

STATE OF UTAH CONTRACT ASSIGNMENT

STATE CONTRACT # AR1910

1. PARTIES TO THE ASSIGNMENT:

ASSIGNOR (old contractor): **Premier Election Solutions**
 ASSIGNEE (new contractor): **Dominion Voting Systems, Inc.**
 NEW VENDOR NUMBER:
 (Assigned by the State of Utah)

Assignee please complete company information form:

| | | | | |
|---|--------------------------------------|---|-------------------------------------|------------|
| Dominion Voting Systems, Inc. | | | 27-0565149 | |
| Company Name | | | Federal Tax ID # | |
| 1201 18 th Street, Suite 210 | | Denver | CO | 80202 |
| Ordering Address | | City | State | Zip Code |
| Dept. 1241, PO Box 1070 | | Charlotte | NC | 28201-1070 |
| Remittance Address (if different from ordering address) | | City | State | Zip Code |
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Proprietorship | <input type="checkbox"/> Government | Tuyet Ha |
| Company Type | | | Company Contact Person | |
| (866) 654-8683 | | (303) 291-3909 | | |
| Telephone Number | | Fax Number | | |
| www.dominionvoting.com | | ar-dvsi@dominionvoting.com | | |
| Internet Home Page | | Email Address | | |

2. CONTRACT SERVICES ASSIGNED TO ASSIGNEE (Brief Description):

This is the contract assignment of the State of Utah and Premier Election Solutions, Inc. contract entered into on August 11, 2005 and amended on February 17, 2010. The Statewide Contract is Contract Number AR1910. As part of the assignment, Dominion agreed to provide a software license for the continued use of the system at discounted rates.

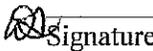
3. ASSIGNEE agrees to perform all of ASSIGNOR'S contract responsibilities, and to abide by all contract provisions specified in this contract. ASSIGNOR will have no further responsibilities to perform under this contract and will make no claim for benefits arising from this contract after the effective date of this assignment.

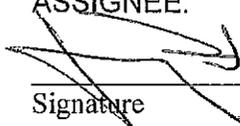
EFFECTIVE DATE: 05/10/2011.

IN WITNESS WHEREOF, the parties to this assignment sign and cause it to be executed.

ASSIGNOR:

ASSIGNEE:

 _____
Signature Date

 _____
Signature Date 29-JUNE-2011

Name and Title (type or print)

John Poulos, President and CEO

Name and Title (type or print)

APPROVED BY:

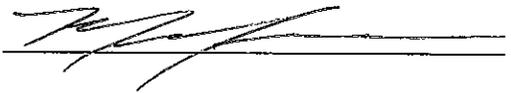
 _____
 Division of Purchasing Date

**ADDENDUM TO FIRST AMENDMENT TO ASSIGNMENT AGREEMENT
DOMINION VOTING SYSTEMS, INC
AND THE STATE OF UTAH**

The State of Utah (State) is entering into this amendment to the agreement with Dominion Voting Systems, Inc. (Dominion) based on Dominion Voting Systems, Inc's representation of the Assignment of Contract AR1910 from Premier Election Solutions to Dominion Voting Systems, Inc. The State is entering into this amendment to the agreement based on the reliance on the representation by Dominion that Dominion has the right to enter into this amendment to the agreement as it has acquired such rights from Premier, and the State is relying on that representation in entering into this amendment to the agreement.

IN WITNESS THEREOF, the State and Dominion have caused this Agreement to be duly executed by their authorized representatives as of the Effective Date of the First Amendment.

Dominion Voting Systems, Inc



By: Michael Frontera

Its: Vice President & General Counsel

Date: 10/18/11

State of Utah

Division of Purchasing



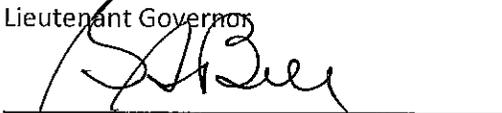
By: Kent D Beers

Its: Director, State Purchasing

Date: 11/1/10

State of Utah

Lieutenant Governor



By: Greg Bell

Its: Lt. GOVERNOR

Date: 10/27/2011

**FIRST AMENDMENT TO ASSIGNMENT AGREEMENT
DOMINION VOTING SYSTEMS, INC.
AND THE STATE OF UTAH**

This First Amendment to the Assignment Agreement ("Amendment") is made and entered into as of this ___ day of May, 2011 (the "Effective Date") by and between State of Utah ("State") and Dominion Voting Systems, Inc., a Delaware corporation ("Dominion").

RECITALS

WHEREAS on August 11, 2005 the State and Premier Election Solutions, Inc. ("Premier") entered into a Statewide Contract, Contract Number AR1910 ("Original Contract") which was amended on February 17, 2010 ("First Amendment to Contract"). The Original Contract and First Amendment to Contract shall hereinafter collectively be referred to as the "Agreement"); and

WHEREAS on May 9, 2011, the State assigned the Agreement with Premier to Dominion; and

WHEREAS the State and Dominion now desire to revise certain terms of the Agreement upon the terms, covenants and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the State and Dominion agree as follows:

A G R E E M E N T

1 Incorporation of Recitals. The above recitals are true and correct and incorporated herein by this reference as if fully set forth.

2. Amendment Language. The terms of this Amendment shall modify and supersede any and all inconsistent terms of the Agreement. Except as specifically set forth in this Amendment, all remaining applicable terms and conditions of the Agreement shall remain in full force and effect.

3. GEMS Software License. Exhibit B to the First Amendment to Contract and Exhibit B of Attachment C to the Original Contract are hereby amended by reducing the Annual Software License and Maintenance Fee for the GEMS software from \$193,500.00 to \$93,500.00. The GEMS Software License Fee for 2011 shall be pro-rated based upon the Effective Date of this Amendment.

4. Notices. Section 10 of the First Amendment to Contract and Section 14.6 of Attachment C to the Original Contract are hereby amended by deleting the Notice to DESI provision and replacing it with the following:

"If to Dominion:

Dominion Voting Systems, Inc.
1201 18th St. Suite 210
Denver, CO 80202
Attn: Office of General Counsel"

IN WITNESS THEREOF, the State and Dominion have caused this Agreement to be duly executed by their authorized representatives as of the Effective Date.

Dominion Voting Systems, Inc.



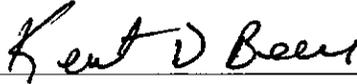
By: JOHN POULOS

Its: PRESIDENT & CEO

Date: 29 - JUNE - 2011

State of Utah

DP
Division of Purchasing



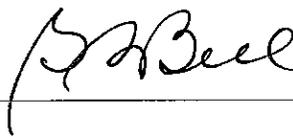
By: Kent D Beers

Its: Director, State Purchasing

Date: 8/29/11

State of Utah

Lieutenant Governor



By: Greg Bell

Its: Lt. Governor

Date: 8/23/11

**FIRST AMENDMENT TO ASSIGNMENT AGREEMENT
DOMINION VOTING SYSTEMS, INC.
AND THE STATE OF UTAH**

This First Amendment to the Assignment Agreement ("Amendment") is made and entered into as of this ___ day of May, 2011 (the "Effective Date") by and between State of Utah ("State") and Dominion Voting Systems, Inc., a Delaware corporation ("Dominion").

R E C I T A L S

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WHEREAS on May 9, 2011, the State assigned the Agreement with Premier to Dominion; and

WHEREAS the State and Dominion now desire to revise certain terms of the Agreement upon the terms, covenants and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the State and Dominion agree as follows:

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Dominion Voting Systems, Inc.
1201 18th St. Suite 210
Denver, CO 80202
Attn: Office of General Counsel"

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Dominion Voting Systems, Inc.



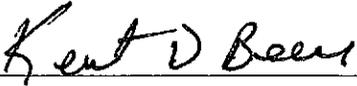
By: JOHN POULOS

Its: PRESIDENT & CEO

Date: 29 - JUNE - 2011

State of Utah

 Division of Purchasing



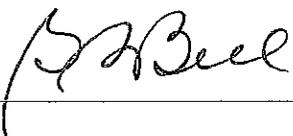
By: Kent D Beers

Its: Director, State Purchasing

Date: 8/28/11

State of Utah

Lieutenant Governor



By: Greg Bell

Its: Lt. Governor

Date: 8/23/11

**FIRST AMENDMENT TO ASSIGNMENT AGREEMENT
DOMINION VOTING SYSTEMS, INC.
AND THE STATE OF UTAH**

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RECITALS

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WHEREAS on May 9, 2011, the State assigned the Agreement with Premier to Dominion; and

WHEREAS the State and Dominion now desire to revise certain terms of the Agreement upon the terms, covenants and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the State and Dominion agree as follows:

AGREEMENT

1 Incorporation of Recitals. The above recitals are true and correct and incorporated herein by this reference as if fully set forth.

2. Amendment Language. The terms of this Amendment shall modify and supersede any and all inconsistent terms of the Agreement. Except as specifically set forth in this Amendment, all remaining applicable terms and conditions of the Agreement shall remain in full force and effect.

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Dominion Voting Systems, Inc.
1201 18th St. Suite 210
Denver, CO 80202
Attn: Office of General Counsel"

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Dominion Voting Systems, Inc.



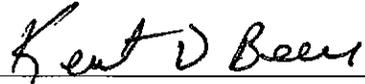
By: JOHN POULOS

Its: PRESIDENT & CEO

Date: 29 - JUNE - 2011

State of Utah

 **Division of Purchasing**



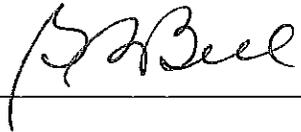
By: Kent D Beers

Its: Director, State Purchasing

Date: 8/29/11

State of Utah

Lieutenant Governor



By: Greg Bell

Its: Lt. Governor

Date: 8/23/11

FIRST AMENDMENT TO CONTRACT

This First Amendment ("Amendment") shall be deemed a material part of that certain State of Utah – Statewide Contract, Contract Number AR1910 by and between Premier Election Solutions, Inc. (f/k/a Diebold Election Systems, Inc.), a Delaware corporation ("Contractor, Premier and/or DESI") and the State of Utah ("Customer") dated August 11, 2005 ("Contract"). The terms of this Amendment shall modify and supersede any and all inconsistent terms of the Contract. Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Contract.

RECITALS

WHEREAS, Contractor and Customer entered into the Contract under which Contractor supplied certain equipment, software, services, support and maintenance to Customer;

WHEREAS, the Contract expired by its own terms on December 31, 2009;

WHEREAS, the parties wish to extend the Agreement through December 31, 2015 in accordance with the terms set forth herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby specifically incorporated into, and deemed a material part of, this Amendment.

