Date through December 31, 2005. All such Services (except Contractor's warranty and training obligations hereunder) shall be completed during this term of this Contract. This Contract may be extended and amended by agreement of both Parties in writing and subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the State and written agreement of Contractor.

By law, contracts for professional or other services must be approved by the Attorney General and the Department of Administration and Information, General Services Division, Procurement Section ("A&I Procurement"), WYO. STAT. § 9-1-403(b)(v), and all contracts for services costing over one thousand five hundred dollars (\$1,500.00) must be approved by the Governor or his designee, WYO. STAT. § 9-2-1016(b)(iv).

6. Payment.

A. State agrees to pay Contractor for the Services described in the Appendices in accordance with the payment terms set forth in Appendix A. The total payment for the Services under this Contract shall not exceed \$5,400,000.00. No payment shall be made for work performed before the date on which the last required signature is affixed to this Contract.

B. Invoices. Invoices shall be submitted to State and will contain sufficient detail to enable State to confirm that amounts set forth on each invoice accurately reflect the amounts due and payable. Invoices may be submitted per County. Payment, minus retainage, shall be made following delivery, testing and training by Contractor of the Equipment and Software against its Documentation with no failure to perform in all material respects, and receipt by the State of a fully executed Certificate of Acceptance. Contractor shall verify successful testing on forms provided by State. Before the State shall pay any invoice, it must also receive acceptance of the Equipment and Software by each County, as verified upon forms provided by the State.

C. State shall withhold ten (10) percent of each invoice. Payment of retainage to Contractor shall occur when all Counties have verified receipt of their Equipment and Software, and Contractor has delivered, tested and verified to the State that all Equipment and Software has been successfully tested in all Counties.

7. Responsibilities of Contractor. Contractor's responsibilities are specified in Appendix F, which is included and made part of this Contract. In addition, Contractor shall:

A. Train County representatives on the operation of the Equipment, use of ES&S Software, poll worker procedures and election day trouble shooting in accordance with a mutually agreed upon Training Plan, a preliminary draft of which is attached hereto as Appendix H. The Parties shall finalize the Training Plan within thirty (30) days after execution of this Contract, which final Training Plan shall include the number and type of manuals to be provided by Contractor and number of days to be provided for each area of training.

B. Be responsible for the professional quality, technical accuracy, timely completion and coordination of all Services furnished by Contractor or its Subcontractors to each County. All Services furnished to each County shall be conducted in accordance with practices consistent with generally accepted

professional, technical and regulatory standards.

C. Provide an election report in an electronic format agreed upon by the Parties no later than ninety (90) calendar days after acceptance of the Equipment.

D. Perform all other obligations described in this Contract.

8. Certification of Equipment and Software.

Contractor certifies and warrants to the State that all Equipment and Software, as applicable, has been tested end-to-end by relevant independent testing authorities against the requirements of the Federal Election Commission 2002 Voluntary Voting Systems Standards and is ready and certified for use in a federal election. In addition, the Contractor is responsible for certifying that all Equipment and Software meets state law requirements and any other applicable federal law. Contractor shall submit documentation to State of all federal tests and shall submit a verified statement that the Equipment and Software meets state law and all other current federal requirements for use in federal elections. Contractor shall also submit documentation that all Equipment and Software has been tested and certified under standards separately adopted and implemented in various states for use in elections in those states.

Any updates, patches or add-ons offered to the State or County shall also be certified by Contractor to meet the above standard. No updates, patches or add-ons shall be installed in any County until authorized by the State.

9. Installation of Equipment and Software.

A. Installation of the Equipment and Software for each County shall be the responsibility of Contractor as described in this Contract.

B. The Equipment and Software to be delivered under this Contract shall be new when delivered and in accordance with all specifications as stated in this Contract. Any defective unit shall be replaced within the time scheduled for deployment to that County.

C. Following deployment by Contractor and acceptance by County, defective Equipment, materials, or other components of the System may be returned to Contractor at no cost to State or County during the Original Warranty. Items returned will either be replaced with identical new equipment/component or repaired, at the option of Contractor, and returned to

County without charge. All replacement or repaired equipment shall be tested and certified according to the terms of this Contract.

D. Contractor shall coordinate the ordering and timely delivery of the items supplied by itself or subcontractors or agents to ensure the Equipment and Software is complete and operational in accordance with the provisions in this Contract.

10. Acceptance Testing.

A. System Acceptance Testing: Acceptance testing is intended to ensure that the Equipment and Software acquired operates in substantial compliance with the specifications and representations set forth herein, is adequate to perform as warranted by Contractor and evidences a satisfactory level of performance reliability prior to its acceptance by Counties and State.

B. Testing of each piece or component of the Equipment and Software shall be performed by Contractor at the manufacturer's facility prior to delivery of the Equipment and Software to ensure that it is in good working order and complies with the terms of this Contract. Upon delivery to the County, each piece or component of the Equipment and Software shall be tested again by Contractor in cooperation with the County Clerks in accordance with the acceptance testing criteria set forth at Appendix G. Each County and Contractor shall conduct and complete acceptance testing of the Equipment as promptly as reasonably practicable after delivery, but in no event later than December 15, 2005. Contractor shall repair or replace with Equipment or Software, as described in Appendix B, any unaccepted or defective component during the time scheduled for deployment to that County.

11. Responsibilities of State. The State shall act in good faith in the performance of its respective responsibilities under this Contract and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by Contractor in order to perform its responsibilities under this Contract.

12. Termination.

A. State Termination Without Cause. State may terminate this Contract, in whole or in part, without cause, upon at least thirty (30) business days written notice, except that State may not terminate this Contract without cause for the purposes of contracting with another contractor to provide similar services. Upon State termination without cause all undisputed amounts due Contractor for Services rendered up to the date of termination are due and

payable upon submission of invoice. Upon termination each Party will promptly deliver to the other Party, or upon request, certify the status of, all data, materials and programs of the other Party (except as expressly provided herein) in connection with this Contract. Payment to Contractor shall include payment for all Services rendered up to the last day Services are provided subject to Section 21(T).

B. This Contract may be terminated for cause, in writing, at any time by either Party if the other Party breaches any provision of this Contract and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching Party. In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all actual documented costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. The State shall at all times exercise its best efforts to mitigate any costs incurred as a result of such a termination for cause.

C. Failure of the Contractor to complete delivery and acceptance testing of the Equipment by January 1, 2006, federal HAVA deadline, will be deemed a breach of Contract.

13. Grant of Licenses.

A. Subject to the terms and conditions of this Contract, Contractor hereby grants to the Counties nonexclusive, nontransferable licenses to use the ES&S Software, described in Appendix C, and ES&S' firmware, which is delivered as part of the ES&S Equipment ("ES&S Firmware"), and related Documentation in the County while Counties are using the ES&S Equipment. The licenses allow the Counties to use and copy the ES&S Software and ES&S Firmware (in Object Code only) and the Documentation, in the course of operating the ES&S Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the County. The licenses granted in this Section do not permit the Counties to use the Source Code for the ES&S Software or ES&S Firmware.

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

- (i) Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the

Source Code or the structural framework for part or all of the ES&S Software;

(ii) 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 without Contractor's prior written consent; or

(iii) Cause or permit any change to be made to the ES&S Software without Contractor's prior written consent; or

(iv) Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which Contractor owns or claims any registered or common law proprietary intellectual property rights (e.g., copyright, trademark, patent or patent pending), including, but not limited to, any ballot shells or ballot code stock.

C. License Fees. In consideration for Contractor's grant of the license for the ES&S Software, State shall pay Contractor the ES&S Software License Fees set forth on Appendix C. The consideration for Contractor's grant of the license for the ES&S Firmware is included in the cost of the ES&S Equipment.

D. Term of Licenses. The licenses shall commence upon the delivery of the ES&S Software. The licenses shall survive the termination of all other obligations of the Parties under this Contract and the termination of all Appendices; provided, however, that Contractor may terminate the licenses if State fails to pay the consideration due or takes any of the prohibited actions set forth in Section 13(B) above. Upon the termination of the licenses, State and Counties shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to Contractor, or (if requested by Contractor) destroy such ES&S Software and Documentation and certify in writing to Contractor that such destruction has occurred. The licenses granted hereunder do not permit the State or Counties to use the Source Code for the ES&S Software. Contractor has placed the Source Code in escrow with its third party escrow agent. In the event that Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State or Counties may obtain the Source Code for its licensed software for the sole purpose of enabling the continued use of its licensed software in accordance with this Agreement. The Source Code shall remain at all times the property of Contractor and may not otherwise be used by State.

E. Updates. During the Warranty Period paid for by State or County, Contractor shall provide any new releases, upgrades or maintenance patches to

the ES&S Software, together with appropriate Documentation ("Updates"), as mutually agreed to by Contractor and State. Upgrades and patches must be certified by Contractor pursuant to the terms of this Contract and authorized by State before delivery and installation at the County. All Updates shall be deemed to be ES&S Software for purposes of this Contract upon delivery. Counties may install the Updates in accordance with Contractor's recommended instructions or may request that Contractor install the Updates. Contractor may charge County at its then-current rates to (i) install the Updates, (ii) provide training on the Updates, or (iii) provide maintenance and support on the ES&S Software that is required as a result of a failure to timely or properly install an Update. Upon termination of the Warranty Period, County shall be entitled to receive the Software Maintenance and Support described on Appendix F if it has so elected and timely paid all fees associated therewith.

