

564B



County of Orange

MEMO

RECEIVED

06 SEP 21 PM 3:38

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

DATE: September 21, 2006

TO: Clerk of the Board

FROM: Thomas G. Mauk
County Executive Officer

SUBJECT: Exception to the Rule 21

The County Executive Office is requesting a supplemental for the September 26, 2006 Board Hearing Meeting:

Board Meeting Date September 26, 2006

Agenda Item # ASR No.

Subject: Price Agreement N1000008234, N1000008235, and N1000008236 for Transporting Election Equipment to and from Polling Sites.

Calendar: Public Hearing Discussion SN

Districts: All

Reason for Supplemental: The voting system transportation contract for the November 7, 2006 election was delayed due to last minute negotiations with three different vendors.

Concur: 

Bill Campbell, Chairman
Orange County Board of Supervisors

cc: Rob Richardson
Assistant to the County Executive Officer



RECEIVED SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

06 SEP 21 PM 3: 38

Agenda Item (Clerk's Use Only)

564B

ASR Control

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

MEETING DATE: 09/26/06
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Registrar of Voters
DEPARTMENT CONTACT PERSON(S): Neal Kelley, 714-567-5139

SUBJECT: PRICE AGREEMENTS N1000008234, N1000008235, AND N1000008236 FOR TRANSPORTING ELECTION EQUIPMENT TO AND FROM POLLING SITES.

CEO CONCUR

CLERK OF THE BOARD
Discussion

COUNTY COUNSEL REVIEW
Approved Agreements to Form

Ann E. Fletcher
Deputy County Counsel

Budgeted: Yes

Current Year Cost:

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: No

Current Fiscal Year Revenue: N/A

Funding Source: 100% General Fund to be billed to participating jurisdictions

Prior Board Action: N/A

RECOMMENDED ACTION(S)

1. Authorize the Purchasing Agent or his designee to issue Price Agreement N1000008234 to Torrez Trucking, Inc., for transportation of election equipment to and from polling sites in North Orange County, effective 10/1/06 through 9/30/08, in an amount not to exceed \$175,000 over a period of five years, and renew the agreement for three additional one year periods, under the same terms, conditions and scope of work, per Board policy.
2. Authorize the Purchasing Agent or his designee to issue Price Agreement N1000008236 to South Coast Logistics, Inc., for transportation of election equipment to and from polling sites in Central Orange County, effective 10/1/06 through 9/30/08, in an amount not to exceed \$300,000 over a period of five years, and renew the agreement for three additional one year periods, under the same terms, conditions and scope of work, per Board policy.
3. Authorize the Purchasing Agent or his designee to issue Price Agreement N1000008235 to O'Neil Moving Systems, doing business as O'Neil Relocation, for transportation of election equipment to and from polling sites in Central and South Orange County, effective 10/1/06 through 9/30/08, in an amount not to exceed \$375,000 over a period of five years, and renew the agreement for three additional one year periods, under the same terms, conditions and scope of work, per Board policy.

4. Authorize the Purchasing Agent or his designee to make changes to the three Price Agreements for any non-monetary changes substantially in compliance with the original Agreements without further Board Action.

SUMMARY:

Following a competitive public bid process, three vendors were selected for this project, providing not only the lowest bids, but the most responsive proposals of the six bidders. The Registrar of Voters requests approval to issue three Price Agreements to accomplish delivery and pick-up of voting equipment to and from polling sites.

	Years 1 & 2: 10/1/06 - 9/30/08	Year 3: 10/1/08 - 9/30/09	Year 4: 10/1/09 - 9/30/10	Year 5: 10/1/10 - 9/30/11	TOTAL
Area A Torrez Trucking	70,000	35,000	35,000	35,000	175,000
Area B O'Neil Relocation	70,000	35,000	35,000	35,000	175,000
Area C South Coast Logistics	120,000	60,000	60,000	60,000	300,000
Area D O'Neil Relocation	80,000	40,000	40,000	40,000	200,000

BACKGROUND INFORMATION:

On August 29, 2006, the Registrar of Voters issued a Request for Proposals for the transportation of voting equipment to and from polling sites throughout the County. The RFP solicited responses for vendors to service four regions in Orange County. This approach was designed to provide for more timely delivery and pick-up of election equipment.

Six vendors were interested in different regions of the county. Five bidders were interested in Area A (north Orange County). Three bidders were interested in Area B (central Orange County - west). South Coast Logistics was the only bidder interested in Area C (central Orange County - east). Three bidders were interested in Area D (south Orange County). Among these, it was determined that the contract award would be split between Torrez Trucking, South Coast Logistics, and O'Neil Relocation.

This option was exercised for several reasons to provide additional value to the County. Because of the size of the County, it may be efficient and productive to employ more than one transportation service provider. Two of the selected bidders (Torrez Trucking and O'Neil Relocation) have previous experience with the transportation of the County's election equipment.

Three of the bidders (Cor-O-Van, Beltman Group and Blue Wing) did not demonstrate either competitive pricing or sufficient capacity and, therefore, were not selected for this Agreement.

Copies of the Price Agreements are on file with the Clerk of the Board.

FINANCIAL IMPACT:

This represents normally budgeted ballot and voting equipment transportation expense. It is higher due to the increased weight and security needs of the voting equipment, but this increase is expected to be offset by the reduction in official ballot printing expense. These costs are billed as allowed by law to participating jurisdictions.

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

County Counsel

ATTACHMENT(S):

Price Agreements N1000008234, N1000008235, and N1000008236



COUNTY OF ORANGE

REGISTRAR OF VOTERS

**PRICE AGREEMENT NO. N100008234 FOR
TRANSPORTATION OF ELECTION EQUIPMENT TO AND
FROM POLL SITES WITHIN NORTH ORANGE COUNTY**

AGREEMENT

Table of Contents	2
Recitals.....	4
Agreement	4
ARTICLES	PAGE
1. Scope of the Agreement	4
2. Agreement Term.....	4
3. Compensation.....	4
4. Availability of Funds	4
5. Payment Terms-Payment in Arrears.....	5
6. Assigned Contractor Staff.....	5
7. Governing Law and Venue.....	5
8. Entire Agreement	5
9. Amendments	5
10. Taxes.....	5
11. Delivery.....	5
12. Acceptance/Payment.....	5
13. Warranty	6
14. Patent/Copyright Material/Propriety Infringement.....	6
15. Assignment or Sub-contracting	6
16. Non-Discrimination	6
17. Termination.....	6
18. Consent to Breach not Walver.....	6
19. Remedies Not Exclusive.....	6
20. Independent Contractor.....	7
21. Performance	7
22. Indemnification and Insurance.....	7
23. Bills and Liens	9
24. Changes	9
25. Change of Ownership.....	9
26. Force Majeure	9
27. Confidentiality	9
28. Compliance with Laws	10
29. Freight (F.O.B. Destination)	10
30. Pricing	10
31. Waiver of Jury Trial	10
32. Terms and Conditions	10
33. Headings	10
34. Severability	10
35. Calendar Days.....	10
36. Attorney Fees	10
37. Interpretation	10
38. Project Manager	10
39. Authority	11
40. Child Support Enforcement Requirements	11
41. Liquidated Damages	11
42. Notices	11

Signature Page.....13

Attachments

A. Scope of Work.....14
B. Invoicing and Compensation/Cost.....20
C. Child Support Enforcement Certification Requirements.....21

Exhibits

1. Regional 1A Description.....17
2. Caddy Specifications.....18
3. Privacy Booth with Eslate Specifications.....19

**PRICE AGREEMENT NO. N100008234 FOR TRANSPORTATION OF ELECTION
EQUIPMENT TO AND FROM POLL SITES WITHIN NORTH ORANGE COUNTY**

This Agreement to provide transportation of election equipment to and from poll sites within North Orange County, hereinafter referred to as "Agreement" is made and entered into on the date approved by the Board of Supervisors or when fully executed by the parties, whichever is later, and is by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and Torrez Trucking, Inc., a California corporation, with a place of business at 190 East Crowther, Suite B, Placentia, CA 92870, hereinafter referred to as "Contractor."

ATTACHMENTS

This Agreement is comprised of this document and the following attachments, which are incorporated by reference into this Agreement:

- Attachment A – Scope of Work
- Attachment B – Compensation/Cost for Contractor Services
- Attachment C – Child Support Enforcement Certification Requirements

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) for transportation of election equipment to and from poll sites within Orange County;

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

NOW, THEREFORE, the parties mutually agree as follows:

AGREEMENT

1. **Scope of the Agreement:** Contractor shall provide the County with services to transport and deliver election equipment to and from poll sites within North Orange County as specified in the Scope of Work, Attachment A.
2. **Agreement Term:** The term of this agreement shall be two (2) years, commencing on October 1, 2006 through September 30, 2008 renewable for three (3) additional one (1) year periods by mutual agreement of the parties, subject to approval of the County's Board of Supervisors, as required.
3. **Compensation:** Compensation shall be paid to Contractor for the satisfactory performance of the services under this Agreement following receipt of an acceptable invoice as described in Attachment B, not to exceed \$175,000.00 over a period of five (5) years.

The Contractor agrees to accept the specified compensation as set forth in this Agreement as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

4. **Availability of Funds:** Notwithstanding any provision to the contrary herein, all payment obligations of the County are contingent upon the availability of funds, which are appropriated or otherwise legally available for the payment of County obligations under this Agreement. If funds are not appropriated or otherwise legally available for the payment of compensation hereunder, this Agreement shall terminate at the end of the period for which funds are available. In the event this Agreement terminates due to the insufficient appropriated or legally available funds to pay compensation in accordance with this Agreement, there shall be no liability to the County, nor shall the County be liable for any future payments or damages of any kind resulting from such termination.

Contractor acknowledges that funding or portions of funding for this Agreement may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Agreement without penalty.

5. **Payment Terms – Payment In Arrears:** Invoices are to be submitted in arrears. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Agreement requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Agreement and shall not be construed as acceptance of any part of the goods or services.

6. **Assigned Contractor Staff:** County agrees to accept, and Contractor agrees to provide the aforementioned services primarily through Terri Geml, and such other officers and employees of Contractor as are necessary for the satisfactory completion of the services to be provided under this Agreement.

County reserves the right to review and approve all staff changes proposed by Contractor which will affect key personnel and positions assigned to provide services to County under this Agreement. County's approval of such staff changes shall not be unreasonably withheld.

7. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
8. **Entire Agreement:** This Agreement, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein.
9. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
10. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
11. **Delivery:** Time of delivery of goods or services is of the essence in this Agreement. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
12. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received,

inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

13. **Warranty:** Contractor expressly warrants that the goods/services covered by this Agreement are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Contractor agrees to indemnify, defend and hold County and its Indemnities as identified in section 22 below, and as more fully described in section 22, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
14. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Agreement, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement. Contractor warrants that any software purchased, and as modified through services provided hereunder, will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in section 22 below, it shall indemnify, defend and hold County and COUNTY INDEMNITEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
15. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of County shall be invalid and shall constitute a breach of this Agreement.
16. **Non-Discrimination:** In the performance of this Agreement, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
17. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Agreement without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Agreement shall relieve County of all further obligation.
18. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
19. **Remedies Not Exclusive:** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either party to any other remedies provided by law.

20. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.

21. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Agreement. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

22. **Indemnification and Insurance**

Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES"), harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Agreement. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or COUNTY INDEMNITEES, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Insurance Provisions:

Prior to the provision of services under this Agreement, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of contractor pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form	\$1,000,000 combined single limit per occurrence
Property damage and contractual liability	\$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Cargo Insurance	\$1,000,000 per occurrence

All liability insurance, except Professional Liability, required by this Agreement shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this agreement with respect to work done by the Contractor under the terms of this Agreement (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability. All insurance policies required by this Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

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

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of agreement.

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the contractor has secured, for the period of this Agreement, statutory Workers' Compensation Insurance and Employers' Liability Insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Agreement may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

23. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Section 22 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
24. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
25. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Agreement and complete them to the satisfaction of County.
26. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails itself of any available remedies.
27. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

28. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Agreement shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Section 22 above, Contractor agrees that it shall defend, indemnify and hold County and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
29. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Agreement.
30. **Pricing:** The Agreement price shall include full compensation for providing all services as specified herein or when applicable, in the Scope of Work attached to this Agreement, and no additional compensation will be allowed therefore, unless otherwise provided for in this Agreement.
31. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and for any other claim of injury or damage.
32. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Agreement.
33. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
34. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
35. **Calendar Days:** Any reference to the words "day" or "days" herein shall mean calendar day or calendar days respectively; unless otherwise expressly provided.
36. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
37. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.
38. **Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Agreement. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. County is not required to provide any reason for requesting such removal. The Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.

39. **Authority:** The parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
40. **Child Support Enforcement Certification Requirements:** In order to comply with child support enforcement certification requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the selected Contractor hereby agrees to furnish CEO/Purchasing with the required Contractor data and certifications, Attachment C - Child Support Enforcement Certification Requirements.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purpose. Failure of Contractor to timely submit the data and/or certifications required above or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

41. **Liquidated Damages:** It is agreed by and between the Contractor and the County that if this Agreement is not fully and completely performed within the terms of the Agreement, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that the Contractor will pay to the County liquidated damages in the amount of \$1500 for each and every day of delay as set forth in this Agreement.

In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this Agreement.

This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.

If the Contractor is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays otherwise caused by the County, the time of performance of the Agreement will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.

If this Agreement is not fully and completely performed with the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

42. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be

addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

TO: COUNTY

Registrar of Voters
1300 S. Grand Ave. Building C
Santa Ana, CA 92705
Attn: Kate Gold
Contract No. N100008234

TO: CONTRACTOR

Torrez Trucking, Inc.
190 E. Crowther, Suite B
Placentia, CA 92870
Attn: Terri Geml

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year shown opposite their respective signatures below:

Date: 9-18-06

Torrez Trucking, Inc., a California corporation

By: *Terri Geml*

Terri Geml, Vice President

Date: 9-18-06

By: *Virginia Torrez*

Name: Virginia Torrez

Title: Secretary

(Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer)

County of Orange, a political subdivision of the State of California

Ronald Vienna, Purchasing Agent

Date: 9/18/06

By: *Mylinh Tu*

Mylinh Tu, Deputy Purchasing Agent

APPROVED AS TO CONTENT:

By: *Neal Kelley*

Neal Kelley, Registrar of Voters

Date: 9/18/06

APPROVED AS TO FORM:

COUNTY COUNSEL

By: *Ann E. Fletcher*

Ann E. Fletcher, Deputy

Date: 9/19/06

ATTACHMENT A SCOPE OF WORK

> BACKGROUND:

The County of Orange, Registrar of Voters (ROV) uses the Hart Intercivic privacy booth/eSlate system for electronic voting in Federal, State and local elections. These units must be transported to and from the polling sites (1000-1700 in previous major elections) throughout the County of Orange.

The privacy booth/eSlate system is transported in previously loaded, specially designed caddies. There may be occasions the privacy booth/eSlate system will need to be transported loose (not loaded into the caddy). Some privacy booth/eSlates are designated Disabled Access Units (DAUs) and provide enhanced functionality to meet the needs of persons with disabilities. Each poll site receives at least one of the clearly labeled DAU units. See Exhibit 2 for caddy specifications. See Exhibit 3 for privacy booth/eSlate specifications. (loose units)

In all elections there are legal mandates that secure the integrity of the election to assure voters that their votes will be recorded and tallied as they intend. The Contractor will fully comply with the security requirements of the ROV and will immediately report any attempt to interfere with the election equipment or delivery process to the ROV.

> SCOPE:

The Contractor will provide services for region A as specified in Exhibit 1A. The Contractor will transport and deliver privacy booth/eSlates pre-loaded in caddies and/or loose to and from polling sites throughout the designated geographical area. The Contractor shall ensure that the equipment is promptly delivered, carefully unloaded, properly receipted and securely stored at the designated location. The Contractor shall also ensure that the equipment is retrieved promptly and transported safely to the ROV warehouse following each election.

The Contractor is also responsible for prior notification of the Poll Site Operator of the planned delivery date and time. This notification must be at least twenty-four (24) hours prior to the planned delivery and provide a window of three hours or less.

The period of performance will be approximately four weeks prior to a County-wide election and two weeks following the election date. Two weeks prior to an election, the equipment will be delivered to polling sites County-wide (within the designated region). The number of poll sites will vary.

> PRE-ELECTION DELIVERY:

Four weeks prior to each election, the ROV will provide to the Contractor an address list of polling sites within the geographical area and expected time frames for delivery. At that time, the Contractor will prepare a delivery plan to transport the equipment. The plan will be submitted to the ROV for review no later than three weeks prior to the election. Beginning two weeks prior to the election, on a daily basis, the Contractor will pick up the equipment staged at the ROV warehouse. ROV personnel will man the loading dock at 6:30 a.m. on weekdays. Pickups may begin any time after 6:30 a.m. For the two Saturdays prior to the election, pickups may begin any time after 7:00 a.m. until 12:00 p.m. Some coordination of pickup times may be required among multiple vendors. The number of poll sites will vary between elections.

All deliveries must be completed two days prior to the election.

ATTACHMENT A
SCOPE OF WORK (continued)

> DELIVERIES:

If the Contractor is required to inventory the equipment upon delivery to the polling site, an electronic inventory device will be provided by the County to the driver and the barcode of each privacy booth/eSlate will be recorded as it is delivered to the poll site operator.

Upon delivery, a receipt will be signed by the poll site operator with a notation by receiver of the specific room or internal area where the equipment is stored. Completed receipts must be turned in by the Contractor to the Registrar of Voters office no later than 10:00 a.m. of the following working day. Receipts may be transmitted by hand delivery or via fax by the Contractor. Deliveries to schools and businesses are to be made on weekdays only and during their regular office hours, not evenings or on Saturdays, Sundays, or holidays. No deliveries of any kind may take place before 8:00 a.m. or after 8:00 p.m. except at the express request of the receiver. Receivers must be given a delivery window no longer than three (3) hours by arrangement between 8:00 a.m. and 8:00 p.m. Deliveries before 8:00 a.m. and after 8:00 p.m. shall be made only at the specific request of the poll site. Please document such requests.

All transportation of voting equipment will be done in closed vans or enclosed trucks. If equipment is not delivered the day of pick-up, it must be returned to the ROV warehouse before 5:00 p.m. or stored in a secure location. Trucks must be locked at all times while equipment is onboard. Caddies will be retained at the polling sites during the election period. Caddies will not be stacked on the truck and must be secured during transport to avoid shifting. All trucks must be equipped with either a lift or ramp to minimize damage to the equipment.

The Contractor is responsible for loading and unloading preloaded caddies and/or loose privacy booth/eSlates at the ROV warehouse. The Contractor will properly secure the privacy booth/eSlate and caddies during transport to avoid damage to the equipment. The trucks will be locked at all times when the equipment is onboard. The Contractor is responsible at all times while the voting equipment is in the Contractor's possession for the security, safety and well-being of the equipment.

At the discretion of the Contractor, trucks may be loaded the night before for the following day's deliveries, secured and stored overnight at the Registrar of Voters site or a secured facility pre-approved by the Registrar of Voters.

> REDELIVERIES:

Where re-delivery is necessary, the following guidelines will apply:

1. Where re-delivery is a result of failure to arrange and confirm timely delivery or other failure on the part of the Contractor, the Registrar will not be charged.
2. Where re-delivery occurs as a result of a change of location by the Registrar's office, a second delivery fee may be charged.

ALL RE-DELIVERY CHARGES WILL BE VERIFIED BY THE ROV DOCUMENTATION OF ADDRESS, PRECINCT AND PRE-NOTIFICATION OF POLL SITE OPERATOR FOR EACH CHARGE IS REQUIRED. THE PRE-APPROVAL OF THE REGISTRAR'S TRANSPORTATION COORDINATOR IS REQUIRED FOR RE-DELIVERY. AN AUTHORIZATION NUMBER WILL BE ISSUED AND MUST ACCOMPANY ALL RE-DELIVERY BILLING CHARGES. IN NO CASE MAY RE-DELIVERIES BE CHARGED WITH MORE THAN 3% OF ORIGINALLY SCHEDULED POLL SITES.

ATTACHMENT A
SCOPE OF WORK (continued)

> OTHER DELIVERY REQUIREMENTS:

Deliveries must be made during the two-week period prior to the election. A single truck will be scheduled for no more than twenty-six (26) deliveries in a single day. The Contractor will provide the ROV with a planned route/schedule, following receipt of the polling site information.

All drivers must possess a current, unrestricted California Driver's license appropriate to the type of vehicle used.

All drivers must be able to verbally communicate in English. All drivers must be able to read English sufficiently to understand delivery instructions.

> ELECTION DAY DELIVERIES:

On each Election Day, the Contractor may be required to provide one additional truck and driver per region, for emergency deliveries at the discretion of the Registrar of Voters.