2. **Attachment B to the Contract.** Section 3 of Attachment B to the Contract is hereby deleted in its entirety and replaced in its entirety as follows:

"3. **Credit for Trade-in of Tabulators and Feeders** The STATE will be purchasing tabulators and feeders (AccuVote Optical Scan Tabulators and Accufeed Feeders) under this Contract. DESI agrees that the STATE will have the option to upgrade these tabulators and feeders to high speed counters that are currently being developed by DESI. This option will remain open until (and expire if not exercised by) the 180th day after such high speed counters first become both federally qualified and state certified. The STATE will receive a dollar-for-dollar credit for the price previously paid by the STATE for the tabulators and feeders if the STATE trades in such tabulators and feeders toward the high speed counters. The STATE shall only be entitled to such dollar-for-dollar trade when the STATE trades in one AccuVote Optical Scan Tabulator or Accufeed Feeder for one high speed scanner. The STATE understands that the high speed counters will likely cost more than the price previously paid for the tabulators and feeders and agrees to pay the difference, if any. DESI will offer the high speed counters under this Contract with similar discounts to the STATE as the discounts offered on the tabulators and feeders."

3. **Attachment B to the Contract.** Section 5 of Attachment B to the Contract is hereby amended by deleting in its entirety subsection 5(1) and replacing subsection 5(1) with the following:

"1) Intentionally Omitted."

4. **Attachment B to the Contract.** Section 6 of Attachment B to the Contract is hereby deleted in its entirety and replaced in its entirety with the following:

"6. Intentionally Omitted."

5. **Attachment B to the Contract.** Section 11 and Exhibit 1 of Attachment B to the Contract is hereby deleted in its entirety and replaced in its entirety with the following:

"11. Intentionally Omitted."

6. **Attachment C to the Contract.** The first paragraph of Section 2 of Attachment C to the Contract is hereby deleted in its entirety and replaced in its entirety with the following:

"2. **Term.** This Contract is effective as of the Effective Date and, unless terminated under Section 13, expires on December 31, 2015."

7. **Attachment C to the Contract.** Section 3 of Attachment C to the Contract is hereby amended by deleting in its entirety subsections 3.2 and 3.3 and replacing subsections 3.2 and 3.3 with the following:

"3.2. Intentionally Omitted."

"3.3 Intentionally Omitted."

8. **Attachment C to the Contract.** Section 6 of Attachment C to the Contract is hereby deleted in its entirety and replaced in its entirety with the following:

"6 **Payment.** Customer or each individual jurisdiction, as applicable, shall pay DESI the amounts specified in Exhibit B and upon the payment terms set forth in Exhibits E and F for Software Licenses and Software Maintenance and Hardware Maintenance Services respectively. Customer or each individual jurisdiction, as applicable, shall pay DESI the amounts specified in Exhibit B and upon the payment terms set forth in Attachment A for all other purchases. Customer or each individual jurisdiction, as applicable, is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or products or services provided under this Contract. If Customer or such individual jurisdiction, as applicable, is exempt from such taxes or duties, Customer or such individual jurisdiction, as applicable, shall provide DESI with a tax exemption certificate. For additional equipment purchases made under the Contract, Customer or each individual jurisdiction, as applicable, hereby grants to DESI a first priority security interest in such equipment and any proceeds thereof, effective until the Customer or such individual jurisdiction, as applicable, has fully paid for each additional item of equipment as applicable. Customer or each individual jurisdiction, as applicable, shall execute and deliver UCC filings and other documents DESI reasonably requests to perfect this security interest if payment is not made within 45 days of delivery."

9. **Attachment C to the Contract.** Section 7 of Attachment C to the Contract is hereby amended by deleting in its entirety subsection 7.2 and replacing subsection 7.2 with the following:

"7.2. Intentionally Omitted."

10. **Attachment C to the Contract.** Section 14.6 of Attachment C to the Contract is hereby amended by updating the Notice to DESI with the following:

"If to DESI

Premier Election Solutions Inc.
11208 John Galt Boulevard
Omaha, Nebraska 68137
Attn: Office of General Counsel

With a copy to:

Intentionally deleted"

11. **Exhibits to Agreement.** Exhibits B, C and D to the Agreement are hereby deleted in their entirety and replaced in their entirety with Exhibits B, C and D attached hereto and fully incorporated herein by this reference

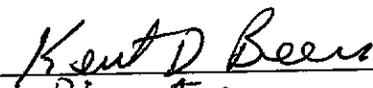
12. **Continuing Validity of Agreement.** Except as specifically set forth in this Amendment, all remaining terms and conditions of the Agreement shall remain in full force and effect.

EXECUTED as of the 17 day of FEBRUARY, 2010.

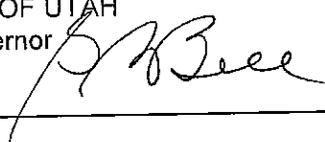
PREMIER ELECTION SOLUTIONS, INC.
a Delaware corporation

By: 
Its: CFO

STATE OF UTAH
Division of Purchasing

By: 
Its: Director

STATE OF UTAH
Lt. Governor

By: 

**EXHIBIT B
PRICING
(See Attached Spreadsheet)**

VOTING EQUIPMENT CONTRACT – PRICE LIST

*** \$24,496,975.00 Cost for goods and services through December 31, 2009**

| | |
|-------|--|
| 6000 | AccuVote TSX |
| 1500 | AccuVote TSX-VIBS |
| 7500 | AccuVote PM |
| 7500 | Touchscreen application software |
| 5700 | Precinct voter card encoder |
| 30000 | Voter access cards |
| 3800 | Supervisor cards |
| 65 | Early voting encoder |
| 1500 | Warehouse carts |
| 7500 | Spare PCMCIA memory cards |
| 7500 | Spare AVTSX paper tape rolls |
| 3000 | Disposable ear piece covers |
| 63 | AccuVote OS Tabulator |
| 63 | AccuFeed automated ballot feeder |
| 63 | Optical Scan application software |
| 63 | Spare AccuVote OS memory cards |
| 5 | Large central server system with backup |
| 25 | Medium central server system with backup |
| 30 | Report Printers |
| 30 | Ethernet hubs |
| 1 | GEMS application software |
| 1 | Security enhancement software |
| 1 | Statewide voter registration interface |
| | Logistical and technical support |
| | Training |
| | Installation |
| | Voter Awareness campaign |
| | Performance bond |
| | Shipping to anywhere in Utah |

Cost for goods and services through December 31, 2015 is TBD Based on the Services to be purchased by the State and/or individual jurisdictions.

Total Cost for Statewide Voting Solution will be TBD Based on the Services to be purchased by the State and/or individual jurisdictions for the Period of January 1, 2010 through December 31, 2015.

***State of Utah intends to purchase these items with Federal Funds. All other items purchased will be at the individual customer expense.**

Item

Per Unit Prices for additional purchases by the State or Counties:

| Item | Unit Price | Quantity | Extension |
|--|------------|----------|---|
| AccuVote TSX (without ADA Kit) | \$1,750.00 | | Includes built-in printer, AVPM attachment, self-enclosed booth, PCMCIA 128mb memory card, 4 voter access cards, application software, CE license, and one year warranty and maintenance. |
| AccuVote TSX with ADA kit (headphones, keypads) | \$1,895.00 | | Includes built-in results printer, AVPM attachment, self-enclosed booth, PCMCIA 128mb memory card, ADA kits, 4 voter access cards, application software, CE license, and one year warranty and maintenance. |
| AccuVote OS tabulator (for absentee processing) | \$3,200.00 | | Includes memory card, ballot box, carrying case, paper roll, 1 pk diagnostic ballots, application software and one year warranty and maintenance. |
| AccuFeed automated ballot feeder (for absentee processing) | \$2,995.00 | | Includes base unit, accessory tray, firmware, 1 set batch header cards, and one year warranty and maintenance. |

Optional Items Available For Purchase:

| | |
|--|------------|
| Precinct Voter Card Encoder | \$395.00 |
| Voter Access Cards | \$3.50 |
| Supervisor (precinct) Cards | \$4.00 |
| AVOS replacement battery | \$35.00 |
| AVTSX replacement battery | \$45.00 |
| AVTSX paper roll (94 ft) | \$1.00 |
| PCMCIA 128 mb memory card | \$135.00 |
| Express Poll5000 electronic pollbook | \$1,195.00 |
| AVPM (VVPAT) spare security canister | \$13.85 |
| AVPM (VVPAT) spare paper roll | \$2.50 |
| AVOS ballot box wheel kits | \$125.00 |
| AVOS memory cards | \$250.00 |
| Ballot transfer bags | \$35.00 |
| Marking pens (dozen per pkg) | \$6.95 |
| Secrecy sleeves-18" (10 per pkg) | \$42.50 |
| AVOS paper rolls | \$1.00 |
| AVOS ribbons | \$15.00 |
| Batch Starter/Encoder Cards (25 per pkg) | \$15.00 |
| Early Voting Card Encoder (ST 100) | \$495.00 |
| Disposable ear piece covers | \$1.75 |

| | |
|--------------------------|----------|
| Warehouse Carts (5 Unit) | \$412.00 |
| AVPM carrying case | \$115.00 |
| Diagnostic cards | \$2.95 |

Hourly Rates, inclusive of travel costs, for additional services after warranty expiration:

| | |
|---|----------|
| Project manager* | \$165.00 |
| Business Analyst* | \$165.00 |
| Systems Analyst/Programmer* | \$145.00 |
| Network engineer/Designer/Administrator* | \$145.00 |
| Database Administrator* | \$145.00 |
| Technical Writer* | \$125.00 |
| Applications Trainer* | \$125.00 |
| *Hourly rates do not include shipping of voting equipment | |

Recurring Fees (Applicable upon expiration of extended warranty/maintenance included in initial purchase)

| Annual Software License and Maintenance Fees (Mandatory) | Qty | Unit Fee*** | Total Amount Fee |
|---|------|-------------|------------------|
| GEMS Software | 1 | \$193,500 | \$193,500 |
| Security Enhancement application software (Key Card Tool) | 1 | \$1,800 | \$1,800 |
| AVTSX Application software | 7500 | \$5 | \$37,500 |
| AVOS Application software | 63 | \$5 | \$315 |
| Total | | | \$233,115 |

| Annual Extended Hardware Fees (Optional) | Qty | Unit Fee*** | Total Amount Fee |
|--|------|-------------|------------------|
| AVTSX (with AVPM) extended hardware warranty | 7500 | \$100 | \$750,000 |
| AVOS extended hardware warranty | 63 | \$150 | \$9,450 |
| Total | | | \$759,450 |

***DESI shall provide at least 30 days advance written notice of any increase in the unit fee for annual Software License & Maintenance and/or Extended Hardware Warranty Agreements.