14. Proprietary Items.

Contractor warrants that it owns the ES&S Software, all documentation and training materials provided by Contractor, the design and configuration of the ES&S Equipment and the format, layout, measurements, design and all other technical information (except for State supplied information such as election information) associated with the ballots to be used with the ES&S Equipment. Counties have the right to use the aforementioned items to the extent specified in this Contract. Contractor also warrants that it 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 Contractor that are protected by law and are of substantial value to Contractor.

15. Title and Risk of Loss.

Contractor shall ship the Equipment and Software identified on Appendices B, C and D to Counties on or before the "Estimated Delivery Dates" listed on Appendix A. The Estimated Delivery Dates are merely estimates and may be revised by mutual written agreement between State and County and Contractor. All equipment shall be delivered, installed, tested and certified by no later than December 15, 2005, or such other date as mutually agreed upon by the Parties. After delivery by Contractor to the County, the risk of loss or damage for the Equipment shall be borne by the County. Title to the delivered Equipment shall pass to the Counties upon full payment for the Equipment by State.

16. Proof of Insurance.

A. Workers' Compensation and Employer's Liability Insurance. Contractor shall provide to A&I Procurement proof of workers' compensation coverage for all its employees who are to work on the project described in this Contract. Contractor's coverage shall be under the Wyoming Worker's Safety and Compensation program, if statutorily required, or such workers' compensation insurance, as appropriate. Contractor's insurance shall include Employer's Liability "Stop Gap" coverage, in an amount not less than five hundred thousand dollars (\$500,000.00) per employee for each accident and disease. Contractor shall also supply to A&I Procurement proof of workers' compensation and employer's liability insurance on each and every subcontractor before allowing that subcontractor on the job site.

B. Commercial General Liability Insurance. Contractor shall provide coverage, during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations, in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate.

C. Business Automobile Liability. Contractor shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence.

D. Policies Effective Date . All policies required under this Contract shall be in effect for the duration of this Contract and project. All policies shall be primary and not contributory. Contractor shall pay the premiums on all insurance policies and all insurance certificates must include a clause stating that the insurance may not be cancelled until the expiration of at least twenty (20) business days advance written notice to the State.

E. State As Additional Insured. All insurance policies required by this Contract, except workers' compensation, shall name the State as an additional insured for claims resulting from Contractor's negligence, and shall contain a waiver of subrogation against the State, its agents and employees.

F. Subcontractors. The insurance requirements set forth above apply to all subcontractors. It is Contractor's responsibility to ensure that its subcontractors meet these insurance requirements. The State has the right to review the certificates of any and all subcontractors used by Contractor.

17. Warranties; Disclaimers.

A. ES&S Equipment/ES&S Software. Contractor warrants that for the period from delivery through December 31, 2006, (the "Warranty Period"), it will repair or replace any component of the ES&S Equipment or ES&S Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any ES&S Equipment components that are consumed in the normal course of operating the Equipment, including printer ribbons, paper rolls, batteries, removable memory packs, PCMCIA cards, cancellation stamps, ink pads, ink cartridges or marking devices. The Warranty Period will commence upon delivery. Any repaired or replaced item of ES&S Equipment or ES&S Software shall be certified by Contractor pursuant to the terms of this Contract and shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the ES&S Equipment or ES&S Software will become the property of Contractor. This warranty is effective provided that (I) State or County promptly notifies Contractor of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the ES&S Equipment or ES&S Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor, (III) the ES&S Equipment or ES&S Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by Contractor or causes beyond the reasonable control of Contractor or State or County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) County has installed and is using the most recent Update, or the second most recent Update, provided to it by Contractor. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

B. System. Contractor warrants that the ES&S Equipment and ES&S Software will operate in conjunction with the Third Party Items during the Warranty Period, provided that (i) County has installed and is using the most recent certified Update, or the second most recent certified Update, provided to it by Contractor, and (ii) the Third Party Items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. Following State authorization, County may install the Updates in accordance with Contractor's recommended

instructions or may request that Contractor install the Updates at Contractor's then current applicable rates. In the event that the ES&S Equipment or ES&S Software fails to operate in conjunction with the Third Party Items, Contractor will repair or replace the item of ES&S Equipment or ES&S Software that is causing such failure to occur. State acknowledges that Contractor has merely purchased the Third Party Items for resale or rental to Counties and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than Contractor ("Third Parties"). State further acknowledges that except for the payment to Contractor for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. Contractor shall provide State and Counties with copies of all documentation and warranties for the Third Party Items which are provided to Contractor.

C. Exclusive Remedies. CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

D. A possible Phase II of acquiring HAVA compliant voting systems, upon election by any Wyoming County Clerk, may entail the replacement of optical scanning systems and related software such that a County would primarily utilize all ES&S AutoMARK equipment for future elections. If adequate federal and state funds exist, the State is granted an option to assist in payment for the equipment by any County making such an election.

E. Maintenance For ES&S Equipment During Warranty Period. During the Warranty Period, State and Counties are entitled to the Maintenance Services in accordance with Article II, Subsection 1(b) of Appendix F.

F. Purchase of Post-Warranty Maintenance and Support Services. Contractor agrees to offer post-warranty maintenance and support services to the State pursuant to this Contract through December 31, 2010 at the prices set forth in Appendix F. During this time, County or State has an option to purchase such post-warranty maintenance and support services on a year-to-year basis for the prices as shown in Appendix F, as long as there has been no lapse in County's or State's, as applicable, purchase of annual post-warranty maintenance and support services.

G. Contractor further warrants that:

- (i) Contractor will perform all services timely, diligently, carefully and in a good and workman-like manner in accordance with professional standards in the industry.
- (ii) Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services.
- (iii) Contractor will perform all services in a manner that complies with all applicable laws and regulations.
- (iv) Contractor represents and warrants that the Equipment shall be in good operating condition and shall operate and perform in accordance with the warranties set forth in Section 18 above.
- (v) Contractor warrants that the Equipment and Software and its services to be furnished pursuant to this Contract conform, in all material respects, to their respective Documentation and will be free from defects, and of good material and workmanship.

H. Contractor is solely responsible for maintaining compliance with the accessibility requirements of Section 301 of HAVA for the AutoMARK Voter Assist Terminals ("AutoMARKS") for a period from purchase through December 31, 2008. In the event that during that period (i) an action is commenced in a state or federal court of competent jurisdiction, or (ii) an authority of competent jurisdiction such as the EAC, NASED or NIST, if applicable, issues an order decertifying the AutoMARKS as non-compliant with Section 301 of HAVA, then upon the earlier to occur of (a) the issuance of a final and non-appealable order by the Wyoming Supreme Court, which order must be issued prior to or within five (5) years following the first statewide election use of the AutoMARKS in Wyoming, (b) the issuance of a final order by a federal district court sitting in Wyoming, which order must be issued prior to or within four (4) years following the first statewide election use of the AutoMARKS in Wyoming, or (c) the issuance of an order by an authority of competent jurisdiction such as the EAC, NIST or NASED decertifying the AutoMARKS as non-compliant with Section 301 of HAVA, which order must be issued prior to or within two (2) years following the first statewide election use of the AutoMARKS in Wyoming, the Contractor shall replace the AutoMARK Voter Assist Terminals, at no cost to the State or County, with a comparable Contractor federal and state certified

and HAVA compliant vote tabulation system within 120 days or prior to the next regularly scheduled statewide election, whichever comes first.

18. Most Favored Customer.

During the initial Warranty Period, if Contractor contracts under the same or substantially similar terms and conditions as contained in this Contract with any new customer to provide services or goods the same as or substantially similar to the services or goods described in this Contract at a price lower or a discount greater than the price charged or the discounts offered to the State or County hereunder or contracts to provide additional or more comprehensive service at the same or a lower price (or greater discount), then, on a prospective basis, Contractor shall apply such lower price or greater discount to the State and/or Counties for the purchase of additional services or goods. The affected components of the Contract shall then be formally amended to reflect such revisions on a prospective basis only. Adjustments pursuant to this paragraph will not be made if Contractor's pricing changes are the result of significant reductions in Contractor's component costs. Contractor represents that the prices charged in this Contract for ES&S Equipment and ES&S Software are comparable to prices charged by Contractor during the twelve month period immediately preceding execution of this Contract to jurisdictions purchasing substantially similar quantities and configurations of ES&S Equipment and ES&S Software, after factoring in any adjustments to such prices resulting from differences in quantities, configurations and timing of the procurement during Contractor's sales cycles.

19. Disclosure of Litigation.

A. Contractor shall notify the State, if Contractor, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractors, or any of the foregoing entities' then current officers or directors during the term of this Contract.

B. Contractor shall notify the State, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years preceding this Contract or which may occur during the term of this Contract, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim in excess of One

Million Dollars (\$1,000,000) or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any Federal, State or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any an amount less than One Million Dollars (\$1,000,000) shall be disclosed to the State only to the extent they affect the financial solvency and integrity of the Contractor or subcontractor. Such claims shall include litigation against any product purchased by the State from Contractor.

