

**ROUTING FORM – RQN #: -**

**Date: 8/3/2017**

AGREEMENT       AMENDMENT       BOARD REPORT FOR PRE-APPROVAL

Vendor Name: **DOMINION VOTING SYSTEMS, INC.**

Title/Brief Description of Document: **AGREEMENT #1 Lease of Voting Hardware & Services**

Originating Dept.: **ELECTIONS**

Dept. Contact WITH Phone #: **Bella Lesik x 1491**

This Agreement or Amendment requires Board Approval: Yes  No

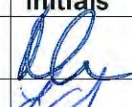



This Agreement requires an MYA: Yes  No

**AGREEMENT TYPE**

<input type="checkbox"/>	RQNSA – Standard Agreement	<input type="checkbox"/>	RQNNS – Non-Standard Agreement
<input type="checkbox"/>	RQNIT – ITD Standard Agreement	<input type="checkbox"/>	RQNIN – ITD Non-Standard Agreement
<input type="checkbox"/>	RQNPB – Pre-Board Standard Agreement	<input checked="" type="checkbox"/>	Non-Standard Board Agreement (Not to be tracked within RQN)
<input checked="" type="checkbox"/>	Insurance & Endorsement Current	<input checked="" type="checkbox"/>	VDR & Non-Resident State Forms Verified

**ROUTING AND APPROVALS\***

*Each Approving Authority is requested to forward the Service Contract to the next Approving Authority in the order listed herein. Thank you.*

	Approving Authority:	Approval Initials	Comments:	Date Reviewed
1st	ITD(for all ITD related contracts)		OK PER ERIC CHATHAM	8-9-17
2nd	County Counsel (required)		NUMEROUS TYPES IN BOARD REPORT.	8/14/17
3rd	Risk Management (non-standard insurance and/or indemnity provisions)			
4th	Auditor-Controller (required)			8-15-17
5th	Contracts/Purchasing (required)			8-16-17
	Return to Originating Department Instructions		Please interoffice to Bella x 1491	

\* In the event that one of the approving authorities has an issue with the document and will not sign, the document shall be returned immediately to the originating department's key contact person identified herein along with a brief written explanation regarding the issue. Once that issue is corrected, the originating department shall restart the routing process again from the beginning by resubmitting the document through the approval process. The original Routing Form should be included for reference.

MYA #: \* \_\_\_\_\_



# Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Order

### Agreement No.: A-13733

Upon motion of Supervisor Parker, seconded by Supervisor Alejo and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Contracts/Purchasing Officer or Contracts Purchasing Supervisor to execute a non-standard Agreement with Dominion Voting Systems, Inc. to install leased voting equipment and provide software, maintenance and support services retroactive to August 1, 2017 through December 31, 2023, for a total amount not to exceed \$1,239,319.70; and
- b. Accepted the non-standard terms and conditions contained in the vendor's contract pursuant to the recommendation of the Registrar of Voters.

PASSED AND ADOPTED this 29th day of August 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Parker and Adams


NOES: None

ABSENT: Supervisor Salinas

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting August 29, 2017.

Dated: September 26, 2017  
File ID: A 17-352

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By  Deputy

**County of Monterey**  
**Contracts/Purchasing Department**  
**JUSTIFICATION OF SOLE SOURCE/SOLE BRAND REQUEST**

Purchase Requisition Number \_\_\_\_\_ Date \_\_\_\_\_

Description of Item: Voting system, licenses and related services

1. Please indicate the following:

Procurement:         X Goods  
                           X Services

(Check One)

- X Sole Source: Item is available from one source only. Item is a one-of-a kind and is not sold through distributors. Manufacturer is exclusive distributor.
- Sole Brand: Various sources can supply the specified model and brand and competitive bids will be solicited for the requested brand only. Meets form, fit and function- nothing else will do.

Note: Sole Source/Sole Brand Requests are not maintained as a standing request. Each request is for a single one-time purchase only.

2. Vendor Selection:

- Preferred Vendor  
 Sole Source

Vendor Name: Dominion Voting Systems, Inc.  
Address: 1201 18<sup>th</sup> St., Ste. 210 City: Denver State: CO  
Phone Number: 720-257-5209 Fax: ( )  
Contact Person: John Poulos Title: President and CEO  
Federal Employer #: \_\_\_\_\_

3. Provide a brief description of the goods/services to be purchased and why this purchase is being proposed under a sole source acquisition.

a) Why were product and/or vendor chosen?

Dominion Systems, Inc. is our current vendor and provides the voting suite used in Monterey County including ballot design, tabulation, and accessible voting systems. In the interest of continuity and efficiency, and in taking into consideration it is the only system fully approved by the Secretary of State (SOS) for use in the State of California as of April 2017. The vendor has agreed to upgrade our tabulation equipment, the 400Cs, which are outdated and in disrepair. The machines require

constant maintenance during tabulation, which slows ballot processing times and increases costs associated with staff time for on-site repairs. The upgrade will only include ballot design and tabulation and includes a contract end date of 2023, at which time multiple new and fully integrated systems will be certified to provide for enough options to conduct an RFP of a full voting system replacement. The SOS has approved integration with the remaining portion of the voting suite, the AVC Edge machines, currently used for accessibility.

- b) What are the unique performance features of the product/brand requested that are not available in any other product/brand? For Services: what unique qualifications, rights, and licenses does the vendor possess to qualify as a sole source/brand request?

The system is the only certified system to provide ballot scanning and image collection. This feature is a requirement of Monterey County as it will create efficiencies in the requisite 1% manual tally and for any recounts that may be requested. Furthermore, ballot image scanning allows for fully transparent and cost-efficient adjudication. In addition, this vendor supplies all other components of our voting suite under contract. It is anticipated that the market will not have ample voting system options until 2022 at which point we will be able to conduct an RFP for a full voting system replacement. The California Secretary of State has approved the blended voting system suite to include our current AVC Edge (assistive voting technology) and the new tabulation equipment.

