

**ORIGINAL**

**Dominion Voting Systems, Inc.**

**Voting System and Services Agreement**

**AGREEMENT FOR SERVICES #3958**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Dominion Voting Systems, Inc., a Delaware corporation duly qualified to conduct business in the State of California, whose principal place of business is 1201 18<sup>th</sup> Street, Suite 210, Denver, Colorado 80202, and whose local office address is 1555 Doolittle Drive, Suite 110, San Leandro, California 94577 (hereinafter referred to as "Consultant");

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a contractor to assist its Election Department with installation of a comprehensive voting system, including, but not limited to, all necessary hardware, software, configuration, maintenance, training, and on-going support;

**WHEREAS**, Consultant 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;

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

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

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

**ARTICLE I**

**Scope of Services:** Contractor shall perform all professional and technical services and tasks required to accomplish the objectives set forth herein. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Services," and Exhibit B, marked "Software License Terms and Conditions," both exhibits which are incorporated herein and made by reference a part hereof.

Unless otherwise indicated, receipt of this executed Agreement is Consultant's Notice to Proceed with the work specified herein. No payment will be made for any work performed prior to the effective date of the Agreement.

If a submittal or deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in language, format, and design that are compatible with and completely transferable to County's computer and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator.

All of the services included in Exhibit A hereto, are the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration, and work performed by any subconsultant for services rendered under this Agreement.

#### ARTICLE II

**Term:** This Agreement shall become effective July 1, 2019 upon final execution by both parties hereto and shall expire five (5) years thereafter.

#### ARTICLE III

**Compensation for Services:** For services provided herein, County agrees to pay Consultant within forty-five (45) days following County's receipt and approval of itemized invoices detailing the services rendered.

For the purposes of budgeting the tasks, hardware, and software costs identified in Exhibit A, the maximum billing amounts for each item are described in Exhibit C, marked "Cost Proposal," incorporated herein and made by reference a part hereof. The amounts indicated in Exhibit C represent the composition of the total not-to-exceed budget for the project. In no event shall the total not-to-exceed amount of the Agreement be exceeded.

The total amount of this Agreement shall not exceed \$866,504.28 inclusive of all costs and expenses, inclusive of sales tax as noted in Exhibit C.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado  
Elections Department  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Linda Webster

or to such other location as County directs.

In the event that Contractor fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XIV, Default, Termination, and Cancellation, herein.

#### ARTICLE IV

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

#### 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

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained specifically for the use of the County as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

#### ARTICLE VII

**Consultant's Project Manager:** Consultant designates Cynthia Sakai, Project Manager, as its Project Manager for this Agreement. Consultant's Project Manager, or COUNTY-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations, and any subconsultants authorized under this Agreement including, but not limited to, (1) assigning qualified personnel to perform the required work and to prepare the deliverables required pursuant to this Agreement; and (2) reviewing, monitoring, training, and directing Consultant's personnel and any subconsultants authorized herein.

#### ARTICLE VIII

**Consultant 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, Consultant shall act as Consultant only to County and shall not act as Consultant 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 Consultant's responsibilities to County during the term hereof.

#### ARTICLE IX

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Elections Department for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

County will not disclose Consultant's confidential information aside from disclosures which are legally mandated. Any specific information that Consultant claims to be confidential must be clearly marked or identified as such by Consultant. To the extent consistent with public record law, County shall maintain the confidentiality of all such information marked by Consultant as confidential. If a request is made to view such confidential information, County will notify Consultant of such request and the date the information will be released to the requestor unless Consultant obtains a court order enjoining such disclosure. If Consultant fails to obtain such court order enjoining such disclosure, County will release the requested information on the date specified. Such release shall be deemed to have been made with Consultant's consent and shall not be deemed to be a violation of law of this Agreement.

#### ARTICLE X

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant 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 XI

**Independent Contractor/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant 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.

Consultant 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 Consultant or its employees.

## ARTICLE XII

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, 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 County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## ARTICLE XIII

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

## ARTICLE XIV

### **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 thirty (30) 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 in 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, 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 County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant 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 Consultant, 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 Agreement. Upon receipt of a Notice of Termination, Consultant 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 XV

**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 in duplicate and addressed as follows:

To County:

County of El Dorado  
Elections Department  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Bill O'Neill  
Registrar of Voters

With a copy to:

County of El Dorado  
Chief Administrative Office  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Dominion Voting Systems, Inc.