> POST ELECTION RECOVERY OF EQUIPMENT:

On the day following each election, the Contractor will begin pick up of the equipment from the sites where they were delivered and transport such equipment immediately to the ROV warehouse at 1300 S. Grand Ave. Building C, Santa Ana. It is the Contractor's responsibility to offload the equipment at the ROV loading dock.

A list of designated "first pickup" sites will be provided to the Contractor by the ROV by Friday prior to Election Day. The same parameters with respect to pickup days and times will apply. The equipment collected will be returned to the ROV warehouse in Santa Ana, during business hours, as they are ready for delivery, until all equipment is accounted for. All equipment picked up after delivery hours for delivery to the ROV will be stored in a locked, weatherproof location. By prior arrangement, ROV warehouse will accept the return deliveries until 7:00 P.M. Monday through Friday.

All equipment must be returned to the ROV by close of business fourteen (14) days following election day (E+14). Poll Site operator will be notified, in writing, the anticipated pick up date. They may be advised that failure to provide access on the scheduled date may result in further delay of pick-up because repeat pick ups will be scheduled following regularly scheduled pick-ups throughout the region.

> POST ELECTION DEBRIEFING:

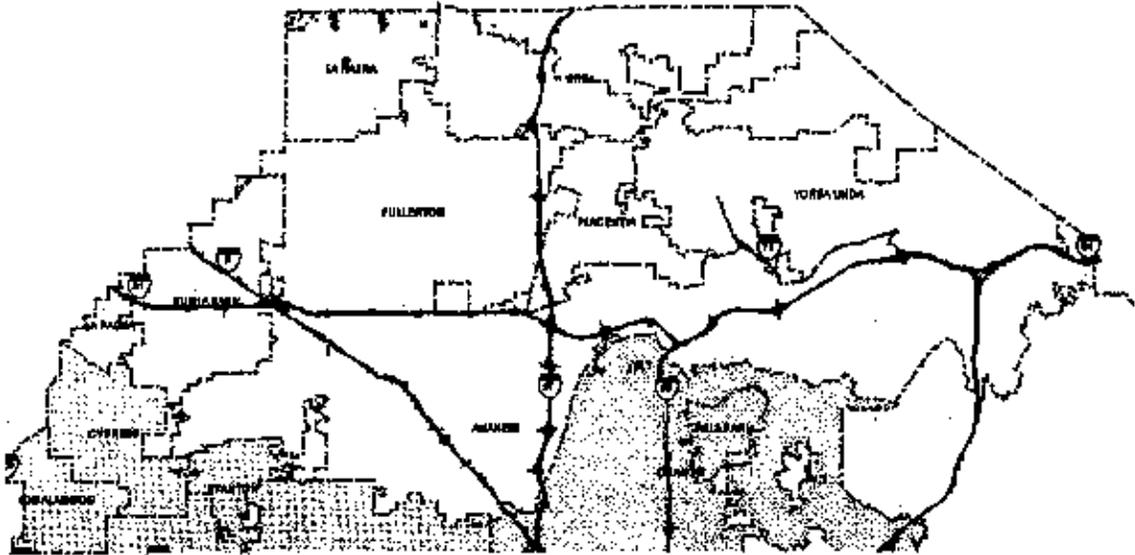
The Contractor and ROV will meet within four (4) weeks following completion of Post Election equipment recovery to recap the transportation of voting equipment. A preliminary delivery plan for the next scheduled election will be developed at that time.

> OTHER CONTRACTOR REQUIREMENTS:

A Transportation Coordinator at the ROV will be the main point of contact for the Contractor during performance of the Agreement. Changes to this Agreement may not be authorized by any other person on the staff of the ROV and shall not be effective unless made in writing pursuant to Section 9 of the Agreement.

Each driver must carry a cell phone with the capability of calling the ROV Transportation Coordinator in Santa Ana if problems/issues arise plus the capability of receiving calls from the ROV in Santa Ana.

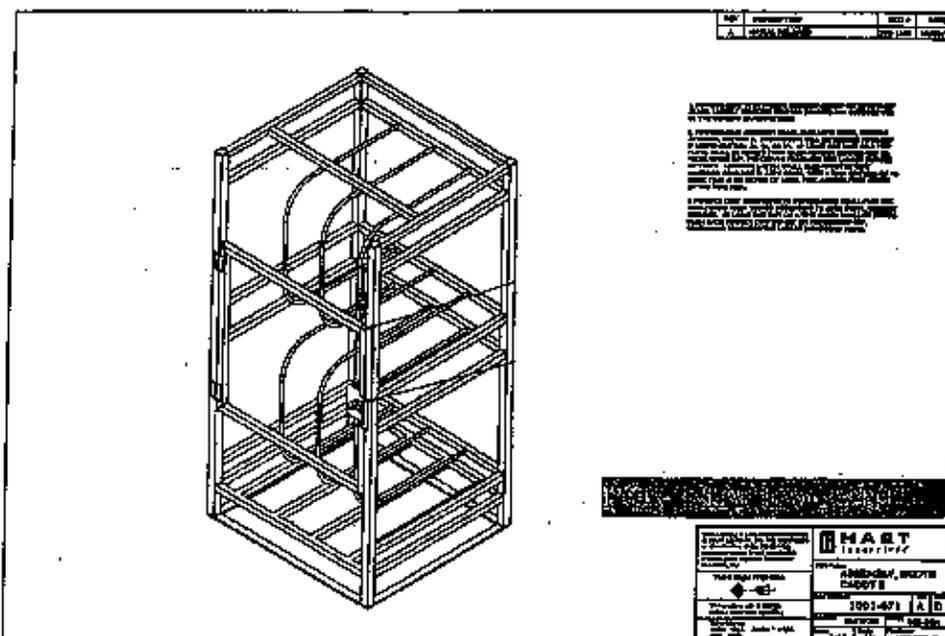
EXHIBIT 1 A
REGIONAL DESCRIPTION



AREA A
Cities

1. Anaheim
2. Brea
3. Buena Park
4. Fullerton
5. La Habra
6. La Palma
7. Placentia
8. Yorba Linda

EXHIBIT 2 CADDY SPECIFICATIONS



CADDY	Collapsed for Transport	Assembled / Ready to Use
Height	N/A	58 in
Width	N/A	31 in
Length	N/A	28 in
Weight	N/A	83 lbs empty
Weight	N/A	390 lbs fully loaded w/8 eSlates, VVPAT printers & batteries

The Voting Booth Caddy is a boxy, metal-framed structure that provides a durable and convenient voting booth transportation solution. The Caddy is finished in indoor/outdoor powder coating for durability. Through various holes provided in the Caddy frame, the user can place tamper-evident seals or locks to hold the units in place or provide evidence that it has been opened.

The Caddy can be moved with a heavy-duty two-wheel hand truck, pallet jack, or forklift. There are openings on all four sides in the lower portion of the Caddy for access. These openings are detailed in Hart InterCivic drawing 1001-679 (Caddy, Frame); and enclose forklift lines per OSHA requirements.

**EXHIBIT 3
PRIVACY BOOTH W/ESLATE SPECIFICATIONS (LOOSE UNITS)**



BOOTH	Collapsed for Transport	Assembled / Ready to Use
Height	6.75 in	67 in
Width	25 in	29.5 in
Length	25 in	25 in
Weight	38 lbs	38 lbs

ATTACHMENT B

PAYMENT/INVOICING INSTRUCTIONS COMPENSATION/COST FOR CONTRACTOR SERVICES

> Payment/Invoicing Instructions:

Invoices are to be sent to:

County of Orange
Registrar of Voters
P.O. Box 11298
Santa Ana, CA 92711

Acceptable invoicing format:

The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address
3. Name of County agency/department
4. Delivery/service address
5. Price Agreement (PG) or Purchase Order (PO) number
6. Date of order
7. Product/service description, quantity, and prices by commodity code
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Submit authorization numbers for re-deliveries
11. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

> Compensation/Cost

	<u>AREA A</u>
Delivery Rate Per Site (1 Truck/1 Driver/1 Helper)	\$40.00
Pickup Rate Per Site (1 Truck/1 Driver/1 Helper)	\$38.00
Re-Delivery Rate Per Site - not to exceed 3% of originally scheduled deliveries; paid only with prior authorization	\$40.00
Election Day Standby Rate (1 Truck/1 Driver)	\$72.00 per hour

Pricing to remain firm throughout the two year term of the Agreement and all subsequent renewal terms.



COUNTY OF ORANGE

REGISTRAR OF VOTERS

**PRICE AGREEMENT NO. N1000008235
FOR
TRANSPORTATION OF ELECTION EQUIPMENT
TO AND FROM POLL SITES WITHIN
CENTRAL AND SOUTH ORANGE COUNTY**

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AGREEMENT

Table of Contents	2
Recitals.....	4
Agreement	4

ARTICLES	PAGE
1. Scope of the Agreement	4
2. Agreement Term.....	4
3. Compensation	4
4. Availability of Funds	4
5. Payment Terms-Payment in Arrears.....	5
6. Assigned Contractor Staff	5
7. Governing Law and Venue.....	5
8. Entire Agreement	5
9. Amendments	5
10. Taxes	5
11. Delivery	5
12. Acceptance/Payment.....	5
13. Warranty	6
14. Patent/Copyright Material/Propriety Infringement.....	6
15. Assignment or Sub-contracting	6
16. Non-Discrimination	6
17. Termination.....	6
18. Consent to Breach not Waiver.....	6
19. Remedies Not Exclusive.....	6
20. Independent Contractor.....	7
21. Performance	7
22. Indemnification and Insurance.....	7
23. Bills and Liens	9
24. Changes	8
25. Change of Ownership.....	9
26. Force Majeure	9
27. Confidentiality	9
28. Compliance with Laws	10
29. Freight (F.O.B. Destination)	10
30. Pricing	10
31. Waiver of Jury Trial	10
32. Terms and Conditions	10
33. Headings	10
34. Severability.....	10
35. Calendar Days.....	10
36. Attorney Fees	10
37. Interpretation	10
38. Project Manager	10
39. Authority	11
40. Child Support Enforcement Requirements	11
41. Liquidated Damages	11
42. Notices	11



Signature Page 13

Attachments

A. Scope of Work14
B. Invoicing and Compensation/Cost .. 21
C. Child Support Enforcement Certification Requirements . .22

Exhibits

1. Regional 1B and 1D Descriptions .. . 17
2. Caddy Specifications 19
3. Privacy Booth with Eslate Specifications .. .20



**PRICE AGREEMENT NO. N100008235 FOR
TRANSPORTATION OF ELECTION EQUIPMENT TO AND FROM POLL SITES
WITHIN CENTRAL AND SOUTH ORANGE COUNTY**

This Agreement to provide transportation of election equipment to and from poll sites within Central and South Orange County, hereinafter referred to as "Agreement" is made and entered into on the date approved by the Board of Supervisors or when fully executed by the parties, whichever is later, and is by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and O'Neil Moving Systems, Inc., a California corporation, dba O'Neil Relocation, with a place of business at 12101 Western Ave., Garden Grove, CA 92841, hereinafter referred to as "Contractor."

