

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL
Meeting of October 31, 2006**

AGENDA TITLE: Contract with The SMR Training Group, Inc.

DEPARTMENT: Recorder-Clerk-
Registrar of Voters

DEPT SIGNOFF:

CAO USE ONLY: *D*

CONTACT: William E. Schultz

William E. Schultz

S. Schultz 10/20/06

DATE: 10/19/06 **PHONE:** 7505

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

Recorder-Clerk-Registrar of Voters recommends your Board approve, and give authorization to the Purchasing Agent to execute The SMR Training Group, Inc. contract; and, authorize the Purchasing Agent to encumber funds for same.

Federal HAVA grant funding will cover cost of \$11,500.00.

Retroactive as to term (May 1, 2006).

CAO RECOMMENDATIONS: *Recommend approval. Laura J. Hill 10/24/06*

Financial impact? () Yes (X) No

Funding Source: () Gen Fund () Other
Other:

BUDGET SUMMARY:

Total Est. Cost	\$	<u>-0-</u>
Funding		
Budgeted	\$	<u>-0-</u>
New Funding	\$	<u>-0-</u>
Savings*	\$	<u>-0-</u>
Other	\$	<u>-0-</u>
Total Funding	\$	<u> </u>
Change in Net County Cost	\$	<u>-0-</u>

CAO Office Use Only:

4/5's Vote Required	() Yes	<input checked="" type="checkbox"/> No
Change in Policy	() Yes	<input checked="" type="checkbox"/> No
New Personnel	() Yes	<input checked="" type="checkbox"/> No

CONCURRENCES:

Risk Management *yes*

County Counsel *yes*

Other _____

*** Explain**

BOARD ACTIONS:

Vote: Unanimous _____ Or

Ayes:

Noes:

Abstentions:

Absent:

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors.

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____

EL DORADO COUNTY



RECORDER-CLERK REGISTRAR OF VOTERS

William E. Schultz

**Recorder-Clerk
Commissioner of Civil Marriages**

360 Fair Lane
Placerville CA 95667
www.co.el-dorado.ca.us/countyclerk/
Phone: 530.621.5490
JANE KOHLSTEDT
Assistant Recorder-Clerk

Registrar of Voters

2850 Fairlane Court
P.O. Box 678001
Placerville CA 95667-8001
www.co.el-dorado.ca.us/elections/
Phone: 530.621.7480 Fax: 530.626.5514
NORMA GRAY
Assistant Registrar of Voters

October 19, 2006

Honorable Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Honorable Board Members:

Title: Contract with The SMR Training Group, Inc.

Recommendations: It is recommended that your Board approve, and give authorization to the Purchasing Agent to sign The SMR Training Group, Inc. contract.

Reasons for Recommendation: The SMR Training Group has provided the El Dorado County Elections Department with various manuals, flip guides and Power Point presentations to assist in the training of precinct workers.

Fiscal Impact: Federal grant funding will be provided through the HAVA Section 301 Program to cover the cost of \$11,500.00.

Net County Cost: See Fiscal Impact above.

Action to be Taken Following Approval: The Purchasing Agent will encumber funds necessary to fund the contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William E. Schultz", written over a light blue background.

WILLIAM E. SCHULTZ
Recorder-Clerk-Registrar of Voters

RUSH

Contract #: 114-S0711

CONTRACT ROUTING SHEET

Date Prepared: 7/27/07

Need Date: Needs to be completed by 9/30/06. Thank you!

PROCESSING DEPARTMENT:

Department: CAO/Proc. & Contracts
 Dept. Contact: Pam Carlone
 Phone #: 5833
 Department
 Head Signature: *Pam Carlone*
 for Bonnie H. Rich

CONTRACTOR:

Name: The SMR Training Group, Inc.
 Address: 111 Galena Drive
Reno, NV 89506
 Phone: 775-677-8407

ELDOGRADO COUNTY COUNSEL
 JUL 27 11 40 AM '07
 RECEIVED

CONTRACTING DEPARTMENT:

Recorder Clerk/Registrar of Voters
 Service Requested: Update Presentation /Manual for Consolidated General Election
 Contract Term: _____ Contract Value: \$11,500
 Compliance with Human Resources requirements? Yes: _____ No: _____
 Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: ✓ Disapproved: _____ Date: 8-10-06 By: *W. Kelly*
 Approved: _____ Disapproved: _____ Date: _____ By: _____

ASSIGNMENT DATE	ATTORNEY	DEPT./INDEX NO.
<u>07/28/06</u>	<u>ED SHUPP</u>	<u>026100</u>
		<u><i>[Signature]</i></u>

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: ✓ Disapproved: _____ Date: 8/11/06 By: *Costello*
 Approved: _____ Disapproved: _____ Date: _____ By: _____

AUG 11 2006

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____

ORIGINAL

AGREEMENT FOR SERVICES #114-S0711

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and The SMR Training Group, Inc., a Nevada Corporation, whose principal place of business is 111 Galena Drive, Reno, NV 89506; (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to update presentation and manuals for newly acquired voting system for the Recorder Clerk/Registrar of Voters; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to provide services to update presentation and manuals for the newly acquired voting system for the Recorder Clerk/Registrar of Voters. Updated changes are for the November 7, 2006 Consolidated General Election and shall be completed no later than September 30, 2006.

