

**PERSONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF SHASTA  
AND DOMINION VOTING SYSTEMS, INC.**

This agreement is entered into between the County of Shasta, through its County Clerk/Elections Department, a political subdivision of the State of California ("County") and Dominion Voting Systems, Inc., a Delaware corporation authorized to do business in California by the California Secretary of State ("Contractor") (collectively, the "Parties" and individually a "Party") for the purpose of leasing the Democracy Suite 5.2 voting system and all associated hardware, software, licenses, and related services.

**Section 1. RESPONSIBILITIES OF CONTRACTOR.**

- A. Pursuant to the terms and conditions of this agreement, Contractor shall lease to County all Democracy Suite 5.2 voting system and all associated hardware, software, licenses, and related services ("System") as outlined in Exhibit A, Deliverable Descriptions, and; Exhibit B, Warranties, Software License Terms and Conditions; attached and incorporated herein.
- B. Prior to delivery of the System to County, Contractor shall pack, remove, and dispose of all equipment, hardware, and software associated with the Sequoia Voting System currently housed at County's County Clerk/Elections Department located at 1643 Market Street, Redding, California. Contractor shall coordinate with County regarding dates and times for Contractor access to County premises for such purposes. Should Contractor and County be unable to agree as to the date and time to access the premises to perform the duties contained in this subsection, County shall have the right, in its sole discretion, to select the date and time.

**Section 2. RESPONSIBILITIES OF COUNTY.**

- A. County shall compensate Contractor as prescribed in sections 3 and 4 of this agreement and shall monitor the outcomes achieved by Contractor.
- B. County shall appoint a project manager ("County Project Manager") to coordinate services with Contractor. County shall be permitted to determine which staff person is County's Project Manager and to change at any time, in its sole discretion, the staff person who is selected. County Project Manager shall be responsible for review, analysis, and acceptance of the System as outlined in Exhibit A.
- C. For election setup and database creation services as described in Exhibit A, County shall review and approve or, if not approved, identify the reasons for non-approval of Contractor's deliverables related to such service within two (2) County business days of receipt by County. County shall notify Contractor of the reasons for non-approval within two (2) County business days of identifying the reason for non-approval.

**Section 3.     COMPENSATION.**

Contractor shall be paid \$1,960,428 for the services described in this agreement. In addition, Contractor shall be reimbursed by County a maximum of \$18,000 for the actual cost of the shipping of equipment to County, and a maximum of \$20,000 for Special Election setup and database creation services. In no event shall the maximum amount payable under this agreement exceed \$1,998,428.

**Section 4.     BILLING AND PAYMENT.**

- A. Contractor shall submit an annual invoice in the amount of \$245,053.50 to County on January 1 of each calendar year this agreement is in effect, for the 12-month period of said calendar year.
- B. For calendar year 2018 only, Contractor shall submit the 2018 invoice within 1 week of County accepting delivery and completion of the successful testing by Contractor performed on each component of the System as outlined in Exhibit B. Contractor shall also submit an additional invoice for the actual cost of shipping, as outlined in Section 3.A.
- C. For election setup and database creation services that are Special Elections outside the eight (8) Primary and General Elections as defined in Exhibit A. 2.7.6, billing will be calculated on the following base charges, with a minimum charge of \$3,500 per election. Contractor shall submit an invoice to County within 30 days of the date of the election.
  - (1) Precincts or Splits 1 through 100: \$200/precinct
  - (2) Precincts or Splits 101 through 500: \$75/precinct
  - (3) Each Additional Language: 25% of the Base Charge
  - (4) Deduction for No Audio 10% of the Base Charge
- D. County shall make payment within 30 days of receipt of Contractor's correct and approved invoice.

**Section 5.     TERM OF AGREEMENT.**

This agreement shall commence on January 1, 2018 and shall end on December 31, 2025.

**Section 6.     TERMINATION OF AGREEMENT.**

- A. If Contractor materially fails to perform Contractor's responsibilities under this agreement, or if Contractor violates any of the terms or provisions of this agreement, then County shall have the right to provide written notice to the

Contractor identifying the work or services which have not been performed in accordance with the terms of this agreement. Contractor shall have fifteen (15) days in which to cure the deficiency in the work or services provided in the notice. In the event the Contractor has not remedied the deficiency in the work or services provided in the notice by the end of the cure period, the County may terminate this agreement for cause effective immediately upon County giving written notice thereof to Contractor. If termination for cause is given by County to Contractor and it is later determined that Contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph B of this section.