ATTACHMENTS

This Agreement is comprised of this document and the following attachments, which are incorporated by reference into this Agreement:

- Attachment A – Scope of Work
Attachment B – Compensation/Cost for Contractor Services
Attachment C – Child Support Enforcement Certification Requirements

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) for transportation of election equipment to and from poll sites within Orange County;

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

NOW, THEREFORE, the parties mutually agree as follows:

AGREEMENT

1. **Scope of the Agreement:** Contractor shall provide the County with services to transport and deliver election equipment to and from poll sites within Central and South Orange County as specified in the Scope of Work, Attachment A.
2. **Agreement Term:** The term of this agreement shall be two (2) years, commencing on October 1, 2006 through September 30, 2008 renewable for three (3) additional one (1) year periods by mutual agreement of the parties, subject to approval of the County's Board of Supervisors, as required.
3. **Compensation:** Compensation shall be paid to Contractor for the satisfactory performance of the services under this Agreement following receipt of an acceptable invoice as described in Attachment B, not to exceed \$375,000 over a period of five (5) years.

The Contractor agrees to accept the specified compensation as set forth in this Agreement as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

4. **Availability of Funds:** Notwithstanding any provision to the contrary herein, all payment obligations of the County are contingent upon the availability of funds, which are appropriated or otherwise legally available for the payment of County obligations under this Agreement. If funds are not appropriated or otherwise legally available for the payment of compensation hereunder, this Agreement shall terminate at the end of the period for which funds are available. In the event this Agreement terminates due to the insufficient appropriated or legally available funds to pay compensation in accordance with this Agreement, there shall be no liability to the County, nor shall the County be liable for any future payments or damages of any kind resulting from such termination.

Contractor acknowledges that funding or portions of funding for this Agreement may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Agreement without penalty.

5. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Agreement requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Agreement and shall not be construed as acceptance of any part of the goods or services.

6. **Assigned Contractor Staff:** County agrees to accept, and Contractor agrees to provide the aforementioned services primarily through Bud Potter, and such other officers and employees of Contractor as are necessary for the satisfactory completion of the services to be provided under this Agreement.

County reserves the right to review and approve all staff changes proposed by Contractor which will affect key personnel and positions assigned to provide services to County under this Agreement. County's approval of such staff changes shall not be unreasonably withheld.

7. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

8. **Entire Agreement:** This Agreement, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein.

9. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

10. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

11. **Delivery:** Time of delivery of goods or services is of the essence in this Agreement. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.

12. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received,

inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

13. **Warranty:** Contractor expressly warrants that the goods/services covered by this Agreement are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Contractor agrees to indemnify, defend and hold County and its indemnitees as identified in section 22 below, and as more fully described in section 22, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
14. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Agreement, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement. Contractor warrants that any software purchased, and as modified through services provided hereunder, will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in section 22 below, it shall indemnify, defend and hold County and COUNTY INDEMNITEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
15. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of County shall be invalid and shall constitute a breach of this Agreement.
16. **Non-Discrimination:** In the performance of this Agreement, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
17. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Agreement without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Agreement shall relieve County of all further obligation.
18. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
19. **Remedies Not Exclusive:** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either party to any other remedies provided by law.

20. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
21. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Agreement. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

22. **Indemnification and Insurance**

Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES"), harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Agreement. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or COUNTY INDEMNITEES, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Insurance Provisions:

Prior to the provision of services under this Agreement, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of contractor pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form	\$1,000,000 combined single limit per occurrence
Property damage and contractual liability	\$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Cargo Insurance	\$1,000,000 per occurrence

All liability insurance, except Professional Liability, required by this Agreement shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this agreement with respect to work done by the Contractor under the terms of this Agreement (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability. All insurance policies required by this Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

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

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of agreement.

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the contractor has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Agreement may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

23. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Section 22 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
24. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
25. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Agreement and complete them to the satisfaction of County.
26. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails itself of any available remedies.
27. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

28. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Agreement shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Section 22 above, Contractor agrees that it shall defend, indemnify and hold County and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
29. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Agreement.
30. **Pricing:** The Agreement price shall include full compensation for providing all services as specified herein or when applicable, in the Scope of Work attached to this Agreement, and no additional compensation will be allowed therefore, unless otherwise provided for in this Agreement.
31. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and for any other claim of injury or damage.
32. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Agreement.
33. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
34. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
35. **Calendar Days:** Any reference to the words "day" or "days" herein shall mean calendar day or calendar days respectively; unless otherwise expressly provided.
36. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
37. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.
38. **Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Agreement. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. County is not required to provide any reason for requesting such removal. The Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.

39. **Authority:** The parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
40. **Child Support Enforcement Certification Requirements:** In order to comply with child support enforcement certification requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the selected Contractor hereby agrees to furnish CEO/Purchasing with the required Contractor data and certifications, Attachment C - Child Support Enforcement Certification Requirements.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purpose. Failure of Contractor to timely submit the data and/or certifications required above or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

41. **Liquidated Damages:** It is agreed by and between the Contractor and the County that if this Agreement is not fully and completely performed within the terms of the Agreement, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that the Contractor will pay to the County liquidated damages in the amount of \$1500 for each and every day of delay as set forth in this Agreement.

In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this Agreement.

This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.

If the Contractor is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays otherwise caused by the County, the time of performance of the Agreement will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.

If this Agreement is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

42. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be

addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

TO: COUNTY

Registrar of Voters
1300 S. Grand Ave. Building C
Santa Ana, CA 92705
Attn: Kate Gold
Contract No. N1000008235

TO: CONTRACTOR

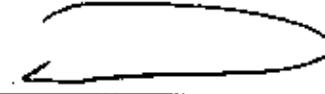
O'Neil Relocation
12101 Western Ave.
Garden Grove, CA 92841
Attn: Bud Potter

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year shown opposite their respective signatures below:

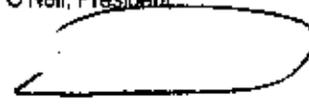
O'Neil Moving Systems, Inc., a California corporation,
dba O'Neil Relocation,

Date: 9/15/06

By: 

William O'Neil, President

Date: 9/15/06

By: 

Name: *Secretary*

Title:

(the Secretary, any Assistant Secretary, the Chief Financial Officer,
or any Assistant Treasurer)

County of Orange, a political subdivision of the
State of California

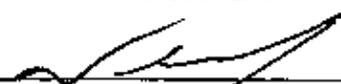
Ronald Vienna, Purchasing Agent

By: 

Mylinh Tu, Deputy Purchasing Agent

Date: 9/18/06

APPROVED AS TO CONTENT:

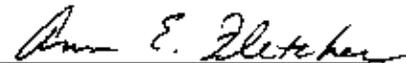
By: 

Neal Kelley, Registrar of Voters

Date: 9/13/06

APPROVED AS TO FORM:

COUNTY COUNSEL

By: 

Ann E. Fletcher, Deputy

Date: 9/19/06



ATTACHMENT A
SCOPE OF WORK

➤ **BACKGROUND:**

The County of Orange, Registrar of Voters (ROV) uses the Hart Intercivic privacy booth/eSlate system for electronic voting in Federal, State and local elections. These units must be transported to and from the polling sites (1000-1700 in previous major elections) throughout the County of Orange.

The privacy booth/eSlate system is transported in previously loaded, specially designed caddies. There may be occasions the privacy booth/eSlate system will need to be transported loose (not loaded into the caddy). Some privacy booth/eSlates are designated Disabled Access Units (DAUs) and provide enhanced functionality to meet the needs of persons with disabilities. Each poll site receives at least one of the clearly labeled DAU units. See Exhibit 2 for caddy specifications. See Exhibit 3 for privacy booth/eSlate specifications. (loose units)

In all elections there are legal mandates that secure the integrity of the election to assure voters that their votes will be recorded and tallied as they intend. The Contractor will fully comply with the security requirements of the ROV and will immediately report any attempt to interfere with the election equipment or delivery process to the ROV.

➤ **SCOPE:**

The Contractor will provide services for regions B and D as specified in Exhibit 1B and 1D. The Contractor will transport and deliver privacy booth/eSlates pre-loaded in caddies and/or loose to and from polling sites throughout the designated geographical area. The Contractor shall ensure that the equipment is promptly delivered, carefully unloaded, properly receipted and securely stored at the designated location. The Contractor shall also ensure that the equipment is retrieved promptly and transported safely to the ROV warehouse following each election.

The Contractor is also responsible for prior notification of the Poll Site Operator of the planned delivery date and time. This notification must be at least twenty-four (24) hours prior to the planned delivery and provide a window of three hours or less.

The period of performance will be approximately four weeks prior to a County-wide election and two weeks following the election date. Two weeks prior to an election, the equipment will be delivered to polling sites County-wide (within the designated region). The number of poll sites will vary.

➤ **PRE-ELECTION DELIVERY:**

Four weeks prior to each election, the ROV will provide to the Contractor an address list of polling sites within the geographical areas and expected time frames for delivery. At that time, the Contractor will prepare a delivery plan to transport the equipment. The plan will be submitted to the ROV for review no later than three weeks prior to the election. Beginning two weeks prior to the election, on a daily basis, the Contractor will pick up the equipment staged at the ROV warehouse. ROV personnel will man the loading dock at 6:30 a.m. on weekdays. Pickups may begin any time after 6:30 a.m. For the two Saturdays prior to the election, pickups may begin any time after 7:00 a.m. until 12:00 p.m. Some coordination of pickup times may be required among multiple vendors. The number of poll sites will vary between elections.

All deliveries must be completed two days prior to the election.

ATTACHMENT A
SCOPE OF WORK (continued)

➤ **DELIVERIES:**

If the Contractor is required to inventory the equipment upon delivery to the polling site, an electronic inventory device will be provided by the County to the driver and the barcode of each privacy booth/eSlate will be recorded as it is delivered to the poll site operator.

Upon delivery, a receipt will be signed by the poll site operator with a notation by receiver of the specific room or internal area where the equipment is stored. Completed receipts must be turned in by the Contractor to the Registrar of Voters office no later than 10:00 a.m. of the following working day. Receipts may be transmitted by hand delivery or via fax by the Contractor. Deliveries to schools and businesses are to be made on weekdays only and during their regular office hours, not evenings or on Saturdays, Sundays, or holidays. No deliveries of any kind may take place before 8:00 a.m. or after 8:00 p.m. except at the express request of the receiver. Receivers must be given a delivery window no longer than three (3) hours by arrangement between 8:00 a.m. and 8:00 p.m. Deliveries before 8:00 a.m. and after 8:00 p.m. shall be made only at the specific request of the poll site. Please document such requests.