Materials to be provided shall include the following:

- Updated Poll Worker Manual
- Updated Problem Solving Manual
- New AccuVote Optical Scan Manual
- New Touchscreen Manual
- Updated Power Point

Flip Guides for setting up and closing:
Polls, General
Optical Scan Unit
Touchscreen Unit

Contractor will correct both manuals and Power Point Presentation without charge to reflect any additional changes the law may require through the November 7, 2006 Consolidated General Election.

ARTICLE II

Ownership of Rights: County and Contractor hereby expressly agree that all manuals and Power Point presentations as described above, whether produced by Contractor, its agents, representatives, employees or sub-contractors, shall be considered a "work made for hire" within the meaning of 17 USC Sec. 101. County shall have sole ownership of all rights, for all purposes, in each completed work, and unused portions thereof, including all copyrights.

ARTICLE III

Term: This Agreement shall become effective when fully executed by both parties hereto and shall cover the period of May 1, 2006 through November 30, 2006.

ARTICLE IV

Compensation for Services: For services provided herein, County agrees to pay Contractor within thirty (30) days following completion of work and the County's receipt and approval of itemized invoice(s) identifying services rendered. For the purposes herein, the billing rates shall be in accordance with Exhibit "A", marked "Fee Schedule", incorporated herein and made by reference a part hereof. The total amount of this Agreement shall not exceed \$11,500.00.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. . In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly

discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise

ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
RECORDER CLERK/REGISTRAR OF VOTERS
2850 FAIRLANE COURT
PLACERVILLE, CA 95667

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

THE SMR TRAINING GROUP, INC.
111 GALENA DRIVE
RENO, NV 89506
ATTN: DR. MARTHA RILEY

or to such other location as the Contractor directs.

ARTICLE XII

Indemnity: The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California. Contractor has no employees and shall not be required to obtain Workers' Compensation and Employers' Liability Insurance. Should during the term of this Agreement Contractor hire one or more employees who will provide any services related to this Agreement he/she shall immediately obtain Full Workers' Compensation and Employer's Liability insurance and furnish County with certificate for same.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement. For the purposes of this Agreement, motor vehicles will not be used, therefore, automobile liability is not required.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is not required.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;

2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for the protection of the County.

ARTICLE XIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested: nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XV

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or,

2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XVI

Nonresident Withholding (Form 588): All independent Contractors providing services to the County who are not California residents must file a State of California Form 588 certifying County's exemption from withholding where applicable; where not applicable, Contractor will indemnify and hold the County harmless for any action taken by the California Franchise Tax Board. The Contractor will be required to submit a Form 588 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement where applicable. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is William E. Schultz, Recorder Clerk/Registrar of Voters, or successor.

ARTICLE XIX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XX

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXI

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California,

ARTICLE XXII

Jurisdiction: In event of dispute, parties regardless of their residence will be subject to the jurisdiction of the courts of the State of California.

ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator/Department Head Concurrence:

By:  Dated: 8/16/2006
William E. Schultz
Recorder Clerk/Registrar of Voters

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: 10/11/06

By: _____

Bonnie H. Rich, Purchasing Agent
Chief Administrative Office
"County"

ATTEST:
Cindy Keck
Clerk of the Board of Supervisors

By: N/A Date: _____
Deputy Clerk

-- CONTRACTOR --

Dated: 9-10-6

THE SMR TRAINING GROUP, INC.
A NEVADA CORPORATION

By: Martha Riley
Martha Riley
President
"Contractor"

By: Tim Riley
Corporate Secretary

Dated: 9-10-6

The SMR TRAINING GROUP, INC.

Your Prescription for a Healthy Election

www.thesmrgroup.com

Dr. Martha Riley
216 Lemmon Drive #175
Reno, NV. 89506
Phone: 775-677-8407 Fax: 775-677-8111
E-Mail: mwriley@thesmrgroup.com



Carol Staley
P.O. Box 684
Woodacre, CA. 94973
Phone/Fax: 415-488-8872
E-mail: cstaley@thesmrgroup.com

EXHIBIT "A"
FEE SCHEDULE

July 17, 2006

Updated Poll Worker Manual.....	500.00
Updated Problem Solving Manual	500.00
New AccuVote Optical Scan Manual	2000.00
New Touchscreen Manual.....	2000.00
Updated Power Point.....	500.00
Flip Guides for setting up and closing:	
Polls, General.....	2000.00
Optical Scan Unit	2000.00
Touchscreen Unit.....	2000.00
 TOTAL CHARGES:	 \$ 11,500.00 ¹

¹ This represents a special package price for El Dorado County Elections and it is difficult to give specific breakdowns.