

**AGREEMENT # 632-M1211**

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**THE COUNTY OF EL DORADO**  
**and**  
**COUNTY OF MONTEREY**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into by and between the County of El Dorado (hereinafter referred to as “El Dorado County”) and County of Monterey (hereinafter referred to as “Recipient”), a Cal E-Promise Consortium (hereinafter referred to as “Consortium”) member.

WHEREAS Counties of Butte, Contra Costa, El Dorado, Fresno, Lassen, Marin, Nevada, Sacramento, San Joaquin, San Luis Obispo, San Mateo, Monterey, and Solano have formed a Cal E-Promise Consortium with the goal of increasing uniformed and overseas voter participation base and gathering and providing comprehensive data detailing uniformed and overseas voter activities and

WHEREAS the El Dorado County has, on behalf of the Consortium, applied for and was awarded the Electronic Absentee Systems for Elections grant from the Federal Voting Assistance Program (FVAP) and represented by The Defense Human Resources Activity (DHRA) in the amount of \$1,831,665.00 and

WHEREAS the grant funds are to be used in support of the acquisition and implementation of a web-based electronic ballot delivery system for the military and overseas citizens and

WHEREAS El Dorado County has been designated as lead in administering the grant and as such may incur administrative costs not exceeding 2% of the grant amount to administer funds to the participating Consortium members and

WHEREAS Democracy Live, in partnership with Microsoft Corporation, has been selected as the sole vendor to develop and deploy a comprehensive set of Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voter services for California.

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

**ARTICLE I. DEFINITIONS**

“Election” is defined as

- a) a general, special, primary, or runoff election
- b) a primary election held for the selection of delegates to a national nominating convention of political party; and
- c) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President

A federal election is defined as the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

## **ARTICLE II. SCOPE OF SERVICES**

The purpose of this MOU is to specify the responsibilities of El Dorado County and the Recipient with respect to the Electronic Absentee Systems for Elections grant from the Federal Voting Assistance Program (FVAP).

### **Section 2.01 El Dorado County Responsibilities**

1. El Dorado County shall compile and submit, on a timely basis, the following reports as outlined in the grant documents:
  - (a) Data collection point reports
  - (b) Final performance reports
  - (c) Financial reports
2. El Dorado County shall submit requests for grant funds through the Wide Area Work Flow system on a monthly basis.
3. El Dorado County shall notify the Grants Officer of any developments that would have a significant impact on the award-supported activities, as well as any problems, delays, or adverse conditions, which would materially impair the ability to meet the objectives of the award.
4. El Dorado County shall perform any other administrative or reporting duties as required by the grant, attached hereto as Exhibit B, and serve as a point of contact for FVAP.
5. El Dorado County shall abide by requirements contained in the grant and the MOU.

### **Section 2.02 Recipient Responsibilities**

1. Recipient shall provide information required for reporting purposes to El Dorado County as follows:
  - (a) Data collection points  
Recipient shall prepare data collection point reports in accordance with FVAS reporting requirements, as detailed in Exhibit B. Reports are due no later than 35 days after each election during the grant's term and should be emailed to [linda.webster@edcgov.us](mailto:linda.webster@edcgov.us) or successor.
  - (b) Special reporting requirements  
Recipient shall immediately notify El Dorado County Registrar of Voters of any development that could have a significant impact on the award-supported

activities. Also, notification shall be given to El Dorado County Registrar of Voters in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award.