All transportation of voting equipment will be done in closed vans or enclosed trucks. If equipment is not delivered the day of pick-up, it must be returned to the ROV warehouse before 5:00 p.m. or stored in a secure location. Trucks must be locked at all times while equipment is onboard. Caddies will be retained at the polling sites during the election period. Caddies will not be stacked on the truck and must be secured during transport to avoid shifting. All trucks must be equipped with either a lift or ramp to minimize damage to the equipment.

The Contractor is responsible for loading and unloading preloaded caddies and/or loose privacy booth/eSlates at the ROV warehouse. The Contractor will properly secure the privacy booth/eSlate and caddies during transport to avoid damage to the equipment. The trucks will be locked at all times when the equipment is onboard. The Contractor is responsible at all times while the voting equipment is in the Contractor's possession for the security, safety and well-being of the equipment.

At the discretion of the Contractor, trucks may be loaded the night before for the following day's deliveries, secured and stored overnight at the Registrar of Voters site or a secured facility pre-approved by the Registrar of Voters.

➤ **REDELIVERIES:**

Where re-delivery is necessary, the following guidelines will apply:

1. Where re-delivery is a result of failure to arrange and confirm timely delivery or other failure on the part of the Contractor, the Registrar will not be charged.
2. Where re-delivery occurs as a result of a change of location by the Registrar's office, a second delivery fee may be charged.

ALL RE-DELIVERY CHARGES WILL BE VERIFIED BY THE ROV. DOCUMENTATION OF ADDRESS, PRECINCT AND PRE-NOTIFICATION OF POLL SITE OPERATOR FOR EACH CHARGE IS REQUIRED. THE PRE-APPROVAL OF THE REGISTRAR'S TRANSPORTATION COORDINATOR IS REQUIRED FOR RE-DELIVERY. AN AUTHORIZATION NUMBER WILL BE ISSUED AND MUST ACCOMPANY ALL RE-DELIVERY BILLING CHARGES. IN NO CASE MAY RE-DELIVERIES BE CHARGED WITH MORE THAN 3% OF ORIGINALLY SCHEDULED POLL SITES.

ATTACHMENT A
SCOPE OF WORK (continued)

➤ **OTHER DELIVERY REQUIREMENTS:**

Deliveries must be made during the two-week period prior to the election. A single truck will be scheduled for no more than twenty-six (26) deliveries in a single day. The Contractor will provide the ROV with a planned route/schedule, following receipt of the polling site information.

All drivers must possess a current, unrestricted California Driver's license appropriate to the type of vehicle used.

All drivers must be able to verbally communicate in English. All drivers must be able to read English sufficiently to understand delivery instructions.

➤ **ELECTION DAY DELIVERIES:**

On each Election Day, the Contractor *may* be required to provide one additional truck and driver per region, for emergency deliveries at the discretion of the Registrar of Voters.

➤ **POST ELECTION RECOVERY OF EQUIPMENT:**

On the day following each election, the Contractor will begin pick up of the equipment from the sites where they were delivered and transport such equipment immediately to the ROV warehouse at 1300 S. Grand Ave. Building C, Santa Ana. It is the Contractor's responsibility to offload the equipment at the ROV loading dock.

A list of designated "first pickup" sites will be provided to the Contractor by the ROV by Friday prior to Election Day. The same parameters with respect to pickup days and times will apply. The equipment collected will be returned to the ROV warehouse in Santa Ana, during business hours, as they are ready for delivery, until all equipment is accounted for. All equipment picked up after delivery hours for delivery to the ROV will be stored in a locked, weatherproof location. By prior arrangement, ROV warehouse will accept the return deliveries until 7:00 P.M. Monday through Friday.

All equipment must be returned to the ROV by close of business fourteen (14) days following election day (E+14). Poll Site operator will be notified, in writing, the anticipated pick up date. They may be advised that failure to provide access on the scheduled date may result in further delay of pick-up because repeat pick ups will be scheduled following regularly scheduled pick-ups throughout the region.

➤ **POST ELECTION DEBRIEFING:**

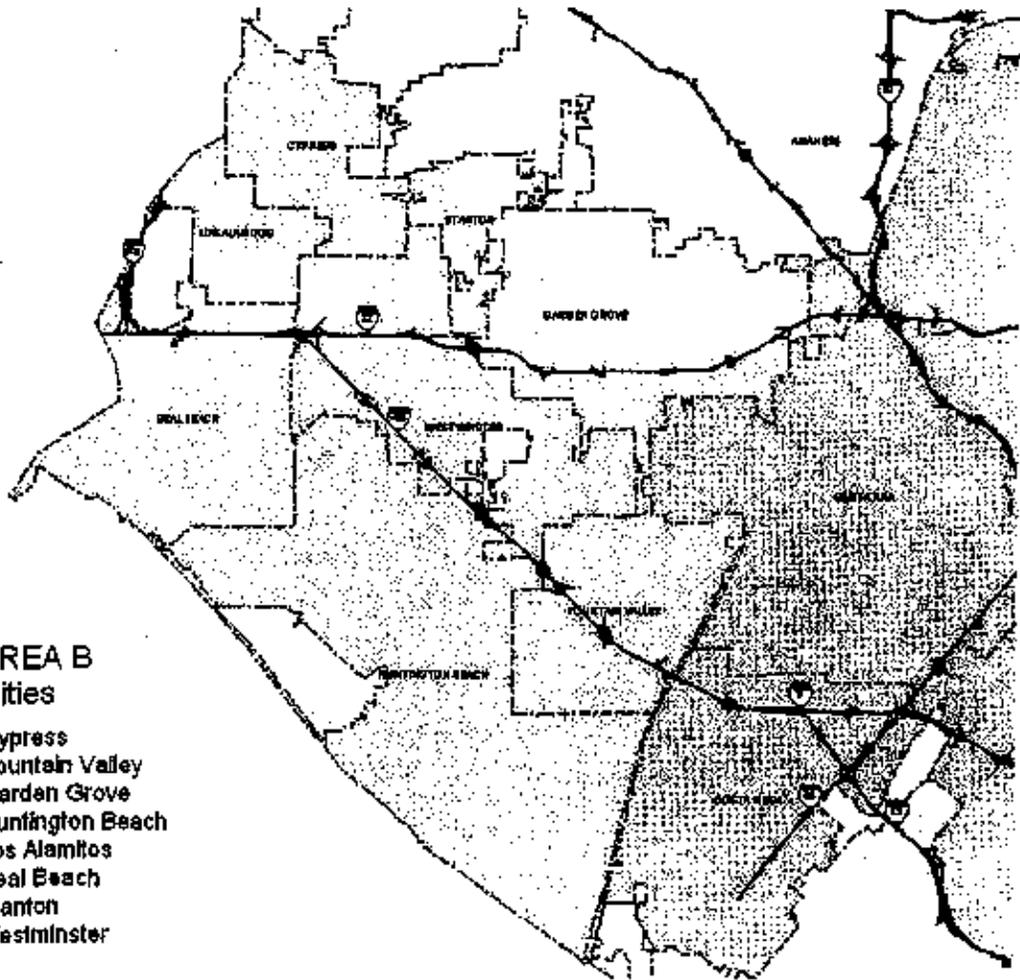
The Contractor and ROV will meet within four (4) weeks following completion of Post Election equipment recovery to recap the transportation of voting equipment. A preliminary delivery plan for the next scheduled election will be developed at that time.

➤ **OTHER CONTRACTOR REQUIREMENTS:**

A Transportation Coordinator at the ROV will be the main point of contact for the Contractor during performance of the Agreement. Changes to this Agreement may not be authorized by any other person on the staff of the ROV and shall not be effective unless made in writing pursuant to Section 9 of the Agreement.

Each driver must carry a cell phone with the capability of calling the ROV Transportation Coordinator in Santa Ana if problems/issues arise plus the capability of receiving calls from the ROV in Santa Ana.