- B. County may terminate this agreement without cause on 30 days written notice to Contractor.
- C. County may terminate this agreement immediately upon oral notice should funding cease or be materially decreased during the term of this agreement.
- D. County's right to terminate this agreement may be exercised by County's Executive Officer and his/her designee, or by the Shasta County Clerk/Registrar of Voters and his/her designee.
- E. Should this agreement be terminated, Contractor shall promptly provide to County any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by Contractor pursuant to this agreement.
- F. If this agreement is terminated, Contractor shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.

**Section 7. ENTIRE AGREEMENT; AMENDMENTS; HEADINGS; EXHIBITS/APPENDICES.**

- A. This agreement supersedes all previous agreements relating to the subject of this agreement and constitutes the entire understanding of the Parties hereto. Contractor shall be entitled to no other benefits other than those specified herein. Contractor specifically acknowledges that in entering into and executing this agreement, Contractor relies solely upon the provisions contained in this agreement and no others.
- B. No changes, amendments, or alterations to this agreement shall be effective unless in writing and signed by both Parties. However, minor amendments, including retroactive amendments, that do not result in a substantial or functional change to the original intent of this agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between Contractor and the Shasta County Clerk/Registrar of Voters, provided that the amendment is in substantially the same format as County's standard format amendment contained in the Shasta County Contracts Manual (Administrative Policy 6-101).

- C. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.
- D. If any ambiguity, inconsistency, or conflict exists or arises between the provisions of this agreement and the provisions of any of this agreement's exhibits or appendices, the provisions of this agreement shall govern.

**Section 8. NONASSIGNMENT OF AGREEMENT; NON-WAIVER.**

Inasmuch as this agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of County. The waiver by County of any breach of any requirement of this agreement shall not be deemed to be a waiver of any other breach.

**Section 9. EMPLOYMENT STATUS OF CONTRACTOR.**

Contractor shall, during the entire term of this agreement, be construed to be an independent contractor, and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Contractor performs the work or services that are the subject matter of this agreement; provided, however, that the work or services to be provided by Contractor shall be provided in a manner consistent with the professional standards applicable to such work or services. The sole interest of County is to insure that the work or services shall be rendered and performed in a competent, efficient, and satisfactory manner. Contractor shall be fully responsible for payment of all taxes due to the State of California or the federal government that would be withheld from compensation if Contractor were a County employee. County shall not be liable for deductions for any amount for any purpose from Contractor's compensation. Contractor shall not be eligible for coverage under County's workers' compensation insurance plan nor shall Contractor be eligible for any other County benefit. Contractor must issue W-2 and 941 Forms for income and employment tax purposes, for all of Contractor's assigned personnel under the terms and conditions of this agreement.

**Section 10. INDEMNIFICATION AND LIMITATION OF LIABILITY.**

- A. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees arising out of: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement; (b) any infringement, misappropriation, or other violation of any intellectual property rights or other right of any third party, excluding any third party products; and (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part

due to the negligence or misconduct of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable), except when the injury or loss is caused by the sole negligence or intentional wrongdoing of County. Contractor shall also, at Contractor's own expense, defend County, its elected officials, officers, employees, agents, and volunteers, against any claim, suit, action, or proceeding brought against County, its elected officials, officers, employees, agents, and volunteers, arising from the work or the provision of services undertaken pursuant to this agreement by Contractor, or any of Contractor's subcontractors, any person employed under Contractor, or under any subcontractor, or in any capacity. Contractor shall also defend and indemnify County for any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency and shall defend, indemnify, and hold harmless County with respect to Contractor's "independent contractor" status that would establish a liability on County for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment. The provisions of this paragraph are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this agreement.

- B. Except for the indemnification obligations contained in this agreement, Contractor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of this agreement. Neither party shall be liable for any loss of profits, 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.

## **Section 11. INSURANCE COVERAGE.**

- A. Without limiting Contractor's duties of defense and indemnification, Contractor and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this agreement Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other coverage necessary to protect County and the public with limits of liability of not less than \$1 million per occurrence; such insurance shall be primary as to any other insurance maintained by County.
- B. Contractor and any subcontractor shall obtain and maintain continuously required Workers' Compensation and Employer's Liability Insurance to cover Contractor, subcontractor, Contractor's partner(s), subcontractor's partner(s), Contractor's employees, and subcontractor's(s') employees with an insurance carrier authorized

to transact business in the State of California covering the full liability for compensation for injury to those employed by Contractor or subcontractor. Each such policy shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against County, its elected officials, officers, employees, agents, and volunteers which might arise in connection with this agreement. Contractor hereby certifies that Contractor is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to this agreement.