C. All notices under subsections A and B herein shall be provided in writing to the State within fifteen (15) business days after the Contractor learns about any such criminal or civil investigations and within fifteen (15) business days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements which are prevented from disclosure by the terms of the settlement shall be redacted as such.

D. Assurances. In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- (i) the ability of Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Wyoming or Federal law, regulation or public policy, then

Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

E. Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, shall constitute a material breach of this Contract and will allow the State to terminate for cause.

20. Suspension and Debarment, Voluntary Exclusion.

By signing this Contract, Contractor certifies and discloses, in accordance with the regulations implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 67, Section 67.510, that it is not suspended, debarred or voluntarily excluded from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred or voluntarily excluded. Further, Contractor agrees to notify the Secretary of State by certified mail should Contractor or any of its agents become debarred, suspended or voluntarily excluded during the term of this Contract.

21. General Provisions

A. Amendments. Any changes, modification, revisions or amendments to this Contract which are mutually agreed upon by the Parties to this Contract shall be incorporated by written instrument, executed and signed by all Parties to this Contract.

B. Americans with Disabilities Act. Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.

C. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

D. Assignment/Contract Not Used as Collateral. Neither Party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned, nor unduly delayed. Contractor may use this Contract, or any portion thereof, for collateral for any financial obligation, with the prior written consent of the State, which consent shall not be unreasonably withheld or conditioned, nor unduly delayed. However, any assignment as security does give any third parties any rights against the State.

E. Appendices. The Appendices and Appendices referred to in and attached to this Contract are made a part of it as if fully included in the text.

In the event of any conflict between the general terms and conditions of this Contract (consisting of Sections 1 through 23) and any of the Appendices attached hereto, including, but not limited to, Appendix J, the general terms and conditions of this Contract shall govern and prevail.

F. Audit Rights. During the Term of this Contract and for a period of three (3) years after expiration or any earlier termination hereof, the State and any of its representatives shall have reasonable access to any books, documents, papers, and records of Contractor which are directly related to Contractor's performance of this Contract. Contractor shall, upon receiving reasonable prior written notice from the State, provide to any independent auditor, accountant, or accounting firm, access to all books, documents, papers and records of Contractor which are directly related to Contractor's performance of this Contract. Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the State.

G. Award of Related Contracts. The State may undertake or award supplemental or successor contracts for work related to this Contract. Contractor shall cooperate fully with other contractors and the State in all such cases.

H. Compliance with Law. Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract applicable to the delivery of its Services.

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by Contractor in the performance of this Contract shall be kept confidential by Contractor unless written permission is granted by the State for its release.

Records shall not be disclosed or used for any purpose, except when authorized by the State pursuant to applicable state statutes and regulations and when such disclosure or use is required by law. Unless otherwise required by law, all records and other information pertinent to this Contract shall be confidential and the custodian of such records shall deny access to those records in accordance with Wyo. Stat. § 16-4-203(d). All information in the Contract is subject to the Public Records Act, Wyo. Stat. § 16-4-201 *et seq.*

J. Consents. Contractor represents and warrants that it has the requisite power and authority to bind Contractor and its designated affiliates, and to execute and deliver this Contract and perform its obligations hereunder.

State represents and warrants that it has the requisite power and authority to execute and deliver this Contract and perform its obligations hereunder. Each Party will obtain and maintain all consents, authorizations and approvals of third parties necessary to allow (i) Contractor to provide the Services and otherwise fulfill its obligations under this Contract, and (ii) State to fulfill its obligations under this Contract. No Party will be in breach of its obligations hereunder for failure to obtain any such consent, authorization or approval unless it has actual knowledge of the need to obtain such consent and fails to use reasonable efforts to obtain such consent, authorization or approval.

K. Entirety of Contract. This Contract, consisting of twenty-five (25) pages, and Appendices A through K represents the entire and integrated Contract between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

L. No Finder's Fees. No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

M. Force Majeure. Neither Party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

N. Indemnification by Contractor.

(1) General. Subject to the limitations set forth in Subsection 22(O) below, Contractor shall indemnify, defend and hold harmless the State of Wyoming, the Secretary of State's Office and the Counties and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice.

(2) Intellectual Property Infringement. Contractor will indemnify and hold the State of Wyoming and the Secretary of State's Office (collectively in this Section 21(N)(2), the "State") harmless from and against any and all damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to a 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"). State shall notify Contractor immediately if it becomes aware of any Third Party Infringement Claim. State hereby gives Contractor full and complete authority, and shall provide such information and assistance as is necessary (at Contractor's expense with respect to reasonable out-of-pocket costs), to enable Contractor to defend, compromise or settle a Third Party Infringement Claim. In addition, if State is prevented by a Third Party Infringement Claim from using any of the ES&S Equipment or ES&S Software in substantially the manner contemplated by this Contract, Contractor, at its sole option and expense, shall procure for State the right to continue such use or shall replace or modify the infringing item. If neither option is commercially reasonable, Contractor may direct State to cease use of the infringing item, and shall refund the depreciated cost for the infringing item (as determined in accordance with GAAP) to State, and State shall cease and desist from any further use thereof and return the infringing item to Contractor; provided, however, that if loss of the infringing item causes the voter tabulation system to fail to (i) perform in accordance with its Documentation, (ii) be compliant with all applicable federal and state election laws and regulations, or (iii) remain certified by the appropriate state authorities for use in the State of Wyoming, and Contractor is unable, despite commercially reasonable efforts, to modify the voter tabulation system to resolve such failures, then Contractor shall instead refund the depreciated amount paid by State for the voter tabulation system under this Contract (as determined in accordance with GAAP). **THE FOREGOING STATES CONTRACTOR'S ENTIRE LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT ARISING UNDER THIS CONTRACT.**

O. 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. Except for such liability as may arise as a result of claims for intellectual property infringement, death, personal injury or property damage, Contractor's total liability to State arising out of or relating to this Contract shall not exceed the aggregate amount to be paid to Contractor hereunder. Any action by State against Contractor must be commenced within the applicable statutory period of limitations after the cause of action has accrued. By entering into this

Agreement and to the extent that any of the following was not based upon Contractor's representations, State agrees to accept responsibility for (a) the selection of the Equipment and Software to achieve State's intended results; (b) the use of the Equipment and Software in accordance with training and other materials provided by Contractor; (c) the selection of, use of and results obtained from any equipment, software or services not provided by Contractor and used with the Equipment or Software; (d) errors that arise from mechanical or electronic component failures that are not covered under warranty or not subject to preventative efforts or cure under this Contract; or (e) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of Contractor to perform. Contractor shall not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) State's failure to timely or properly install and use the most recent Update, or the second most recent Update, provided to it by Contractor or (z) State's election not to receive, or to terminate, the Hardware Maintenance Services or the Software Maintenance and Support.

P. Independent Contractor. Contractor shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming for any purpose. Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the State, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Secretary of State or the Counties. Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of Contractor or Contractor's agents and/or employees as a result of this Contract.

Q. Interpretation. The following rules of interpretation must be applied in interpreting this Contract:

- (i) headings and captions are for convenience only and are not to be used in the interpretation of this Contract;
- (ii) the provisions of the Appendices are incorporated in this Contract, and in the event of a conflict between an Appendix and this Contract, the terms of the Contract govern;

(iii) consents or approvals required to be given under this Contract shall not be unreasonably withheld, delayed or denied unless the Contract expressly states otherwise; and

(vi) all requests under this Contract shall be reasonable.

R. Kickbacks. Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with the Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, the State may, at its discretion, terminate this Contract without liability to the State, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

S. Nondiscrimination. Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975. Contractor shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance of this Contract. Contractor shall include the provisions of this section in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

T. Limitation of Payments. The State's obligation to pay Contractor for services rendered pursuant to this Contract is conditioned upon the availability of state or federal government funds which are allocated to pay the Contractor. If no further funds or if insufficient funds are allocated and available for the State to pay Contractor for these services, this Contract may be terminated by the State at the end of the period for which the funds are available.

The State shall notify Contractor at the earliest possible time if this Contract will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section other than payment to Contractor for all Services performed and deliverables provided by Contractor for which funds have been appropriated under this Contract. This provision shall not be construed so as to permit the State to terminate this Contract to acquire similar services from another party.

U. Notice and Approval of Proposed Sale or Transfer of the Contractor. Contractor shall provide the State with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Contractor. Such notice shall be provided in accordance with the Notice Provision of this Contract and consent granted by the State in accordance with Subsection 22(Q)(iii) above. If the State reasonably and objectively determines that the proposed merger, consolidation, sale or transfer of assets will materially adversely affect the continued satisfactory performance of Contractor's obligations under this Contract, then the State may, at its option, terminate or renegotiate the Contract.

V. Notice to Contractor. State shall consider the employment by Contractor of unauthorized aliens a violation of Section 274A of the Immigration and Naturalization Act. If Contractor has not cured such violation within three (3) business days of written notice from State, such violation shall be cause for unilateral cancellation of this Contract without payment of Termination Fees. Contractor and its subcontractors shall comply with all Wyoming and federal fair labor practices, laws, rules and regulations wherever this Contract is performed.

