

SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT ("Agreement") is made as of the date of full execution, by and between San Benito County, a governmental subdivision of the State of CA ("Client"), and RUNBECK ELECTION SERVICES, INC., an Arizona corporation, whose address is 2800 S. 36th Street, Phoenix, AZ 85034 ("Runbeck") (collectively, the "Parties").

RECITALS

1. In connection with its elections responsibilities, Client desires to purchase from Runbeck election management equipment ("Equipment"); and to obtain from Runbeck a license to use accompanying software ("Software") to operate the Equipment.

2. Runbeck desires to sell the Equipment and grant a license to use the software to Client on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein and other good and valuable consideration, the Parties agree as follows:

AGREEMENTS

1. Sale of Equipment.

Runbeck hereby sells, and Client hereby purchases, the Equipment, including hardware components and accessories, as specifically set forth in the Equipment Description attached hereto as Exhibit "A".

2. Grant of Software License; Annual License Fees; Restrictions.

Subject to the Client's ongoing obligations under this Agreement, Client has been granted an irrevocable, non-exclusive right and license to install, display and use the software necessary for operation of the Equipment ("Software") for the term described in, and in accordance with the express terms of, the Software License attached hereto as Exhibit "B". Title to and ownership of the Software shall at all times remain with Runbeck and neither Client, nor its affiliates, agents or employees, will reverse engineer or reverse compile any part of the Software without Runbeck's prior written consent. Client shall pay Runbeck an annual Software License Fee for the Software, as specifically set forth in Exhibit "B". The Annual Software License Fee for the first year of this Agreement is included in the purchase price of the Equipment. All subsequent payments of this Fee shall be made on each successive yearly anniversary date of execution this Agreement, as specifically set forth in Exhibit "D".

3. Equipment Maintenance and Support Services; Annual Equipment Maintenance and Support Services Fee.

Runbeck shall provide those Equipment Maintenance Support Services that are specifically set forth in the Equipment Maintenance and Support Services Schedule attached hereto as Exhibit "C". Client shall pay Runbeck an annual Equipment Maintenance Fee for the Equipment, as specifically set forth in Exhibit "C". The Annual Equipment Maintenance and Support Service Fee for the first year of this Agreement is included in the purchase price of the Equipment. All subsequent payments of this Fee shall be made on each successive yearly anniversary date of execution of this Agreement, as specifically set forth in Exhibit "D".

4. Availability and Retention of Records.

All records relating to the products and services provided under this Agreement and supporting documentation for invoices submitted to Client by Runbeck shall be retained and made available by Runbeck for audit by Client, its duly authorized representatives, the State of CA (including, but not limited to, the Auditor of the State of CA, Inspector General or duly appointed law enforcement officials) and agencies of the United States government. Such records shall be retained by Runbeck and made available a period of three years, or longer, if required by state or federal law.

5. Assignment.

The Parties expressly agree that neither shall assign this Agreement without the prior written consent of the other. Runbeck may subcontract services agreed to in this Agreement, but only with the written consent of the Client. All subcontracts are subject to the same terms, conditions, and covenants contained within this Agreement.

6. Governing Law.

This Agreement shall be governed, construed, and enforced under the laws of California, notwithstanding any conflicts of laws provisions. Any legal action brought pursuant to this Agreement shall be filed in the courts of California.

7. Integration and Modification.

This Agreement, including exhibits (each of which is expressly incorporated herein), embodies the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or contracts, either written or oral, between the Parties to this Agreement. This Agreement shall not be modified in any manner except by an instrument, in writing, executed by the Parties to this Agreement.

8. Severability.

If any term or provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be

affected thereby, and each remaining term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9. Appropriations.

Client represents and covenants that (i) it has, and will have, funds available to pay the purchase price for the Equipment, Annual Software License Fees, Annual Equipment Maintenance Fees and other financial obligations under this Agreement, including all exhibits hereto, through the end of Client's current fiscal period; and (ii) that it shall use its best efforts to obtain funds to pay any of the foregoing financial obligations for each subsequent fiscal year of the four (4) year term of the Agreement. In the event Client's appropriations request to its legislative body or funding authority for necessary funds hereunder is denied, this Agreement, and all exhibits, may be terminated by either party. Client shall make payment of all charges and obligations incurred through the end of the fiscal period for which funds were appropriated. In any such event, Client shall thereupon return to Runbeck all Software and other Runbeck property in its possession.