- c) Why are these specific features/qualifications required?

The scanning features are required to meet transparency guidelines and to realize cost savings in tabulating ballots, conducting required manual tallies and completing adjudication. In addition, the approval of a blended system that is fully integrated facilitates continuity of operations and is approved by the California Secretary of State.

- d) What other products/services have been examined and/or rejected?

Elections explored another system that only gained certification within the last two months. The suite does not offer full image scanning and capture of ballots to meet transparency efforts and efficiencies in the aforementioned processes. There are no other fully certified new systems to provide full integration until a field of voting systems are certified for RFP.

- e) Why are other sources providing like goods or services unacceptable (please give a full meaningful explanation)?

Only one other source is certified in the State, there is not enough competition to warrant a full RFP to include a complete change in voting systems. The other source is unacceptable for the following reasons:

1. The partial replacement is still fully integrated with the remaining portion of the voting equipment at the approval of the California Secretary of State.
2. The cost savings realized with the scanning component of the tabulation equipment can only be realized with the vendor who offers this component.
3. The costs and time associated with bringing a new vendor up to speed on the project is prohibitive to the department.

f) What are the unique performance features REQUIRED (not merely preferred), and how would your requirement be inhibited without this particular item or service?

ImageCast® Adjudication Application is a client and server application used to review and adjudicate ImageCast® 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. Adjudication Application eliminates the need to physically rescan ballots, which can potentially damage the originals and cause chain-of-custody concerns.

g) Estimated Costs: \$189,064.79 annually plus applicable taxes

4. Is there an unusual or compelling urgency associated with this project?

- No  
 X Yes (Please describe)


We must implement the new tabulation component prior to the next countywide election in 2018. The 2018 primary and general elections will be on par with the 2016 election cycle with high voter turnout. In addition, due to the change in election years of our schools and special districts from odd-number year elections to even-numbered year elections, the 2018 general election will see more election contests than previously experienced in Monterey County. The current tabulation equipment is not designed to perform to the voting population and ballot length moving forward in Monterey County.

**THE FOLLOWING TO BE COMPLETED BY THE REQUESTOR**


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I hereby certify that:

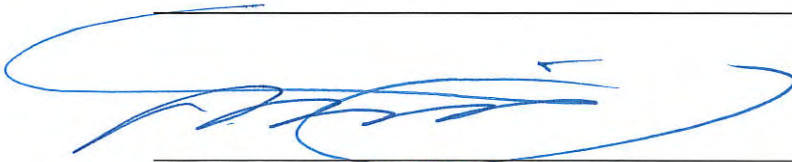
1. I am an approved department representative, and am aware of the County's requirements for competitive bidding, as well as the criteria for justification for sole source/brand purchasing.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment.
3. The information contained herein is complete and accurate.
4. There is justification for sole source/brand purchasing noted above as it meets the County's criteria.
5. A sole source/brand purchase in this case would withstand a possible audit or a vendor's protest.

  
Requestors Signature

7/18/17  
Date

  
Authorized Signature by Department Head

7/18/2017  
Date

  
Contracts/Purchasing Officer

7-24-17  
Date



# Monterey County

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Report

Legistar File Number: A 17-352

August 29, 2017

Introduced: 8/15/2017

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Authorize the Contracts/Purchasing Officer or Contracts Purchasing Supervisor to execute a non-standard Agreement with Dominion Voting Systems, Inc. to install leased voting equipment and provide software, maintenance and support services retroactive to August 1, 2017 through December 31, 2023, for a total amount not to exceed \$1,239,319.70; and
- b. Accept the non-standard terms and conditions contained in the vendor's contract pursuant to the recommendation of the Registrar of Voters.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Authorize the Contracts/Purchasing Officer or Contracts Purchasing Supervisor to execute a non-standard Agreement with Dominion Voting Systems, Inc. to install leased voting equipment and provide software, maintenance and support services retroactive to August 1, 2017 through December 31, 2023, for a total amount not to exceed \$1,239,319.70; and
- b. Accept the non-standard terms and conditions contained in the vendor's contract pursuant to the recommendation of the Registrar of Voters.

### SUMMARY:

This County has an existing Agreement with Dominion Voting Systems, Inc. for hardware, software, maintenance and support services for four 400C tabulation machines. The hardware and software together constitute a voting system, which enables the Elections Department to tabulate votes.

The total estimated cost for this Managed Service Agreement to lease and install a new system for six years is \$1,239,319.70, consisting of hardware, software, maintenance and support services.

The proposed software Agreement is "non-standard" for the County with respect to warranties and indemnification provisions. It is the recommendation of the Registrar of Voters to approve the non-standard terms and conditions to conduct more efficient elections and reduce staffing costs while familiarizing staff with an upgraded voting system and tabulation process prior to a larger election year.

A copy of the Agreement is on file with the Clerk to the Board.

### DISCUSSION:

On June 4, 2010, Dominion Voting Systems acquired Sequoia Voting Systems' (Sequoia) inventory and all intellectual property including Sequoia's precinct and central count optical scanners purchased by the Elections Department with federal Helping America Vote Act 301

and Proposition 41 funds as authorized by your Board in 2004. Central Count 400C Optical Scan ballot tabulators count all of the ballots for each election. Your Board most recently approved an amendment to an existing maintenance agreement with the vendor on June 23, 2015.

Elections would now like to retire this aged system in preparation for the volume of consolidated Statewide and local elections, in order to maintain a timely election night reporting schedule. This current lease Agreement is with the same vendor for similar types of services. The Agreement contains maintenance services and warranty for eight ImageCast Central Scanners, four portable ADA compliant touchscreen electronic voting tablets, required software and licenses, on-site and off-site election support services, installation, testing and staff system training. The voting system will tally all of the paper ballots for each election, including Vote by Mail ballots and provisional ballots, create the results report for publishing, and scan a record of any ballot for human examination to determine the intent of the voter.