W. Notices. Any legal notice or other communication required or permitted to be made or given by either Party pursuant to this Contract will be in writing, in English, and will be deemed to have been duly given:

- (i) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; and
- (ii) when delivered if delivered personally or sent by express courier service.

All notices will be sent to the other Party at its address as set forth below or at such other address as the party may specify in a notice given in accordance with this section.

If to State: Wyoming Secretary of State's Office
ATTENTION: Tom Cowan
200 West 24th Street
Cheyenne, Wyoming 82002-0020
Phone: (307) 777-5348
Fax: (307) 777-7640

If to Contractor: Election Systems & Software, Inc.
11208 John Galt Boulevard
Omaha, NE 68137
ATTENTION: Office of General Counsel
Phone: (402) 593-0101
Fax: (402) 970-1291

X. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor, shall identify the State as the sponsoring agency and shall not be released without prior written approval from the State, and such approval shall not be unreasonably withheld, conditioned or delayed. The Parties agree that they will work toward developing a mutually agreeable press release and a statement for public use by the parties.

Y. Severability. The provisions of this Contract will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Contract, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties.

Z. Sovereign Immunity. The State of Wyoming and the Secretary of State do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

AA. Subcontractors. Contractor will identify all significant subcontractors to State prior to "Production Implementation Date." Contractor will provide State notification of changes to significant subcontractors impacting State hosting services and receive approval from State. State will not unreasonably withhold or condition, nor unduly delay the granting of any subcontractor approval. Contractor's responsibility for the Services is not diminished in any way by any such subcontracting. Contractor will not subcontract the management of this Contract. Contractor shall be responsible for all subcontractors adhering to the terms of this Contract.

BB. Survival. Any provision of this Contract that imposes or contemplates continuing obligations on a Party will survive the expiration or termination of this Contract in which it is contained.

CC. Taxes. Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes. The State shall provide Contractor a tax exempt certificate for sales of tangible personal property to State by Contractor or purchases of tangible personal property made by Contractor on behalf of State in connection with this Contract, where the title vests in State.

DD. Third Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the Parties to this Contract, and shall inure solely to the benefit of the Parties to this Contract.

EE. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

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23. Signatures. By signing this Contract, the Parties certify that they have read and understood it, that they agree to be bound by the terms of the Contract and that they have the authority to sign it. This Contract is not binding on either Party until approved by A&I Procurement and the Governor of the State of Wyoming or his designee, as required by WYO. STAT. § 9-2-1016(b)(iv).

The effective date of this Contract is the date of the signature last affixed to this page.

GOVERNOR

Dave Freudenthal
Governor
Date

SECRETARY OF STATE

Joseph B. Meyer
Secretary of State
Date

ELECTION SYSTEMS & SOFTWARE, INC.

Thomas F. O'Brien
Chief Financial Officer
Date

**ADMINISTRATION AND INFORMATION,
GENERAL SERVICES DIVISION, PROCUREMENT SECTION**

Name
Title
Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Stephanie Anesi
Assistant Attorney General
Date

ELECTION SYSTEMS & SOFTWARE, INC.

VOTER TABULATION SYSTEM AND SERVICES AGREEMENT SCHEDULES AND APPENDICES

APPENDIX A

PRICING SUMMARY

Sale Summary:										
Description	Refer to	Amount								
ES&S Equipment	Appendix B	\$4,225,895								
ES&S Software License Fees	Appendix C	\$790,500								
Third Party Items	Appendix D	\$52,440								
Election Support Services	Appendix E	\$290,400								
Shipping and Handling	Note 1	Included								
Total Net Sale		\$5,359,235								
Terms & Conditions:										
<p>Note 1: Any applicable state and local taxes are not included, and are the responsibility of State. See Section 3.5. The cost of Shipping and Handling is included. Premium or rush transportation services incurred in connection with deliverables included in the Total Net Sale are additive and will be billed as incurred.</p>										
<p>Note 2: <u>Payment terms are as follows:</u> 100% of Total Net Sale Due Upon Delivery and Acceptance of Equipment by all Counties</p>										
<p>Note 3: Services in excess of those set forth in <u>Appendix E</u> shall be charged at the rate of \$1,500 per day, including expenses.</p>										
<p>Note 4: Contractor anticipates delivering the Equipment and Software in accordance with Section 3.1 as follows:</p> <table border="0"> <thead> <tr> <th><u>Equipment/Software</u></th> <th><u>Estimated Delivery Date</u></th> </tr> </thead> <tbody> <tr> <td>ES&S Equipment</td> <td>TBD</td> </tr> <tr> <td>ES&S Software</td> <td>TBD</td> </tr> <tr> <td>Third Party Items</td> <td>TBD</td> </tr> </tbody> </table>			<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>	ES&S Equipment	TBD	ES&S Software	TBD	Third Party Items	TBD
<u>Equipment/Software</u>	<u>Estimated Delivery Date</u>									
ES&S Equipment	TBD									
ES&S Software	TBD									
Third Party Items	TBD									
<p>Note 5: In the event that State desires to later purchase ES&S Equipment in addition to those quantities set forth in this Agreement, Contractor will offer such additional ES&S Equipment to State at the same per unit pricing as set forth in this Agreement up through May 31, 2007. If State desires to purchase additional ES&S Equipment after May 31, 2007, Contractor shall offer such additional ES&S Equipment to State at Contractor's then current pricing.</p>										

Warranty:		
ES&S Equipment and ES&S Software – Warranty Period: Anticipated Warranty Period: Delivery Date – December 2006	1 year	
Ongoing Services:		
Description	Refer to	Annual Fee
Routine Maintenance Services during Warranty Period; Payment is due 30 days after invoice.	Section 17(E)	N/A
Post Warranty Hardware Maintenance Services	Appendix F	\$199,755
Services commence in 2007. Fees reflect a one-year term. Payment is due at the start of the maintenance period.		
Post Warranty Software Maintenance & Support Services		
- ES&S Firmware	Appendix F	\$25,315
- All Other ES&S Software	Appendix F	\$157,400
- EDM On-Line Renewal Fee		\$1,750
Services commence in 2007. Fees reflect a one-year term. Payment is due at the start of the maintenance period.		

APPENDIX B

ES&S EQUIPMENT DESCRIPTION AND PRICING

QUANTITY	DESCRIPTION	TOTAL PRICE
417	Model 100 Precinct Scanner with Steel Ballot Box w/Diverter, Printer, Battery, Protective Case, Security Lid, Start-Up Kit, and PCMCIA Card	\$2,137,125
318	Model 100 Internal PC104 Modem	\$63,600
20	Omni Drive	\$12,000
2	Model 650 High Speed Scanner with Steel Cart/Table, Dust Cover, and Start-Up Kit	\$92,300
358	ES&S AutoMARK Voter Assist Terminal with Transport Case, Ink Cartridge, 256mb Flashcard, and Headset	\$1,840,120
25	Model 100 Operators Manual	Included
25	Model 100 Maintenance Manual	Included
210	Model 100 Quick Start Guide	Included
7	Model 650 Operators/Maintenance Manual	Included
20	ES&S AutoMARK Manual	Included
5	High Speed Central Scanner System for Current Wyoming Central Count Customers; Model 650 High Speed Scanner with Steel Cart/Table, Dust Cover, and Start-Up Kit	\$80,750
	TOTAL	\$4,225,895

**APPENDIX C
ES&S SOFTWARE DESCRIPTION AND PRICING**

DESCRIPTION	NUMBER OF LICENSES
Unity Election System licensed pursuant to Section 2.2(a) of the General Terms (check modules being licensed):	
EDM-OnLine	7
Data Manager	12
Ballot Image Manager	12
Ballot on Demand	12
Hardware Programming Manager	12
Data Acquisition Manager	14
Reporting Manager	19
AutoMARK Information Management Software	12
ES&S Firmware (see Notes 1 and 2 below)	1
Total License Fees (including all applicable Documentation)	\$790,500

Note 1: ES&S Firmware versions may change between execution of the Agreement and first election usage due to ongoing certification of Updates.

Note 2: ES&S Firmware license fee included in the total cost of the ES&S Equipment.

APPENDIX D

THIRD PARTY ITEMS

<u>DESCRIPTION:</u>	<u>QUANTITY</u>
Okidata 9300DXN Ballot on Demand Printer with Guide	12
TOTAL THIRD PARTY ITEMS	\$52,440

Note 1:

The configuration and specification of Third Party Items as per this Appendix D are subject to change by Contractor and/or the manufacturer. Should the actual configuration and specifications differ from those set forth herein, Contractor agrees to provide, and State agrees to accept, Third Party Items that are comparable to those described above.

APPENDIX E

ELECTION SUPPORT SERVICES

1. **Term.** The services described herein shall be provided for the following elections (the “Elections”):

<p>August 2006 Primary Election November 2006 General Election</p>

2. **Services.** The election support services to be provided by Contractor, a description of such services and total fees are described below. State acknowledges that Contractor’s fees for election support services are based on the descriptions listed in the table below, and that a change in the descriptions may require Contractor to change the fees charged to State. For purposes of Contractor’s provision of Election Support Services under this Agreement, a “Service Day” shall mean the performance of any agreed upon Election Support Services on or off of State’s facilities, as applicable, by one (1) Contractor employee, contractor or agent on any one (1) calendar day or portion thereof. By way of example, “ten Service Days” could be used by State through the provision of Election Support Services by one (1) Contractor employee, contractor or agent on each of ten (10) different calendar days, two (2) Contractor employees, contractors or agents on each of five (5) different calendar days, or ten (10) Contractor employees, contractors or agents on one (1) calendar day.

