



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Bill Schultz, County Recorder-Clerk, Elections Official
FROM: Judith M. Kerr, Principal Ass't Deputy County Counsel *JMK*
DATE: January 27, 2014
RE: Dominion Voting Systems Contract

The Dominion Voting Systems Contract is a non- standard contract that gives the County a license to use Dominion's software update to the SSL Certificates (small data files installed on a server to protect information) in regard to the County's electronic voting system. The County does not currently have a contract with Dominion Voting because our current GEMS 1.18.24 and Ballot Station 4.6.4 are provided by another vendor. However, the California Secretary of State (who governs elections in the state) has only authorized Dominion Voting, and no others, to provide the current update to the SSL Certificates that are required for electronic voting.

While the update to the SSL Certificates is being offered to the County at no charge, the terms of the contract do not include standard terms that provide protection to the County in the event the product fails or litigation arises in regard to the update. Dominion is requiring the County to "indemnify, defend and hold harmless Dominion...against any and all demands, claims, losses, and liabilities resulting from the use of the SSL Certificate update". Dominion has also agreed to a small modification to the indemnification provision by adding the words, "Except in the case of Dominion's willful misconduct or gross negligence ". What does this mean? The County may be required to indemnify, defend and hold Dominion Voting harmless in the event any third party sues Dominion Voting, even when the County does nothing wrong.

The contract contains no warranties of any kind for use of the software update. The County accepts the license "As Is" and Dominion has no responsibility for any potential problems or claims with the update such as but not limited to challenges to counting votes.

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The contract does not contain any provisions in regard to insurance, venue, or jurisdiction that would ensure application of the laws of the State of California in the event of a dispute. Dominion Voting is a Colorado corporation.

We understand that the contract will identify Bill Schultz or his designee as the County contract administrator.

JMK:tw

Cc: Terri Knowlton