1201 18<sup>th</sup> Street, Suite 210  
Denver, Colorado 80202

Attn.: Nicole Nollette  
Executive Vice President - Operations

or to such other location as Consultant directs.

#### ARTICLE XVI

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### ARTICLE XVII

**Indemnity:** Consultant shall defend, indemnify, and hold County and its officers, agents, employees, and representatives 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 Consultant's negligence or willful misconduct related to the services, operations, or performance hereunder, except for the sole or active negligence of County, its officers, agents, employees, and representatives, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT, DOMINION'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, SHALL IN NO CIRCUMSTANCES EXCEED THE TOTAL DOLLAR AMOUNT OF THE AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF PROFITS OR LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER, ARISING, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT FOR THE INDEMNITY OBLIGATIONS CONTAINED IN THE PRECEDING PARAGRAPH.

#### ARTICLE XVIII

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant

maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein 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, Consultant 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 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 Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant 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 prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.



- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant 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 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. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant 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. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

#### ARTICLE XIX

**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 Consultant 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 XX

##### **Warranties:**

- A. **Dominion Software Warranty:** The Dominion Software warranty is subject to the terms and conditions of Exhibit B.

- B. Third Party Products: The warranties in this section do not apply to any third party products. However, to the extent permitted by the manufacturers of third party products, Consultant shall pass through to County all warranties such manufacturers make to Consultant regarding the operation of third party products.
- C. Dominion Hardware Warranty Terms: Consultant warrants that when used with the hardware and software configuration purchased through or approved by Consultant, each component of Dominion Hardware shall be free of defects that would prevent the Dominion Hardware from operating in conformity in all material respects with its specifications as documented by Consultant. The Dominion hardware warranty shall remain in effect until one (1) year after acceptance or through any optional extended warranty period.
- D. Dominion Hardware Warranty Services: If any Dominion Hardware component fails to operate in conformity with its specifications during the warranty period, Consultant shall provide a replacement for the Dominion Hardware component or, at Consultant's sole option, shall repair the Dominion Hardware component, so long as the Dominion Hardware is operated with its designated Dominion Software and with third party products approved by Consultant for use with the Dominion Hardware. The following conditions apply to the Dominion Hardware warranty:
- Consultant shall perform one (1) on-site preventative maintenance inspection ("PM") on Dominion Hardware during the Agreement term at a time mutually agreed to by both parties. This on-site PM is expected to be scheduled at least ninety (90) days prior to the requested test date. Consultant shall perform the annual PM and will replace any and all parts that fail due to normal use during the warranty period. In the event of a warranty claim outside of the scheduled PM, additional on-site services will be available at Consultant's then current time and materials rates. There are no additional charges for parts covered by this warranty.
  - The following services are not covered by this Agreement, but may be available at Consultant's current time and material rates:
    - Replacement of consumable items including but not limited to batteries, paper rolls, seals, smart cards, removable memory devices, scanner rollers, or any other consumable;
    - Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;
    - Repair or replacement of Dominion Hardware modified by any person other than those authorized in writing by Consultant;
    - Repair or replacement of Dominion Hardware from which the serial numbers have been removed, defaced, or changed.

- E. **No Other Warranties:** Consultant disclaims all other warranties, and representations, whether written, oral, express, implied, or statutory, including any warranty of merchantability or fitness for a particular purpose and any warranty based on a course of dealing, course of performance, or usage of trade.

#### ARTICLE XXI

**Interest of Consultant:** Consultant covenants that Consultant 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. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

#### ARTICLE XXII

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XIV, Default, Termination, and Cancellation, herein.

#### ARTICLE XXIII

**Nondiscrimination:**

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section

12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and 8355 and Title 2, California Code of Regulations, Section 8103.

#### ARTICLE XXIV

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### ARTICLE XXV

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

#### ARTICLE XXVI

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### ARTICLE XXVII

**Licenses:** Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California, including the certification from the State of California to the California Voting System Standards. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good

standing throughout the term of this Agreement.

ARTICLE XXVIII

**California Forum and Law:** 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 XXIX

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Bill O'Neill, Registrar of Voters, Elections Department, or successor.