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Project Management	A project manager appointed by Contractor shall be responsible for the overall planning, communication, management and coordination of Contractor Services. This person shall be the liaison for State with Contractor as it pertains to all products, services and obligations set forth in the contract.	Contractor	\$ 1,500.00
Shipping Material	Dispose of shipping materials (boxes, packaging, etc.)	State	
Regional Training – Unity	A system overview that covers the modules licensed by State. Class size is limited to 10 and course participant manuals are included. (State will ensure participants have an appropriate level of technical experience – including intermediate skills in relational database administration).	Contractor	\$1,500.00
Regional Training – ES&S AutoMARK Voter Assist Terminal	Contractor will provide classroom-style training with hands-on practice with the AutoMARK Voter Assist Terminal. General operations and general maintenance procedures will be covered. Course participant manuals are included. Class size limited to 20.	Contractor	\$1,500.00

Role/Function	Area of Work or Description	Primary Responsibility	Additional Day Bill Rate
Regional Training – Model 650 Scanner	Contractor will provide classroom-style training with hands-on practice using the Model 650 Scanner. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	Contractor	\$1,500.00
Regional Training – Model 100 Scanner	Contractor will provide classroom-style training with hands-on practice using the Model 100 Scanner. General operations, tabulation procedures, backups and general maintenance procedures are covered. Class size is limited to 20.	Contractor	\$1,500.00
Regional Training – Poll Worker Train – The-Trainer	Contractor agrees to conduct Poll Worker “Train the Trainer” classes. Class size is limited to 20. Manuals are provided (up to 20), and a master template for duplication for Poll Workers is included.	Contractor	\$1,500.00
Public Test	Contractor will assist in the development of Public Test procedures for ES&S Equipment and Software (according to State Elections Code), and assist in the actual Public Test procedures.	Contractor	\$1,500.00
Election Day Support	Contractor will provide software accumulation assistance on Election Day/Night of each contracted election.	Contractor	\$1,500.00
	Total Election Support Service Days: 264		
	Total Fees: \$290,400		

Role/Function	Area of Work or Description	Primary Responsibility
Installation – AutoMARK Voter Assist Terminal	Contractor will inspect the AutoMARK Voter Assist Terminal at the State’s delivery location to make sure it is operating properly and is within specifications for marking election day ballots.	Contractor
Installation – Model 650 Scanner	Contractor will inspect the Model 650 Scanner at the State’s delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	Contractor
Installation – Model 100 Scanner	Contractor will inspect the Model 100 Scanner at the State’s delivery location to make sure it is operating properly and is within specifications for tabulating election day ballots.	Contractor
	Total Installation Fees: Included	

[END OF APPENDIX E]

**APPENDIX F
MAINTENANCE SERVICES
(POST-WARRANTY PERIOD)**

ARTICLE I

GENERAL

1. **Term: Termination.** This Appendix F shall be in effect from the date on which the Warranty Period expires until the first anniversary thereof (the "Hardware Maintenance Term"). The Hardware Maintenance Term shall automatically renew for an unlimited number of successive one year periods until this Appendix F is terminated by the first to occur of (a) State's election to terminate it at any time, notice of which election shall be given to Contractor at least sixty (60) days prior to the termination date, (b) the date that is 30 days after either party notifies the other that the other has materially breached this Appendix F, and the breaching party fails to cure such breach within such 30-day period, or (c) the date that is thirty (30) days after State fails to pay any amount due Contractor under this Appendix F. The termination of this Appendix F shall not relieve State of its liability to pay any amounts due Contractor hereunder.

2. **Fees.** In consideration for Contractor's agreement to provide Hardware Maintenance Services and Software Maintenance and Support under this Appendix F, State shall pay to Contractor the Hardware Maintenance and Software Maintenance Fees set forth on Schedule F1 for the initial Term and each renewal period. The Hardware Maintenance and Software Maintenance Fees for the initial Term are due on the date of the expiration of the Warranty Period. Contractor may increase the Hardware Maintenance and Software Maintenance Fees for a renewal period by not more than 5% of the amount of the most recent Fees paid by State. The Hardware Maintenance and Software Maintenance Fees for any renewal period shall be due and payable no later than 30 days prior to the beginning of such renewal period. The Software Maintenance Fee shall be comprised of (i) a fee for the Software Maintenance and Support provided for the ES&S Firmware, and (ii) a fee for the Software Maintenance and Support provided for all other ES&S Software, and shall be in addition to any fees or charges separately referred to in any Section of this Appendix F or the Agreement. If State elects to receive Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, Contractor will charge an incremental Software Maintenance Fee for such services.

**ARTICLE II
HARDWARE**

1. **Maintenance Services.** The Hardware Maintenance Services to be provided to State under this Appendix F for the ES&S Equipment listed on Schedule F1 (the "Products") shall be subject to the following terms and conditions:

a. **Inspection.** If State has elected not to receive Hardware Maintenance Services under this Appendix F for a period of twelve (12) months or more, Contractor may require State to allow it to inspect the Products before it provides any Hardware Maintenance Services. The purpose of such inspection shall be to determine whether or not the Products are fit for the ordinary purposes for which they are to be used, normal wear and tear excepted ("Normal Working Condition"). The cost of such inspection will be at the current published Contractor rate plus Contractor's Out-of-Pocket Expenses, and shall be due from State within 30 days of its receipt of Contractor's invoice therefore. If any of the Products is not in Normal Working Condition, Contractor, at the option of State, (i) shall provide such repairs and replacements as Contractor deems reasonable and necessary to restore such Product(s) to Normal Working Condition, at State's expense with respect to the cost of any parts used in such repairs or replacements, or (ii) shall not provide any Hardware Maintenance Services with respect to such Product(s).

For purposes of this Appendix E, “Out-Of-Pocket Expenses” shall mean all travel, meal and lodging expenses incurred by Contractor employees or authorized representatives (“Contractor Representatives”) who are required to travel to State’s Designated Location to provide services. State’s “Designated Location” shall mean State’s owned or leased facility at which State desires Contractor to perform the Hardware Maintenance Services. State’s Designated Location is specified on Schedule F1.

b. **Routine Maintenance Services.** A Contractor Representative shall provide such services as may be necessary to keep the Products in Normal Working Condition (“Routine Maintenance Services”) once each twelve (12) months during the Hardware Maintenance Term or any renewal thereof. State may request that Routine Maintenance Services be performed more than once during any such 12-month period. Any such request shall be made at least sixty (60) days before the Routine Maintenance Services are desired. The per-unit fee for such additional Routine Maintenance Services is set forth on Schedule F1 and shall be due within thirty (30) days after invoice. Routine Maintenance Services shall include cleaning, lubrication and calibration services. At the request of State, Contractor shall provide a reasonably detailed record of all Routine Maintenance Services performed with respect to one or more Products. The Routine Maintenance Services will be provided either at State’s Designated Location or at a Contractor-designated depot facility (“Depot”), as elected by State on Schedule F1. State shall pay all costs associated with shipping Product(s) to a Depot, including insurance.

c. **Remedial Maintenance Services.**

i. **Defects Under Normal Use and Service.** If a defect or malfunction occurs in any Product while it is under normal use and service, State shall promptly notify Contractor, and Contractor shall use reasonable efforts to restore the Product to Normal Working Condition as soon as practicable. The services provided by Contractor pursuant to this Subsection 1(c)(i) are referred to herein as “Remedial Maintenance Services”. Contractor shall provide the Remedial Maintenance Services at its Depot; provided, however, that if Remedial Maintenance Services are required for ten (10) or more Products at any given time, State may elect to have them provided at its Designated Location; provided, further, that all Remedial Maintenance Services provided for central count equipment shall be provided at State’s Designated Location. State acknowledges that Product(s) identified on Schedule F1 as “depot repair only” may only be repaired at a Depot.

ii. **Defects Due to State Actions or Omissions.** If a defect or malfunction occurs in any Product as a result of (1) repairs, changes, modifications or alterations not authorized or approved by Contractor, (2) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by Contractor or (3) causes beyond the reasonable control of Contractor or State, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations, and utility or communication interruptions, or if State does not notify Contractor within 24 hours after it knows of the defect or malfunction or is otherwise not in compliance with its obligations hereunder, State shall pay Contractor for the Remedial Maintenance Services at Contractor’s then-current rates, as well as for the cost of all parts used in connection with such Remedial Maintenance Services.

iii. **Timing.** The date(s) on which any Remedial Maintenance Services shall be provided shall be mutually agreed upon by Contractor and State. If State requires Contractor to provide “emergency” Remedial Maintenance Services (which shall be defined as Remedial Maintenance Services that are provided within 48 hours after State notifies Contractor of the need therefor), and such emergency Remedial Maintenance Services are not needed as a result of an action, error or omission by Contractor, State shall pay a surcharge, as set forth on Schedule F1.