OTHER AGENCY INVOLVEMENT:

The Agreement has been reviewed by the Auditor-Controller and Contracts Purchasing regarding terms and fiscal provisions. The Agreement has been reviewed by County Counsel as to form, and by Risk Management as to indemnity and insurance. Risk Management cannot approve due to non-standard terms and conditions regarding insurance and indemnity provisions. County Counsel points out that the agreement contains non-standard provisions regarding limitations on warranty; limitations on the type of and amount of damages available to County in event of a breach of contract; County obligation to indemnify vendor for claims arising out of County data; and non-standard termination provisions.

FINANCING:

Funding for this agreement was incorporated into Elections FY 2017-18 Budget Unit 8064 in the amount of \$206,553.28. There will be no additional cost to the County General Fund associated with this recommendation.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

Plan and develop a sustainable, physical infrastructure that improves the quality of life



for County residents and supports economic development results.

Public Safety:

Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by:



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Izabela Desfk x 1491  
Management Analyst

Approved by:



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Claudio Valenzuela x 1499  
Registrar of Voters

Attachments:

Proposed Dominion Agreement 2017

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT  
BY AND BETWEEN  
DOMINION VOTING SYSTEMS, INC.  
AND MONTEREY COUNTY, CA

This Voting Systems and Managed Services Agreement (the "Agreement"), dated August 1, 2017 (the "Effective Date"), for a voting system, licenses and related services is made by and between Monterey County, CA ("Customer") and Dominion Voting Systems, Inc., a corporation organized under the laws of the State of Delaware ("Dominion"). This Agreement may refer to Dominion and the Customer together as the "Parties," or may refer to Dominion or the Customer individually as a "Party."

WHEREAS, The Customer desires to lease voting system services, licenses and related solutions; and

WHEREAS, Dominion designs, manufactures, sells and/or licenses, and provides ongoing solutions for voting systems;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with the terms and conditions set forth herein, Dominion agrees to license and/or sell and furnish to Customer the System (as defined herein), including the products and services described more fully below:

1. **Composition of Agreement.** Exhibits A, B and C are attached and incorporated herein by reference and form a part of this Agreement (the "Agreement"). This Agreement consists of the general terms and conditions contained in the following sections, together with the listed Exhibits below. The total compensation payable under this Agreement shall be in accordance with the item prices incorporated within the Exhibit A attached hereto.

Exhibit A: Pricing Summary and Deliverables Description  
Exhibit B: Software License Terms and Conditions  
Exhibit C: Administrative Approvals

2. **Definitions.** For the purposes of this Agreement, the following are defined terms:

- 2.1. "Acceptance" and variations thereof, mean the successful completion of the acceptance testing performed on each component of Dominion Hardware and Software, after delivery in accordance with testing criteria developed and updated by Dominion, and mutually agreed upon by Customer, or the occurrence of other events defined in Section 8.
- 2.2. "Dominion Hardware" means the voting system hardware as more specifically described in Exhibit A.
- 2.3. "Dominion Software" means software and firmware programs licensed to the Customer by Dominion and any associated documentation including the following:

- 2.2.1. "Democracy Suite<sup>®</sup> Software," Dominion's election management software associated with the ImageCast<sup>®</sup> voting system as more specifically described in Exhibit A.
    - 2.2.2. "ImageCast<sup>®</sup> Software," the software/firmware designed for use in the ImageCast<sup>®</sup> voting system.
  - 2.4. "Election" means a single election event administered by the Customer including any absentee and early voting activity associated with the election event. Election shall not mean any follow-on events occurring after the initial election event, including without limitations, run-offs or recall replacements elections. Any follow on event shall be considered an Election in and of itself.
  - 2.5. "Election Management System Hardware" or "EMS Hardware" means third party hardware required for operating Dominion Software as used in conjunction with the Dominion Hardware.
  - 2.6. "License" has the meaning set forth in Section 7.
  - 2.7. "System" means the combination of Dominion Software, Dominion Hardware and EMS Hardware.
  - 2.8. "Third Party Software" means software, manufacturer supplied software, or firmware owned by third parties, which Dominion provides to Customer pursuant to sublicenses or end user license agreements with the owners of such Third Party Software. Third Party Software includes, but is not limited to, various operating systems, software drivers, report writing subroutines, and firmware.
- 3. Term of Agreement.** The Term of this Agreement shall begin on the Effective Date and shall continue until 12/31/2023 providing however and subject to possible annual price increases, the Licenses or warranties authorized by this Agreement may extend beyond the Term of this Agreement, according to the terms and conditions of such Licenses or warranty.
- 4. Dominion's Responsibilities.** Dominion shall:
- 4.1. Deliver the System and installation plan services as described in Exhibit A (Pricing Summary and Deliverables Description).
  - 4.2. Appoint a project manager ("Dominion Project Manager") to oversee the general operations of the project. The Dominion Project Manager 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 Dominion Project Manager will provide the Customer with status updates on the progress of tasks as set out in this Agreement and to advise the Customer upon the occurrence of any material change in such plans.

- 4.3. Provide the Customer with a Dominion Software License as described in Exhibit B (Software License Terms and Conditions).
- 4.4. Provide the Customer with one (1) reproducible electronic copy of the user documentation.
- 4.5. Assist in the Acceptance Testing process as required by Section 8 herein.
- 4.6. Provide invoices to Customer upon Acceptance of items listed in Exhibit A and pursuant to the payment schedule described in Section 5.1 herein.
- 4.7. Provide use of the Dominion Democracy Suite 4.14-A.1 with Adjudication 2.4.1.14601 voting system in conjunction with the customer's existing Sequoia WinEDS 3.1.012 AVC Edge voting system as a blended system throughout the duration of the contract. Blended system approved by the Secretary of State on April 17, 2017 as described in Exhibit C.