ARTICLE XXX

**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 the obligations set forth herein.

ARTICLE XXXI

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

ARTICLE XXXII

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

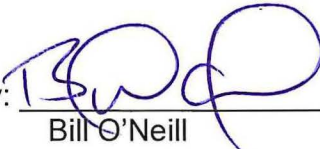
ARTICLE XXXIII

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXIV

**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 and Department Concurrence:**

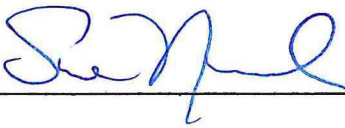
By:  \_\_\_\_\_  
Bill O'Neill

Dated: 6/19/19 \_\_\_\_\_

Registrar of Voters  
Elections Department

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

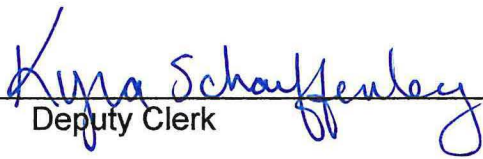
--COUNTY OF EL DORADO--

By: 

Dated: 6-25-19


Board of Supervisors  
"County"

Attest:  
James S. Mitrison  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 6-25-19

--DOMINION VOTING SYSTEMS, INC.--

By:   
John Poulos  
President and CEO  
"Consultant"

Dated: 6/14/19

By:   
Michael Frontera  
Secretary, Board of Directors

Dated: 6/14/19

# **Dominion Voting Systems, Inc.**

## **Exhibit A**

### **Scope of Work**

Consultant shall implement the Tasks detailed in the Scope of Work described below in accordance with the terms and conditions, including the reporting and deliverable requirements, of this Agreement. Consultant shall provide services as described in the Scope of Work to assist County with the installation of a voting system.

#### **Agreement Overview:**

Consultant shall furnish personnel, equipment, and services necessary to install a comprehensive voting system, including but not limited to all necessary hardware, software, configuring, maintenance, training, and on-going support for County. Unless otherwise indicated below, and notwithstanding any other provisions of this Agreement to the contrary, Consultant shall submit all deliverables in accordance with ARTICLE I, Scope of Services.

If changes in the Scope of Work of this Agreement are required, an amendment must be approved in writing and executed by County and Consultant.

#### **Schedule and Deliverables:**

Consultant shall deliver the voting system and provide services as described herein.

#### **Scope of Work Tasks:**

Consultant's services shall include, but not be limited to, the following Tasks:

##### **Task 1. Deliver the Voting System**

- Title to the system, or any portion thereof, excluding software, will transfer to County upon delivery.
- Dominion Software and Third Party Software is licensed, and not sold. The original and any copies of the Dominion Software, or other software provided pursuant to this Agreement, in whole or in part, including any subsequent improvements or updates, shall remain the property of Consultant, or any third party that owns such software. During the Term, County will continue to have access to, and use of, the software to enable County to operate the voting system, consistent with the associated fees identified in Exhibit C of this agreement.
- Consultant shall bear the responsibility for all risk of physical loss or damage to each portion of the system until such portion is delivered to County. County shall



provide Consultant with a single location for shipment and Consultant shall not be responsible for shipping to more than one (1) location. For Consultant to bear the responsibility for all risk of physical loss or damage to each portion of the system, County shall notify Consultant of any identifiable physical loss or damage within ten (10) business days of the receipt of any or all portions of the system, or such shorter period as may be required to comply with the claims requirements of the shipper, and shall cooperate in the processing of any claims made by Consultant.

**Task 2. Provide Dominion Software Use License (Exhibit B)**

**Task 3. Acceptance Testing Process**

- After delivery of Dominion Software or Dominion Hardware, County will conduct acceptance testing of such units, in accordance with the acceptance criteria as outlined by the California Secretary of State's office use procedures section 4.1 and updated by Consultant. Such acceptance testing shall occur at a time mutually agreed upon by both parties, but no later than ten (10) business days after installation.
- After testing, if the Dominion Software, Dominion Hardware, or the System does not conform to user documentation or Consultant's provided acceptance criteria, County will notify Consultant in writing within five (5) business days. Consultant shall, at its own expense, repair or replace the rejected Dominion Software, Dominion Hardware, or System within thirty (30) days after receipt of County's notice of deficiency. The foregoing procedure shall be repeated until County finally accepts or rejects the Dominion Software, Dominion Hardware, or System in writing in its sole discretion.

**Deliverables:**

- Reproducible electronic copy of documentation

**Task 4 Training**

- Consultant shall provide the following trainings:
  - Train the Trainer
  - Democracy Suite Full System
  - ImageCast Central Operator
  - ImageCast Central Adjudication
  - ImageCast X Operator

**Deliverables:**

- Training material

### **Task 5: Support**

- Consultant will provide onsite election support through the California Presidential Preference Primary on March 3, 2020.
- Ongoing telephone support. Telephone support shall be available for the County during the Term of the Agreement at no additional costs.