- (c) Any other information needed for meeting the grant reporting requirements as requested by El Dorado County Registrar of Voters.
2. Recipient agrees to maintain materials and supplies obtained under this grant at its sole expense. In addition, Recipient agrees to Audit Requirements of the property which may include, but are not limited to, on-site visits by El Dorado County or federal staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. Recipient agrees to use all property for its intended purposes and agrees not to transfer, rent, sell, lease, alienate, donate, mortgage, encumber or otherwise dispose of the listed property without prior written consent of the El Dorado County Registrar of Voters. Recipient agrees to administer a system to protect, preserve, use, maintain, and dispose of the property listed in accordance with federal guidelines 32 CFR 33.32 (equipment) and 32 CFR 33.33 (supplies).
  3. Recipient agrees to use Democracy Live as a sole-source vendor for providing a web-based electronic ballot delivery system for military and overseas citizens identified in the grant. If Recipient selects a different vendor to perform these services, services rendered by that vendor will not be eligible for grant funding. Vendors that will provide products for outreach and public awareness activities can be selected in accordance with federal law and the FVAP grant requirements.
  4. Recipient agrees to be bound by the agreement and all amendments with Democracy Live signed by El Dorado County on behalf of the Recipient, attached hereto as Exhibit C.
  5. Recipient agrees to El Dorado County being reimbursed from the grant funds for administrative costs incurred during the administration of the grant in the amount not to exceed 2% of the total grant.
  6. Recipient acknowledges that this MOU is supported by funds from the grant issued by FVAP and represented by DHRA. If grant funds become unavailable as a result of action by Congress, DHRA, or the Office of Management and Budgeting, all obligations on the part of El Dorado County shall terminate.

### Section 2.03 Joint Responsibilities

Both El Dorado County and Recipient agree to the terms and conditions listed below and to the general terms and conditions of the FVAP Grant, which is attached hereto as Exhibit B and incorporated by reference herein.

1. **Federal Requirements.** Federal statutes and regulations take precedence over all terms and conditions of this Grant.
2. **Administration and Cost Principles.** Applicable to Grants and Cooperative Agreements, and incorporated herein by reference, are the requirements of the appropriate Office of Management and Budget (OMB) Circulars<sup>1</sup>: “appropriate” is determined by the organizational nature of the Recipient.
  - (a) OMB A-102 **“Administration of Grants and Cooperative Agreements with State and Local Governments”** (October 7, 1994) (further amended August 29, 1997);
  - (b) 2 CFR Part 225 **“Cost Principles for State, Local and Indian Tribal Governments”** (OMB A-87) (effective August 31, 2005); and
  - (c) OMB A-133 **“Audits of States, Local Governments, and Non-Profit Organizations”** (includes revisions published in the Federal Register June 27, 2003 and June 26, 2007)
3. **DoD Grant and Agreement Regulations (DOD 3210.6-R)2.** These regulations, specifically 32 CFR Part 33, implements OMB Circular A-110 and establishes the uniform administrative requirements for Grants, Agreements and subawards awarded to State and Local Governments.
4. **Officials not to benefit.** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Grant, or to any benefit arising from it, in accordance with 41 U.S.C. §22.

### ARTICLE III. FISCAL PROVISIONS

#### Section 3.01 Amount Available to Recipient

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

#### Section 3.02 Payment

Democracy Live shall invoice El Dorado County for Recipient’s one-time set-up fee following receipt of the respective Notice to Proceed and approval of system deployment by the Recipient. Approval of system deployment shall be evidenced by an email or letter from the Recipient to El Dorado County acknowledging the LiveBallot system has been successfully installed. El Dorado County shall pay the Democracy Live invoice within 30 days of receipt and subsequently request

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<sup>1</sup> OMB Circulars can be found at: [https://www.whitehouse.gov/omb/grants\\_circulars](https://www.whitehouse.gov/omb/grants_circulars)

<sup>2</sup> The DoD Grant and Agreement Regulations (DoD 3210.6-R) are published at: <http://www.dtic.mil/whs/directives/corres/html/321006r.htm>

reimbursement from DHRA. Set-up fee for Recipients shall not exceed the amount specified in Exhibit A.

In addition to the one-time set-up fee, Democracy Live will invoice El Dorado County annually for the Recipient's Annual Subscription Fee for calendar years 2012 through 2016. The annual subscription fee for Recipient will not exceed the amounts specified in Exhibit A. Written approval of these annual payments shall be required in writing by the Recipient prior to El Dorado County paying Democracy Live.

Invoices for outreach and public awareness activities shall be paid by the Recipient. Upon payment of these invoices, the Recipient shall submit a claim for reimbursement to El Dorado County. The claim shall include a copy of the invoice and proof of payment, such as a copy of the check or credit card payment. Claims for reimbursement received by the 15<sup>th</sup> of each month shall be submitted to DHRA by the end of the month. El Dorado County shall submit a request for grant funds to DHRA on a monthly basis. El Dorado County will issue reimbursements to the Recipient within 30 days of receipt of grant funds.