- C. Contractor shall obtain and maintain continuously a policy of Errors and Omissions coverage with limits of liability of not less than \$1 million per occurrence.
- D. Contractor shall require subcontractors to furnish satisfactory proof to County that liability and workers' compensation and other required types of insurance have been obtained and are maintained similar to that required of Contractor pursuant to this agreement.
- E. With regard to all insurance coverage required by this agreement:
  - (1) Any deductible or self-insured retention exceeding \$25,000 for Contractor or subcontractor shall be disclosed to and be subject to approval by County's Risk Manager prior to the effective date of this agreement.
  - (2) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Contractor or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of this agreement and continue coverage for a period of three years after the expiration of this agreement and any extensions thereof. In lieu of maintaining post-agreement expiration coverage as specified above, Contractor or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide the insurance coverage required hereunder for claims received and reported three years after the expiration date of this agreement.
  - (3) All insurance (except workers' compensation and professional liability) shall include an endorsement or an amendment to the policy of insurance which names County, its elected officials, officers, employees, agents, and volunteers as additional insureds. In the event that coverage is reduced or canceled, a notice of said reduction or cancellation shall be provided to County within 24 hours. Any available insurance proceeds in excess of the specified minimum limits and coverage pursuant to the terms of this agreement shall be applicable to the Additional Insured. The additional insureds coverage shall be equal to Insurance Service Office endorsement CG 20 10 for on-going operations, and CG 20 37 for completed operations.

- (4) Each insurance policy (except for workers' compensation and professional liability policies), or an endorsement thereto, shall contain a "separation of insureds" clause which shall read:

"Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
  - b. Separately to each suit insured against whom a claim is made or suit is brought."
- (5) Contractor shall provide County with an endorsement or amendment to Contractor's policy of insurance as evidence of insurance protection before the effective date of this agreement.
- (6) The insurance coverage required herein shall be in effect at all times during the term of this agreement. In the event any insurance coverage expires at any time during the term of this agreement, Contractor shall provide County, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the term of this agreement or for a period of not less than one year. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of this agreement, County may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.
- (7) If the endorsement or amendment does not reflect the limits of liability provided by the policy of insurance, Contractor shall provide County a certificate of insurance reflecting those limits.
- (8) Any of Contractor's Excess Insurance shall contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of County.

**Section 12. NOTICE OF CLAIM; APPLICABLE LAW; VENUE.**

- A. If any claim for damages is filed with Contractor or if any lawsuit is instituted concerning Contractor's performance under this agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect County, Contractor shall give prompt and timely notice thereof to County. Notice shall be prompt and timely if given within 30 days following the date of receipt of

a claim or 10 days following the date of service of process of a lawsuit. This provision shall survive the termination, expiration, or cancellation of this agreement.

- B. Any dispute between the Parties, and the interpretation of this agreement, shall be governed by the laws of the State of California. Any litigation shall be venued in Shasta County.

**Section 13. COMPLIANCE WITH LAWS; NON-DISCRIMINATION.**

- A. Contractor shall observe and comply with all applicable present and future federal laws, state laws, local laws, codes, rules, regulations, and/or orders that relate to the work or services to be provided pursuant to this agreement.
- B. Contractor shall not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.
- C. Contractor represents that Contractor is in compliance with and agrees that Contractor shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. sections 12101, *et seq.*), the Fair Employment and Housing Act (Government Code sections 12900, *et seq.*), and regulations and guidelines issued pursuant thereto.
- D. No funds or compensation received by Contractor under this agreement shall be used by Contractor for sectarian worship, instruction, or proselytization. No funds or compensation received by Contractor under this agreement shall be used to provide direct, immediate, or substantial support to any religious activity.
- E. In addition to any other provisions of this agreement, Contractor shall be solely responsible for any and all damages caused, and/or penalties levied, as the result of Contractor's noncompliance with the provisions of this section.

**Section 14. ACCESS TO RECORDS; RECORDS RETENTION.**

- A. County, federal, and state officials shall have access to any books, documents, papers, and records of Contractor that are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Contractor or County. Except where longer retention is required by federal or state law, Contractor shall maintain all records for five years after County makes final payment hereunder. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Contractor shall maintain appropriate records to insure a proper accounting of all funds and expenditures pertaining to the work performed or the services provided

pursuant to this agreement. Contractor shall maintain records providing information that account for all funds and expenses related to the provision of services provided pursuant to this agreement. Access to these records shall be provided to County during working days, 8:00 a.m. to 5:00 p.m. and at other times upon reasonable notice by County, and upon request of state and federal agencies charged with the administration of programs related to the work or services to be provided pursuant to this agreement.

- C. Contractor agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by appropriate federal, state, or County audit directly related to the provisions of this agreement. Contractor agrees to repay County the full amount of payment received for duplicate billings, erroneous billings, audit exceptions, or false or deceptive claims. Contractor agrees that County may withhold any money due and recover through any appropriate method any money erroneously paid under this agreement if evidence exists of less than full compliance with this agreement including, but not limited to, exercising a right of set-off against any compensation payable to Contractor.