All prices set forth on this Exhibit B shall take precedence over any pricing previously submitted by DESI, including, but not limited to, any pricing contained in any Best and Final Offers provided to the State.

**EXHIBIT C
(RESERVED)**

**EXHIBIT D
(RESERVED)**

STATE OF UTAH CONTRACT ASSIGNMENT

STATE CONTRACT # AR1910 NAME CHANGE FORM

1. PARTIES TO THE ASSIGNMENT: ****NAME CHANGE ONLY****

ASSIGNOR (old contractor): Diebold Election Systems, Inc.
 ASSIGNEE (new contractor): Premier Election Solutions, Inc.
 NEW VENDOR NUMBER: No new number. Name change only. Vendor #970064A
 (Assigned by the State of Utah)

Assignee please complete company information form:

| | | | | | | | |
|---|-------------|--------------------------|-------------|----------------------------------|----------------|--------------------------|------------|
| Premier Election Solutions, Inc. | | | | | | 85-0394190 | |
| Company Name | | | | | | Federal Tax ID # | |
| 1253 Allen Statation Parkway | | | | Allen | | TX | 75002 |
| Ordering Address | | | | City | | State | Zip Code |
| Same | | | | | | | |
| Remittance Address (if different from ordering address) | | | | City | | State | Zip Code |
| <input checked="" type="checkbox"/> | Corporation | <input type="checkbox"/> | Partnership | <input type="checkbox"/> | Proprietorship | <input type="checkbox"/> | Government |
| Company Type | | | | | | Dana LaTour | |
| 469-675-8990 | | | | 214-383-1596 | | | |
| Telephone Number | | | | Fax Number | | | |
| www.premierelections.com | | | | dana.latour@premierelections.com | | | |
| Internet Home Page | | | | Email Address | | | |

2. CONTRACT SERVICES ASSIGNED TO ASSIGNEE (Brief Description): Provide a voting system solution including equipment, training, warranty and maintenance for the State of Utah and Political Subdivisions on as need basis.
3. ASSIGNEE agrees to perform all of ASSIGNOR'S contract responsibilities, and to abide by all contract provisions specified in this contract. ASSIGNOR will have no further responsibilities to perform under this contract and will make no claim for benefits arising from this contract after the effective date of this assignment.

EFFECTIVE DATE: August 22, 2007

IN WITNESS WHEREOF, the parties to this assignment sign and cause it to be executed.

ASSIGNOR:

Christy Dugan 1/16/08
 Signature Date

Christy Dugan, Controller
 Name and Title (type or print)

ASSIGNEE:

Christy Dugan 1/16/08
 Signature Date

Christy Dugan, Controller
 Name and Title (type or print)

APPROVED BY:

[Signature]
 1/23/08

STATE OF UTAH - STATEWIDE CONTRACT

CONTRACT NUMBER AR1910

1. CONTRACTING PARTIES: This Statewide Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah (STATE or Customer), and the following CONTRACTOR:

| | |
|---|--|
| Name: Diebold Election Systems, Inc (DESI) | Legal Status Of Contractor: |
| Address: 1611 Wilmeth Road McKinney, Texas 75069 | For-Profit Corporation |
| Contact Person: <u>Dana LaTour</u> | Vendor #: 970064A |
| Phone #: <u>775-250-1722</u> | Commodity Code #: 57835 & 93690 |
| Fax #: 972-542-6044 | Federal Tax ID#: 85-0394190 |
| e-mail: <u>DanaL@dieboldes.com</u> | |

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:

| |
|--|
| Provide a Voting System Solution including Equipment, Training, Warranty and Maintenance for the State of Utah and Political Subdivisions on an as needed basis. |
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3. CONTRACT PERIOD: Effective date: This contract will become effective when the STATE submits, within the timeframe set forth in the following sentence, written, irrevocable Purchase Order(s) to DESI for at least 6,000 combined DRE Units in either the ADA or the non-ADA configuration. This contract will not become effective if such a Purchase Order is not received by 5:00 p.m. MT on September 9, 2005. Although the STATE will be irrevocably committed to purchase 6000 combined DRE Units once the Purchase Order(s) are submitted, the STATE may change the combination of ADA or non-ADA configurations within the Purchase Order(s) and the STATE may change the delivery locations within a reasonable time period.

Termination date: 12/31/2009 unless terminated early or extended in accordance with Section 2 of Attachment C and the other applicable terms and conditions of this contract. Renewal options (if any): Renewable to 12/31/2015

4. PRICING : Per Attachment C, Exhibit B
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: As Agreed by both Parties
FREIGHT TERMS: F.O.B. Destination

5. THE DOCUMENTS THAT COMPOSE THE CONTRACT ("Contract") ARE:
Attachment A: Standard Contract Terms and Conditions (Revised), State of Utah, Statewide Contracts
Attachment B: Addendum to State of Utah and Diebold Election Systems, Inc. Contract AR1910
Attachment C: Voting System Agreement

DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
Contractor's response to RFP # DG5502, including Contractor's response to the Best and Final Offer for RFP DG5502.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

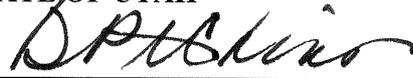
CONTRACTOR

STATE OF UTAH



Contractor's Signature

8/10/05
Date



Douglas G. Richins

AUG 11 2005
Date

Director, Div. of Purchasing & General Svs.

Dave Byrd, VP-Business Operations

Type or Print Name and Title



Gary R. Herbert

Aug. 11, 2005
Date

Lieutenant Governor

Attachment A
Standard Contract Terms and Conditions (Revised)
State of Utah, Statewide Contracts
(Request for Proposals)

All references in this Attachment A to the STATE will also apply to Individual Customers, when applicable, as defined in Attachment C.

- 1. AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
- 2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake Co.
- 3. LAWS AND REGULATIONS:** Any and all supplies, services and equipment proposed and furnished will comply fully with all applicable Federal and State laws and regulations.
- 4. RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.
- 5. AUDIT OF RECORDS:** The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 6. CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the STATE or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.
- 7. INDEPENDENT CONTRACTOR:** Contractor will be an independent Contractor, and as such will have no authorization, express or implied to bind the STATE to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as expressly set forth herein. Compensation stated herein will be the total amount payable to the Contractor by the STATE. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE will not be deemed to be employees or agents of the Contractor.
- 8. HOLD HARMLESS:** The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from any third party claim that results in damages, costs or liability, including reasonable attorney's fees, or any injuries to persons or property which are based on the negligent or intentional misconduct or omissions of the Contractor, his employees or subcontractors or volunteers.
- 9. EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
- 10. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- 11. AMENDMENTS:** The terms of this contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing.
- 12. DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE.
- 13. CANCELLATION:** In addition to the termination rights under Section 31 of this Attachment A, the STATE will have the right to terminate this contract if any relevant governmental authority does not fund procurement under this contract. In addition, if renewed under Section 2 of the Voting System Agreement (Attachment C), then the STATE will also have the right to terminate this contract by providing written notice to Contractor at least ninety (90) days prior to the anniversary date of the Effective Date (as defined in the

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Voting System Agreement). Refunds of prepaid warranty and maintenance will be made in accordance with Attachment B, Section 5.

14. TAXES: Proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

15. WARRANTY: As specified in the Voting System Agreement, the Contractor agrees to warrant and assume responsibility for products sold under this contract (including hardware, firmware, and/or software products) for the period specified in the Voting Systems Agreement. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract to the extent not excluded by the Voting System Agreement. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. During the warranty period, remedies available to the STATE include the following: The Contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inoperable, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made for such repaired or replaced product. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. PARTICIPANTS: This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the proposal.

17. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

18. QUANTITY ESTIMATES: The STATE does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for proposing purposes only and are not to be construed as a guarantee to purchase any amount. However, the Purchase Orders that cause this Contract to become effective in accordance with the Signature Page will be irrevocable once submitted.

19. DELIVERY: The prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility, liability for loss or damage and title will remain with Contractor until delivery to the STATE (or Individual Customers). Upon delivery responsibility and title will pass to the STATE; except for Contractor's fraud and warranty obligations. In addition, the STATE maintains its testing, inspection and acceptance/reject rights under the Voting System Agreement. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

20. REPORTS: The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision.

21. PROMPT PAYMENT DISCOUNT: Contractor may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Any prompt payment discount will apply to payments made regardless of the payment method. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

22. FIRM PRICES: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening.

23. PRICE GUARANTEE, ADJUSTMENTS: The contract pricing resulting from this proposal will be guaranteed for the period specified. Contractor will provide firm prices on products as priced in Contractor's response to RFP DG5502 to the STATE through December 31, 2009. DESI will provide firm prices on warranty and maintenance as priced in DESI's response to RFP DG5502 to the STATE through December 31, 2015. Following the guarantee period, Contractor will notify the STATE thirty (30) days prior to the effective date of any price adjustment.

24. ORDERING AND INVOICING: Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the STATE. Contract will endeavor to place the STATE contract number and the agency ordering number on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices in the contract.

25. PAYMENT: Payments will be made in accordance with the Voting Systems Agreement. Forty five (45) days after the due date, the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Contractor will endeavor to accept payments made via a State of Utah (or political subdivision) "Purchasing Card." All payments to the Contractor will be remitted by mail unless paid by Purchasing Card. The STATE (in this case, specifically the State Lt. Governor's Office) will pay for the initial order of products purchased, and the STATE will pay for the warranty and maintenance through December 31, 2009 on the initial order of products. After the initial purchase, the parties agree that the Individual Customers will be responsible

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for their individual orders, payments, and related warranty and maintenance purchases.

26. MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals, no proposals may be modified or withdrawn.

27. PROPOSAL PREPARATION COSTS: The STATE is not liable for any costs incurred by the offeror in proposal preparation.

28. INSPECTIONS: Goods furnished under this contract will be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or not in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or, upon Contractor's agreement, deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph will adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under Voting Systems Agreement.

29. PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability for third party claims of intellectual property infringement, patented or un-patented products as set forth in the Voting System Agreement.

30. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State Director of Purchasing.

31. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the STATE to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a thirty (30) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the STATE may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Suspend Contractor from receiving future proposal solicitations.