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

#### **ARTICLE IV. TERM**

This MOU will become effective upon execution by both parties and will expire on October 30, 2016, unless terminated earlier pursuant to the provisions of Article V herein.

#### **ARTICLE V. GENERAL PROVISIONS**

##### **Section 5.01 Changes to MOU**

This MOU 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 officials of the parties hereto.

##### **Section 5.02 Default, Termination and Cancellation**

1. **Default:** Upon the concurrence of any default of the provisions of this MOU, 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 (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable MOU provision and shall demand that the party in default perform the provisions of this MOU within the applicable period of time. No such notice shall be deemed a termination of this MOU unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

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

#### **Article VI. NOTICE TO PARTIES**

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

All notices to El Dorado County in regard to grant reporting requirements (data collection points, special reporting requirements) shall be emailed to [linda.webster@edcgov.us](mailto:linda.webster@edcgov.us) or successor.

All other notices related to this grant shall be addressed as follows:

COUNTY OF EL DORADO  
AUDITOR-CONTROLLER'S OFFICE  
360 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: JOE HARN

or to such other location as El Dorado County directs.

Notices to Recipient shall be addressed as follows:  
LINDA TULETT, MONTEREY COUNTY REGISTRAR OF VOTERS  
1370 B SOUTH MAIN ST.  
P. O. BOX 4400  
SALINAS, CA 93912

or to such other location as Recipient directs.

**Article VII. INDEMNITY**

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

**Article VIII. INSURANCE**

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

**Article IX. ADMINISTRATOR**

The El Dorado County officer or employee with responsibility for administering this MOU is Joe Harn, Auditor-Controller, or successor.

**Article X. AUTHORIZED SIGNATURES**

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

**Article XI. PARTIAL INVALIDITY**

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

**Article XII. VENUE**

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

**Article XIV. ENTIRE AGREEMENT**

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

REQUESTING MOU ADMINISTRATOR CONCURRENCE:

By: \_\_\_\_\_  
Joe Harn  
Auditor-Controller

Dated: \_\_\_\_\_

REQUESTING GRANT RECIPIENT CONCURRENCE:

By: \_\_\_\_\_  
William Schultz  
Registrar of Voters

Dated: \_\_\_\_\_

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

**-- COUNTY OF EL DORADO --**

By: \_\_\_\_\_  
William Schultz  
Registrar of Voters

**-- COUNTY OF MONTEREY --**

By: \_\_\_\_\_  
Linda Tulett  
Monterey County Registrar of Voters

Dated: \_\_\_\_\_



## Reference Tables

### Itemized Budget Subsection (e) - Contractor, Subcontractor Awards

#### **LiveBallot UOCAVA eBalloting System**

(as described in detail in the *Technical Approach and Justification*)

**One Time Fee (to include Licensing and Annual Support) per County through 2016:**

<u>Consortium County</u>	<u>Four (4) Year Licensing Fee*</u>
Butte	\$ 75,000
Contra Costa	200,000
El Dorado	75,000
Fresno	200,000
Lassen	35,000
Marin	75,000
Nevada	75,000
Sacramento	200,000
San Joaquin	150,000
San Luis Obispo	150,000
San Mateo	150,000
<del>Santa Barbara</del> MONTEREY	150,000
Solano	150,000

**Consortium Total:** \$ 1,685,000

\*Includes training and support

**Itemized Budget Subsection (z) - Materials and Supplies**

**Ballot on Demand Systems for Auto-duplication of Voted Ballots**  
(as described in detail in the *Technical Approach and Justification*)

Ballot on Demand		
Consortium County		
Contra Costa	\$9,000	Scanner equipment + software
El Dorado	\$9,000	Scanner equipment + software
Sacramento	\$9,000	Scanner equipment + software
<b>Total:</b>	<b>\$27,000</b>	

<b>OVERALL CONSORTIUM</b>	
<b>TOTAL BUDGET</b>	<b>\$1,795,750</b>

**h) Other Direct Costs:**

Reaching out to nearly 50,000 known UOCAVA voters across 13 California counties and the globe will require an aggressive plan to reach them—both here at home and abroad. Use of traditional print media and newer social and web-based media will be essential. The associated costs are listed below.