10. Compliance.

Runbeck agrees to comply with all applicable federal, state, and local laws in the conduct of work hereunder. Runbeck accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation, insurance premiums, income tax deductions, social security deductions, and all other taxes or payroll deductions required for all employees engaged by Runbeck in the performance of work under this Agreement.

11. Non-Discrimination.

Runbeck certifies it is an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulations including, but not limited to, Title VI, and Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975 and the Age Discrimination in Employment Act, as amended.

During the performance of this Agreement, Runbeck will not discriminate against any employee, contract worker, or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. Runbeck will take affirmative action to ensure that during employment, all employees are treated without regard to race, color, religion, sex, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. These provisions apply also to contract workers, such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Runbeck agrees to post in conspicuous places, available to employees and applicants for employment, notices stating Runbeck complies with all applicable federal and state non-discrimination laws.

Runbeck, or any person claiming through Runbeck, agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Runbeck.

12. Independent Relationship.

Nothing in this Agreement is intended to, nor shall be deemed to, create a partnership, association or joint venture between Client and Runbeck in the conduct of the provisions of this Agreement. Runbeck shall at all times have the status of an independent contractor.

13. Waiver.

Any waiver by either party of any right, provision or condition under this Agreement shall not be construed or deemed to be a waiver of any other right, provision or condition of this Agreement, nor a waiver of a subsequent breach of the same right, provision or condition.

14. Confidential Information.

All information owned, possessed or used by Client which is communicated to, learned, or otherwise acquired by Runbeck or its employees, agents or contractors in the performance of the terms of this Agreement shall be deemed and remain Confidential Information. Runbeck shall not, beginning on the date of first association or communication between the Client and Runbeck and continuing through the term of this Agreement and thereafter, disclose, communicate or divulge to another, or use for Runbeck's own benefit or the benefit of another, any such Confidential Information without the prior written consent of the Client.

15. Risk of Loss.

Runbeck agrees to bear all risk of loss, injury, or destruction of goods and materials, including Equipment, ordered as a result of this Agreement which occurs prior to delivery to the Client. Upon delivery by Runbeck to the Client, and Client taking possession of such goods and materials, Client agrees to bear all risk of loss, injury, or destruction of such goods and materials. Runbeck's invoices will conform to the reasonable requirements of the Client.

16. Warranty.

Runbeck warrants and represents that services provided pursuant to this Agreement, and attached exhibits, shall be timely performed in a professional manner in accordance with applicable industry standards; and that Runbeck has the requisite ownership, authority and license rights to furnish Software provided to Client in connection with this Agreement.

Runbeck warrants and represents that Equipment shall be free from any defects in material or workmanship for a period of one (1) year after installation; and Software shall be free from any defects in material or workmanship for a period of one (1) year after installation (collectively, the "Warranty Periods"); provided, however, that if the manufacturer's warranty extends beyond one (1) year for any part, product, or service item, the longer warranty shall apply. This warranty extends to i) any defect reported during the Warranty Periods but not corrected; ii) any defect reported and thought to be corrected but that reoccurs outside of the Warranty Periods; iii) any defect misdiagnosed during the Warranty Periods and discovered to reoccur outside of the Warranty Periods; and iv) any defect discovered after the Warranty Periods but which can be documented to have started during the Warranty Periods. Runbeck agrees to a one-day grace period beyond the end of the Warranty Periods for notification purposes for defects discovered during the Warranty Periods. Runbeck shall, at its own election and expense, either repair or replace any component which Client discovers to be defective in material or workmanship, provided that Client has furnished timely written notice to Runbeck.

EXCEPT FOR THE WARRANTIES PROVIDED HEREIN, RUNBECK HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE CONCERNING THE EQUIPMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17. Limitation of Runbeck Liability.

Runbeck shall not be responsible for the Equipment's or the Software's operation or failure to operate, to the extent such operation or failure results from, arises out of, or is related to Client's improper or negligent use or operation of the Equipment or the Software. IN NO EVENT SHALL RUNBECK BE LIABLE TO CLIENT OR TO ANY THIRD PARTY, FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, OR OTHER CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER.

18. Indemnification.

Runbeck agrees to indemnify and hold harmless Client from and against any and all losses, damages, injuries, claims, demands and expenses, including legal expenses, caused by the sole negligence or intentional misconduct of Runbeck with respect to its obligations under this Agreement.