32. FORCE MAJEURE: Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

33. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

34. NON-COLLUSION: By signing the proposal, the offeror certifies that the proposal submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the request for proposal, designed to limit independent proposing or competition.

35. PUBLIC INFORMATION: Contractor agrees that the contract will be a public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

36. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions which follow, the special terms and conditions will govern.

37. LOCAL WAREHOUSE AND DISTRIBUTION: The Contractor will maintain a reasonable amount of stock warehoused for immediate or emergency shipments. Shipments are to be made in the quantities as required by the STATE. Orders for less than a minimum amount specified per Purchase Order (if any) will have transportation charges prepaid by the Contractor and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

Revision date: 8/10/2005

Attachment B

Addendum to State of Utah and Diebold Elections Systems, Inc. Contract AR1910

The State of Utah (STATE or Customer) and Diebold Elections Systems, Inc. (DESI or Contractor) agree to the following changes and clarifications to the Contract Terms and Conditions:

All references in this Contract to the STATE will also apply to Individual Customers, when applicable, as defined in Attachment C.

1. Order of Precedence. In the event of any conflict or ambiguity between the documents that comprise this Contract, the order of precedence of such documents will be the following (with the earlier documents prevailing over the later documents):

- A. This Addendum B (Addendum to State of Utah and Diebold Elections Systems, Inc. Contract AR1910)
- B. Attachment A (Standard Contract Terms and Conditions (Revised), State of Utah, Statewide Contracts)
- C. Attachment C (Voting System Agreement)
- D. DESI's response the RFP DG5502, including DESI's response to the Best and Final Offer for RFP DG5502

2. Ownership

The parties agree that the STATE is making the initial purchases of equipment. The equipment will be delivered to each specific county, as identified on a separate Purchase Order provided to DESI. After the delivery, the ownership of the equipment will automatically be transferred to the individual counties (Individual Customer) as specified by the STATE. DESI agrees to provide all applicable warranties and maintenance to the individual counties and DESI will perform the services for the counties, in accordance to the terms of the Contract.

3. Credit for Trade-in of Tabulators and Feeders

The STATE will be purchasing tabulators and feeders (AccuVote Optical Scan Tabulators and Accufeed Feeders) under this Contract. DESI agrees that the STATE will have the option to upgrade these tabulators and feeders to high speed counters that are currently being developed by DESI. This option will remain open until (and expire if not exercised by) the 180th day after such high speed counters first become both federally qualified and state certified. The STATE will receive a dollar-for-dollar credit for the price previously paid by the STATE for the tabulators and feeders if the STATE trades in such tabulators and feeders toward the high speed counters. The STATE understands that the high speed counters will likely cost more than the price previously paid for the tabulators and feeders and agrees to pay the difference, if any. DESI will offer the high speed counters under this Contract with similar discounts to the STATE as the discounts offered on the tabulators and feeders.

4. Travel Expenses

Travel Expenses will not apply to the STATE's initial purchase, including the Scope of DESI Support listed under Exhibit 1 to Attachment B.

When not already included, travel expenses will have the following guidelines:

- 1) Airline Travel will be booked through the agency contact or through the State Travel Agency, (801) 538-3352. The costs for the airline travel will be billed directly to the STATE from the State Travel Agency. STATE discount rates will apply to these charges. (Note: The Manager from the STATE needs to send a memo to the State Travel Agency listing the person traveling and the travel dates before the travel can be booked.) As an alternative, the Contractor may plan their air travel independently; however, the costs will be limited to the airfare available through the State Travel Agency or actual airfare, whichever is lower.
- 2) Hotels may be booked through the State Travel Agency or directly with the local hotel. Hotel costs are limited to STATE discount rates (currently \$68/day plus tax). These rates may be higher depending on availability of rooms.
- 3) Car Rentals may be booked through the State Travel Agency or directly with the car rental agency. Rates are limited to STATE discount rates (currently \$38/day) available through the State of Utah Contracted Car Rental Agencies.
- 4) Travel time will not be billable hours.
- 5) Per Diem for meals on overnight travel will be paid at STATE per diem rates. The current rate is \$30/day. (Current per diem is allowed as follows: Breakfast \$6, Lunch \$9, Dinner \$15.)
- 6) Other reasonable expenses (for taxi's, etc.) will be covered. Contractor will provide receipts for these expenses.
- 7) All costs (except the airline travel which is paid directly by the STATE) and per diem, will be invoiced to the STATE and copies of receipts and documentation need to be attached to the invoice.

If the Contractor books directly with the hotel and car rental agency, then the individual will need to ask for the "State of Utah Rates" and indicate that they will be traveling to provide services for the STATE. They may need to show verification, such as a signed letter from the STATE.

The STATE will not pay any costs above these amounts unless prior written approval is received from a Travel Coordinator with the STATE Agency or the STATE manager in charge of monitoring the services. A signed fax will be accepted as approval.

5. Advance Payments and Potential Refund of Maintenance Fees

- 1) The STATE will pre-pay for warranty and maintenance on the software and the hardware through December 31, 2009. The parties agree that in the event the Contract is terminated for cause (in accordance with Section 13 of Attachment C or Section 31 of Attachment A), DESI will refund all prepaid (but unused) warranty and maintenance costs for future years through 2009, within thirty (30) days of such termination. Any such refund of pre-paid warranty and maintenance fees will not include amounts paid for the warranty and maintenance on the software and the hardware for the then-current-year (which will be retained by Contractor).
- 2) If funding is allocated to the STATE, the STATE may also pre-pay for warranty and maintenance on the software and the hardware from January 1, 2010 through December 31, 2015. The parties agree that in the event the Contract is terminated for any reason, DESI will refund all prepaid (but unused) warranty and maintenance fees for future years through 2015, within 30 days of termination. Any such refund of pre-paid warranty and maintenance fees will not include amounts paid for the warranty and maintenance on the software and the hardware for the then-current-year (which will be retained by Contractor).
- 3) If the STATE pre-pays for warranty and maintenance on the products for the period of January 1, 2010 through December 31, 2015, then the parties agree to discount the

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warranty and maintenance fees to the "Present Value" of such amounts, as calculated by standard accounting principles with calculations approved by both parties.

4) The Individual Customers will pay for warranty and maintenance fees on additional purchases on an annual basis. DESI will invoice the Individual Customers annually for warranty and maintenance costs as they become due.

6. On-Site Training

DESI will provide On-Site Training to each participating State of Utah county as part of the initial equipment purchase through the first federal election cycle (through November 2006).

7. Software Updates

Any software updates released by DESI during the applicable warranty period, including any required to comply with changes in law, will be provided (but not installed) at no additional charge. After the warranty period, such updates will be provided for the duration of any maintenance contract with the STATE. Hardware updates required to comply with changes in law (if any) may be subject to an additional charge.

8. Escrow Account

DESI's software source code constitutes a proprietary trade secret that derives its value from being kept confidential. Consequently, DESI does not provide its source code to Customers in the ordinary course of business. Nonetheless, the STATE would become a beneficiary under DESI's existing master escrow agreement with DSI Technology Escrow Services. In addition, if requested, DESI will cooperate in order to enable a third party that is acceptable to the State to conduct an independent security review of its source code.

9. Conflict Resolution

In case of any dispute under this Contract that cannot be readily resolved by the parties, including but not limited to any dispute regarding termination, refunds or cause, the parties agree to participate in nonbinding mediation in accordance with customary standard arbitration procedures. Each party shall name an expert in the area related to the dispute and the two selected experts shall name a third expert. The panel of three experts shall investigate the dispute, have the ability to gather documents and statements from the parties and others, and make a preliminary recommendation. After the preliminary recommendation, the parties shall be entitled to make comments to the panel and then a final recommendation will be presented to upper management personnel designated by each party. The parties shall in good faith participate in the mediation and shall endeavor to reach a settlement. Each party shall be responsible for its own attorney fees. The completion of this mediation process shall be required prior to any filing of any lawsuit regarding this Contract.

10. Sip and Puff Technology

When and if DESI develops "sip and puff" technology for disability access to its products, and provided such technology is federally qualified and state certified, DESI will make such technology available to the STATE and the Individual Customers at then current pricing.

11. Scope of DESI Support

See attached Exhibit 1.

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EXHIBIT 1 TO ATTACHMENT B

The following chart details the number and timeline of resources which DESI intends to dedicate to the Implementation and Elections in Utah through 2009 in accordance with the Statewide TSX purchase.

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| | Project Manager | Logistics Manager | Election SME | Administrator/ Scheduler | DESI Help Desk | Warehouse Labor/ Acceptance Testing/ Site Surveys/ Logic and Accuracy Team | Voter Outreach Consultant | Training – GEMS/ Poll- worker | Regional Managers | County Technicians | Rover Coordinators | Rovers/ Field Technicians | Ballot Programmer | |
|---------------------------|------------------------------------|-------------------|--------------|--------------------------|----------------|---|------------------------------|----------------------------------|-------------------|--------------------|--------------------|---------------------------|-------------------|-----|
| | Project Management/ Implementation | | | | | | | Election Support | | | | | | |
| 2005 | | | | | | | | | | | | | | |
| June | 1 | 1 | | 1 | X | | | | | | | | | |
| July | 1 | 1 | 1 | 1 | X | 14 | | | | | | | | |
| Aug | 1 | 1 | 1 | 1 | X | | | | | | | | | |
| Sept | 1 | 1 | 1 | 1 | X | | | | | | | | | |
| Oct | 1 | 1 | 1 | 1 | X | | | | 6 | 23 | | | X | |
| Nov | 1 | 1 | 1 | 1 | X | | X | X | 6 | 23 | 2 | 50 | | 88 |
| Dec | 1 | 1 | | 1 | X | | | | | | | | | |
| 2006 | | | | | | | | | | | | | | |
| Jan | 1 | | | 1 | X | | | | | | | | | |
| Feb | 1 | | | 1 | X | | | | | | | | | |
| Mar | 1 | | | 1 | X | | | | | | | | | |
| Apr | 1 | | 1 | 1 | X | | | | 6 | | | | X | |
| May | 1 | | 1 | 1 | X | | | X | 6 | 23 | 2 | 103 | | |
| Jun | 1 | | 1 | 1 | X | 14 | | X | 6 | 23 | 2 | 103 | | 152 |
| July | 1 | | | 1 | X | | | | | | | | | |
| Aug | 1 | | | 1 | X | | | | | | | | | |
| Sept | 1 | | 1 | 1 | X | | | | 6 | | | | X | |
| Oct | 1 | | 1 | 1 | X | 14 | | X | 6 | 23 | 2 | 103 | | |
| Nov | 1 | | 1 | 1 | X | | | X | 6 | 23 | 2 | 103 | | 152 |
| Dec | 1 | | 1 | 1 | X | | | | | | | | | |
| 2007 | | | | | | | | | | | | | | |
| Ongoing | 1 | | | 1 | X | | | | | | | | | |
| Statewide Election (1) | 1 | | 1 | 1 | X | 14 | | | 6 | | | | X | 23 |
| 2008 | | | | | | | | | | | | | | |
| Ongoing | 1 | | | 1 | X | | | | | | | | | |
| Primary | 1 | | | 1 | X | 14 | | X | 6 | 23 | 2 | 50 | X | 97 |
| General | 1 | | | 1 | X | 14 | | X | 6 | 23 | 2 | 50 | X | 97 |
| 2009 | | | | | | | | | | | | | | |
| Ongoing | 1 | | | 1 | X | | | | | | | | | |
| Statewide Election (1) | 1 | | | 1 | X | 14 | | | 6 | | | | X | 22 |

Onsite support at the county level is not included for runoffs. DESI will offer at additional pricing if State/ Counties require support.