**Section 15. COMPLIANCE WITH CHILD, FAMILY, AND SPOUSAL SUPPORT REPORTING OBLIGATIONS.**

Contractor's failure to comply with state and federal child, family, and spousal support reporting requirements regarding Contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family, and spousal support obligations shall constitute a default under this agreement. Contractor's failure to cure such default within 90 days of notice by County shall be grounds for termination of this agreement.

**Section 16. LICENSES AND PERMITS.**

Contractor, and Contractor's officers, employees, and agents performing the work or services required by this agreement, shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, the County of Shasta, and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this agreement and constitutes grounds for the termination of this agreement by County.

**Section 17. PERFORMANCE STANDARDS.**

Contractor shall perform the work or services required by this agreement in accordance with the industry and/or professional standards applicable to Contractor's work or services.

**Section 18. CONFLICTS OF INTEREST.**

Contractor and Contractor's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income that could be financially affected by or otherwise conflict in any manner or degree with the performance of the work or services required under this agreement.

**Section 19. NOTICES.**

- A. Except as provided in section 6.C. of this agreement (oral notice of termination due to insufficient funding), and notices required or permitted pursuant to the terms and provisions of this agreement shall be given to the appropriate Party at the address specified below or at such other address as the Party shall specify in writing. Such notice shall be deemed given: (1) upon personal delivery; or (2) if sent by first class mail, postage prepaid, two days after the date of mailing.

If to County: Cathy Darling Allen, County Clerk/Registrar of Voters  
P.O. Box 990880  
Redding, CA 96049-0880

If to Contractor: Dominion Voting Systems, Inc.  
Attn: Contracts Administrator  
1201 18<sup>th</sup> Street, Suite 210  
Denver, CO 80202

- B. Any oral notice authorized by this agreement shall be given to the persons specified in Section 19.A. and shall be deemed to be effective immediately.
- C. Unless otherwise stated in this agreement, any written or oral notices on behalf of County as provided for in this agreement may be executed and/or exercised by the County Executive Officer and his/her designee, or by the Shasta County Clerk/Registrar of Voters and his/her designee.

**Section 20. AGREEMENT PREPARATION.**

It is agreed and understood by the Parties that this agreement has been arrived at through negotiation and that neither Party is to be deemed the Party which created any uncertainty in this agreement within the meaning of section 1654 of the Civil Code.

**Section 21. COMPLIANCE WITH POLITICAL REFORM ACT.**

Contractor shall comply with the California Political Reform Act (Government Code, sections 81000, *et seq.*), with all regulations adopted by the Fair Political Practices Commission pursuant thereto, and with County's Conflict of Interest Code, with regard to any obligation on the part of Contractor to disclose financial interests and to recuse from influencing any County decision which may affect Contractor's financial interests. If required by County's Conflict of Interest Code, Contractor shall comply with the ethics training requirements of Government Code sections 53234, *et seq.*

**Section 22. PROPERTY TAXES.**

Contractor represents and warrants that Contractor, on the date of execution of this agreement, (1) has paid all property taxes for which Contractor is obligated to pay, or (2) is current in payments due under any approved property tax payment arrangement. Contractor shall make timely payment of all property taxes at all times during the term of this agreement.

**Section 23. SEVERABILITY.**

If any portion of this agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or County ordinance, the remaining provisions of this agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this agreement are severable.

**Section 24. COUNTY'S RIGHT OF SETOFF.**

To the fullest extent permitted by law, County shall have the right but not the obligation, to setoff, in whole or in part, against any compensation owed to Contractor or any of its subsidiaries under any contract with County, any amount of any Federal or State audit liability owed by or claimed or asserted against County or any amounts owed to County by Contractor or its subsidiaries.

**Section 25. CONFIDENTIALITY.**

During the term of this agreement, both Parties may have access to information that is confidential or proprietary in nature. Both Parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other Party or as required by law. This provision shall survive the termination, expiration, or cancellation of this agreement.

**Section 26. SCOPE AND OWNERSHIP OF WORK.**

All research data, reports, and every other work product of any kind or character specifically created for the sole use of the County as part of this agreement shall become the property of County and be delivered to County upon completion of its authorized use pursuant to this agreement. County may use such work products for any purpose whatsoever. All works produced under this agreement shall be deemed works produced by a contractor for hire, and all copyright with respect thereto shall vest in County without payment of royalty or any other additional compensation. Notwithstanding anything to the contrary contained in this agreement, Contractor shall retain all of Contractor's rights in Contractor's own proprietary information, including, without limitation, Contractor's methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge, and experience possessed by Contractor prior to, or acquired by Contractor during the performance of this agreement and Contractor shall not be restricted in any way with respect thereto.