**5. Customer's Responsibilities.** Customer shall:

- 5.1. Pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice. Payments specified in this Section 5 are exclusive of all excise, sale, use and other sales taxes imposed by any governmental authority, all of which taxes shall be reimbursed by the Customer. If the Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar in a form demonstrating its exempt status.
- 5.2. Appoint a project manager ("Customer Project Manager"), who shall be responsible for review, analysis and acceptance of the System and the coordination of Customer personnel, equipment, vehicles and facilities. The Customer Project Manager shall be empowered to make decisions on behalf of the Customer with respect to the work being performed under this Agreement. The Customer Project Manager shall also have direct access to the Customer's top management at all times for purposes of problem resolution.
- 5.3. Conduct Acceptance testing process as required by Section 8.
- 5.4. For election setup and database creation services as more specifically described in Exhibit A, the Customer shall review and approve or identify issues to all Dominion deliverables related to such service within two (2) business days of receipt by the Customer. In the event the Customer discovers an issue, it shall provide written notice to Dominion immediately following the discovery of any issue and Dominion shall rectify the issue at no additional cost to the Customer. In the event the Customer approves the deliverable and subsequent to such approval, requests that a change be made to the deliverable, Dominion may provide the change at an additional cost based upon Dominion's then current published service rates.

**6. Title and Risk of Loss.**

- 6.1. Title to the System, Excluding All Software. The System shall be provided by Dominion to the Customer as part of the managed services described herein. Title to the System shall not pass to the Customer and shall remain with Dominion.
- 6.2. Software. Software, including firmware, is licensed 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 Dominion, or any third party that owns such software.
- 6.3. Risk of Loss. Dominion shall bear the responsibility for all risk of physical loss or damage to each portion of the System until such portion is Accepted by Customer. Customer shall provide Dominion with a single location for shipment and Dominion shall not be responsible for shipping to more than one location. To retain the benefit of this clause, Customer shall notify Dominion of any 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 Dominion.

**7. Software License and Use.**

- 7.1. License. Upon mutual execution of this Agreement, Dominion grants to the Customer, and the Customer accepts a non-exclusive, non-transferable, license ("License") to use the Dominion Software subject to the terms and conditions of this Agreement and the Software License Terms attached hereto as Exhibit B.
- 7.2. Third Party Software. The System includes Third Party Software, the use of which is subject to the terms and conditions imposed by the owners of such Third Party Software. Customer consents to the terms and conditions of the third party license agreements by Customer's first use of the System.

**8. Acceptance.**

- 8.1. Dominion Software or Dominion Hardware. After delivery of Dominion Software or Dominion Hardware, the Customer will conduct Acceptance testing of such units, which testing will include the Acceptance criteria developed and updated by Dominion and mutually agreed upon by Customer. Such Acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after installation.
- 8.2. System Acceptance Testing. To the extent not tested as part of the testing pursuant to Section 8.1, upon completing the System installation, the Customer will conduct System Acceptance testing, which testing will include the Acceptance test procedures developed and updated by Dominion, and mutually agreed upon by Customer. Such Acceptance testing shall occur at a time mutually agreed upon by the Parties, but no

later than ten (10) business days after installation of the System.

- 8.3 Acceptance/Rejection. After testing, if the Dominion Software, Dominion Hardware, or the System does not conform to user documentation or Dominion provided Acceptance criteria, as mutually agreed upon by Customer, Customer will notify Dominion in writing within five (5) business days. Dominion will, at its own expense, repair or replace the rejected Dominion Software, Dominion Hardware, or System within twenty (20) days after receipt of Customer's notice of deficiency. The foregoing procedure will be repeated until Customer finally accepts or rejects the Dominion Software, Dominion Hardware, or System in writing in its sole discretion.

## 9. Warranties.

- 9.1. Dominion Software Warranty. The Dominion Software warranty is subject to the terms and conditions of Exhibit B - the Software Terms and Conditions.
- 9.2. Third Party Products. The warranties in this Sections 9 do not apply to any third party products. However, to the extent permitted by the manufacturers of third party products, Dominion shall pass through to Customer all warranties such manufacturers make to Dominion regarding the operation of third party products.
- 9.3. Dominion Hardware Warranty. Dominion warrants that when used with the hardware and software configuration purchased through or approved by Dominion, each component of Dominion Hardware will be free of defects that would prevent the Dominion Hardware from operating in conformity in all material respects with its specifications as documented by Dominion. The Dominion Hardware Warranty shall remain in effect during the Term of this Agreement.
- 9.4. Dominion Hardware Warranty Conditions. If any Dominion Hardware component fails to operate in conformity with its specifications during the Term of this Agreement, Dominion shall provide a replacement for the Dominion Hardware component or, at Dominion'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 Dominion for use with the Dominion Hardware. The following conditions apply to the Dominion Hardware warranty:
- 9.4.1. Dominion shall perform one (1) on-site preventative maintenance inspection ("PM") per year on Dominion Hardware during the Agreement Term 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.

9.4.2. The following services are not covered by this Agreement, but may be available at Dominion's current time and material rates:

9.4.2.1. Replacement of consumable items including but not limited to batteries, paper rolls, ribbons, seals, smart cards, and removable memory devices, scanner rollers, disks, etc.;

9.4.2.2. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;

9.4.2.3. Repair or replacement of Dominion Hardware modified by any person other than those authorized in writing by Dominion;

9.4.2.4. Repair or replacement of Dominion Hardware from which the serial numbers have been removed, defaced or changed.

9.5. No Other Warranties. DOMINION DISCLAIMS ALL OTHER 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.

**10. Force Majeure.** Should any circumstances beyond the control of Dominion or Customer occur that delay or render impossible the performance of any obligation due under this Agreement, such obligation will be postponed for the period of any delay resulting from any such circumstances, plus a reasonable period to accommodate adjustment to such extension, or cancelled if performance has been rendered impossible thereby. Such events may include, without limitation, accidents; war, acts of terrorism; natural disasters; labor disputes; acts, laws, rules or regulations of any government or government agency; or other events beyond the control of both Dominion and Customer. Neither Party shall be liable under this Agreement for any loss or damage to the other Party due to such delay or performance failures. Both Parties shall use commercially reasonable efforts to minimize the adverse consequences of any such event. This section shall not excuse the Customer from paying amounts owed for services received pursuant to this Agreement.