iv. **Loaner Unit.** At State's request, Contractor shall use reasonable efforts to promptly make available to State a product that is the same as, or substantially similar to, the Product for which Remedial Maintenance Services are being performed (a "Loaner Unit"). If the Remedial Maintenance Services are being performed pursuant to Subsection 2(c)(ii) above, State shall pay Contractor for the use of the Loaner Unit at Contractor's then-current rates including the cost of shipping.

d. **Exclusions.** Contractor has no obligation under this Appendix F to (i) assume the obligations under any existing or expired warranty for a Third Party Item; (ii) repair or replace Product components that are consumed in the normal course of operating the Product, including printer ribbons, paper rolls, batteries, removable memory packs, cancellation stamps, ink pads or red stripe pens, or (iii) repair any Product from which the serial number has been removed or altered. In addition, Contractor may, at any time in its discretion, determine that any Product is no longer fit for Hardware Maintenance Services because it is in such poor condition that it cannot practically be restored to Normal Working Condition, or cannot be restored to Normal Working Condition at an expense that is less than the then-current value of the Product. If such a determination is made, Contractor shall no longer be required to provide Hardware Maintenance Services for such Product. Contractor shall also refund to State an amount equal to (1) that portion of the most recent fee paid for Hardware Maintenance Services that is attributable to such Product, multiplied by (2) a fraction, the numerator of which is the remaining number of days in the Hardware Maintenance Term or renewal period for which such fee was paid and the denominator of which is the total number of days in such Hardware Maintenance Term.

e. **Sole Provider; Access.** State shall not permit any individual other than a Contractor Representative to provide maintenance or repairs with respect to the Products for so long as a Hardware Maintenance Term is in effect. State shall provide Contractor Representatives with all information necessary to enable them to provide Hardware Maintenance Services. State shall likewise provide full access to the Products and adequate working space for all Hardware Maintenance Services performed at its Designated Location, including sufficient heat, lights, ventilation, electric current and outlets.

f. **Storage.** When not in use, State shall properly store the Products in accordance with the storage requirements established in the Documentation.

ARTICLE III

SOFTWARE

1. **Services Provided.** Contractor shall provide maintenance and support services for the ES&S Software ("Software Maintenance and Support"), to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship.

2. **Updates.** During the Software Maintenance Term and any renewals thereof, Contractor shall continue to provide updates in accordance with any update schedule determined by Contractor.

2. **Reinstatement of Software Maintenance and Support.** If the Software Maintenance Term or any renewal thereof expires without being renewed, State may thereafter resume receiving Software Maintenance and Support upon (a) notification to Contractor, (b) payment of all fees which would have been due to Contractor had the Software Maintenance Term not expired, and (c) the granting to Contractor of access to the ES&S Software, so that Contractor may analyze it and perform such maintenance as may be necessary before resuming the Software Maintenance and Support.

4. **Conditions.** Contractor shall not provide Software Maintenance and Support for any item of ES&S Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by Contractor, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by Contractor, (c) causes beyond the reasonable control of Contractor or State, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) State's failure to timely and properly install and use the most recent Update, or the second most recent Update, provided to it by Contractor, (e) State's failure to notify Contractor within 24 hours after State knows of the need for such services, or (f) if State is otherwise not in compliance with its obligations under this Agreement. Any such Software Maintenance and Support shall be provided at the fees to be agreed upon by the parties if and when the need for such Software Maintenance and Support arises.

5. **Proprietary Rights.** Contractor shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with State or others, as a result of or related to the performance of this Appendix F, including all proprietary rights therein or based thereon. Subject to the payment of all Software Maintenance Fees, Contractor hereby grants to State a non-exclusive license to use that portion of such corrections, programs, information and work product that Contractor actually delivers to State pursuant to this Appendix F. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, Contractor does not grant to State any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

Schedule F1

**DESCRIPTION OF PRODUCTS
HARDWARE**

Ongoing Annual Hardware Maintenance Fees

Quantity	Description (Note: *** indicates Depot Repair Only Products)	Initial Maintenance Fee Per Unit	Annual Maintenance Fee In Total
417	Model 100 Precinct Scanner	\$195	\$81,315
7	Model 650 High Speed Scanner	\$2,600	\$18,200
358	ES&S AutoMARK Voter Assist Terminal	\$280	\$100,240
	Total Annual Hardware Maintenance Fees Due Beginning in 2007		\$199,755
417	Model 100 Precinct Scanner	\$203	\$84,651
7	Model 650 High Speed Scanner	\$2,704	\$18,928
358	ES&S AutoMARK Voter Assist Terminal	\$291	\$104,178
	Total Annual Hardware Maintenance Fees Due Beginning in 2008		\$207,757
417	Model 100 Precinct Scanner	\$211	\$87,987
7	Model 650 High Speed Scanner	\$2,812	\$19,684
358	ES&S AutoMARK Voter Assist Terminal	\$303	\$108,474
	Total Annual Hardware Maintenance Fees Due Beginning in 2009		\$216,145
417	Model 100 Precinct Scanner	\$219	\$91,323
7	Model 650 High Speed Scanner	\$2,924	\$20,468
358	ES&S AutoMARK Voter Assist Terminal	\$315	\$112,770
	Total Annual Hardware Maintenance Fees Due Beginning in 2010		\$224,561
417	Model 100 Precinct Scanner	\$228	\$95,076
7	Model 650 High Speed Scanner	\$3,041	\$21,287
358	ES&S AutoMARK Voter Assist Terminal	\$328	\$117,424
	Total Annual Hardware Maintenance Fees Due Beginning in 2011		\$233,787

Per-Unit Fees if State requests more than one Routine Maintenance visit in a 12-month period, State shall pay 90% of the then current maintenance fee per unit.

Surcharge for Emergency Remedial Maintenance Services: 150% of the then current maintenance fee per unit.

State's Designated Location: Determined by County

Location of Services

State's Designated Location

Depot

Per Unit Surcharge for performance of Routine Maintenance visit at more than one State Designated Location: \$25.00 per unit for all units located at second or more locations.

SOFTWARE

Year	Maintenance Term	Fee –ES&S Firmware	Fee- All Other ES&S Software	EDM-OnLine Renewal Fee
2007	One (1) Year	\$25,315	\$157,400	\$1,750
2008	One (1) Year	\$26,174	\$165,270	\$1,820
2009	One (1) Year	\$27,033	\$173,140	\$1,893
2010	One (1) Year	\$27,899	\$181,010	\$1,969
2011	One (1) Year	\$28,765	\$188,880	\$2,048

**APPENDIX G
ACCEPTANCE CRITERIA**

M100 - SYSTEM ACCEPTANCE TESTING

Inspector: _____

Serial Number: _____ **Date:** _____

- Plug in unit and insert Demo Card
- Turn Key to Open/Close Polls
- When the question 'Election Card Inserted Open Polls Now?' appears DO NOT press Yes. Press the 1 & 3 keys simultaneously.
- Select System Settings
- Select Date Time
- Select Set Date. Verify the date and change accordingly using the select and plus or minus keys.
- Press Previous to return to the Date Time Menu
- Select Set Time. Verify the date and change accordingly using the select and plus or minus keys.
- Press Previous to return to the Date Time Menu
- Select Set Zone. Verify the zone and change accordingly using the select and plus or minus keys.
- Press Previous to return to the Date Time Menu
- When the Date Time function is complete – select Previous Menu
- Select Calibrate DACs
- Select Set DACs
- Run Ballots in all 4 orientations. Verify that the DAC Values are all accounted for and do not exceed 5. Make adjustments accordingly.
- When the ballot has been run in all 4 orientations and the DACs are set correctly select Previous.
- Select Previous again
- Select Factory Defaults
- Select Save Factory Defaults
- Select Yes

M100 - SYSTEM ACCEPTANCE TESTING cont.

- Select OK
- Select Previous Menu
- Select Previous Menu again
- Question appears 'Mode lock out calibration menu?' Answer NO
- Select Previous
- Question appears 'Mode lock out system settings?' Answer NO
- Select Diags
- Select Ballot Diags
- Select Feed Ballots
- Insert 2 Ballots – should receive error (127) Multiple Ballots detected
- Remove ballots and select OK
- Select Previous Menu
- Select Recycle Set
- Set Cycles for 5 using the Select Digit & Plus/Minus Key
- Select Previous Menu
- Select Feed Ballots
- Insert the Blank Ballot in all 4 orientations, 5 times each orientation.
- Insert the ALL FILL Ballot in all 4 orientations, 5 times each orientation.
- When ballots are at 40 Select Marks Table. All marks should be 020.
- If okay, select Previous Menu
- Select Previous Menu again
- Select Previous Menu again
- When you get back to Open Polls Now? Turn Key of off – remove card and unplug.

