

Memorandum of Understanding

Between

The County of El Dorado

And

(County)

This Memorandum of Understanding (“MOU”) is made and entered into by and between the County of El Dorado (hereinafter, “El Dorado County”), and _____, (hereinafter, “Recipient”), a DRAM Settlement Grant Consortium (hereinafter, “Consortium”) member.

WHEREAS the Counties of Placer, Inyo, Marin, Fresno, and El Dorado have formed a Consortium with the goal of providing voter information and vote-by-mail to voters with disabilities and military personnel stationed overseas. The new system will allow voters who are blind, disabled or remotely stationed and living abroad access to their ballot and balloting information; and

WHEREAS El Dorado County has, on behalf of the Consortium, applied for and was awarded the DRAM Settlement Grant (hereinafter, “Grant”) in the amount of \$198,000; and

WHEREAS the Grant funds are to be used in the support of the acquisition and implementation of a fully accessible, ADA- compliant online balloting portal, LiveBallot/OmniBallot; and

WHEREAS El Dorado County has been designated as the lead in administering the Grant to the participating Consortium members; and

WHEREAS, Democracy Live, has been selected as the sole vendor to deploy a remotely accessible online balloting portal, LiveBallot/OmniBallot, which will enable participating Consortium members to extend voter information and vote-by-mail to voters with disabilities and military personnel stationed overseas.

NOW THEREFORE, El Dorado County and Recipient hereto mutually agree to as follows:

Article I. DEFINITIONS

“Election” is defined as: E.C. 318 any election including a primary that is provided for under this code.

Article II. SCOPE OF SERVICES

The purpose of this MOU is to specify the responsibilities of El Dorado County and the Recipient with respect to the DRAM Settlement Grant.

Section 2.1 El Dorado County Responsibilities

1. El Dorado County shall compile and submit, on a timely basis, a Final Progress and Expenditure Report as required by the Grant Agreement between El Dorado County and the DRAM Settlement Fund (hereinafter, "Grant Agreement").
2. El Dorado County shall timely abide by all other requirements contained in the Grant Agreement.
3. El Dorado County shall abide by all other applicable federal, state and local laws and regulations as well as any contractual obligations to the extent they would govern this MOU.

Section 2.2 Recipient Responsibilities

1. Recipient agrees to audit requirements of the products which include, but are not limited to, on-site visits by El Dorado County of the Cy Pres Grants Administrators to examine such records and documents as they deem necessary to validate payment requests or compliance with this agreement. Notwithstanding the foregoing, Recipient shall not be required to provide El Dorado County or the Cy Pres Grants Administrators with access to confidential information, including but not limited to, confidential voter registration information.
2. Upon request of El Dorado County, Recipient shall provide any other information need by El Dorado County to satisfy the reporting requirements of the DRAM Settlement Agreement. Notwithstanding the foregoing, Recipient shall not be required to provide El Dorado County with access to confidential information, including but not limited to, confidential voter registration information.
3. Recipient agrees to use Democracy Live as a sole-source vendor for providing remotely accessible online balloting portal, which will enable participating counties to extend voter information and vote-by-mail to voters with disabilities and military personnel stationed overseas as described in the grant. If Recipient selects a different vendor to perform these services, services rendered by that vendor will not be eligible for Grant funding.
4. Recipient agrees to be bound by the agreement and all amendments with Democracy Live signed by El Dorado County on behalf of the Recipient and attached hereto as Exhibit B.
5. Recipient acknowledges that this MOU is supported by funds from the Grant. If Grant funds become unavailable as a result of action by the Cy Pres Administrators or the Office of Management and Budgeting, all obligations on the part of El Dorado County shall terminate.
6. Recipient's approval of the system deployment shall be evidenced by an email or letter from the Recipient to El Dorado County acknowledging that the Liveballot/OmniBallot system has been successfully installed, tested and accepted, and authorizing release of payment from El Dorado County.
7. Recipient County shall abide by requirements contained in the Grant.

Article III. Fiscal Provisions

Section 3.1 Amount Available to Recipient

The maximum amount of grant funding available to Recipient is attached hereto as Exhibit A. In no event shall payments/reimbursements made by El Dorado County on behalf of Recipient exceed the amount specified in Exhibit A.

Section 3.2 Payment`

Democracy Live shall invoice El Dorado County for Recipient's fees upon receipt of the respective notice to proceed and approval of system deployment by the Recipient.

