



June 25, 2007

**VIA E-MAIL TRANSMISSION: LFinley@sos.ca.gov**  
**AND OVERNIGHT DELIVERY**

Lowell Finley  
Deputy Secretary of State  
Voting Systems Technology and Policy  
1500 11<sup>th</sup> Street, 6<sup>th</sup> Floor  
Sacramento California 95814

**RE: “Top-To-Bottom Review” of InkaVote Plus Voting System**

Dear Deputy Secretary Finley:

This letter and the enclosures herein shall serve as a follow-up to our most recent conversation of June 21, 2007, in which we discussed the California Secretary of State’s (“SOS”) proposed “top-to-bottom review” of the InkaVote Plus voting system.

Despite the SOS’ continued refusal to even consider the limited revisions requested by ES&S to the Confidentiality and Non-Disclosure Agreements (“NDAs”) or address the concerns repeatedly communicated by ES&S regarding the exorbitant cost of this exercise and concerns respecting several examiners, ES&S has executed the Agreement Regarding Voting System Documentation and Equipment (“SOS Agreement”) and encloses a fully executed copy of the same. As such, ES&S also agrees to release the InkaVote Plus voting system source code to the SOS solely for purposes of this review in accordance with the terms of the SOS Agreement.

We have been advised by ES&S’ escrow agent, Iron Mountain Intellectual Property Management, Inc. (“Iron Mountain”), that you have made a separate request directly to Iron Mountain to release the InkaVote Plus voting system source code to your office. As this review is not a permitted release condition under ES&S’ contract with Iron Mountain, we don’t expect that your request will be fulfilled by Iron Mountain without ES&S’ agreement and direction to Iron Mountain to release the code. As such, we will authorize our business partner International Lottery & Totalizator Systems, Inc. (“ILTS”) to release the InkaVote Plus voting system source code directly to your office. Your office should receive such source code on Tuesday, June 26, 2007. Further, as

ES&S is providing the InkaVote Plus voting system source code directly to your office, ES&S requests that you send a letter to Iron Mountain retracting your request for the InkaVote Plus voting system source code. This will provide the required notification to Iron Mountain that you are no longer in need of the requested source code and allow Iron Mountain to close your request. In addition, this will avoid ES&S from having to issue contrary instructions to Iron Mountain to prohibit the release of the InkaVote Plus voting system source code. ES&S respectfully requests that such letter be sent on Tuesday, June 26, 2007 upon your receipt of the code from ILTS.

ES&S expects that the SOS and each of the examiners will strictly comply with the NDAs and take all necessary actions to fully ensure that the trade secrets contained within the voting system source code and related confidential and proprietary information are protected from any unauthorized disclosure or use by anyone, including each of the examiners. In that regard, we are in receipt of a copy of the enclosed letter to Secretary Bowen from Mr. Frank Bigelow on behalf of the California State Association of Counties ("CSAC"). As echoed by the CSAC, there are serious concerns regarding the motivations and apparent personal agendas of a number of the currently proposed examiners. We reiterate those concerns and our expectation that the SOS shall ensure that the examiners strictly comply with the terms of the NDAs and not disclose or in any way use the information reviewed or gained through such review for any improper purpose, including the design and development of competing voting systems. Please understand that ES&S will hold not only the examiners responsible, but the SOS as well, for any prohibited disclosure or use of ES&S' trade secrets and related confidential and proprietary information.

In addition to the SOS Agreement, ES&S encloses herein a check in the amount of \$131,000 as payment in full for the vendor's portion of the cost to complete the "top-to-bottom review" of the InkaVote Plus voting system. We understand that these funds will be deposited into escrow by the SOS and drawn against as the review work is completed by the examiners in accordance with the SOS' engagement and scope of work. Please be advised that ES&S' hereby reserves all rights and previous arguments made to the SOS as communicated in both ES&S' April 24 and June 15, 2007 letters. In the event it is later determined that the SOS' proposed review was not conducted in accordance with applicable law, ES&S reserves the right to seek a refund of some or all of the fees paid for this review.

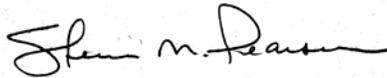
Lastly, as the InkaVote Plus voting system has already been fully qualified by federally accredited independent testing authorities against current federal voluntary voting system standards and certified by the SOS in accordance with current California certification requirements, we fully expect that the SOS' review will not result in the need to make any changes to the voting system in order to comply with such existing requirements. As such, in the event that recommendations or requested changes result from this examination which are not otherwise required by applicable federal or state law, before any changes can be made, ES&S will need to determine whether its sole

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California customer using this system, Los Angeles County, is willing and able to incur the expense of developing and certifying such changes. As we previously stated, we are skeptical that a customer will be willing or able to pay the cost of changes to its voting system that are not otherwise required by applicable law.

If you have any questions or need additional information, please contact me directly.

Sincerely,



Steven M. Pearson

cc: The Honorable Debra Bowen, Secretary of State  
Aldo J. Tesi – ES&S  
Eric A. Anderson, Esq. – ES&S  
Lou Dedier – ES&S  
Michael M. Hupp, Esq. – Koley Jessen  
Chris Ortiz - ILTS  
David Beirne – Executive Director, Election Technology Council  
Steve Weir – President, California Association of Clerks and Elections Officials  
Connie McCormack – Los Angeles County Register-Recorder/County Clerk  
Judy Whitehurst, Esq. – Principal Deputy County Counsel, Los Angeles County