### **Assumptions:**

- County will assign a Project Manager who will be responsible for the review, analysis, and acceptance of the system and the coordination of personnel, equipment, vehicles, and facilities.
- County will provide acceptance testing of the system.
- County will provide access and entry to Consultant in order to perform the services described herein.
- County will review, identify, or approve deliverables issues to Consultant within two (2) business days of receipt. County will provide written notification to Consultant following the discovery of any issue and Consultant shall rectify the issue at no additional cost to County. Consultant may charge for any changes requested by County after approval at the then current published service rates.

# Dominion Voting Systems, Inc.

## EXHIBIT B

### SOFTWARE LICENSE TERMS AND CONDITIONS

#### 1. Definitions.

- 1.1. "Agreement" shall mean the agreement between the Parties for the use of the licensed Software.
- 1.2. "Licensee" shall mean County.
- 1.3. "Licensor" shall mean Consultant
- 1.4. "Party" or "Parties" Licensor and Licensee may hereinafter be referred to individually as a Party and collectively as the Parties.
- 1.5. "Software" means the Democracy Suite<sup>®</sup> and ImageCast<sup>®</sup> software licensed by Licensor hereunder, in object code form, including all documentation therefore.
- 1.6. "Specifications" means descriptions and data regarding the features, functions, and performance of the Software, as set forth in user manuals or other applicable documentation provided by Licensor.
- 1.7. "Third-Party Products" means any software or hardware obtained from third-party manufacturers or distributors and provided by Licensor hereunder.

#### 2. License Terms.

- 2.1. License to Software. Subject to the terms herein, Licensor grants Licensee a non-exclusive, non-transferrable license to use the Software solely for the Licensee's own internal business purposes and solely in conjunction with the Software and hardware. This License shall only be effective during the Term and cannot be transferred or sublicensed.
- 2.2. Print Copyright License. Subject to the Print Copyright License terms and conditions as defined in Schedule A attached hereto, Licensor grants to Licensee a non-exclusive, non-transferable print copyright license as defined in Schedule A.
- 2.3. Third-Party Products. When applicable, Licensor shall sublicense any software that constitutes or is contained in Third-Party Products, in object code form only, to Licensee for use during the Term.
- 2.4. No Other Licenses. Other than as expressly set forth herein, (a) Licensor grants no licenses, expressly or by implication, and (b) Licensor's entering into the Agreement will not be deemed to license or assign any intellectual property rights of Licensor to Licensee or any third party. Licensee agrees not to use the Software as a service bureau for elections outside the Licensee's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of the Software. The Licensee

shall have no power to transfer or grant sub-licenses for the Software. Any use of all or any portion of the Software not expressly permitted is strictly prohibited.

**3. Payment.** In consideration of the grant of the license, the Licensee shall pay the license fees set forth in Exhibit C of this Agreement.

**4. Upgrades and Certification.** During the Term, Licensor may provide upgrades to Licensee under the following terms and conditions.

4.1. Upgrades. In the event that Licensor, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the State of California, Licensor shall make the certified Software upgrade available to the Licensee at no additional cost.

4.2. Certification Requirement. Notwithstanding any other terms of this Agreement, Licensor shall not provide, and shall not be obligated to provide under this Agreement any upgrade, enhancement, or other software update that has not been certified under the applicable provisions of the election laws and regulations of the State of California.

**5. Prohibited Acts.** The Licensee shall not, without the prior written permission of Licensor:

5.1. Transfer or copy onto any other storage device or hardware or otherwise copy the Software in whole or in part except for purposes of system backup;

5.2. Reverse engineer, disassemble, decompile, decipher, or analyze the Software in whole or in part;

5.3. Alter or modify the Software in any way or prepare any derivative works of the Software or any part of parts of the Software;

5.4. Alter, remove, or obstruct any copyright or proprietary notices from the Software, or fail to reproduce the same on any lawful copies of the Software.

**6. Return of Software.** Upon termination or expiration of this Agreement, Licensee shall (i) forthwith return to Licensor all Software in its possession or control, or destroy all such Software from any electronic media, and certify in writing to Licensor that it has been destroyed.