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DESI Oversight Team

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| Steven Moreland- Senior Director of Customer Service |
| Robert Chen- PMO Director |
| Tari Runyan- Regional Support Manager |
| Stephanie Given- Contract Staffing Manager |

Project Office

DESI will maintain an office in Salt Lake City, Utah to house the Project Office Personnel through the contract term. The DESI Overview Management Team will use this office when traveling to Utah for meetings with the State or the Project Team. This office will be the main office for the Project in Utah.

Project Management

DESI will utilize the Project Management Institute (PMI) Methodology to ensure a successful implementation of the DESI voting system in the State of Utah.

Project Management Office

Project Management Office will oversee the developed Project Plan and assure that the milestones of the project are being achieved. Project Management Office will assign a Project Manager to provide a single focal point for support during project installation. The Project Manager will act as a liaison between the customer and the Diebold Election Systems project team.

Project Management Functions

Project management begins right away. Typically, this includes:

- Reviewing and evaluating customer needs
- Developing clear scope of work
- Development of detailed project plan
- Resource management planning
- Quality Control
- Establish communication path criteria
- Risk management
- Change control process
- Equipment procurement
- Project plan execution

- Project plan acceptance meeting all the details of the project plan
- Coordination & communication

In addition, the Project Manager will:

- provide a focal point for information flow to the customer
- track the progress of the overall project and update the customer per regular meetings
- provide an escalation point for critical situations and work in advance to mitigate risk to resolve them quickly

Project Team

DESI offers Project Management and Administration with key personnel leading the implementation and management of the project. The Project Manager will coordinate the project direction in concert with the designated Sponsor / Project Manager from the State of Utah and/or the counties. Working with the Project Manager is the Project Team which consists of the following positions and responsibilities:

| Position | Responsibility |
|------------------------------|--|
| Project Manager | Overall management of Project Team. Single point of contact for all communication with the State. |
| Administrator | Communication Facilitator/ Support Project Team |
| Technical SME | Technical expertise of equipments hardware and software Oversight of onsite acceptance testing Service bureau personnel Election day and election night support personnel |
| Logistics Project Manager | Professional delivery using high quality standard shipping procedures Election preparation of equipment personnel |
| Training Manager | Dedicated training staff |
| DESI Help Desk | Issue Tracking to Expedite Call Requests |
| Ballot Printing/ Programming | Printing staff to meet the required ballot design and all other printing requirements |
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Project Manager

The DESI Project Manager will bring the knowledge of Project Management as a (PMI) certified Professional Project Manager as well as years of experience in complex project process management. They will be responsible for the Risk, Change and Quality Assurance processes. Support tasks will include:

- Support of the RISC process
- Support of the Change Control process
- Support of the Quality Assurance process.

The Project Manager will stay onsite in Utah from award through the contract term.

Administrator/ Scheduler

The Project Manager will maintain an onsite Administrator to assist with overall communication and organization of the Project. The administrator will:

- Schedule Meetings
- Keep Reports up to date and distributed
- Be the office manager for the Project Office
- Assist and support the Project Team
- Assist with payroll and timesheets for all contractors on the project
- Assist with new hires on team

Technical Subject Matter Expert

DESI will provide a Technical Subject Matter Expert who is well versed in elections and in every technical aspect of the DESI voting system. The Technical Subject Matter Expert will be onsite in Utah full time during the implementation period and subsequent elections in 2006 to ensure the proper installation. They will perform the following duties:

- Advise the Project Manager on all Technical Specifications
- Assist with planning and programming of the ballots
- Help identify standard procedures and processes for testing, implementation and installation of the voting system
- Assist with training and providing technical documentation to Technical Personnel on the project
- Oversee GEMS Server installations
- Assist with Election Day support

Logistics Project Manager

The Logistics Project Manager will be responsible for scheduling and tracking the delivery of all equipment to the counties. The duties include:

- Manage the overall implementation of an inventory process.
- Ensure all equipment is ordered and received through the proper system.
- Responsible for returning in all equipment needing repair during implementation.
- Ensure all personnel are appropriately trained.

Warehouse Labor / Acceptance Testing Site Survey/ Logic and Accuracy Testing Team

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Under the Project Management Office, a staff of fourteen personnel will be dedicated to assist with:

- Warehousing
- Acceptance Testing
- Site Surveys
- Delivery of units to the counties
- Logic and Accuracy

This team will be allocated to the above project tasks in accordance with the skill set and number of resources needed per the project timeline.

Voter Outreach Consultant

DESI will assign a Voter Outreach Consultant in Utah during the implementation to assist the State in developing its Voter Outreach Plan:

DESI Help Desk/ Server Configuration Support

DESI maintains a help desk in the McKinney, TX office which will be available to every support person and election official throughout the State Contract. The help desk will be an extension to the Project Management Office in Utah. The DESI help desk will configure and test the 29 GEMS servers for installation in the 29 Utah counties and in the Utah Lt. Governor's office. The configurations will begin once the contract has been signed and the servers are ordered. The help desk staff has extensive knowledge and experience with server configurations and testing. They will perform the following:

- Installing all hardware to include digi board and sound card
- Install Windows Operating System 2000 Server Software
- Apply Updates
- Upload all 3rd party software
- Install GEMS software
- Configuration of Security and Communication Settings
- Apply testing to system to check for errors

The help desk is also available for all support issues which the State and counties may have. All issues will be tracked and reported into the Project Team. The help desk is open from 7 AM to 7 PM CST during normal business days. The help desk will be open extended hours around election days to ensure support is available. Whenever possible, all Utah issues and questions will be redirected to the Utah DESI PMO office in Salt Lake City. On all major Election Days, the help desk will be staffed with additional Subject Matter Experts to handle the increased volume of calls. All support calls will be logged into the help desk database which will be made available to the State. After hours coverage is available through the Customer Response Center in Canton, Ohio for holiday, weekends, and evenings 365 days of the year.

The DESI help desk will be available to Utah throughout the contract term for all warranty, maintenance, and support issues.

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Training Manager/ Trainers

DESI will assign a Training Manager to coordinate the delivery of all training curriculum. The Training Manager will manage a team of trainers who will be assigned to deliver the classroom and hands on training. The staff of trainers will be qualified to train in all aspects of the proposed voting system. The Training Manager, under the supervision of the Project Manager, will work with the designated State official to develop the final training implementation plan and will conduct ongoing feedback sessions to ensure quality and effectiveness of the training.

The Training Manager and team will conduct the following:

- State Officials Training upon the implementation of the equipment.
- Internal Support Training for all staff.
- County Clerks Training
- Poll Worker Training

We also recommend that continuing training be conducted at a yearly conference and at the meetings held in the summer and winter.

Election Support

Regional Technicians

DESI will dedicate six Regional Technicians in 2005 through 2009 to manage the overall implementation and statewide elections of the voting machines once they arrive in the counties. DESI will work with the State of Utah to divide the State into six regions which each region can be supported and managed by one Regional Technician.

Regional Technicians will assist with managing the following:

- Loading of the Election Database
- Ballot Loading and Verification
- Election Night Tabulation and Reporting
- Pre and Post Election Support
- Management of County Technicians and Field Technicians
- Status Reporting to the Project Manager

The Regional Technician will assist the Project Manager in all technical matters while supporting and managing all County Technicians for pre, post, and Election Day support.

County Technicians

In addition to the Regional Managers, DESI will provide County Technicians at a ratio of one County Technician per county for the 2006 and 2008 General and Primary Elections. The six Regional Technicians will work in a dual role as a County Technician and as a Regional Technician. County Technicians will report directly to their Regional Technician and be designated as the prime support within their assigned county for the following:

- Acceptance testing in the county
 - Installation of the GEMS server
- 

- Loading of the GEMS database
- Ballot Loading and Verification
- Election Night Tabulation and Reporting

County Technicians will be in their assigned county the day before, the day of, and the day after an Election for full onsite support. The County Technician will be trained to support any problems that may arise in their county. Election Day Field Technicians or Rovers will assist the County Technician in their assigned county.

Election Day Field Technicians/ Rovers

Election Day Field Technicians (Precinct Rovers) are roving support staffers deployed on Election Day. DESI will provide Field Technicians on Election Days in 2005, 2006, and 2008 to support the polling locations. They will be available for support from one hour before poll openings until one hour after poll closings. DESI will provide one Field Technician for every fifteen precincts in the 2006 Primary and General Elections. A targeted regional coverage will be assigned for the 2005 and 2008 statewide elections. Responsibilities include:

- AccuVote-TSX and AccuVote-OS setup and poll opening assistance.
- Answer questions and address concerns of poll workers.
- Power system monitoring of the AccuVote-TSX and AccuVote-OS.
- Assist with printer operations.
- Support for poll opening processes.
- Support for accessibility equipment.
- Guidance in the use of Voter Card Encoders.
- Guidance in the use of Voting, Canceling a Ballot, and Election Screens.
- Support for Closing the Polls.
- Replacement of equipment as needed.

Ballot Programming

A Programming Team will be responsible for ballot set-up as directed by the Utah Lt. Governor's office throughout the contract term for all General and Primary Elections. The programming team will provide reports and absentee ballot facsimiles for proofing and post databases for AccuVote-TSX proofing.

DESI Programming team will:

- Ensure that all ballots are programmed to Lt. Governor's defined standards.
- Provide reports and absentee ballot facsimiles for proofing.
- Post databases for proofing on the AccuVote-TSX.
- Coordinate all changes identified by Local and Lt. Governor's staff.
- Release the final, approved database for election set-up and absentee ballot printing.
- Coordinate and manage audio recording in association with the database.