**EXHIBIT 1 B
REGIONAL DESCRIPTION**

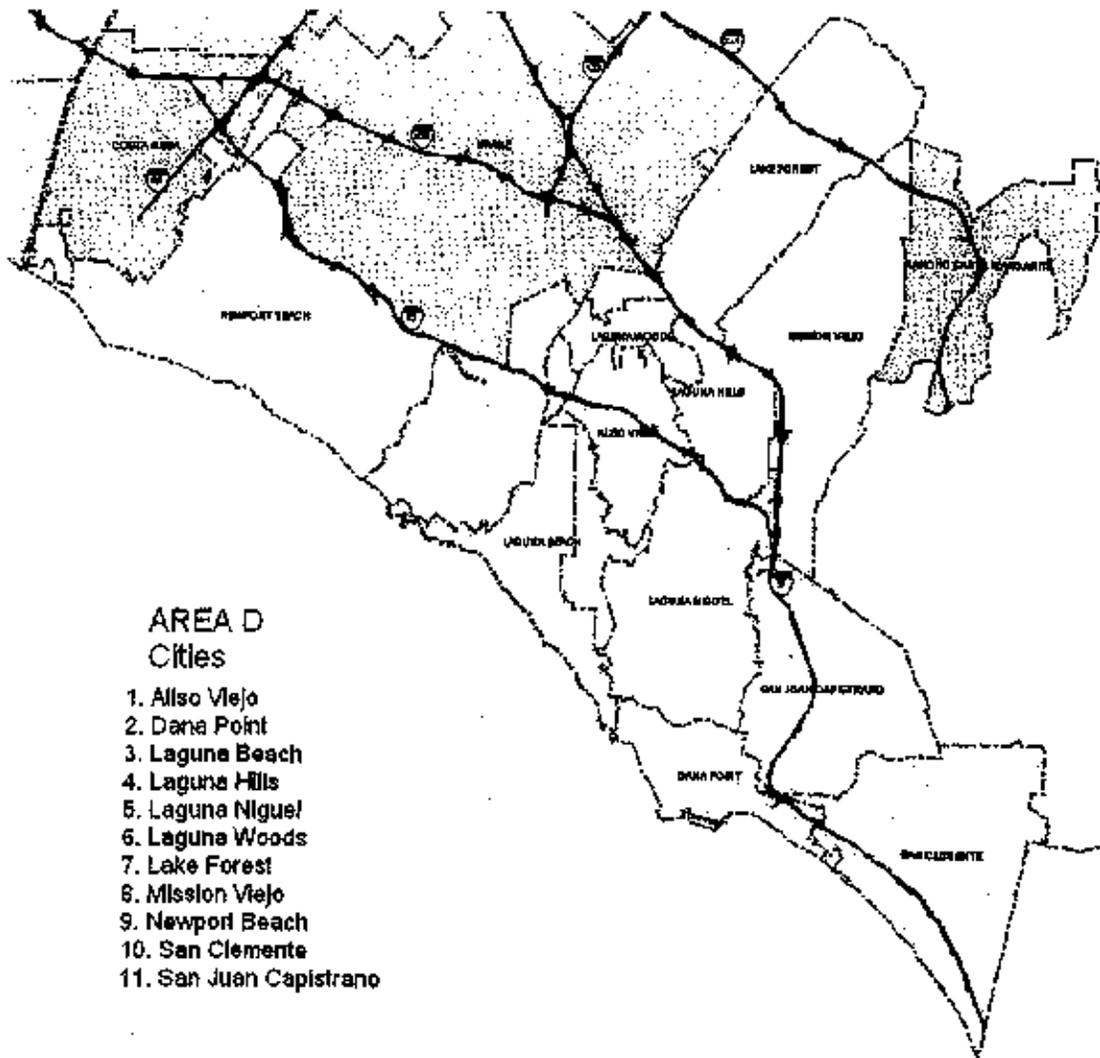


**AREA B
Cities**

- 1. Cypress
- 2. Fountain Valley
- 3. Garden Grove
- 4. Huntington Beach
- 5. Los Alamitos
- 6. Seal Beach
- 7. Stanton
- 8. Westminster



**EXHIBIT 1 D
REGIONAL DESCRIPTION**

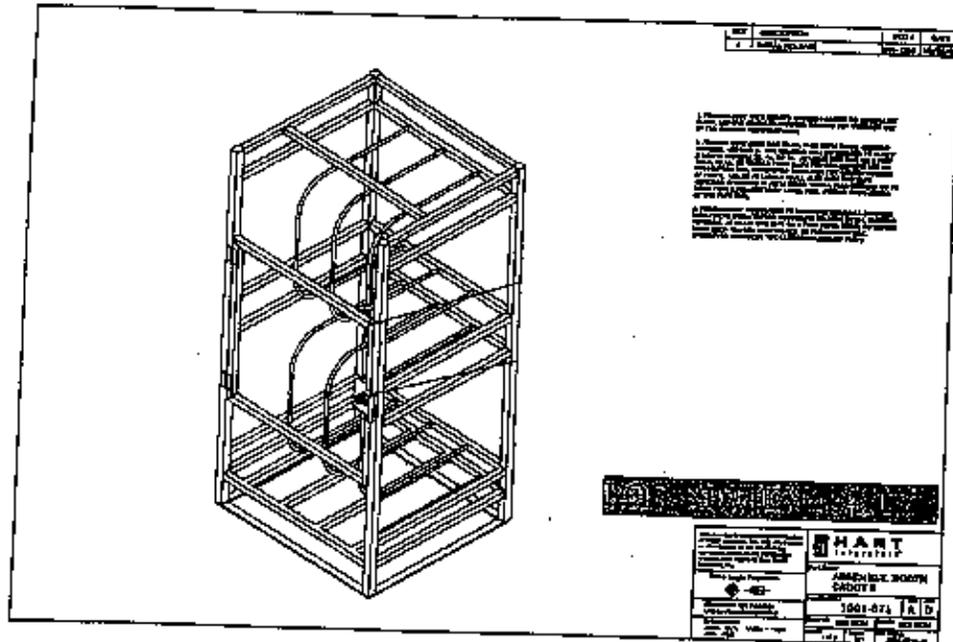


**AREA D
Cities**

1. Aliso Viejo
2. Dana Point
3. Laguna Beach
4. Laguna Hills
5. Laguna Niguel
6. Laguna Woods
7. Lake Forest
8. Mission Viejo
9. Newport Beach
10. San Clemente
11. San Juan Capistrano



EXHIBIT 2 CADDY SPECIFICATIONS



CADDY	Collapsed for Transport	Assembled / Ready to Use
Height	N/A	58 in
Width	N/A	31 in
Length	N/A	28 in
Weight	N/A	83 lbs empty
Weight	N/A	390 lbs fully loaded w/8 eSlates, VVPAT printers & batteries

The Voting Booth Caddy is a boxy, metal-framed structure that provides a durable and convenient voting booth transportation solution. The Caddy is finished in indoor/outdoor powder coating for durability. Through various holes provided in the Caddy frame, the user can place tamper-evident seals or locks to hold the units in place or provide evidence that it has been opened.

The Caddy can be moved with a heavy-duty two-wheel hand truck, pallet jack, or forklift. There are openings on all four sides in the lower portion of the Caddy for access. These openings are detailed in Hart InterCivic drawing 1001-679 (Caddy, Frame); and enclose forklift lines per OSHA requirements.

EXHIBIT 3
PRIVACY BOOTH W/ESLATE SPECIFICATIONS (LOOSE UNITS)



BOOTH	Collapsed for Transport	Assembled / Ready to Use
Height	6.75 in	67 in
Width	25 in	29.5 in
Length	25 in	25 in
Weight	38 lbs	38 lbs



ATTACHMENT B

**PAYMENT/INVOICING INSTRUCTIONS
COMPENSATION/COST FOR CONTRACTOR SERVICES**

➤ **Payment/Invoicing Instructions:**

Invoices are to be sent to:

County of Orange
Registrar of Voters
P.O. Box 11298
Santa Ana, CA 92711

Acceptable invoicing format:

The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address
3. Name of County agency/department
4. Delivery/service address
5. Price Agreement (PG) or Purchase Order (PC) number
6. Date of order
7. Product/service description, quantity, and prices by commodity code
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Submit authorization numbers for re-deliveries
11. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

➤ **Compensation/Costs**

	<u>AREA B</u>	<u>AREA D</u>
Delivery Rate Per Site (1 Truck/1 Driver/1 Helper)	\$38.50	\$42.50
Pickup Rate Per Site (1 Truck/1 Driver/1 Helper)	\$38.50	\$42.50
Re-Delivery Rate Per Site not to exceed 3% of originally scheduled deliveries; paid only with prior authorization	\$90.00	\$96.00
Election Day Standby Rate (1 Truck/1 Driver)	\$60.00 per hour	\$60.00 per hour

Pricing to remain firm throughout the two year term of the Agreement and all subsequent renewal terms.





COUNTY OF ORANGE

REGISTRAR OF VOTERS

**PRICE AGREEMENT NO. N100008236 FOR
TRANSPORTATION OF ELECTION EQUIPMENT TO AND
FROM POLL SITES WITHIN CENTRAL ORANGE COUNTY**

AGREEMENT

Table of Contents	2
Recitals.....	4
Agreement	4
ARTICLES	PAGE
1. Scope of the Agreement	4
2. Agreement Term	4
3. Compensation.....	4
4. Availability of Funds	4
5. Payment Terms-Payment in Arrears	5
6. Assigned Contractor Staff	5
7. Governing Law and Venue.....	5
8. Entire Agreement	5
9. Amendments	5
10. Taxes.....	5
11. Delivery.....	5
12. Acceptance/Payment.....	5
13. Warranty	6
14. Patent/Copyright Material/Propriety Infringement.....	6
15. Assignment or Sub-contracting	6
16. Non-Discrimination	6
17. Termination.....	6
18. Consent to Breach not Waiver.....	6
19. Remedies Not Exclusive.....	6
20. Independent Contractor.....	7
21. Performance	7
22. Indemnification and Insurance.....	7
23. Bills and Liens	9
24. Changes	9
25. Change of Ownership.....	9
26. Force Majeure	9
27. Confidentiality	9
28. Compliance with Laws	10
29. Freight (F.O.B. Destination)	10
30. Pricing	10
31. Waiver of Jury Trial	10
32. Terms and Conditions	10
33. Headings	10
34. Severability	10
35. Calendar Days.....	10
36. Attorney Fees	10
37. Interpretation	10
38. Project Manager	10
39. Authority	11
40. Child Support Enforcement Requirements	11
41. Liquidated Damages	11
42. Notices	11

Signature Page..... 13

Attachments

A. Scope of Work..... 14
B. Invoicing and Compensation/Cost..... 20
C. Child Support Enforcement Certification Requirements..... 21

Exhibits

1. Regional 1A Description..... 17
2. Caddy Specifications..... 18
3. Privacy Booth with Estate Specifications..... 19

PRICE AGREEMENT NO. N100008236 FOR TRANSPORTATION OF ELECTION EQUIPMENT TO AND FROM POLL SITES WITHIN CENTRAL ORANGE COUNTY

This Agreement to provide transportation of election equipment to and from poll sites within Central Orange County, hereinafter referred to as "Agreement" is made and entered into on the date approved by the Board of Supervisors or when fully executed by the parties, whichever is later, and is by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and South Coast Logistics, Inc., a California corporation, with a place of business at 12572 Western Avenue, Garden Grove, CA 92841, hereinafter referred to as "Contractor."

ATTACHMENTS

This Agreement is comprised of this document and the following attachments, which are incorporated by reference into this Agreement:

- Attachment A – Scope of Work
- Attachment B – Compensation/Cost for Contractor Services
- Attachment C – Child Support Enforcement Certification Requirements

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) for transportation of election equipment to and from poll sites within Orange County;

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

NOW, THEREFORE, the parties mutually agree as follows:

AGREEMENT

1. **Scope of the Agreement:** Contractor shall provide the County with services to transport and deliver election equipment to and from poll sites within Central Orange County as specified in the Scope of Work, Attachment A.
2. **Agreement Term:** The term of this agreement shall be two (2) years, commencing on October 1, 2006 through September 30, 2008 renewable for three (3) additional one (1) year periods by mutual agreement of the parties, subject to approval of the County's Board of Supervisors, as required.
3. **Compensation:** Compensation shall be paid to Contractor for the satisfactory performance of the services under this Agreement following receipt of an acceptable invoice as described in Attachment B, not to exceed \$300,000.00 over a period of five (5) years.

The Contractor agrees to accept the specified compensation as set forth in this Agreement as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

4. **Availability of Funds:** Notwithstanding any provision to the contrary herein, all payment obligations of the County are contingent upon the availability of funds, which are appropriated or otherwise legally available for the payment of County obligations under this Agreement. If funds are not appropriated or otherwise legally available for the payment of compensation hereunder, this Agreement shall terminate at the end of the period for which funds are available. In the event this Agreement terminates due to the insufficient appropriated or legally available funds to pay compensation in accordance with this Agreement, there shall be no liability to the County, nor shall the County be liable for any future payments or damages of any kind resulting from such termination.