## SCHEDULE A

### PRINT COPYRIGHT LICENSE TERMS AND CONDITIONS

1. **Definitions.** For the purposes of this Agreement, the following are defined terms:
  - 1.1. "Derivative Works" shall mean any work that is based upon or derived from the Licensor's voting systems' ballots, including without limitation, sample ballots, and voting booklets.
  - 1.2. "Voting Systems' Ballots" shall mean any ballot created for use with any voting system owned or licensed by the Licensor.
2. **Print Copyright License and Use.**
  - 2.1. Copyright License Grant. Licensor grants to the Licensee a non-exclusive, non-transferable copyright license to print, reproduce, distribute, or otherwise copy the Licensor's Voting Systems' Ballots or any Derivative Works (collectively the "Materials") pursuant to the terms and conditions of this Schedule A.
  - 2.2. Copyright License Use. Other than as expressly set forth herein, (a) Licensor grants no other licenses, expressly or by implication, and (b) Licensor's entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Licensor to Licensee or any third party, (c) the copyright license granted herein cannot be transferred or sublicensed and the Voting Systems' Ballots or Derivative Works cannot be reproduced by any third party without the prior written consent of the Licensor, including without limitation:
    - (i) any commercial or non-commercial printer
    - (ii) any third party vendor using ballot on demand system.
  - 2.3. Rights and Interests. All rights, title, and interest in the material, including without limitation, any copyright, shall remain with the Licensor.
3. **No Copyright Warranties.** Licensor disclaims all representations and warranties, whether written, oral, express, implied, or statutory, including any warranty of merchantability or fitness for a particular purpose and any warranty based on a course of dealing, course of performance, or usage of trade.



# EXHIBIT C - COST

California Voting System Proposal  
 El Dorado County  
 Bill Oneil, Registrar of Voters  
 Registered Voters: 123,000 Precincts: 140 Polling Locations: 15  
 Version: 5.2

Date: 06/04/2019

Product Name	Description	QTY	UNIT PRICE	EXTENSION
<b>Central Scanning Solution: Absentee / Vote By Mail Hardware</b>				
ImageCast Central Kit - G1130	Includes Canon Model DR-G1130, Computer w/ 23" Monitor, Keyboard & Mouse, One 8GB USB Flash Drive & One I-Button, patch cable	5	\$25,000.00	\$125,000.00
<b>Sub-Total:</b>				<b>\$125,000.00</b>
<b>In-Person Voting Solution: Polling Location Hardware</b>				
ImageCast X Kit - Classic BMD 21"	Includes 21.5" tablet, laser printer, printer cable, USB ATI cable, 5 voter smart cards.	55	\$3,175.00	\$174,625.00
ImageCast X Classic Voter Activation Kit	Includes Dell e3480 laptop, smart card reader/writer, pollworker smart card.	20	\$1,200.00	\$24,000.00
ImageCast X Classic Voter Activation Card		50	\$8.10	\$405.00
ImageCast X Classic Poll Worker Smart Card		50	\$8.10	\$405.00
ImageCast X Classic Technician Smart Card		20	\$8.10	\$162.00
MBP Kit #2 Portable High Volume	Includes OKI C712dn, Dell e3480 laptop, USB printer cable, 19" printer tray.	23	\$5,800.00	\$133,400.00
Smart-UPS C 1500VA LCD 120V 1000W		20	\$555.00	\$11,100.00
<b>Sub-Total:</b>				<b>\$344,097.00</b>
<b>Peripherals</b>				
<b>Accessories</b>				
ATI Kit - ICX - USB		55	\$375.00	\$20,625.00
ImageCast X Voting Booth - Standard		55	\$295.00	\$16,225.00
ImageCast X Classic BMD Transport Bag Kit (15"/21" Tablet + Printer)		55	\$125.00	\$6,875.00
USB Flash Drive - 8GB - 3.0		20	\$16.60	\$332.00
<b>Sub-Total:</b>				<b>\$44,057.00</b>