**11. Indemnification.** Dominion, at its sole expense, will indemnify and defend the Customer, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) resulting from third party claims, suits or actions arising out of a) any infringement, violation, or misappropriation a third party's patent, copyright, trademark, trade secret or other intellectual property or proprietary rights or b) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to the negligence or misconduct of Dominion.

**12. Limitation of Liability.** 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, 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 the Agreement. Neither party shall be liable to the other party for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, 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.

### **13. Confidential Information.**

- 13.1. For purposes of this Agreement, confidential information ("Confidential Information") is defined as those materials, documents, data, and technical information, specifications, business information, customer information, or other information that the disclosing Party maintains as trade secrets or confidential and which are disclosed to a receiving Party in tangible form conspicuously marked as "confidential," or with words having similar meaning or which are expressly identified in this Section 13.1. Confidential Information includes, without limitation, Dominion Software source code and associated documentation.
- 13.2. Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations.
- 13.3. Subject to the requirements of the California Public Records Act ("CPRA"), neither Party shall disclose the other Party's Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of, an obligation to any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court.
- 13.4. Each Party shall be given the ability to defend the confidentiality of its Confidential Information to the maximum extent allowable under the law prior to disclosure by the other Party of such Confidential Information.
- 13.5. The parties understand and agree that Customer is a public entity subject to the CPRA. Therefore, any covenant of confidentiality given by the Customer in this Agreement shall be governed by provisions of CPRA.
- 13.6. Any specific information that Dominion claims to be confidential must be clearly identified as such by Dominion. To the extent consistent with CPRA, Customer shall maintain the confidentiality of all such information marked by Dominion as confidential.
- 13.7. If a request is made to view such Confidential Information by any federal, state, or local governmental administrative agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court, Customer will notify Dominion of such request, pursuant to the provisions of Section 22, and



the date the information will be released to the requestor unless Dominion obtains a court order enjoining such disclosure. If Dominion fails to obtain such court order enjoining such disclosure, the Customer will release the requested information on the date specified. Such release shall be deemed to have been made with Dominion's consent and shall not be deemed to be a violation of law or this Agreement

**14. Assignment.** Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party, providing however that Dominion may assign the proceeds of this Agreement to a financial institution without prior consent of the Customer but with written notice to Customer.

**15. Termination.**

15.1 For Default. In the event either Party violates any provisions of this Agreement, the non-violating Party may serve written notice upon the violating Party identifying the violation and providing a reasonable cure period. Except as otherwise noted herein, such cure period shall be at least thirty (30) days. In the event the violating Party has not remedied the infraction at the end of the cure period, the non-violating Party may terminate this Agreement, and seek legal remedies for breach of contract as allowed hereunder. If the breach identified in the notice cannot be completely cured within the specified time period, no default shall occur if the Party receiving the notice begins curative action within the specified time period and thereafter proceeds with reasonable diligence to cure the breach as soon as practicable.

15.2 For Non-Appropriation of Funds. The Customer shall not be obligated for payments hereunder for any future fiscal year unless or until the Customer appropriates funds for this Agreement in Customer's budget for that fiscal year. In the event that funds are not appropriated, then this Agreement may be terminated by the Customer as the end of the last fiscal year for which funds were appropriated. Termination of this Agreement by the Customer under this Section 15.2 shall not constitute a breach of this Agreement by the Customer. Customer shall notify Dominion in writing of such non-appropriation at the earliest possible date which, in any event, shall be prior to Dominion performing services during any fiscal year for which an appropriation has not been made. In the event Customer notifies Dominion that sufficient funds have not been appropriated, or if in fact sufficient funds have not been appropriated, to compensate Dominion in accordance with this Agreement, Dominion may suspend Dominion's performance and terminate all Dominion licenses under this Agreement. Suspension of performance and termination of all Dominion licenses by Dominion in accordance with this section 15.2 shall not constitute a breach of this Agreement by Dominion.

**16. Legality and Severability.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, court orders, and applicable governmental agency orders. If any term or provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent

permitted by law. The Parties agree that any court reviewing this Agreement shall reform any illegal or unenforceable provision to carry out the express intent of the parties as set forth herein to the fullest extent permitted by law.

**17. Survival.** The provisions of Sections 2, 9, 10, 11, 12, 13, 16, 18, and 19 shall survive the expiration or termination of this Agreement.

**18. Choice of Law.** Interpretation of this Agreement shall be governed by the laws of the State of California, and the courts of competent jurisdiction located in the State of California will have jurisdiction to hear and determine questions relating to this Agreement.

**19. Waiver.** Any failure of a Party to assert any right under this Agreement shall not constitute a waiver or a termination of that right or any provisions of this Agreement.

**20. Insurance.**

20.1 Dominion hereby agrees at its own cost and expense to procure and maintain, during the entire term of this Agreement and any extended term therefore, insurance in a sum acceptable to Customer and adequate to cover potential liabilities arising in connection with the performance of this Agreement and in any event not less than the minimum limit set forth as follows:

<u>Insurance</u>	<u>Minimum Limit</u>
Umbrella Liability	\$5 million per occurrence
Professional Liability	\$5 million per occurrence \$10 million aggregate
Worker’s Compensation	Statutory
Employers Liability	\$1 million
Commercial General Liability including Contractual Liability, Operations, Products and Completed Operations	
• Personal/Bodily Injury	\$2 million per occurrence \$5 million aggregate
• Property Damage	\$2 million per occurrence \$5 million aggregate
Commercial Automobile Liability (non-owned vehicles)	
• Bodily Injury/Property Damage	\$2 million combined single limit per occurrence

20.2. **Certificates of Insurance.** Complete copies of certificates of insurance for all required coverages including additional insured endorsements, naming the Customer as additional insured, will be provided by Dominion to the Customer.