ACCEPTANCE CRITERIA
AUTOMARK VOTER ASSIST TERMINAL

Inspector: _____

Serial Number: _____ **Date:** _____

Acceptance O.C. Testing:

Setup

- Place AutoMARK on firm surface
- Connect AC chord to machine and wall outlet
- Connect headphones
- Insert key

Visual Inspection

- Verify sample ballot compact flashcard installed
- Verify battery installed
- Verify top and rear clean-out trays installed
- Verify print cartridge installed
- Inspect all fasteners and plastic parts

Print Testing

- Turn key switch to Test
- Wait for machine to boot
- Press Test Ballot Print on Test Mode screen
- Insert sample ballot and wait to print
- Repeat procedure in all orientations
- Press Done
- Calibrate as required

Keypad/Audio Testing

- Turn key switch to On
- Verify "Insert Ballot" audio prompt
- Cycle Display Screen (diamond button)
- Verify Repeat Key functionality
- Verify Tempo rocker key functionality
- Verify Volume rocker key functionality

Voting Process

- Insert sample ballot
- Complete voting process using touch screen
- Print Ballot
- Insert sample ballot
- Complete voting process using key pad
- Print Ballot
- Insert previously printed ballot
- Verify that AutoMARK correctly identifies votes

M650 - SYSTEM ACCEPTANCE TESTING

Inspector: _____

Serial Number: _____ **Date:** _____

- Plug in unit and insert Demo Card
- Turn Key to Open/Close Polls
- When the question 'Election Card Inserted Open Polls Now?' appears DO NOT press Yes. Press the 1 & 3 keys simultaneously.
- Select System Settings
- Select Date Time
- Select Set Date. Verify the date and change accordingly using the select and plus or minus keys.
- Press Previous to return to the Date Time Menu
- Select Set Time. Verify the date and change accordingly using the select and plus or minus keys.
- Press Previous to return to the Date Time Menu
- Select Set Zone. Verify the zone and change accordingly using the select and plus or minus keys.
- Press Previous to return to the Date Time Menu
- When the Date Time function is complete – select Previous Menu
- Select Calibrate DACs
- Select Set DACs
- Run Ballots in all 4 orientations. Verify that the DAC Values are all accounted for and do not exceed 5. Make adjustments accordingly.
- When the ballot has been run in all 4 orientations and the DACs are set correctly select Previous.
- Select Previous again
- Select Factory Defaults

**APPENDIX G
ACCEPTANCE CRITERIA**

CERTIFICATE OF ACCEPTANCE

The undersigned do hereby certify that the Equipment listed below is all of the Equipment to be delivered to _____ County in accordance with Appendices B and K and has been tested and accepted under the criteria specified in the Agreement. Serial Numbers of respective Equipment are attached.

M100 Units	AutoMARK Voter Assist Terminals	M650 Units
<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>
<u>Units Delivered</u>	<u>Units Delivered</u>	<u>Units Delivered</u>

Firmware Version: _____

State: _____

Representative: _____
(Printed Name & Title)

(Signature)

Contractor
Representative: _____
(Printed Name)

(Signature)

Date: ____/____/____

[END OF APPENDIX G]

APPENDIX H

DRAFT TRAINING PLAN

Contractor Overall Training Approach

Introducing new technology presents unique challenges; precinct official training materials and programs have to be developed in cooperation with county election officials to facilitate “first time” conformity to state election laws, regulations, and procedures.

When implementing a new election system, training must be a primary consideration. There are many different approaches to this challenge. Contractor measures the success of new installations by the ability of our clients to more efficiently manage their election process using our systems. Our comprehensive training program has been developed to promote a strong level of competency for all intended users. A series of training modules has been developed that provide successful participants of your election team with the skills to perform necessary operations.

While we have developed a standard curriculum approach, we believe a key element in a successful implementation is the appropriate customization and integration of our training to incorporate the laws, regulations, and procedures unique to the state and to the jurisdictions within. Contractor will work with election staff to develop a training product that is current and relevant to State of Wyoming.

We know the successful implementation and continuous operation of any new voting system directly hinges on an effective training program for election personnel and voters. Knowing that **training stands as the most critical component of any installation and support plan** for the election system, Contractor takes great pride in providing our clients extensive, world-class voter system training programs.

Excepting the hardware Equipment Operations training, the optimum class size is no more than twenty participants per class. While Contractor is capable and willing to schedule multiple classes per jurisdiction, our recommendation is to pursue the Train-the-Trainer approach to accomplish required knowledge transfers. With our Train-the-Trainer approach, the ability to iteratively train others will be captured at the state and county level in a cost-effective manner.

The Train-the-Trainer course trains election staff in complete equipment operations - specific to the piece of equipment the trainer will be teaching others to use. Trainers need only attend one Train-the-Trainer course; they will complete operations training for each piece of equipment on which they will train.

Should some personnel require only a familiarization course on equipment and procedures, the Poll Worker courses should be sufficient. Pertinent operations and poll worker training classes are listed in the attached **Table**. All courses can be customized to a particular equipment configuration for the State of Wyoming. Class sequences and timing are flexible and subject to negotiation.

Contractor offers a comprehensive training program that will meet the needs of direct training for election judges and /or train-the-trainer courses, which will allow the State of Wyoming staff to provide training.

Typically, Train-the-Trainer courses are equipment-specific. A prerequisite for these course offerings is operations training on the piece of equipment being used. The curriculum is designed using theory and methods that are optimal for adult learning. Course instruction utilizes audio, visual and hands-on demonstrations and exercises. The manuals and job aids are designed to complement the course instruction and provide simulation of election activities. The evaluation of the course and transfer of knowledge has been completed in a number of fashions.

Customized job aids and testing materials can be developed to meet the individualized needs of the State of Wyoming.

Additionally, Contractor offers a Training Video / DVD that discusses staff training and setup and operating procedures for poll workers. In addition to training, the video / DVD contains a short loop film that can be played for voters either on or prior to Election Day in places such as the courthouse lobby, libraries, and other public venues.


CONTRACTOR'S TRAINING COURSES

Table illustrates a complete set of training courses offered by Contractor. The courses offered to the State of Wyoming will depend on the product alternative selected.

Course Name	Description	Audience	<i>Prerequisites</i>	Duration	Class Size
iVotronic Operations	<p>This training course introduces Election Personnel to the iVotronic voting system. Successful participants gain the knowledge, skills, and abilities to operate Election Systems & Software's iVotronic Touch Screen voting system. Covered topics include:</p> <ul style="list-style-type: none"> • An in-depth overview of the iVotronic system; • Pre-Election Day preparation requirements and troubleshooting; and • Election Day operations and troubleshooting. 	<ul style="list-style-type: none"> • Election Officials • State, County, and Precinct Voting System Technicians • Training Consultants 	None	1 Day	1-20
iVotronic Train the Trainer	<p>This training course introduces Election Personnel to the training techniques supporting the iVotronic voting system. Successful participants gain the knowledge, skills, and abilities to train others on operating Election Systems & Software's iVotronic Touch Screen voting system. Covered topics include:</p>	<ul style="list-style-type: none"> • Election Officials • State, County and Precinct Trainers • Training Consultants 	iVotronic Operations	2 Days	1-20

Course Name	Description	Audience	<i>Prerequisites</i>	Duration	Class Size
	<ul style="list-style-type: none"> • Optimal adult training methods; • Pre-training preparation; • Overview of the iVotronic system; • Election Day operations – including poll opening / closing and voting procedures; • Troubleshooting procedures; and • Training simulation and practice. 				
iVotronic Poll Worker Training	<p>This training course introduces Poll Workers to the iVotronic voting system. Successful participants gain the knowledge, skills, and abilities to operate Election Systems & Software's iVotronic Touch Screen voting system. Covered topics include:</p> <ul style="list-style-type: none"> • In-depth overview of the Model 100 system; • Election Day operations – including poll opening / closing and voting procedures; and • Troubleshooting procedures. 	<ul style="list-style-type: none"> • Election Officials • State, County, and Precinct Poll Workers • Voting System Technicians 	None	1 Day	1-20

Course Name	Description	Audience	<i>Prerequisites</i>	Duration	Class Size
Model 650 Operations Training	<p>This training course introduces State Representatives to the Model 650 voting system. Successful participants gain the knowledge, skills, and abilities to operate Election Systems and Software's Model 650 voting system. Covered topics include:</p> <ul style="list-style-type: none"> • An in-depth overview of the scanner hardware; • Pre-Election Day preparation requirements and troubleshooting; and • Election Day operations and troubleshooting. 	<ul style="list-style-type: none"> • Election Officials • State and County Workers • Voting System Technicians 	None	1 Day	1-20

Course Name	Description	Audience	<i>Prerequisites</i>	Duration	Class Size
AutoMARK Operations	<p>This training course introduces Election Personnel to the AutoMARK voting system. Successful participants gain the knowledge, skills, and abilities to operate Election Systems & Software's AutoMARK voting system. Covered topics include:</p> <ul style="list-style-type: none"> • An in-depth overview of the AutoMARK's ballot generating capabilities; • Pre-Election Day preparation requirements; and • Election Day operations and troubleshooting. <p> Note: This course is typically bundled with Model 100 Operation courses</p>	<ul style="list-style-type: none"> • Election Officials • State, County, and Precinct Voting System Techs • Training Consultants 	None	1 Day	1-20