**Section 27. USE OF COUNTY PROPERTY.**


Contractor shall not use County premises, property (including equipment, instruments, and supplies), or personnel for any purpose other than in the performance of Contractor's obligations under this agreement.

***SIGNATURE PAGE FOLLOWS***

IN WITNESS WHEREOF, County and Contractor have executed this agreement on the dates set forth below. By their signatures below, each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

COUNTY OF SHASTA

Date: DEC 05 2017

  
DAVID A. KEHOE, CHAIRMAN  
Board of Supervisors  
County of Shasta  
State of California

ATTEST:

LAWRENCE G. LEES  
Clerk of the Board of Supervisors

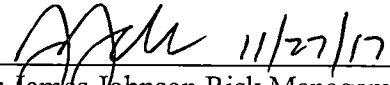
By:   
Deputy

Approved as to form:

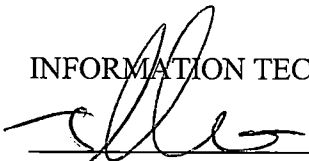
RUBIN E. CRUSE, JR  
County Counsel

  
By: James R. Ross  
Assistant County Counsel

RISK MANAGEMENT APPROVAL

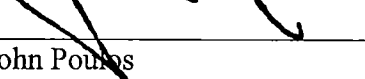
 11/27/17  
By: James Johnson Risk Management Analyst  
Risk Management Analyst

INFORMATION TECHNOLOGY APPROVAL

 11-27-2017  
By: Tom Schreiber  
Chief Information Officer

DOMINION VOTING SYSTEMS, INC.

Date: \_\_\_\_\_

By:   
John Poulos  
President and CEO  
Federal Tax I.D. No.: 27-0565149

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## EXHIBIT A

### DELIVERABLES DESCRIPTION

- Itemized Deliverables Description.** The System includes the following hardware, software, training, technical support, and other related services for voting, vote counting, and result processing.

DESCRIPTION	QUANTITY	DETAILED DESCRIPTION ITEM NO. (see below)
Central Scanning Solution (Absentee/Vote-by-Mail): Hardware and Software		
ImageCast® Central (ICC) Kit	3 each	2.3, 2.4
In-Person Voting Solution: Hardware and Software		
ImageCast® Evolution (ICE): New	55 each	2.1 (2.1.1 thru 2.1.10)
ICE: Pre-Owned	40 each	2.1
ICE Plastic Ballot Box	95 each	2.2
Audio Tactile Interface (ATI) Accessible Voting Kit	95 each	2.1.11
ICE Tech Key (yellow)	10 each	2.6.5
ICE Memory Cards: 8GB	190 each	2.6.4
Election Management: Hardware and Software		
Democracy Suite® Election Management System (EMS) Standard Server Configuration Kit (up to 7 clients)	2 each	2.6.1, 2.6.6 thru 2.6.8
EMS Client Workstation Kit	1 each	2.6.2
Adjudication Workstation Kit	2 each	2.6.3
EMS Report Printer	1 each	2.6.9
Software		
Democracy Suite® EMS Light - Level 4	1 each	2.5
ICC Adjudication Application - Level 4	1 each	2.5.3
Support Services: Implementation		
Implementation Project Management	120 hours	2.7.1
Support Services: Training		
System Acceptance Testing Training	16 hours	2.7.2, 2.7.3
Democracy Suite Result, Tally, and Report	24 hours	2.5.2
ICE Operator Training	8 hours	2.7.4
ICC Operator Training	8 hours	2.7.4
ICC Adjudication Training	8 hours	2.7.4
Train-the-Trainer: Poll Worker	8 hours	2.7.4
Election Support		
Election Set Up (ballot layout, test deck, media)	8 elections	2.7.6
3-Day On-Site Election Support	2 elections	2.7.5
Shipping		
Initial Shipping	1	2.8