<b>Outreach/Public Awareness Budget</b>	
<b>Print Media</b>	
Print Ads- Sample Ballot Filler Pages	\$15,000.00
Direct Mail Piece (Printing and Mail Fulfillment)	\$20,000.00
Tri-Fold Brochure	\$15,500.00
Flyers	\$10,000.00
Posters	\$7,500.00
<b>Print Costs Total:</b>	<b>\$67,500.00</b>
<b>Electronic Media</b>	
Web Banner (Design & Ad Placement)	\$15,500.00
<b>Electronic Costs Total:</b>	<b>\$15,500.00</b>
<b>Branding</b>	
Logo & Branding Development	\$750.00
<b>Branding Costs Total:</b>	<b>\$750.00</b>
<b>ESTIMATED TOTAL</b>	<b>\$83,750.00</b>

# EXHIBIT A

FVAP Grant Modified 12/05/2012 (delete Santa Barbara & add Monterey)  
 Distribution of Outreach Budget

	4 Year Lic.	% of grant		\$ for Sample Ballots	UOCAVA Voters	\$ for Post Cards	Trifold Brochure	Flyers	Posters	Web Banner	Logo & Branding	TOTAL	
<b>Distribution Base:</b>	<b>Registered Voters</b>			<b>UOCAVA Voters</b>		<b>Percent of Grant</b>			<b>Equal Distribution</b>				
<b>Consortium County</b>				<b>\$15,000</b>		<b>\$20,000</b>	<b>\$15,500</b>	<b>\$10,000</b>	<b>\$7,500</b>	<b>\$1,154</b>	<b>\$750</b>	<b>Consortium County</b>	
Butte	75,000	4%	117,419	\$553	347	\$555	\$690	\$445	\$334	\$1,154	\$58	\$3,789	Butte
Contra Costa	200,000	12%	510,737	\$2,407	2,163	\$3,462	\$1,840	\$1,187	\$890	\$1,154	\$58	\$10,998	Contra Costa
El Dorado	75,000	4%	106,031	\$500	202	\$323	\$690	\$445	\$334	\$1,154	\$58	\$3,503	El Dorado
Fresno	200,000	12%	391,607	\$1,846	687	\$1,100	\$1,840	\$1,187	\$890	\$1,154	\$58	\$8,074	Fresno
Lassen	35,000	2%	13,911	\$66	21	\$34	\$322	\$208	\$156	\$1,154	\$58	\$1,996	Lassen
Marin	75,000	4%	147,022	\$693	1,373	\$2,198	\$690	\$445	\$334	\$1,154	\$58	\$5,571	Marin
Nevada	75,000	4%	60,111	\$283	300	\$480	\$690	\$445	\$334	\$1,154	\$58	\$3,444	Nevada
Sacramento	200,000	12%	675,298	\$3,183	1,334	\$2,135	\$1,840	\$1,187	\$890	\$1,154	\$58	\$10,447	Sacramento
San Joaquin	150,000	9%	270,117	\$1,273	850	\$1,360	\$1,380	\$890	\$668	\$1,154	\$58	\$6,783	San Joaquin
San Luis Obispo	150,000	9%	156,784	\$739	476	\$762	\$1,380	\$890	\$668	\$1,154	\$58	\$5,650	San Luis Obispo
San Mateo	150,000	9%	342,230	\$1,613	2,295	\$3,673	\$1,380	\$890	\$668	\$1,154	\$58	\$9,436	San Mateo
Santa Barbara	150,000	9%	194,219	\$915	1,327	\$2,124	\$1,380	\$890	\$668	\$1,154	\$58	\$7,189	Santa Barbara
Solano	150,000	9%	196,776	\$928	1,121	\$1,794	\$1,380	\$890	\$668	\$1,154	\$58	\$6,871	Solano
Monterey	150,000	9%	157,041	\$915	1,327	\$1,920	\$1,380	\$890	\$668	\$1,154	\$58	\$7,189	Monterey
	1,685,000	100%	3,145,084	\$15,000	12,496	\$20,000	15,500	\$10,000	\$7,500	\$1,154	\$58	\$83,750	