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Attachment C

VOTING SYSTEM AGREEMENT

This Voting System Agreement is effective as of the effective date set forth on the signature page of this State of Utah - Statewide Contract - Contract #AR1910 (the "Effective Date") by State of Utah, Division of Purchasing and General Services of Utah ("Customer") and Diebold Election Systems, Inc., a Delaware corporation ("DESI") and together with Customer, the "Parties").

1. Definitions

- 1.1. "DESI Software" means software owned by DESI and licensed by DESI hereunder, including all software documentation therefor.
- 1.2. "Hardware" means hardware manufactured by or for DESI and delivered by DESI hereunder.
- 1.3. "Software" means the DESI Software and Third-Party Software, collectively.
- 1.4. "Specifications" means descriptions and data regarding the features, functions and performance of the Hardware and/or DESI Software, as set forth in user manuals or other applicable documentation, as well as the applicable specifications listed in DESI's Response to RFP DG5502.
- 1.5. "System" means the Software and Hardware, collectively.
- 1.6. "Third-Party Software" means software obtained from third-party manufacturers or distributors and provided by DESI hereunder.
- 1.7. "Warranty Period" means the period beginning on the Effective Date and ending on December 31, 2009, unless extended by both Parties.
- 1.8. "Individual Customer" means each state agency and each political subdivision of Customer. "Customer" and "Individual Customer" are interchangeable unless specifically noted in the Contract.

2. Term. This Contract is effective as of the Effective Date and, unless earlier terminated under Section 13, expires on December 31, 2009 unless renewed through December 31, 2015 upon written approval by both parties; provided that:

- 2.1. Exhibit E (Software Licenses and Maintenance) will survive any expiration or termination of this Contract for the duration of the Warranty Period and all applicable Software Renewal Terms (as defined in Exhibit E).

- 2.2. Exhibit F (Hardware Warranty Services) will survive any expiration or termination of this Contract for the duration of the Warranty Period and all applicable Hardware Renewal Terms (as defined in Exhibit F).
- 2.3. Sections 6 (to extent of any payments still due) and 11 will survive any expiration or termination of this Contract in accordance with their respective terms.
- 2.4. In addition to the foregoing, terms of this Contract that do not survive expiration or termination will nonetheless be effective in determining the Parties' rights and obligations for conduct or events taking place before such expiration or termination.

3. DESI's Responsibilities

- 3.1. DESI shall provide the Software and Hardware as specified in purchase orders issued by the Customer and accepted by DESI.
- 3.2. DESI shall deliver the components of the System at the applicable times specified in Exhibit D.
- 3.3. DESI shall perform the delivery installment and training services specified in Exhibit D.
- 3.4. DESI shall grant Customer the rights and licenses in the Software set forth in Exhibit E during the Warranty Period and during all Software Renewal Terms.
- 3.5. DESI shall provide the software maintenance and support services specified in Exhibit E during the Warranty Period and all Software Renewal Terms (as defined in Exhibit E).
- 3.6. DESI shall provide the hardware warranty services specified in Exhibit F during the Warranty Period and all Hardware Renewal Terms (as defined in Exhibit F).
- 3.7. DESI shall appoint a customer support representative, who will serve as a first point of contact with Customer, be authorized to make day-to-day decisions relating to this Contract and have access to DESI's management for other decisions.

4. Customer's Responsibilities

- 4.1. Customer shall provide DESI with physical accommodations reasonably required for DESI to perform its obligations, including premises access, electrical power, data connectivity, heat and air conditioning.
- 4.2. Customer shall provide information and access to personnel reasonably required for DESI to perform its obligations.

4.3. Customer shall appoint a project manager, who will serve as a first point of contact with DESI, be authorized to make day-to-day decisions relating to this Contract and have access to Customer's authorized officials for other decisions.

5. **Title and Risk of Loss of Hardware.** Title and risk of loss for each item of Hardware provided by DESI under this Contract will pass to Customer when Customer takes possession at a Customer designated site. Upon such delivery, the Hardware will be deemed in Customer's possession for purposes of passage of title and risk of loss. However, delivery will not diminish any rights the Customer has pursuant to this Contract, including rights of testing and acceptance and rights to repairs or replacements under applicable warranty and maintenance terms.

6. **Payment.** Customer shall pay DESI the amounts specified in Exhibit B at the times specified in Exhibit C. Customer is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or products or services provided under this Contract. If Customer is exempt from such taxes or duties, Customer shall provide DESI with a tax exemption certificate. Customer hereby grants DESI a first priority security interest in the System and any proceeds thereof, effective until Customer has fully paid the Total Initial Investment, as defined in Exhibit B. Customer shall execute and deliver UCC filings and other documents DESI reasonably requests to perfect this security interest if payment is not made within 45 days of delivery. The initial purchase will be paid by the State Office of the Lt. Governor's (a specific Individual Customer), Excluding the initial purchase under this Contract (contemplated to be the major purchase of Software and Hardware under this Contract), DESI will apply applicable charges to each Individual Customer and each Individual Customer will be responsible for their own charges, fees and liabilities.

7. **Testing and Acceptance**

7.1. Unit Testing. Within ten business days after installing System components, DESI will commence unit testing under protocols designed to confirm performance in compliance with Specifications. Acceptance of units will occur on the earlier of (a) Customer's delivery of a written certificate of acceptance and (b) 30 days after the scheduled start of unit testing if testing is prevented or delayed by Customer's failure to meet obligations under this Contract.

7.2. System Testing. No later than ten business days after System installation is complete, DESI will conduct System testing under protocols designed to confirm the System's performance in compliance with all System Specifications. Acceptance of the System will occur on the earliest of (a) Customer's delivery of a written certificate of System acceptance, (b) Customer's use of the System in a national election, (c) 30 days after the scheduled start of System testing if impeded or prevented by Customer's failure to respond or perform its obligations and (d) 120 days after the scheduled start of System testing, unless, before then, Customer has notified DESI in writing of its intent to terminate this Contract for cause under Section 13. Customer will not withhold acceptance due to a failure to conform to Specifications in any immaterial respect, provided DESI promptly

delivers a remedial plan for such non-conformity. After the initial Systems are delivered, tested, and accepted as identified above, then the Systems will be delivered to the Individual Customers in the accepted condition.

8. Limited Warranties

- 8.1. Warranty Duration. The following warranties will apply to all DESI Software and Hardware during the Warranty Period. Thereafter, such warranties will apply to all DESI Software during all Software Renewal Terms and to all Warranted Hardware (as defined in Exhibit F) during all Hardware Renewal Terms.
- 8.2. DESI Software. DESI warrants that DESI Software will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications, so long as such DESI Software is operated with Hardware provided by DESI or with third-party products approved by DESI for use with such DESI Software.
- 8.3. DESI Hardware. DESI warrants that the Hardware will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications, so long as such Hardware is operated with DESI Software or with third-party products approved by DESI for use with such Hardware. Third-party products will be approved by DESI unless DESI reasonably determines that the operation of the DESI Software with the third-party products will materially impair the operation of the DESI Software.
- 8.4. Third-Party Software. The warranties in Sections 8.2 and 8.3 do not apply to any Third-Party Software, except that:
- 8.4.1. To the extent permitted by the manufacturers of Third-Party Software, DESI shall pass through to Customer all warranties such manufacturers make to DESI regarding the operation of such Third-Party Software; and
- 8.4.2. DESI warrants that all components of the DESI Software and Hardware will interface and function properly with the Third-Party Software so long as such Third-Party Software operates in compliance with all applicable manufacturers' warranties. DESI will cooperate with Customer in seeking Third-Party providers compliance with Third-Party Software warranties, if needed.
- 8.5. No Other Warranties. UNLESS OTHERWISE PROVIDED IN THIS CONTRACT, DESI DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

9. Indemnification

- 9.1. **Infringement.** If notified promptly in writing of any action brought against Customer alleging that Customer's use of the DESI Software or Hardware infringes a United States patent, copyright or trademark ("Claim"), DESI will be responsible for Customer's reasonable damages and hold Customer harmless and defend the Claim at its expense and pay any costs, fees, and damages awarded against Customer; provided that DESI has sole control of and Customer's reasonable cooperation in the defense or settlement of the Claim.
- 9.2. **Injunction.** If a Claim results in an injunction against Customer's use of any component of the System, or if DESI reasonably anticipates such an injunction, DESI will procure for Customer the right to continue using the component, replace the component or modify the component to avoid the Claim while retaining substantially the same functionality. If DESI is unable to provide the right to continue using the component of the System or to provide a similar replacement, DESI will refund the cost of the applicable component of the System less standard straight-line depreciation over a five (5) year period.
- 9.3. **Other Infringement Claims.** Customer shall be responsible for any expenses or damages arising from a third-party patent, copyright or trademark infringement claim arising from DESI's compliance with Customer's specific written designs or written instructions.

10. **Limitation of Liability.** Unless otherwise provided in the Contract, neither party will be liable under this Contract for consequential, special, punitive or incidental damages. In addition, neither party will be liable for compensatory damages in excess of the greater of: (i) \$1,000,000 or (ii) the total amounts payable under this Contract during the 12-month period preceding the event or events giving rise to liability; provided however that this limitation will not apply to: (a) the refund remedy specified in Section 9.2, (b) the potential refund set forth in Section 6 of Attachment B, or (c) any damages arising from the other party's culpable willful misconduct. No provision under this Contract shall be construed to waive the rights of the Customer of its rights under the State Government Immunity Act, UCA 63-30d.

11. **Confidential Information.** Neither Party will use or disclose the other Party's Confidential Information without the other Party's prior written consent. "Confidential Information" means, as to DESI, the DESI Software and, as to either Party, any information designated as confidential by the Party when or before it is disclosed. This paragraph does not apply to information (a) after it becomes publicly known through no fault of the receiving Party, (b) already rightfully in the receiving Party's possession when received, (c) developed by the receiving Party without the use of the other Party's Confidential Information or (d) required to be disclosed by law, including under the Government Records Access and Management Act, UCA 63.2, so long as the other Party is given immediate notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure. Each Party acknowledges that its breach of this Section 11 may cause the other Party substantial and irreparable harm for which the other Party would be entitled to

equitable relief in addition to any available legal remedies. Each Party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief.