## 2. Detailed Deliverables Description.

- 2.1 ***ICE Scanner and Tabulator (Hardware and Software)*** is a precinct-level all in one, digital scanner, ballot marker, and accessible voting tabulator. Each ICE provided to County shall consist of the following items:
- 2.1.1 Two (2) optical imaging heads for creating a duplex scanned image of each side of the ballot. Ballots can be fed in all four (4) orientations.
  - 2.1.2 Two (2) Compact Flash 8GB memory cards.
  - 2.1.3 An integrated 19" diagonal full color Liquid Crystal Display (LCD) with built-in touch screen.
  - 2.1.4 An internal thermal printer and one (1) paper roll for generating reports.
  - 2.1.5 An integrated inkjet printer for producing marked paper ballots during the accessible voter sessions.
  - 2.1.6 Two (2) administrative security keys (iButton) used with an integrated receptacle (physically attached to the top of the unit and electrically connected to the motherboard) used for a variety of verification and security tasks such control, data confidentiality and integrity functions.
  - 2.1.7 A motorized paper feed mechanism for detecting and moving the ballot within the scanner. Ballots used with the ImageCast® must be 8.5" wide by a variable length (11", 14", 17", 18", 19", 20 and 22"). The paper feed mechanism is physically capable of moving the ballot forward into the machine, across image sensors, enabling complete image capture of both sides of the ballot.
  - 2.1.8 An internal battery which is rated to provide a minimum of two (2) hours of normal use in the absence of Alternating Current (AC) power.
  - 2.1.9 Audit functionality, known as the AuditMark®. For each ballot that is scanned, interpreted and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below. These images can be used to audit the unit's interpretation of each individual ballot.
    - The top portion of the image contains a scanned image of the ballot.
    - The bottom portion consists of a machine-generated type-out showing each mark that the unit interpreted for that particular ballot. This is referred to as an AuditMark®.
  - 2.1.10 The ICE is equipped with an integrated voting feature for voters needing additional assistance. It uses a single ballot path which does not require the

voter to have to go to an additional unit to cast the vote. The ICE features several accessible voting interfaces that allow voters with various disabilities to effectively vote, review and cast a paper ballot in a private and independent manner. The ICE offers the following user interfaces - touch screen interface for visual ballot review and ballot casting, accessible ballot marking interface (both audio and visual), assistive input devices for accessible ballot navigation and voting, including an ATI (Audio-Tactile Interface).

- 2.1.11 ATI is included with the ICE. The ATI connects to the ICE via the port located on the right side of the unit. A set of headphones (also included) connects directly to the ATI controller. Following the audio voting process using the ATI controller, the integrated inkjet printer produces a marked paper ballot which serves as the official ballot record.
- 2.2 **ICE Molded Plastic Ballot Box** is a textured molded plastic ballot box made of a three (3) compartments, custom designed for use with the ICE.
- 2.3 **ICC** is a commercial off-the-shelf digital scanner configured to work with the ICC Software for high speed ballot tabulation. The ICC Scanner includes the following components:
  - 2.3.1 Canon DR-G1130 high speed document scanner.
  - 2.3.2 All-in-One Desktop Workstation with pre-loaded software and monitor.
  - 2.3.3 iButton Reader/Writer used with Democracy Suite® to transfer security and election information to the iButtons for use with the ICC.
- 2.4 **ICE and Central Scanner Software** allows the system to evaluate scanned images that were taken in order to determine voter intent for tabulation purposes.
- 2.5 **Democracy Suite® EMS Software** consists of the following components:
  - 2.5.1 Election File and iButton Creation, which enables County to create Election Files and iButtons from Democracy Suite® to load on the ICE and ICC units.
  - 2.5.2 Results, Tally and Report Client Application, used for the tally, reporting and publishing of election results.
  - 2.5.3 ImageCast® Adjudication Application is a client and server application used to review and adjudicate ICC Scanner ballot images. The application uses tabulator results files and scanned images to allow election administrators to make adjudications to ballots with auditing and reporting capabilities. The Adjudication Application examines such voter exceptions as overvotes, undervotes, blank contests, blank ballots, write-in selections, and marginal marks. The application works in two basic modes: election project setup

and adjudication. The Adjudication Application can be used in a multi-client environment.

2.6 ***EMS System Hardware***, required for operating the Democracy Suite® software system, includes the following:

2.6.1 EMS server.

2.6.2 EMS workstation.

2.6.3 Adjudication workstation.

2.6.4 Compact Flash reader/writers used to upload ballot information to Compact Flashes used with both scanner types. These can also be used to transfer election results data to Democracy Suite®.

2.6.5 iButton Reader/Writers used to transfer security and election information to the iButtons for use with the ICE and ICC.

2.6.6 Dell Switch Port 2.

2.6.7 Network Cables Category 6, Unshielded Twisted Pair (CAT6 UTP) Patch Cables (12 Units).

2.6.8 Structured Query Language (SQL) Server License for defined System configuration.

2.6.9 EMS report printer.

2.7 ***Implementation Services and Training*** provided during the implementation phase are as follows:

2.7.1 Project Management Support: Contractor will provide project management support to oversee implementation of and the general operations of the System. Contractor shall designate a Dominion Project Manager (DPM) who shall be responsible for arranging all meetings, visits and consultations between the Parties and for all administrative matters such as invoices, payments, and amendments. The Parties shall develop and finalize a project implementation plan which includes a training and delivery schedule. If the Parties are unable to agree to a training and delivery schedule County is entitled, in its sole discretion, to establish one. The Parties agree that during the course of the implementation, changes to the project schedule may be required. Any changes to the project schedule must be mutually agreed to by both Parties and such agreement shall not be unreasonably withheld.