Runbeck further agrees to defend, indemnify and hold harmless Client from and against any claim, suit, demand, or action alleging the Equipment, or any component thereof, infringes any copyright, trade secret, U.S. patent or any other proprietary right of any third party, and Runbeck shall indemnify Client against any judgment, award or amount paid in settlement to which Runbeck has agreed. Client shall provide Runbeck prompt written notice of such claim, suit, demand, or action and shall cooperate with Runbeck in the defense and settlement thereof. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of the notice requirements, immunities, rights, benefits, defenses, limitations or protections available to Client under California law. If a temporary or a final injunction is

obtained against Client's use of Equipment by reason of an infringement of a copyright, trade secret, or other proprietary right, Runbeck will, at its option and expense, either:

- A. Procure for Client the right to continue using the Equipment; or
- B. Replace or modify Equipment, or such infringing portion thereof, so that it no longer infringes such copyright, trade secret, or other proprietary right.

19. No Third-Party Beneficiary.

Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement allows any claim or right of action in any third person or entity. Any person or entity other than Client or Runbeck receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

20. Notices.

All written notices required under this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid as follows:

By Runbeck to:	San Benito County 440 5 th Street, Room 206 Hollister, CA 95023 Attention: Angela Curro Assistant County Clerk Fax No.: 831-636-2939
To Runbeck:	Runbeck Election Services, Inc. 2800 S. 36 th Street Phoenix, Arizona 85034 Attention: Rizwan Fidai Fax No.: 602-437-1411
With a copy to:	Steven H. Williams, Esq. 2323 North Central Avenue, Unit 1905 Phoenix, Arizona 85004 Fax No.: 602-390-6719

Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by U.S. mail are effective upon the expiration of five (5) mail delivery days from deposit (postmarked) with the U.S. Postal Service.

21. Runbeck's Confidential Information.

Runbeck represents that the Software and related documentation provided under this Agreement, including, but not limited to, the Source Code, the software design, structure and organization, the user interface and the engineering know-how implemented in the software (collectively "Runbeck Confidential Information") constitute the valuable properties and trade secrets of Runbeck, embodying substantial creative efforts which are secret, confidential, and not generally known by the public. Client agrees to hold Runbeck's Confidential Information, including any copies thereof and any documentation related thereto, in strict confidence and to not permit any unauthorized person or entity to obtain access to it to the extent permitted under applicable law. Within this context, Client agrees not to disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available Runbeck Confidential Information or any part thereof to any other party in any form of media for any purpose other than performing its obligations under this Agreement. Client further agrees not to disclose or distribute to any other party, in whole or in part, Runbeck Confidential Information without written consent from Runbeck.

22. No Construction Against Drafting Party.

The Parties and their respective counsel have had the opportunity to review this Agreement, and the Agreement will not be construed against any party merely because this Agreement was prepared by a particular party.

23. Successors and Assigns.

The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

24. Time is of the Essence.

The Parties agree that in the performance of the terms of this Agreement, time shall be of the essence, it being understood by the Parties that the Equipment and its components, and Runbeck's services related thereto, are essential to the Client's ability to conduct statewide and local elections.

25. Attorneys' Fees.

In the event of a litigation action to enforce, or arising from, the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and costs incurred in the action.

26. Term and Renewal.

The Parties declare, acknowledge and agree that the term of this Agreement shall be four (4) years from the date the Agreement is last fully executed by the Parties, subject to each party's right to terminate immediately due to lack of approved appropriations as set forth in

Section 9 of the Agreement; fraud; breach of contract as set forth in Section 27; or disclosure of Runbeck Confidential Information. Further, County may terminate this agreement without cause upon ninety (90) days prior written notice, except during the first year.

At the time of contract expiration, new license and maintenance terms will be negotiated by both parties.

27. Breach.

Subject to the terms of Section 26, in the event Client commits a material breach of its obligations under this Agreement and any exhibits hereto, including a failure to timely pay any license or maintenance fees, and Client fails to cure the breach within sixty (60) days after receiving notice thereof, Runbeck may terminate this Agreement effective upon delivery of written notice to Client. In any such event, Client shall thereupon return to Runbeck all Software and other Runbeck property in its possession.

IN WITNESS WHEREOF, the Parties have signed this Agreement to be effective as of the date of full execution by the Parties.

Runbeck Election Services, Inc.

San Benito County, CA

By: _____

Title: _____

Date: _____