El Dorado County shall not pay or reimburse invoices for product and services disallowed by the grant. Should any expenses paid by El Dorado County be disallowed by the DRAM Settlement Grant, either upon initial submittal of the claim or upon subsequent audit, the Recipient shall immediately reimburse in full to El Dorado County for any payments made on the disallowed amount.

Article IV. Term

This MOU will become effective upon execution by both parties and will expire 24 months from the effective date of the Grant, unless terminated earlier pursuant to the provisions of Article V herein.

Article V. General Provisions

Section 5.1 Changes to MOU

This MOU may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when writing and fully executed by duly authorized officials of the parties hereto.

Section 5.2 Default, Termination and Cancellation

1. Default: Upon the occurrence of any default of the material provisions of this MOU, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within (10) days of the date of notice, then such party shall be in default. The 10-day time to cure may be extended at the discretion of the party giving notice. Any extension of the 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 MOU provision(s) and shall demand that the party in default adhere to the provisions of this MOU within the applicable period of time. No such notice shall be deemed a termination of this MOU unless the party giving notice so indicates in the terms of its notice, or the party giving notice so indicates in the terms of a subsequent written notice after the time to cure has expired.

2. Bankruptcy: This MOU, at the option of El Dorado County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Recipient. Termination of this MOU under such circumstances must be accomplished through written notice provided pursuant to Article VI below.
3. Ceasing Performance: El Dorado County may terminate this MOU in the event Recipient becomes unable to substantially perform any material term or condition of this MOU. Termination of this MOU under such circumstances must be accomplished through written notice provided pursuant to Article VI below.
4. Termination or Cancellation without Cause: Recipient or County El Dorado may terminate this MOU in whole or in part upon seven (7) calendar days written notice by either party without cause. If such prior termination is effected, El Dorado County will pay Recipient's invoices for eligible products and services provided to the Recipient prior to the effective dates as set forth in the Notice of Termination provided. All such payments shall be contingent on receipt of grant funds. In no event shall El Dorado County be obligated to pay more than the total amount available to the Recipient as specified Exhibit A.

Article VI. 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.

County of El Dorado
Registrar of Voters
2850 Fairlane Ct.
Placerville, CA 95667

| Or to such other location as El Dorado County directs.

Notices to Recipient shall be addressed as follows:

(to be completed upon recipient county signing MOU)

Article VII. Indemnity

Recipient shall defend, indemnify, and hold El Dorado County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or on account of , injuries to or death of any person, including but not limited to workers, El Dorado 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 willful misconduct or the negligent acts, errors, or omissions of the Recipient, its officers, employees, agent, and volunteers in the performance of this MOU. This duty of Recipient to indemnify and save El Dorado County harmless includes the duties to defend set forth in California Civil Code Section 2778.

El Dorado County shall defend, indemnify, and hold Recipient harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or on account of , injuries to or death of any person, including but not limited to workers, Recipient 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 willful misconduct or the negligent acts, errors, or omissions of El Dorado County, its officers, employees, agent, and volunteers in the performance of this MOU. This duty of El Dorado County to indemnify and save Recipient harmless includes the duties to defend set forth in California Civil Code Section 2778.

Article VIII. Insurance

All parties are self-insured and shall provide a letter of self-insurance if requested to do so by either party during the term of this MOU.

Article IX. Administrator

The El Dorado County officer or employee with responsibility for administering this MOU is _____.

Articles X. Authorized Signature

The parties of this MOU represent that the undersigned individuals executing this MOU on their behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set fort herein.

Articles XI. Partial Invalidity

If any provision of this MOU 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 XII. Venue

Any dispute resolution action arising out of this MOU, 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 XIV Entire Agreement

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

IN WITNESS THEREOF, the Parties hereto have executed this MOU on the dates indicated below.

County of El Dorado

By: _____

Date: _____

County of

By: _____

Date: _____

EXHIBT A

I. Fees:

Secure Select Subscription Fee: The Subscription Fee for Customer under this Agreement will be one-hundred and ninety-eight thousand dollars (\$198,000) payable in two installments as described below.

- a. **1st Payment:** the initial payment of ninety-nine thousand dollars (\$99,000) will be invoiced upon signature of this Agreement.
- b. **2nd Payment:** The final payment of ninety-nine thousand dollars (\$99,000) will be invoiced November 1, 2019.