2.7.2 System Acceptance Testing Support: After delivery of the System, County will conduct acceptance testing of the System, including all software and

hardware, in accordance with the acceptance criteria developed and updated by Contractor. Acceptance testing shall occur no later than ten (10) County business days after installation of the System at a time mutually agreed upon by the Parties. If the Parties are unable to agree to a training and delivery schedule County is entitled, in its sole discretion, to establish one. Contractor will provide direct onsite training and support during the System acceptance testing period.

2.7.3 EMS Server Installation, Configuration, and Testing: Contractor will provide a minimum total on one (1) day of direct onsite support for EMS server installation, configuration, and testing.

2.7.4 System Training and Documentation: Prior to delivery, Contractor shall prepare a training plan and proposed schedule for review and approval of County and shall provide copies of training materials for County review and approval. Contractor shall provide County with one reproducible electronic copy of the System user manual(s). Contractor shall designate a qualified and experienced trainer and provide County with the designated trainer's resume for approval prior to the start of training.

2.7.5 On-Site Election Day Support: Contractor shall provide three (3) days (inclusive of travel) of direct onsite election support for two (2) elections.

2.7.6 Election setup and database creation services: Contractor shall provide election setup services and support for the election database creation and ballot review for eight (8) elections (Primary & General Elections for 2018, 2020, 2022, & 2024). Ballot definition services will be provided in English only and will include the following: Democracy Suite Election project setup, provide the Mail Ballot/Absentee PDF artwork, verification and proofing for each Election, provide audio setup for audio voting using a synthesizer.

2.8 ***Initial Shipping*** includes the actual cost of shipping all equipment and supplies from Contractor to County prior to System Acceptance by County.

## WARRANTIES, SOFTWARE LICENSE TERMS AND CONDITIONS

### 1. Licenses and Warranty Itemized Description.

DESCRIPTION	QUANTITY	DETAILED DESCRIPTION ITEM NO.
Annual Software ("Software") Licenses		
Democracy Suite EMS Light - Level 4	1 each	N/A
ICC Adjudication Application - Level 4	1 each	N/A
ICC Annual Firmware License: DR-G1130	3 each	N/A
ICE Annual Firmware License	95 each	N/A
Warranty and Maintenance		
ICC Kit: DR-G1130	3 each	N/A
ICE	95 each	N/A

### 2. Licenses.

- 2.1. **Software License** is subject to the terms herein. Contractor grants County a non-exclusive, non-transferrable license to use the Software solely for County's own business purposes.
- 2.2. **Print Copyright License** is subject to the Print Copyright License terms and conditions as defined below. Contractor grants to County a non-exclusive, non-transferable print copyright license.
- 2.2.1 Copyright License Grant: Contractor grants to County a non-exclusive, non-transferable copyright license to print, reproduce, distribute or otherwise copy the Systems' ballots or any derivative works (collectively the "Materials"), including without limitation sample ballots and voting booklets, pursuant to the terms and conditions of this agreement.
- 2.2.2 Copyright License Use: Other than as expressly set forth herein, Contractor grants no other licenses, expressly or by implication. Contractor's entering into and performing this agreement will not be deemed to license or assign any intellectual property rights of Contractor to County or any third party. The copyright license granted herein cannot be transferred or sublicensed and the Systems' ballots and derivative works cannot be reproduced by any third party without the prior written consent of the Contractor, including without limitation, any commercial or non-commercial printer and any third party vendor using ballot on demand system.
- 2.2.3 Rights and Interests: All right, title, and interest in the Material, including without limitation any copyright, shall remain with Consultant.

- 2.3. **No Other Licenses.** Other than as expressly set forth herein, Contractor grants no licenses, expressly or by implication, and Contractor's entering into this agreement will not be deemed to license or assign any intellectual property rights of Contractor to County or any third party. County agrees not to use the Software for elections outside County's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of the Software. County 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. **Upgrades and Certification.** During the term of this agreement, Contractor may provide upgrades to County under the following terms and conditions:
- 3.1. ***Upgrades.*** In the event that Contractor, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the State of California, Contractor may make the certified Software upgrade available to County at no additional cost.
- 3.2. ***Certification Requirement.*** Notwithstanding any other terms herein, Contractor shall not provide, and shall not be obligated to provide, any upgrade or other Software update that has not been certified under the applicable provisions of the election laws and regulations of the State of California.
4. **Prohibited Acts.** County is prohibited from, without the prior written permission of Contractor, the following acts:
- 4.1. Transfer or copy the Software onto any other storage device or hardware, or otherwise copy the Software in whole or in part, except for purposes of System backup.
- 4.2. Reverse engineer, disassemble, decompile, decipher, or analyze the Software in whole or in part.
- 4.3. Alter or modify in any way the Software, parts of the Software, or any derivative works of the Software.
- 4.4. 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.
5. **Return of Software.** Upon termination or expiration of this agreement, County shall return to Contractor within thirty (30) days of termination or expiration date all Software in its possession or control, or remove and destroy all Software from any electronic media, and certify in writing to Contractor that Software has been destroyed.
6. **Warranties.** The following warranties shall apply:

- 6.1. **Software Warranty.** Contractor warrants that the Software will function substantially in accordance with the specification during the term of this agreement. If County believes that the Software is not functioning substantially in accordance with the specifications, County shall provide Contractor with written notice of the material failure within thirty (30) days of discovering the material failure, provided that County can reproduce the material failure to Contractor. The foregoing warranty shall be void in the event of the Software having been modified by any party other than Contractor or having been used by County for purposes other than those for which the Software was designed by Contractor. If Contractor establishes that the reported material failure is not covered by the foregoing warranty, County shall be responsible for the costs of Contractor's investigative and remedial work at Contractor's then current rates.
- 6.2. **Hardware Warranty.** If any of Contractor's hardware components fail to operate in conformity with its specifications during the warranty period, Contractor shall provide a replacement for the component or, at Contractor's sole option, shall repair the hardware component, so long as the hardware is operated with its designated Software and with third-party products approved by Contractor for use with Contractor's hardware. All costs associated with repair or replacement of Contractor's hardware due to failure will be paid by Contractor. The following conditions apply to Contractor's hardware warranty:
- 6.2.1. Dominion shall perform one (1) on-site preventative maintenance inspection ("PM") per year on Dominion Hardware during the term of this agreement, at a time mutually agreed to by the Parties. This on-site PM is expected to be scheduled at least ninety (90) days prior to requested test date. Dominion 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 service will be available at Dominion's then current time and material rates. There are no additional charges for parts covered by this warranty.
- 6.2.2. Replacement of consumable items including, but not limited to, batteries, paper rolls, ribbons, seals, smart cards, and removable memory devices are not considered hardware and are not covered by this agreement. Replacement consumables may be available from Contractor at Contractor's time and material rates current at time of request.
- 6.2.3 The following conditions will nullify any and all hardware warranties: hardware damaged by accident, disaster, theft, vandalism, neglect, abuse, or any improper usage; hardware modified by any person other than those authorized in writing by Contractor; and any hardware from which the serial numbers have been removed, defaced or changed.
- 6.3. **Third-Party Products.** The warranties herein do not apply to any third-party products. However, to the extent permitted by the manufacturers of third-party products, Contractor shall pass through to County all warranties such

manufacturers make to Contractor regarding the operation of such third-party products.

- 6.4. ***No Other Warranties.*** Contractor disclaims all other representations and warranties, whether written, oral, expressed, 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.
- 6.5 ***No Copyright Warranties.*** Contractor disclaims all other representations and warranties, whether written, oral, expressed, 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.
- 6.6 ***Patent and Copyright Indemnity.*** Notwithstanding anything to the contrary in this agreement, this section 6.6 applies to the terms and conditions of this agreement. In the event any ambiguity, inconsistency, or conflict exists or arises between the provisions of this section 6.6 and the terms and conditions of this agreement, the terms and conditions of this section 6.6 shall govern. Contractor shall not, with actual knowledge or with inquiry knowledge or notice, knowingly provide County with any product or design that violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. If County promptly notifies Contractor in writing of any third party claim against County that any software or other item provided to County by Contractor infringes any patent, copyright, trade secret or other intellectual property right of any third party, Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments or decrees arising from any product or design provided by Contractor to County that violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. Contractor shall also, at Contractor's own expense, defend County, its elected officials, officer, employees, agents, and volunteers, against any claim, suit, action or proceeding brought against County, its elected officials, officer, employees, agents, and volunteers, arising from allegation, claim, or assertion, any product or design provided by Contractor to County violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. Contractor shall not indemnify County, however, to the extent the alleged infringement is caused by (1) County's modification of the software or item, (2) use of the software or item other than in accordance with the documentation or this agreement, (3) County's failure to use acceptable non-infringing corrections or enhancements made available by Contractor, or (4) information, specifications or materials provided by County or any third party. If any software or other item is held to be infringing, Contractor shall at its expense and option: (a) procure the right for County to continue using it; or (b) replace or modify it so that it becomes non-infringing while giving

equivalent performance. If Contractor is initially unable to perform either option (a) or (b), for a period not to exceed 180 days, Contractor may require County to stop using the potentially infringing System or portion thereof, until Contractor can perform either option (a) or (b), providing however Contractor supplies County with an alternate means by which County may obtain equivalent performance.