12. Force Majeure. DESI's obligations hereunder will be suspended so long as compliance is impeded or prevented by unforeseen causes beyond DESI's reasonable control, which may include acts of God, embargoes, acts of war (including terrorist attacks). In addition, if an act or regulation of a governmental entity prevents or impedes a Party's performance under this Contract, the Parties will work together to find a mutually agreeable solution or workaround which (if possible) will enable Customer to continue to utilize the DESI Software and Hardware to conduct elections. The Customer may terminate this contact after determining such delay or default will reasonably prevent successful performance of the Contract. If the Contract is terminated for Force Majeure, the refund for advance payments listed in Attachment B, Section 6 will apply.

13. Termination for Cause. If either Party materially breaches this Contract and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching Party, the non-breaching Party may terminate this Contract as of a termination date specified in that notice or a subsequent notice delivered within such 30-day period. If the breach cannot be completely cured within the 30-day period, no default will occur if the Party receiving the notice begins curative action within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable.

14. Miscellaneous

14.1. Assignment. Neither Party may assign any rights or delegate any obligations under this Contract without the prior written consent of the other Party; provided that DESI may subcontract Services if: (i) DESI notifies Customer of such potential subcontracting of the Services, and (ii) Customer does not object, in writing, to such subcontracting within thirty (30) days after DESI has provided such notice. DESI agrees that the Customer may transfer its rights and obligations between Individual Customers (individual counties) with notice to DESI; however prior written consent will not be required. If DESI subcontracts any Services, DESI will continue to be responsible to ensure that the Services are performed. Any attempted assignment in violation of this Section will be null and void.

14.2. Severability. If any term of this Contract is held to be unenforceable, the other terms of this Contract will be enforced to the fullest extent permitted by law.

14.3. Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

- 14.4. Governing Law. This Contract will be construed under the laws of the State of Utah, and the state and federal courts within Utah have non-exclusive jurisdiction for all actions to enforce this Contract.
- 14.5. Waiver. No waiver or failure of a party to assert any right under this Contract on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.
- 14.6. Notices. All notices under this Contract will be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown below or such other address as may be specified by either Party to the other Party in compliance with this Section. Notices will be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier and four days after such mailing by U.S. mail.

If to DESI:

Diebold Election Systems, Inc
1611 Wilmeth Rd
McKinney, Texas 75069-8250
Attn: Corporate Counsel

With a copy to:

Diebold, Incorporated
5995 Mayfair Road
North Canton, OH 44270
Attn: Vice President and General Counsel

If to Customer:

State Purchasing
3150 State Office Bldg
Salt Lake City, UT 84114-1061
Attn: Debbie Gundersen

With a copy to:

Office of Lt. Governor
PO Box 142325
Salt Lake City, UT 84114
Attn: Lt. Governor

- 14.7. Interpretation. This Contract, including all Attachments and Exhibits (which comprise this State of Utah - Statewide Contract - Contract #AR1910), is the complete and final expression of the Parties' agreement regarding its subject matter and supersedes all prior or contemporaneous communications or agreements, written or oral, by the Parties regarding such subject matter. In the event of any conflict or ambiguity between the documents that comprise this Contract, the order of precedent is set forth in Attachment B. In the event of any conflict or ambiguity between the terms set forth in the body of this Attachment C (i.e., Section 1 through this Section 14.7) and those set forth in any of the attached Exhibits, the terms set forth in the body of this Attachment C will prevail. No amendment or supplement to this Contract is effective unless in writing and signed by both Parties' authorized representatives. The word "include" (or any of its derivatives) is deemed to be followed in all contexts by the words "without limitation." Headings are included for convenience and will be ignored in interpreting this Contract.

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EXHIBIT A

[RESERVED]

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EXHIBIT B
PRICING

See attached spreadsheet

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D

VOTING EQUIPMENT CONTRACT - PRICE LIST

*** \$24,496,975.00 Cost for goods and services through December 31, 2009**

- 6000 AccuVote TSX
- 1500 AccuVote TSX-VIBS
- 7500 AccuVote PM
- 7500 Touchscreen application software
- 5700 Precinct voter card encoder
- 30000 Voter access cards
- 3800 Supervisor cards
 - 65 Early voting encoder
- 1500 Warehouse carts
- 7500 Spare PCMCIA memory cards
- 7500 Spare AVTSX paper tape rolls
- 3000 Disposable ear piece covers
 - 63 AccuVote OS tabulator
 - 63 AccuFeed automated ballot feeder
 - 63 Optical Scan application software
 - 63 Spare AccuVote OS memory cards
- 5 Large central server system with backup
- 25 Medium central server system with backup
- 30 Report printers
- 30 Ethernet hubs
 - 1 GEMS application software
 - 1 Security enhancement software
 - 1 Statewide voter registration interface
- Logistical and technical support
- Training
- Installation
- Voter awareness campaign
- Performance bond
- Shipping to anywhere in Utah

*** \$3,470,940.00 Cost for services through December 31, 2015**

- 1 GEMS annual license fee
- 1 Security enhancement software annual license fee
- 7500 Touchscreen applications software annual license fee
- 63 Optical Scan application software annual license fee
- 7500 AccuVote TSX extended warranty
- 63 AccuVote OS extended warranty

*** \$27,967,915.00 Total cost for statewide voting solution**

*State of Utah intends to purchase these items with Federal Funds. All other items purchased will be at the individual customers expense

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Item **Unit Price** **Quantity** **Extension**
Per Unit prices for additional purchases or subtractions by the State or Counties:**

| | | |
|--|------------|---|
| AccuVote TSX (without ADA kit) | \$2,750.00 | includes built-in results printer, AVPM attachment, self-enclosed booth, PCMCIA 128mb memory card, 4 voter access cards, application software, CE license, warranty and maintenance through 12-31-2009 |
| AccuVote TSX with ADA kit (headphones, keypads) | \$2,895.00 | includes built-in results printer, AVPM attachment, self-enclosed booth, PCMCIA 128mb memory card, ADA kit, 4 voter access cards, application software, CE license, warranty and maintenance through 12-31-2009 |
| AccuVote OS tabulator (for absentee processing) | \$4,200.00 | includes memory card, ballot box, carrying case, paper roll, 1 pk diagnostic ballots, application software, warranty and maintenance through 12-31-2009 |
| AccuFeed automated ballot feeder (for absentee processing) | \$3,995.00 | includes base unit, accessory tray, firmware, 1 set batch header cards, warranty and maintenance through 12-31-2009 |

**Notwithstanding the Customer's ability to subtract units, or any other provision of the Contract, as provided on the Signature Page, the Contract will not be effective until the STATE submits one or more Purchase Orders to DESI that as to a total of at least 6,000 combined DRE Units, in either configuration, are irrevocable. The STATE does not make any guarantees for quantities to be purchased except as identified in the previous sentence.

Warranty and Maintenance Information: Equipment purchased by the STATE/Customer through January 1, 2009 will have warranty and maintenance coverage through December 31, 2009 included in the purchase price. Equipment purchased by the STATE/Customer after January 1, 2009 will have one year of warranty and maintenance coverage included in the purchase price.

Optional items available after initial purchase:

| | |
|---------------------------------------|------------|
| Precinct Voter Card Encoder | \$395.00 |
| Voter Access Cards | \$3.50 |
| Supervisor (precinct) Cards | \$4.00 |
| AVOS replacement battery | \$35.00 |
| AVTSX replacement battery | \$25.00 |
| AVTSX paper roll (94 ft) | \$1.00 |
| PCMCIA 128 mb memory card | \$135.00 |
| Express Poll 4000 electronic pollbook | \$2,500.00 |
| AVPM (VVPAT) spare security canister | \$10.00 |
| AVPM (VVPAT) spare paper roll | \$1.00 |
| AVOS ballot box wheel kits | \$125.00 |
| AVOS memory cards | \$250.00 |
| Ballot transfer bags | \$35.00 |
| Marking pens (dozen per pkg) | \$6.95 |
| Secrecy sleeves-18" (10 per pkg) | \$42.50 |

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| | |
|--|----------|
| AVOS paper rolls | \$1.00 |
| AVOS ribbons | \$15.00 |
| Batch Starter/Ender Cards (25 per pkg) | \$15.00 |
| Early Voting Card Encoder (ST100) | \$495.00 |
| Disposable ear piece covers | \$0.30 |
| Warehouse Carts (5 Unit) | \$323.00 |
| AVPM carrying case | \$115.00 |
| Diagnostic cards | \$1.00 |

Hourly Rates, inclusive of travel costs, for additional services after warranty expiration:

| | |
|--|----------|
| Project Manager* | \$165.00 |
| Business Analyst* | \$165.00 |
| Systems Analyst/Programmer* | \$145.00 |
| Network engineer/Designer/Administrator* | \$145.00 |
| Database Administrator* | \$145.00 |
| Technical Writer* | \$125.00 |
| Application Trainer* | \$125.00 |
| * Hourly rates do not include shipping of voting equipment | |

Recurring Fees (Applicable upon expiration of extended warranty/maintenance included in initial purchase)

| Annual Software License and Maintenance Fees (Mandatory) | Qty | Unit Fee*** | Total Annual Fee |
|---|------|-------------|------------------|
| GEMS Software | 1 | \$193,500 | \$193,500 |
| Security Enhancement application software (Key Card Tool) | 1 | \$1,800 | \$1,800 |
| AVTSX Application software | 7500 | \$5 | \$37,500 |
| AVOS Application software | 63 | \$5 | \$315 |
| Total | | | \$233,115 |

| Annual Extended Hardware Warranty Fees (Optional) | | Unit Cost*** | Total Annual Fee |
|---|------|--------------|------------------|
| AVTSX (with AVPM) extended hardware warranty | 7500 | \$100 | \$750,000 |
| AVOS extended hardware warranty | 63 | \$150 | \$9,450 |
| Total | | | \$759,450 |

***DESI shall provide at least 30 days advance notice of any increase in the unit fee for annual Software License & Maintenance and/or Extended Hardware Warranty Agreements

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D

EXHIBIT C

PAYMENT SCHEDULE

| Milestone / Date | Percentage of Payment Due* |
|---|-----------------------------------|
| Upon delivery of the Systems by DESI to the Customer or Individual Customer, as applicable. | 80% |
| Upon certification of the 2006 primary election (June 2006) | 10% |
| Upon certification of the 2006 general election (November 2006) | 10% |

* Late payments accrue interest at the lesser of 1% per month or the highest rate permitted by law.

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EXHIBIT D

DELIVERY, INSTALLATION AND TRAINING

The Systems will initially be delivered to DESI's warehouse in Salt Lake County. After testing of such Systems, DESI will deliver Systems to Individual Customers as listed on Purchase Order(s).