Course Name	Description	Audience	Prerequisites	Duration	Class Size
Model 100 Operations Training	<p>This training course introduces Election Personnel to the Model 100 voting system. Successful participants gain the knowledge, skills, and abilities to operate Election Systems and Software's Model 100 voting system. Covered topics include:</p> <ul style="list-style-type: none"> • In-depth overview of the Model 100 system; • Pre-election preparation requirements; and • Election Day operations and troubleshooting. 	<ul style="list-style-type: none"> • Election Officials • State and County Information Technology (IT) Employees • Voting System Technicians 	None	1 Day	1-20
Model 100 Poll Worker Training	<p>This training course introduces Poll Workers to the Model 100 voting system. Successful participants gain the knowledge, skills, and abilities to operate Election Systems & Software's Model 100 voting system. Covered topics include:</p> <ul style="list-style-type: none"> • In-depth overview of the Model 100 system; • Election Day operations – including poll opening / closing and voting procedures; and • Troubleshooting procedures. 	<ul style="list-style-type: none"> • Election Officials • State, County, and Precinct Poll Workers • Voting System Technicians 	None	1 Day	1-20

Course Name	Description	Audience	Prerequisites	Duration	Class Size
Model 100 Train-the-Trainer	<p>This training course introduces Election Personnel to the training techniques supporting the Model 100 voting system. Successful participants gain the knowledge, skills, and abilities required to aptly train others on operating Election Systems & Software's Model 100 voting system. Covered topics include:</p> <ul style="list-style-type: none"> • Optimal adult training methods; • Pre-training preparation; • Overview of the Model 100 system; • Election Day operations – including poll opening / closing and voting procedures; • Troubleshooting procedures; and • Training simulation and practice. 	<ul style="list-style-type: none"> • Election Officials • State, County and Precinct Trainers • Training Consultants 	Model 100 Operations	2 Days	1-20

Course Name	Description	Audience	Prerequisites	Duration	Class Size
Basics of Election Data Manager	This <i>optional</i> training course introduces State Representatives to the Election Data Manager (EDM) – a module within Election Systems & Software's Unity Election System. Successful participants gain the knowledge, skills, and abilities to perform basic system functions and build, maintain, and store all election-related information – precincts, districts, offices, candidates, referenda – in one database.	<ul style="list-style-type: none"> • Election Officials • State and County Workers • Voting System Technicians 	None	2 Days	1-10
Basics of Unity Ballot Image Manager Course	This <i>optional</i> training course introduces Election Officials to the Ballot Image Manager (BIM) – a module within Election Systems & Software's Unity Election System. Successful participants gain the knowledge, skills, and abilities to perform basic system functions and create an election ballot.	<ul style="list-style-type: none"> • Election Officials • State and County Workers • Voting System Technicians 	None	1 Day	1-10
Basics of Unity Hardware Programming Manager Course	This training course introduces Election Officials to the Hardware Programming Manager (HPM) – a module within Election Systems & Software's Unity Election System. Successful participants gain the knowledge, skills, and abilities to perform basic system functions and program the election tabulation hardware with election-specific information from the Unity Election Data Manager.	<ul style="list-style-type: none"> • Election Officials • State and County Workers • Voting System Technicians 	None	1 Day	1-10

Course Name	Description	Audience	Prerequisites	Duration	Class Size
Basics of Unity Data Acquisition Manager Course	This training course introduces Election Officials to the Data Acquisition Manager (DAM) – a module within Election Systems & Software's Unity Election System. Successful participants will gain the knowledge, skills, and abilities to perform basic system functions and transmit election results from precincts or regional locations to Election Central.	<ul style="list-style-type: none"> • Election Officials • State and County Workers • Voting System Technicians 	None	1 Day	1-10
Basics of Unity Election Reporting Manager Course	This training course introduces Election Officials to the Election Reporting Manager (ERM) – a module within Election System & Software's Unity Election System. Successful participants gain the knowledge, skills, and abilities to perform basic system functions; including generating and displaying customized election reports in either paper or electronic formats. <input type="checkbox"/> Note: This course is offered in WebEx format to those customers requiring training in only this specific Unity module.	<ul style="list-style-type: none"> • Election Officials • State and County Workers • Voting System Technicians 	None	1 Day	1-10

APPENDIX I

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE WYOMING SECRETARY OF STATE
AND _____**

Parties. This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between the Wyoming Secretary of State, [State], whose address is 200 West 24th Street, Cheyenne, Wyoming 82002, and the _____ [County], whose address is _____.

Purpose. The purpose of this MOU is to set forth the responsibilities of the County regarding the purchase, testing, acceptance, safekeeping and ongoing maintenance of voting systems required and funded under the Help America Vote Act and by the State. The Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 (HAVA) was signed by the President on October 29, 2002.

The State has entered into a contract with _____(Contractor) whereby voting systems, equipment and software will be purchased for and delivered to the County. That Contract is incorporated into this Agreement by reference and is attached as Appendix A. The authority for purchase of the voting systems is provided by HAVA and 2003 Wyo. Sess. Laws Ch. 183.

The type and quantity of qualified voting and management systems to be purchased by the State for use in the County were requested and recommended for purchase to the State by the County Clerk following extensive review. The quantities reflect the HAVA requirements of having at least one accessible voting system for individuals with disabilities to be placed at each polling place. The State, through the Office of Secretary of State, has reviewed that request for completeness, accuracy and reasonableness and has approved same. The request has also been reviewed by a Committee of Wyoming County Clerks. The type and quantity of the systems requested and which will be purchased by the State for the County is attached as Appendix B.

Term of MOU. This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect until terminated.

Payment. No payment shall be made to either party by the other party as a result of this MOU.

Responsibilities of State. The State shall have the following responsibilities:

- A. The State will pay for the purchase of HAVA-qualified voting systems, related equipment and services for the County, for reasonable expenses related to training on the proper use of the systems and for warranties of this system and maintenance of the equipment and software, to the extent stated in Appendix A. The systems, equipment and services are warranted by Contractor to have been tested and certified under the standards provided by HAVA and warranted to meet the requirements of HAVA for future federal elections, and acknowledged to have been tested and certified under standards separately adopted and implemented in various states for use in future elections in those states. The Contractor will also verify to the State and County that each piece of equipment and software delivered to the County will function properly according to the terms provided in Appendix A.
- B. The State hereby acknowledges that the County owns and holds title to all equipment and voting systems purchased under this Agreement, Appendix A and the Contract with _____ on behalf of the County, upon certification, delivery, and verification by the Contractor according to the terms in Appendix A; verification by County according to this MOU; and payment by the State to the Contractor.

Responsibilities of County. The County shall have the following responsibilities:

- A. To assume responsibility for the proper handling, storage, future operation and future replacement of the voting systems and equipment provided to the County under this Agreement and Appendix A to the same extent that the County has responsibility

for existing voting systems and equipment purchased by the County.

- B. To assume financial and other responsibility for all maintenance services, warranties, operational services, equipment and software upgrades following expiration of those services purchased on behalf of the County by the State under this Agreement and Appendix A.
- C. To carry out the acceptance and testing of equipment and systems purchased under this Agreement and notify the State of any deficiencies as provided in Appendix A.
- D. To verify on forms provided by the State that the equipment and software listed in Appendix B was received in good working order.
- E. To perform pre-election testing before each election of the Equipment and Software, as defined in Appendix A, in sufficient time to permit the timely repair of the Equipment and Software before each election. County shall notify the State and Contractor of any deficient equipment and shall set a mutually agreed upon schedule between it and Contractor for replacement or repair, pursuant to the terms in Appendix A.
- F. To coordinate with Contractor for the ordering and timely delivery of the items supplied by Contractor or subcontractors or agents.
- G. To attend training as provided by Contractor.
- H. To be responsible for determining whether to purchase and maintain extended warranties and install or have installed by Contractor all State-approved upgrades, patches and/or add-on or new products, as provided in Appendix A.
- I. To be responsible for the repair or replacement of any components that are consumed in the normal course of operating the equipment, including printer ribbons, paper rolls, batteries, removable memory packs, PCMCIA cards, cancellation stamps, ink pads or red stripe pens.

- J. To be responsible for promptly notifying Contractor and State of 1) the failure of performance or defect or other non compliance with Contractor's obligations under the Contract; 2) any equipment damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by Contractor or causes beyond the reasonable control of County, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions;
- K. To only repair, change, modify or alter any equipment as authorized or approved by Contractor.
- L. To abide by the terms of the Contract between the Secretary of State's Office and _____ including, but not limited to: Sections 5 (Payment), 8 (Installation), 10 (training), 11 (responsibilities of state), 13 (grant of licenses), 15 (title and risk of loss), 19 (warranties). See Appendix A.

General Provisions

- A. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.
- B. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Entirety of Agreement.** This MOU, consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

- D. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been executed before performance begins as described under the terms of this MOU, and until this MOU is approved as to form by the Attorney General or his representative.
- E. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- F. **Sovereign Immunity.** The State of Wyoming, Secretary of State's Office and the County do not waive their sovereign immunity by entering into this MOU, and fully retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- G. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

8. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

OFFICE OF SECRETARY OF STATE

[Name and Title]

Date

COUNTY CLERK

[Name and Title]

Date

COUNTY COMMISSIONERS

Date

Date

Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Stephanie Anesi
Assistant Attorney General

Date

APPENDIX J

PROPOSAL

APPENDIX K

WYOMING VOTING SYSTEMS COUNTY SUMMARY