**21. Independent Contractor.** In all situations and circumstances arising out of the terms and conditions of this Agreement, Dominion is an independent contractor. It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of a partnership, joint venture, or employment with the Customer and Dominion. Dominion is an independent contractor, and it, its employees, agents, subcontractors, and representatives shall not be considered employees, agents or representatives of the Customer. Dominion shall maintain, in all respects, its present control over the means and personnel by which this Agreement is performed. From any amounts due Dominion, there shall be no deduction for federal income tax, FICA payments, state income tax, or for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Dominion.

**22. Notices.** All notices required or permitted to be given hereunder shall be given in writing and shall be deemed to have been given when personally delivered or by nationally recognized overnight carrier or mailed, certified or registered mail, return receipt requested, addressed to the intended recipient as follows:

If to Dominion:

Dominion Voting Systems, Inc.  
Attn: Contracts Administrator  
1201 18<sup>th</sup> St., Ste. 210  
Denver, CO 80202

If to the Customer:

Monterey County Elections  
1441 Schilling Place – North Building  
Salinas, CA 93901

**23. Entire Agreement.** This Agreement and its Exhibits incorporated herein by reference constitute the entire agreement, understanding and representations between Dominion and the Customer, and supersede and replace all prior agreements, written or oral. No modifications or representations to the Agreement shall be valid unless made in writing and signed by duly authorized representatives of both the Customer and Dominion, and incorporated as an amendment hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

**DOMINION VOTING SYSTEMS, INC.**

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Michael Frontera  
\_\_\_\_\_  
PRINTED NAME

Executive Vice President & General Counsel  
\_\_\_\_\_  
TITLE

7/31/2017  
\_\_\_\_\_  
DATE

**MONTEREY COUNTY, CA**

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Michael R. DARR  
\_\_\_\_\_  
PRINTED NAME

Contracts / Purchasing Officer  
\_\_\_\_\_  
TITLE

10-2-17  
\_\_\_\_\_  
DATE

**EXHIBIT A**  
**VOTING SYSTEM AGREEMENT**  
**BY AND BETWEEN DOMINION VOTING SYSTEMS**  
**AND MONTEREY COUNTY, CA**

**PRICING SUMMARY AND DELIVERABLES DESCRIPTION**

1. Pricing/Payment Summary and Descriptions

1.1 **Pricing Summary.** The total annual managed service contract pricing shall equal \$189,064.79/year for a total of six (6) years.

1.2 **Payment Summary.** The following is the invoicing schedule for the annual Customer payments. The Customer shall pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice. All payments shall be made in U.S. Dollars.

1.2.1 Year 1 shall cover the time period from the Agreement Effective Date through 12/31/2018. The Year 1 invoice of \$189,064.79 will be issued immediately after System Acceptance by the Customer. The estimate California tax for each annual payment equals \$ 10,928.70.

1.2.2 Year 2: 1/1/2019 – 12/31/19: \$189,064.79 invoice will be issued on 1/1/2019

1.2.3 Year 3: 1/1/2020 – 12/31/20: \$189,064.79 invoice will be issued on 1/1/2020

1.2.4 Year 4: 1/1/2021 – 12/31/21: \$189,064.79 invoice will be issued on 1/1/2021

1.2.5 Year 5: 1/1/2022 – 12/31/22: \$189,064.79 invoice will be issued on 1/1/2022

1.2.6 Year 6: 1/1/2023 – 12/31/23: \$189,064.79 invoice will be issued on 1/1/2023

2. System Description - Prices of equipment, technical facilities, software, and other related services for voting, vote counting, and result processing. All pricing in U.S. Dollars.

DESCRIPTION	QTY
Central Scanning Solution: Absentee / Vote By Mail Hardware	
ImageCast Central includes: Canon DR-G1130 high speed document scanner ImageCast Central Software Dell Optiplex 7440 All-in-One iButton programmer and key Cables	8
In-Person Voting Solution: Polling Location Hardware	
ImageCast X - BMD Accessible (21 inch) includes: ICX Firmware Tablet ATI accessible unit 5 voter activation cards Printer Cables	4

ICX VA (Voter Activation Station) includes Dell Laptop, ICX Activation software Smart Card Reader/Writer	1
ImageCast X Voting Booth	2
Election Management Hardware	
Democracy Suite EMS Standard Server Configuration Kit - Up to 22 clients	2
EMS Client Workstation Configuration Kit	2
Adjudication Workstation Kit	6
EMS Report Printer - E310dw	1
Software	
Democracy Suite (EMS)	1
ICC Adjudication Application	1
Support Services	
Implementation	
Project Management	25
Training includes:	
System Acceptance Testing Training	1
Democracy Suite Result, Tally and Reporting	4
ICX Operator Training	1
ICC Operator Training	1
ICC Adjudication Training	1
Train The Trainer: Poll worker	1
Election Support	
Election Set Up	7
3 Day Election On-Site Support	2
Annual Licenses	
Democracy Suite (EMS) RTR ONLY	1
ICC Adjudication Application - Level 5 (125K - 250K)	1
ICC Annual Firmware License - G1130	8
ICX - BMD Accessible (21 inch) Annual Firmware License	4
Warranty and Maintenance	
ImageCast Central Kit: Canon DR-G1130	8
ICX - BMD Accessible (21 inch)	4

### 3. Product Description

3.1 **ImageCast® Central Scanner (ICC)**. Dominion shall provide the ImageCast® Central Scanner for use by the Customer. The ImageCast® Central Scanner is commercial off-the-shelf digital scanners configured to work with the ImageCast® Central Software for high speed ballot tabulation. Each ImageCast® Central Scanner includes the following components:

3.1.1 Canon DR-G1130 high speed document scanner

3.1.2 ImageCast® Central Software

- 3.1.3 OptiPlex 7440 All-in-One Series with pre-loaded software
- 3.1.4 iButton Security Key
- 3.1.5 iButton Programmer and iButton Key Switch & Cat5 RJ 45 Cables used with Democracy Suite to transfer security and election information to the iButtons for use with the ICC.
- 3.2 **ImageCast® Central Scanner Software.** The Parties will enter into software licenses for the ImageCast Central Scanner software, substantially in the form of Exhibit B to this Agreement. The Dominion software includes, without limitation:
- 3.2.1 Audit functionality, known as the AuditMark®. For each ballot that is scanned and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below.
- 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®.
- 3.3 **Democracy Suite EMS Software (Express)** consists of the following components:
- 3.3.1 Election File and iButton Creation Customer is authorized to create Election Files and iButtons from Democracy Suite to load on the ICX and ICC units.
- 3.3.2 Results, Tally and Reporting (RTR) Client Application is the application used for the tally, reporting and publishing of election results.
- 3.4 **ImageCast® Adjudication Application** is a client and server application used to review and adjudicate ImageCast® 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. Adjudication Application eliminates the need to physically rescan ballots, which can potentially damage the originals and cause chain-of-custody concerns.
- 3.5 **ImageCast® X Application** is an application used for touchscreen voting on tablets at a voting location, and a Democracy Suite election database. Voting sessions are initiated on the tablet by either a Smart card or the entry of a numeric code based on activation. The ballot is loaded directly onto the standalone device. All voting activity is performed at the tablet, including accessible voting. Accessible voting interfaces connect to the tablet via an adapter that supports most accessible devices, allowing voters to bring their own device. After review and completion of the ballot selections, a paper ballot is created for the voter from a printer in the voting booth, and the ballot is cast after insertion in a ballot box. The paper ballot is the official ballot. The ballots contain a textual representation of the voter's ballot selections for visual review and confirmation, and the ballots are scanned using ImageCast Central Scanner and the results are accumulated in RTR.

4. Implementation and Training Description Dominion shall provide the following training to Customer personnel at no additional cost to Customer.

4.1 **Project Management.** Dominion will provide project management support to oversee the general operations of the project through the Agreement Term. The project manager 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 including a training and delivery schedule. 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.

4.1.1 System Acceptance Testing Training. Included in the Project Management Support, Dominion will provide a minimum total of two (2) days of direct onsite support for EMS Server installation, configuration & testing.

4.2 **System Training.** Dominion will provide the following training as described herein.

4.2.1 System Acceptance Testing Training. Dominion will provide direct onsite training for System Acceptance Testing.

4.2.2 Democracy Suite® EMS System– This training covers the configuration of the Democracy Suite® EMS System along with ICX and ICC election file creation, loading elections, tallying results (including adjudication tally), and generating reports.

4.2.3 ImageCast® X – This training introduces the ImageCast® X system with an emphasis on the operation of the hardware. Students can expect to learn general operations, logic and accuracy testing, Election Day setup and operation, and troubleshooting.

4.2.4 ImageCast Central – This training covers all aspects of ICC operations and tally, including general operations, process, adjudication, and reporting.

4.2.5 Pollworker Train the Trainer – This provides training to the Customer staff on operations of a polling center including the ImageCast® X, voter check-in, system setup, testing and troubleshooting.

4.3 **EMS Ballot Definition.** Dominion shall provide election setup services and support for the election database creation and ballot review for seven (7) elections, including the following components:

4.3.1 Import of data files into the EMS system.

4.3.2 Defining election project parameters and assigning templates.

4.3.3 Assigning tabulators (ICC, tablet).

4.3.4 Defining ballot structures.

4.3.5 Creating proofing ballots.

4.3.6 Creating official ballots.



- 4.4 ***Election Day Support.*** Dominion will provide three (3) days (inclusive of travel) of direct onsite election support for two (2) elections.
- 4.5 ***Ongoing telephone support.*** Telephone support shall be available for Customers during the Term of the Agreement at no additional costs.
- 4.6 ***Other Services, Consumables or Equipment.*** Any other services, consumables or equipment not specifically identified in this Agreement are available for purchase by the Customer at the then current Dominion list price.

**EXHIBIT B**  
VOTING SYSTEM AGREEMENT  
BY AND BETWEEN DOMINION VOTING SYSTEMS  
AND MONTEREY COUNTY, CA

**DOMINION VOTING SYSTEMS  
SOFTWARE LICENSE TERMS AND CONDITIONS**

**1. Definitions.**

- 1.1. “Agreement” shall mean the agreement between the Parties for the purchase and use of the licensed Software.
- 1.2. “Licensee” shall mean the Dominion customer defined in the Agreement.
- 1.3. “Licensor” shall mean Dominion Voting Systems.
- 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® and/or ImageCast® 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 the Licensor’s documentation.
- 1.7. “Term” shall mean the term period defined in the Agreement.

**2. License.**

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

- 3.1. Upgrades. In the event that Licensor, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the Licensee’s State, Licensor may make the certified Software upgrade available to the Licensee at no additional cost.

3.2. Certification Requirement. Notwithstanding any other terms herein, Licensor shall not provide, and shall not be obligated to provide under any upgrade or other software update that has not been certified under the applicable provisions of the election laws and regulations of the Licensee's State.

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

4.1. 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;

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

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

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, 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.

6. **Warranties**. The following warranties shall apply.

6.1. Software Warranty. Licensor warrants that the Software will function substantially in accordance with the Specification during the Term. If the Licensee believes that the Software is not functioning substantially in accordance with the Specifications, the Licensee shall provide Licensor with written notice within thirty (30) days. The foregoing warranty shall be void in the event of the Software (i) having been modified by any party other than Licensor or (ii) having been used by the Licensee for purposes other than those for which the Software was designed by Licensor. If Licensor establishes that the reported issue is not covered by the foregoing warranty, the Licensee shall be responsible for the costs of Licensor's investigative and remedial work at Licensor's then current rates.

6.2. 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, Licensor shall pass through to Licensee all warranties such manufacturers make to Licensor regarding the operation of such Third-Party Products.

6.3. NO OTHER WARRANTIES. DOMINION DISCLAIMS ALL OTHER 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.

## SCHEDULE A

### PRINT COPYRIGHT LICENSE TERMS AND CONDITIONS

#### 1. Definitions.

- 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 right, 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.