Delivery, Installation, and Training: DESI shall deliver all Systems pursuant to the System Implementation Schedule. The System Implementation Schedule will be developed jointly by the DESI Project Manager and representatives of Customer. The development of the System Implementation Schedule may, by mutual agreement, occur after the Contract is signed. However, a System Implementation Schedule developed after the Contract is signed will not be part of the Contract unless it amends the Contract by satisfying the requirements of Section 14.7 of this Attachment C.

Customer Responsibilities: Customer shall provide DESI personnel with reasonable cooperation, the work space and training facilities necessary for the proper execution of its service obligations, provide a training area that includes all the necessary equipment in working order such as terminals and printers, and make available all necessary supplies such as paper, magnetic tape and disc packs.

Delivery Rescheduling: If Customer needs to reschedule any shipment or installation, Customer shall notify DESI at least 15 days in advance of any affected shipment or installation dates. At DESI's discretion, if Customer's notice of rescheduling is less than 15 days, Customer shall reimburse DESI for reasonable expenses incurred by DESI due to such rescheduling, including travel cancellation charges and all charges imposed on DESI by any third-party manufacturer or shipper.

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EXHIBIT E

SOFTWARE LICENSES AND MAINTENANCE

1. **Exhibit E Term.** This Exhibit E is effective as of the Effective Date and, if not extended as provided herein, expires on the last day of the Warranty Period. Customer may thereafter extend the effectiveness of this Exhibit E for up to 20 successive one-year renewal periods (each, a “Software Renewal Term”). DESI will invoice Customer 60 days before the Software Renewal Term. Customer will pay for each Software Renewal Term, the Annual Software License and Maintenance Fee set forth in Exhibit B of this Attachment C at least 30 days before such Software Renewal Term begins. The period during which this Exhibit E is in effect is referred to herein as the “Exhibit E Term.” On expiration of the Exhibit E Term (a) the licenses granted in this Exhibit E will automatically terminate, (b) Customer shall cease any further use of the Software and (c) DESI may cease performing the maintenance services set forth in this Exhibit E.
2. **Payment.** The Total Initial Investment specified in Exhibit B of this Attachment C includes payment in full, for the Warranty Period, for the DESI Software licenses and the software maintenance and support services described in this Exhibit E. Each Annual Software License and Maintenance Fee constitutes payment in full, for the duration of the applicable Software Renewal Term, for the DESI Software licenses and for the software maintenance and support services described in this Exhibit E.
3. **License to DESI Software.** Subject to the terms of this Exhibit E and the other terms of the Contract, DESI grants Customer a non-exclusive license, without the right to transfer or sublicense except to Individual Customers, to use, during the Exhibit E Term, for the purpose of preparing for and conducting federal, state or local elections, run-offs, referenda and other similar voting events that take place within the State of Utah, the numbers of copies specified in the applicable order of the DESI Software applications identified therein. This license may be exercised by Customer officials, employees and volunteers authorized by Customer to conduct the above-described elections.
4. **Third-Party Software.** Subject to the terms of this Exhibit E and the other terms of the Contract, DESI agrees to sublicense the Third-Party Software, in object code form only, to Customer for use during the Exhibit E Term as part of the System for the purposes described in Section 3 of this Exhibit E. This sublicense is conditioned on Customer’s continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which Third-Party Software is provided.
5. **No Other Licenses.** Other than as expressly set forth in this Exhibit E, (a) DESI grants no licenses, expressly or by implication, and (b) DESI’s entering into and performing the Contract (including this Exhibit E) will not be deemed to license or assign any intellectual property rights of DESI to Customer or any third party. Without limiting the forgoing sentence, Customer agrees to use each copy of the AccuVote TSx firmware, or AccuVote OS firmware, only on the AccuVote TSx unit, or AccuVote OS unit, with which the copy is supplied, agrees not to use any DESI Software as a service bureau for

elections outside the State of Utah and agrees not to reverse engineer or otherwise attempt to derive the source code of any Software.

6. DESI Software Maintenance

6.1. During the Exhibit E Term, DESI shall maintain the DESI Software so that it operates in conformity at all times with the warranties set forth in Attachment C. DESI shall use its best efforts to correct any reproducible error affecting the DESI Software. Suspected error conditions will be investigated and corrected by DESI personnel at the DESI office to the extent possible.

6.2. If a problem cannot be resolved using remote diagnostics, upon Customer's prior authorization, DESI will send a specialist to the Customer's premises under the following terms:

6.2.1. If the problem lies solely with DESI Software, DESI is responsible for all expenses associated with the resolution of the problem, provided that Customer has incorporated all error corrections or changes to the DESI Software before the next election. Customer will not be obligated to incorporate error corrections or changes that are delivered to Customer within 60 days of an election; however, Customer will incorporate such error corrections and changes before the next election. If error corrections or changes are critical to accuracy of election (as specified by DESI), then Customer will incorporate corrections or changes upon the earlier of (i) forty five (45) days after DESI delivers such error correction to Customer or (ii) 10 days before the next election.

6.2.2. If the problem is due to acts or omissions by Customer or a third party, including by the failure to incorporate all error corrections or changes in a timely manner, Customer is responsible for all fees and expenses at DESI's contracted consulting service rate. Such problems include those that arise from the failure of hardware or software that is not licensed or under warranty from DESI, installation of the DESI Software on hardware that was not approved by DESI, or improper use of the DESI Software or the hardware upon which it is installed.

6.3. As is reasonably necessary for DESI to provide maintenance and support, Customer shall provide access to its personnel and premises, be responsible for maintaining the computer hardware, communications equipment, telephone lines, cabling and modems, and make available paper, disk packs and other similar supplies.

7. Enhancements and Upgrades. During the Exhibit E Term, DESI shall provide Enhancements and Upgrades (each as defined below) to Customer under the following terms and conditions.

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- 7.1. DESI may provide Customer with unsolicited error corrections or changes to the DESI Software that DESI determines from time to time are necessary for proper operation of the System ("Enhancements").
 - 7.2. DESI may release DESI Software improvements that add to or change the functionality characterizing the DESI Software as of the Effective Date ("Upgrades").
 - 7.3. Customer shall incorporate each Enhancement and Upgrade before the next election. Customer will not be obligated to incorporate error corrections or changes that are delivered to Customer within 60 days of an election; however, Customer will incorporate such error corrections and changes before the next election. If Enhancements or Upgrades are critical to accuracy of election (as specified by DESI), then Customer will incorporate the Enhancements or Upgrades upon the earlier of (i) forty five (45) days after DESI delivers such error correction to Customer, or (ii) 10 days before the next election. Each Enhancement and Upgrade will be, from and after delivery to Customer, licensed to Customer under this Exhibit E and treated for all purposes as part of the DESI Software.
8. **Incorporation of Provisions Surviving Expiration or Termination of Term.** Effective upon expiration or termination of the Term of the Contract, Sections 1, 4 and 8 through 14 of this Attachment C will be incorporated in this Exhibit E as if fully set forth herein, and will survive such expiration or termination (along with those specified in Section 2.3 of Attachment C) for the remainder of the Exhibit E Term.

EXHIBIT F

HARDWARE WARRANTY SERVICES

1. **Exhibit F Term.** This Exhibit F is effective as of the Effective Date and, if not extended as provided herein, expires on the last day of the Warranty Period. Customer may thereafter extend the effectiveness of this Exhibit F for up to 20 successive one-year renewal periods (each, a "Hardware Renewal Term"). DESI will invoice Customer 60 days before the Hardware Renewal Term. Customer will pay for each Hardware Renewal Term, the Annual Extended Hardware Warranty Fee set forth in Exhibit B of this Attachment C at least 30 days before such Hardware Renewal Term begins. The period during which this Exhibit F is in effect is referred to herein as the "Exhibit F Term."
2. **Payment.** The Total Initial Investment specified in Exhibit B of this Attachment C includes payment in full, for the Warranty Period, for the hardware warranty services described in this Exhibit F. Each Annual Extended Hardware Warranty Fee constitutes payment in full for the hardware warranty services described in this Exhibit F for the duration of the applicable Hardware Renewal Term.
3. **Warranted Hardware**
 - 3.1. During the Exhibit F Term, DESI shall maintain the items of Hardware identified in the initial purchase order issued by the Customer and any other items of Hardware for which Customer purchases extended warranty services under this Exhibit F (collectively, "Warranted Hardware"), so that they operate in conformity at all times with the warranties set forth in this Attachment C. If any item of the Warranted Hardware fails during the Exhibit F Term to operate in conformity with the warranties set forth in this Attachment C, DESI shall fully repair or, at DESI's option, replace the Warranted Hardware. The following conditions apply:
 - 3.1.1. Customer shall bear the shipping costs to return the malfunctioning item of Warranted Hardware to DESI and DESI shall bear the shipping costs to return the repaired or replaced item of Warranted Hardware to Customer.
 - 3.1.2. Customer may request on-site support services. If DESI agrees to provide on-site support services, such services will be provided on a time and material basis.
 - 3.1.3. In special or unusual circumstances, Customer may request to borrow a hardware unit that can serve as a temporary replacement for the malfunctioning item of Warranted Hardware ("Loaner"). DESI may, at its discretion, provide a Loaner for Customer to use for election activity until the covered item is repaired or replaced. In the event that a Loaner is provided to Customer, such Loaner will be provided at no additional cost

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to Customer; provided however that Customer will pay the cost to ship the Loaner to Customer's requested destination.

- 3.2. For the avoidance of doubt, the following services are among those not covered by the payments identified in Section 2 above, and are available at DESI's contracted time and then current material rates.
 - 3.2.1. The replacement of consumable items such as batteries, paper rolls, ribbons, clock chips, smart cards, floppy disks and disks on chips.
 - 3.2.2. The repair or replacement of Warranted Hardware damaged by accident, abuse, improper usage or as a result of service modification by anyone other than DESI and its authorized service representatives.
4. **Gaps in Warranty Coverage.** Customer may purchase extended hardware warranty services under this Exhibit F for Hardware units for which coverage has lapsed. In such case, in addition to payment of the applicable Annual Extended Hardware Warranty Fee, Customer will pay at DESI's then current time and material rates for inspections and repairs required to bring the applicable Hardware units up to warranty-level standards.
5. **Incorporation of Provisions Surviving Expiration or Termination of Term.** Effective upon expiration or termination of the Term of the Contract, Sections 1, 4 and 8 through 14 of this Attachment C will be incorporated in this Exhibit F as if fully set forth herein, and will survive such expiration or termination (along with those specified in Section 2.3 of this Attachment C) for the remainder of the Exhibit F Term.

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