Contractor acknowledges that funding or portions of funding for this Agreement may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Agreement without penalty.

5. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Agreement requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Agreement and shall not be construed as acceptance of any part of the goods or services.

6. **Assigned Contractor Staff:** County agrees to accept, and Contractor agrees to provide the aforementioned services primarily through Craig Schueller, and such other officers and employees of Contractor as are necessary for the satisfactory completion of the services to be provided under this Agreement.

County reserves the right to review and approve all staff changes proposed by Contractor which will affect key personnel and positions assigned to provide services to County under this Agreement. County's approval of such staff changes shall not be unreasonably withheld.

7. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
8. **Entire Agreement:** This Agreement, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein.
9. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
10. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
11. **Delivery:** Time of delivery of goods or services is of the essence in this Agreement. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
12. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received,

inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

13. **Warranty:** Contractor expressly warrants that the goods/services covered by this Agreement are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Contractor agrees to indemnify, defend and hold County and its indemnities as identified in section 22 below, and as more fully described in section 22, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
14. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Agreement, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement. Contractor warrants that any software purchased, and as modified through services provided hereunder, will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in section 22 below, it shall indemnify, defend and hold County and COUNTY INDEMNITEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
15. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of County shall be invalid and shall constitute a breach of this Agreement.
16. **Non-Discrimination:** In the performance of this Agreement, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
17. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Agreement without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Agreement shall relieve County of all further obligation.
18. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
19. **Remedies Not Exclusive:** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either party to any other remedies provided by law.

20. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
21. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Agreement. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

22. **Indemnification and Insurance**

Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES"), harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Agreement. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or COUNTY INDEMNITEES, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Insurance Provisions:

Prior to the provision of services under this Agreement, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of contractor pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States** or **ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form	\$1,000,000 combined single limit per occurrence
Property damage and contractual liability	\$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Cargo Insurance	\$1,000,000 per occurrence

All liability insurance, except Professional Liability, required by this Agreement shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this agreement with respect to work done by the Contractor under the terms of this Agreement (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability. All insurance policies required by this Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

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

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of agreement.

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the contractor has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability Insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Agreement may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

23. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Section 22 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
24. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
25. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Agreement and complete them to the satisfaction of County.
26. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails itself of any available remedies.
27. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

28. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Agreement shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Section 22 above, Contractor agrees that it shall defend, indemnify and hold County and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
29. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Agreement.
30. **Pricing:** The Agreement price shall include full compensation for providing all services as specified herein or when applicable, in the Scope of Work attached to this Agreement, and no additional compensation will be allowed therefore, unless otherwise provided for in this Agreement.
31. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and /or any other claim of injury or damage.
32. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Agreement.
33. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
34. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
35. **Calendar Days:** Any reference to the words "day" or "days" herein shall mean calendar day or calendar days respectively; unless otherwise expressly provided.
36. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
37. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.
38. **Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Agreement. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. County is not required to provide any reason for requesting such removal. The Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.

39. **Authority:** The parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
40. **Child Support Enforcement Certification Requirements:** In order to comply with child support enforcement certification requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the selected Contractor hereby agrees to furnish CEO/Purchasing with the required Contractor data and certifications, Attachment C - Child Support Enforcement Certification Requirements.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purpose. Failure of Contractor to timely submit the data and/or certifications required above or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

41. **Liquidated Damages:** It is agreed by and between the Contractor and the County that if this Agreement is not fully and completely performed within the terms of the Agreement, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that the Contractor will pay to the County liquidated damages in the amount of \$1500 for each and every day of delay as set forth in this Agreement.

In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this Agreement.

This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.

If the Contractor is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays otherwise caused by the County, the time of performance of the Agreement will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.

If this Agreement is not fully and completely performed with the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

42. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be

addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

TO: COUNTY

Registrar of Voters
1300 S. Grand Ave. Building C
Santa Ana, CA 92705
Attn: Kate Gold
Contract No. N1000008236

TO: CONTRACTOR

South Coast Logistics, Inc.
12572 Western Ave.
Garden Grove, CA 92841
Attn: Craig Schueller

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year shown opposite their respective signatures below:

Date:

9/15/06

South Coast Logistics, Inc., a California corporation

By:

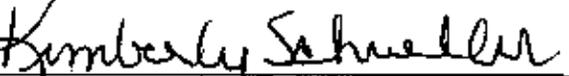


Craig Schueler, President

Date:

9/15/06

By:



Name: Kimberly Schueler

Title: Secretary

(the Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer)

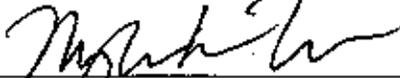
County of Orange, a political subdivision of the State of California

Ronald Vienna, Purchasing Agent

Date:

9/18/06

By:



Mylinh Tu, Deputy Purchasing Agent

APPROVED AS TO CONTENT:

By:



Neal Kelley, Registrar of Voters

Date:

9/18/06

APPROVED AS TO FORM:

COUNTY COUNSEL

By:



Ann E. Fletcher, Deputy

Date:

9/19/06

ATTACHMENT A SCOPE OF WORK

> BACKGROUND:

The County of Orange, Registrar of Voters ROV uses the Hart Intercivic privacy booth/eSlate system for electronic voting in Federal, State and local elections. These units must be transported to and from the polling sites (1000-1700 in previous major elections) throughout the County of Orange.

The privacy booth/eSlate system is transported in previously loaded, specially designed caddies. There may be occasions the privacy booth/eSlate system will need to be transported loose (not loaded into the caddy). Some privacy booth/eSlates are designated Disabled Access Units (DAUs) and provide enhanced functionality to meet the needs of persons with disabilities. Each poll site receives at least one of the clearly labeled DAU units. See Exhibit 2 for caddy specifications. See Exhibit 3 for privacy booth/eSlate specifications. (loose units)

In all elections there are legal mandates that secure the integrity of the election to assure voters that their votes will be recorded and tallied as they intend. The Contractor will fully comply with the security requirements of the ROV and will immediately report any attempt to interfere with the election equipment or delivery process to the ROV.

> SCOPE:

The Contractor will provide services for region C as specified in Exhibit 1C. The Contractor will transport and deliver privacy booth/eSlates pre-loaded in caddies and/or loose to and from polling sites throughout the designated geographical area. The Contractor shall ensure that the equipment is promptly delivered, carefully unloaded, properly receipted and securely stored at the designated location. The Contractor shall also ensure that the equipment is retrieved promptly and transported safely to the ROV warehouse following each election.

The Contractor is also responsible for prior notification of the Poll Site Operator of the planned delivery date and time. This notification must be at least twenty-four (24) hours prior to the planned delivery and provide a window of three hours or less.

The period of performance will be approximately four weeks prior to a County-wide election and two weeks following the election date. Two weeks prior to an election, the equipment will be delivered to polling sites County-wide (within the designated region). The number of poll sites will vary.

> PRE-ELECTION DELIVERY:

Four weeks prior to each election, the ROV will provide to the Contractor an address list of polling sites within the geographical area and expected time frames for delivery. At that time, the Contractor will prepare a delivery plan to transport the equipment. The plan will be submitted to the ROV for review no later than three weeks prior to the election. Beginning two weeks prior to the election, on a daily basis, the Contractor will pick up the equipment staged at the ROV warehouse. ROV personnel will man the loading dock at 6:30 a.m. on weekdays. Pickups may begin any time after 6:30 a.m. For the two Saturdays prior to the election, pickups may begin any time after 7:00 a.m. until 12:00 p.m. Some coordination of pickup times may be required among multiple vendors. The number of poll sites will vary between elections.

All deliveries must be completed two days prior to the election.

ATTACHMENT A
SCOPE OF WORK (continued)

> DELIVERIES:

If the Contractor is required to inventory the equipment upon delivery to the polling site, an electronic inventory device will be provided by the County to the driver and the barcode of each privacy booth/eSlate will be recorded as it is delivered to the poll site operator.

Upon delivery, a receipt will be signed by the poll site operator with a notation by receiver of the specific room or internal area where the equipment is stored. Completed receipts must be turned in by the Contractor to the Registrar of Voters office no later than 10:00 a.m. of the following working day. Receipts may be transmitted by hand delivery or via fax by the Contractor. Deliveries to schools and businesses are to be made on weekdays only and during their regular office hours, not evenings or on Saturdays, Sundays, or holidays. No deliveries of any kind may take place before 8:00 a.m. or after 8:00 p.m. except at the express request of the receiver. Receivers must be given a delivery window no longer than three (3) hours by arrangement between 8:00 a.m. and 8:00 p.m. Deliveries before 8:00 a.m. and after 8:00 p.m. shall be made only at the specific request of the poll site. Please document such requests.

All transportation of voting equipment will be done in closed vans or enclosed trucks. If equipment is not delivered the day of pick-up, it must be returned to the ROV warehouse before 5:00 p.m. or stored in a secure location. Trucks must be locked at all times while equipment is onboard. Caddies will be retained at the polling sites during the election period. Caddies will not be stacked on the truck and must be secured during transport to avoid shifting. All trucks must be equipped with either a lift or ramp to minimize damage to the equipment.

The Contractor is responsible for loading and unloading preloaded caddies and/or loose privacy booth/eSlates at the ROV warehouse. The Contractor will properly secure the privacy booth/eSlate and caddies during transport to avoid damage to the equipment. The trucks will be locked at all times when the equipment is onboard. The Contractor is responsible at all times while the voting equipment is in the Contractor's possession for the security, safety and well-being of the equipment.

At the discretion of the Contractor, trucks may be loaded the night before for the following day's deliveries, secured and stored overnight at the Registrar of Voters site or a secured facility pre-approved by the Registrar of Voters.

> REDELIVERIES:

Where re-delivery is necessary, the following guidelines will apply:

1. Where re-delivery is a result of failure to arrange and confirm timely delivery or other failure on the part of the Contractor, the Registrar will not be charged.
2. Where re-delivery occurs as a result of a change of location by the Registrar's office, a second delivery fee may be charged.

ALL RE-DELIVERY CHARGES WILL BE VERIFIED BY THE ROV DOCUMENTATION OF ADDRESS, PRECINCT AND PRE-NOTIFICATION OF POLL SITE OPERATOR FOR EACH CHARGE IS REQUIRED. THE PRE-APPROVAL OF THE REGISTRAR'S TRANSPORTATION COORDINATOR IS REQUIRED FOR RE-DELIVERY. AN AUTHORIZATION NUMBER WILL BE ISSUED AND MUST ACCOMPANY ALL RE-DELIVERY BILLING CHARGES. IN NO CASE MAY RE-DELIVERIES BE CHARGED WITH MORE THAN 3% OF ORIGINALLY SCHEDULED POLL SITES.