Election Management Hardware				
EMS Standard Server Kit (R630/WS2012/SS2016)	Includes PowerEdge R630 rack server, 24 port switch, 24" monitor, keyboard/mouse, patch cable, Cepstral, Avast.	2	\$17,000.00	\$34,000.00
EMS Client Workstation Kit	Includes Dell T3420, 24" monitor, iButton programmer, high speed media reader, patch cable, smart card reader/writer.	3	\$1,700.00	\$5,100.00
EMS Adjudication Workstation Kit	Includes Dell T3420, 24" monitor, SQL Server 2016 CAL, cables, Windows 10 Pro.	4	\$1,700.00	\$6,800.00
Reformatting Station Kit		1	\$1,200.00	\$1,200.00
EMS Report Printer - LBP6230DW		2	\$125.00	\$250.00
			<b>Sub-Total:</b>	<b>\$47,350.00</b>
Software				
Democracy Suite Standard (60K - 125K)		1	\$100,000.00	\$100,000.00
Adjudication Module (60K - 125K)		1	\$20,000.00	\$20,000.00
Automated Test Deck Module (60K - 125K)		1	\$7,500.00	\$7,500.00
Mobile Ballot Printing Module (60K - 125K)		1	\$4,000.00	\$4,000.00
Remote UOCAVA Module (60K - 125K)		1	\$12,500.00	\$12,500.00
			<b>Sub-Total:</b>	<b>\$144,000.00</b>
Support Services				
<b>Implementation</b>		<b>Days</b>		
Project Management & Implementation		15	\$2,000.00	\$30,000.00
			<b>Sub-Total:</b>	<b>\$30,000.00</b>
<b>Training</b>		<b>Days</b>		
Democracy Suite Full System Training		10	\$2,000.00	\$20,000.00
ImageCast Central Operator Training		1	\$2,000.00	\$2,000.00
ImageCast Central Adjudication Training		1	\$2,000.00	\$2,000.00
ImageCast X Operator Training		1	\$2,000.00	\$2,000.00
			<b>Sub-Total:</b>	<b>\$26,000.00</b>
			<b>Total Purchase Subtotal</b>	<b>\$760,504.00</b>
			<b>Discount</b>	<b>(\$224,821.20)</b>
			<b>Year 1 Purchase Total</b>	<b>\$535,682.80</b>

Sub-Total: \$0.00

**Annual Licenses**

Democracy Suite Standard Annual License Fee (60K - 125K)	1	\$20,000.00	\$20,000.00
Adjudication Annual Software License Fee (60K - 125K)	1	\$4,000.00	\$4,000.00
Automated Test Deck Annual Software License Fee (60K - 125K)	1	\$1,500.00	\$1,500.00
Mobile Ballot Printing Annual Software License Fee (60K - 125K)	1	\$800.00	\$800.00
Remote UOCAVA Module Annual Software License Fee (60K - 125K)	1	\$2,500.00	\$2,500.00
ImageCast Central Annual Firmware License - G1130	5	\$2,575.00	\$12,875.00
ImageCast X Annual Firmware License - Classic BMD 21"	55	\$150.00	\$8,250.00

Sub-Total: \$49,925.00

**Warranty**

ImageCast Central Annual Hardware Warranty - G1130	5	\$1,500.00	\$7,500.00
ImageCast X Annual Hardware Warranty - Classic BMD 21"	55	\$155.00	\$8,525.00

Sub-Total: \$16,025.00

**Annual Fees \$65,950.00**

Invoices for Year 1 will be as follows:

50% Invoiced at contract signing

40% Invoiced upon completion of Acceptance Testing as outlined in Acceptance Testing Documentation

10% Invoiced upon of first use





California Voting System Proposal  
El Dorado County  
Bill Oneil, Registrar of Voters  
Registered Voters: 123,000 Precincts: 140 Polling Locations: 15  
Version: 5.2  
Final Proposal

Outright Purchase

Date: 06/04/2019

	1	2	3	4	5	TOTAL
	2019	2020	2021	2022	2023	
Hardware / Software	\$535,682.80	-	-	-	-	\$535,682.80
Annual License	-	\$28,800.00	\$29,664.00	\$30,553.92	\$31,470.54	\$120,488.46
Firmware	-	\$21,125.00	\$21,758.75	\$22,411.51	\$23,083.86	\$88,379.12
Warranty	-	\$16,025.00	\$16,505.75	\$17,000.92	\$17,510.95	\$67,042.62
CA Sales Tax	\$38,542.58	\$3,912.56	\$4,029.94	\$4,150.84	\$4,275.36	\$54,911.28
<b>Purchase Total</b>	<b>\$574,225.38</b>	<b>\$69,862.56</b>	<b>\$71,958.44</b>	<b>\$74,117.20</b>	<b>\$76,340.71</b>	<b>\$866,504.28</b>

\*Includes 3% increase per year beginning in year 3 on License/Firmware and Warranty.