ATTACHMENT A
SCOPE OF WORK (continued)

> OTHER DELIVERY REQUIREMENTS:

Deliveries must be made during the two-week period prior to the election. A single truck will be scheduled for no more than twenty-six (26) deliveries in a single day. The Contractor will provide the ROV with a planned route/schedule, following receipt of the polling site information.

All drivers must possess a current, unrestricted California Driver's license appropriate to the type of vehicle used.

All drivers must be able to verbally communicate in English. All drivers must be able to read English sufficiently to understand delivery instructions.

> ELECTION DAY DELIVERIES:

On each Election Day, the Contractor may be required to provide one additional truck and driver per region, for emergency deliveries at the discretion of the Registrar of Voters.

> POST ELECTION RECOVERY OF EQUIPMENT:

On the day following each election, the Contractor will begin pick up of the equipment from the sites where they were delivered and transport such equipment immediately to the ROV warehouse at 1300 S. Grand Ave. Building C, Santa Ana. It is the Contractor's responsibility to offload the equipment at the ROV loading dock.

A list of designated "first pickup" sites will be provided to the Contractor by the ROV by Friday prior to Election Day. The same parameters with respect to pickup days and times will apply. The equipment collected will be returned to the ROV warehouse in Santa Ana, during business hours, as they are ready for delivery, until all equipment is accounted for. All equipment picked up after delivery hours for delivery to the ROV will be stored in a locked, weatherproof location. By prior arrangement, ROV warehouse will accept the return deliveries until 7:00 P.M. Monday through Friday.

All equipment must be returned to the ROV by close of business fourteen (14) days following election day (E+14). Poll Site operator will be notified, in writing, the anticipated pick up date. They may be advised that failure to provide access on the scheduled date may result in further delay of pick-up because repeat pick ups will be scheduled following regularly scheduled pick-ups throughout the region.

> POST ELECTION DEBRIEFING:

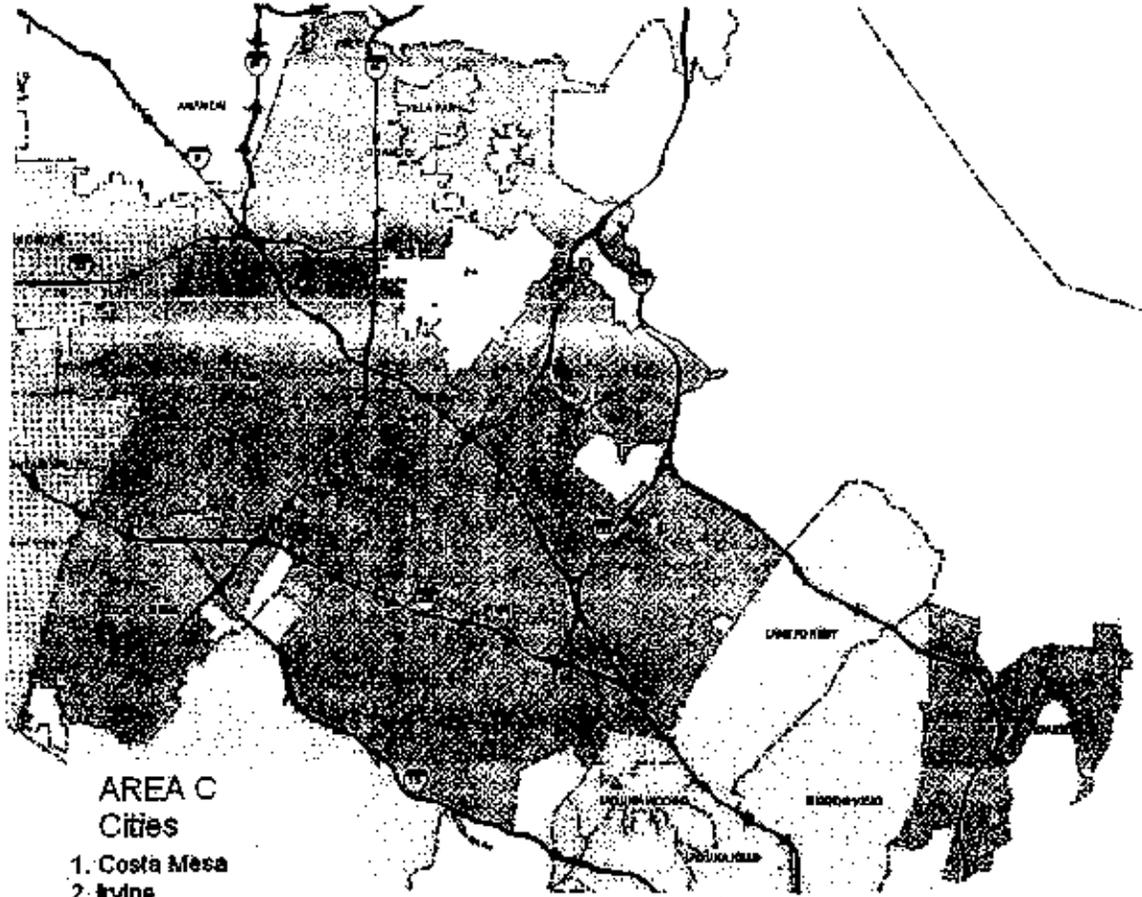
The Contractor and ROV will meet within four (4) weeks following completion of Post Election equipment recovery to recap the transportation of voting equipment. A preliminary delivery plan for the next scheduled election will be developed at that time.

> OTHER CONTRACTOR REQUIREMENTS:

A Transportation Coordinator at the ROV will be the main point of contact for the Contractor during performance of the Agreement. Changes to this Agreement may not be authorized by any other person on the staff of the ROV and shall not be effective unless made in writing pursuant to Section 9 of the Agreement.

Each driver must carry a cell phone with the capability of calling the ROV Transportation Coordinator in Santa Ana if problems/issues arise plus the capability of receiving calls from the ROV in Santa Ana.

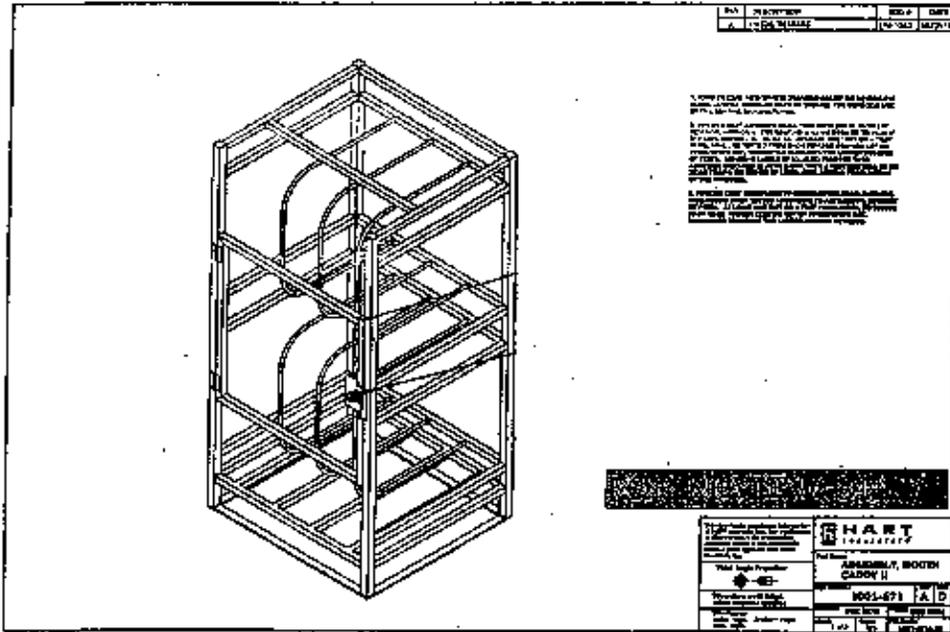
EXHIBIT 1 C REGIONAL DESCRIPTION



AREA C Cities

1. Costa Mesa
2. Irvine
3. Orange
4. Rancho Santa Margarita
5. Santa Ana
6. Tustin
7. Villa Park

EXHIBIT 2 CADDY SPECIFICATIONS



CADDY	Collapsed for Transport	Assembled / Ready to Use
Height	N/A	58 in
Width	N/A	31 in
Length	N/A	28 in
Weight	N/A	83 lbs empty
Weight	N/A	390 lbs fully loaded w/8 eSlates, VVPAT printers & batteries

The Voting Booth Caddy is a boxy, metal-framed structure that provides a durable and convenient voting booth transportation solution. The Caddy is finished in indoor/outdoor powder coating for durability. Through various holes provided in the Caddy frame, the user can place tamper-evident seals or locks to hold the units in place or provide evidence that it has been opened.

The Caddy can be moved with a heavy-duty two-wheel hand truck, pallet jack, or forklift. There are openings on all four sides in the lower portion of the Caddy for access. These openings are detailed in Hart InterCivic drawing 1001-679 (Caddy, Frame); and enclose forklift tines per OSHA requirements.

**EXHIBIT 3
PRIVACY BOOTH WESLATE SPECIFICATIONS (LOOSE UNITS)**



BOOTH	Collapsed for Transport	Assembled / Ready to Use
Height	6.75 in	67 in
Width	25 in	29.5 in
Length	25 in	25 in
Weight	38 lbs	38 lbs

ATTACHMENT B

PAYMENT/INVOICING INSTRUCTIONS COMPENSATION/COST FOR CONTRACTOR SERVICES

> Payment/Invoicing Instructions:

Invoices are to be sent to:

County of Orange
Registrar of Voters
P.O. Box 11298
Santa Ana, CA 92711

Acceptable invoicing format:

The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address
3. Name of County agency/department
4. Delivery/service address
5. Price Agreement (PG) or Purchase Order (PO) number
6. Date of order
7. Product/service description, quantity, and prices by commodity code
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Submit authorization numbers for re-deliveries
11. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

> Compensation/Cost

	<u>AREA C</u>
Delivery Rate Per Site (1 Truck/1 Driver/1 Helper)	\$78.00
Pickup Rate Per Site (1 Truck/1 Driver/1 Helper)	\$78.00
Re-Delivery Rate Per Site not to exceed 3% of originally scheduled deliveries; paid only with prior authorization	\$70.00
Election Day Standby Rate (1 Truck/1 Driver)	\$55.00 per hour

Pricing to remain firm throughout the two year term of the Agreement and all subsequent renewal terms.