**ALEX PADILLA** | SECRETARY OF STATE | STATE OF CALIFORNIA  
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT  
1500 11<sup>th</sup> Street | Sacramento, CA 95814 | Tel 916.653.7244 | Fax 916.653.4620 | www.sos.ca.gov

May 5, 2017

County Clerk/Registrar of Voters (CC/ROV) Memorandum #17045

TO: All County Clerks/Registrars of Voters

FROM: /s/ Susan Lapsley  
Deputy Secretary of State and Counsel

RE: Voting Systems: OVSTA Monthly Update – May 2017

Each month, the Office of Voting Systems Technology Assessment (OVSTA) provides an update on Election Assistance Commission (EAC) and Secretary of State (SOS) activities related to voting technology.

Each update provides information on:

- Voting technology related events that may be of interest.
- Administrative approvals and denials since the prior month's update.
- Administrative approval requests since the prior month's update.
- Voting technology testing and approval at the SOS office.
- Voting system testing and certification at the EAC.
- Defect, failure, and fault reports issued since the prior month's update.
- Ballot printing certification requests since the prior month's update.

### **Recent and Upcoming Events**

Elections Systems and Software, Inc.'s (ES&S) Unity 3.4.1.0 voting system was approved April 14, 2017. The certificate of approval can be viewed at:  
<http://votingsystems.cdn.sos.ca.gov/vendors/ess/unity3410/unity-3410-cert.pdf>

OVSTA continued with certification testing of ES&S's EVS 5.2.1.0 voting system. Testing will continue through the coming months.

OVSTA began examination and review of Runbeck Election Services' Novus 5.0 ballot duplicating system on April 24, 2017.

OVSTA will begin examination and review of Dominion Voting Systems' Democracy Suite 5.2 voting system on May 15, 2017.

The EAC Standards Board Meeting was held in San Antonio, Texas on April 27-28, 2017. Additional information regarding the meeting can be located at:

<https://www.eac.gov/events/2017/04/27/standards-board-meeting/>

The Global Election Technology Summit (The GET Summit) will be held in San Francisco, California on May 17, 2017. Additional information regarding the summit can be located at: <https://www.getsummit.org/#get>

The State Certification Testing of Voting Systems national conference will be held in Austin, Texas on June 19-20, 2017. Additional information regarding the conference can be located at: <http://elections.kennesaw.edu/conference-registration-form.php>

OVSTA is finalizing the documents for the formal rule making process for the proposed Ballot Printing regulations and Electronic Poll Book regulations.

OVSTA is in the process of updating our website. You can visit us at:

<http://www.sos.ca.gov/elections/voting-systems/>

### **Testing and Approval by the State of California**

Application status is now available online at:

[Voting Technology Applications Status | California Secretary of State](#)

System	Type	Applicant	Submission Date	Testing Phase
ABVote 4.01	Remote Accessible Vote by Mail System	Votem	08/26/2016	On Hold
EVS 5.2.1.0	Voting System	Election Systems & Software	9/07/2016	Testing
Prime III	Remote Accessible Vote by Mail System	Prime III	10/31/2016	On Hold
Democracy Suite 5.2	Voting System	Dominion Voting Systems	12/18/2016	Testing
SecureSelect 1.0	Remote Accessible Vote by Mail System	Democracy Live	12/19/2016	Pre-Testing
BallotDNA 360 Voting 2.0	Remote Accessible Vote by Mail System	DemTech	01/04/2017	Pre-Testing
Novus 5.0	Ballot Duplicating System	Runbeck	02/23/2017	Testing

### **Administrative Approval Requests**

California Elections Code section 19216 precludes a voting system or part of a voting system that has been approved by the Secretary of State from being changed or modified until the Secretary of State has determined the change “does not impair its accuracy and efficiency. . . .”

- There were no administrative approval requests in April.

Information on submitting an administrative approval request is in “[Requesting Administrative Approval of a Change or Modification to an Approved Voting System.](#)”

### **Administrative Approvals**

- **Monterey County’s application to use the Dominion Democracy Suite 4.14-A.1 with Adjudication 2.4.1.14601 voting system in conjunction with their existing Sequoia WinEDS 3.1.012 AVC Edge voting system was approved April 17, 2017.**

### **Testing and Certification at the EAC**

The EAC provides a [weekly update](#) of voting system testing. As of the last update on May 2, 2017, the current testing and certification status for systems relevant to California is:

**ClearBallot Group ClearVote 1.4.** ClearBallot provided the technical data package to EAC and Pro V&V. Pro V&V and ClearBallot are working on revisions to the test plan based on EAC comments. Related documents can be found on the EAC [website](#).

**Everyone Counts elect Quad Audit 4.4.0.** Everyone Counts requested a suspension of testing on March 16, 2017. They have 90 days (June 14, 2017) to restart testing or this test will be terminated. Related documents can be found on the EAC [website](#).

The EAC’s “[Voting Systems Under Test](#)” and “[Certified Voting Systems](#)” pages provide more specifics on each voting system.

### **Defects, Failures, and Faults**

Defects, failures, and faults (problem reports) of (1) voting system hardware and software and (2) ballot printing manufacturing and finishing are reported to the Secretary of State.

- There were no defect reports reported to OVSTA for the month of April.

### **Ballot Printing Certification Requests & Approvals**

- There were no ballot printing certification requests or approvals for the month of April.

A list of certified ballot printers can be found at:

<http://elections.cdn.sos.ca.gov//pdfs/approved-vendors-2017-01.pdf>

**Ballot on Demand Printing Requests & Approvals**

- Runbeck Election Services has applied for approval of a new Sentio ballot on demand system.

A list of certified ballot on demand systems and jurisdictions can be found at:

<http://votingsystems.cdn.sos.ca.gov/cert-and-approval/ballots/cert-bod-2015.pdf>

**Electronic Poll Book Certification Requests & Approvals**

Application status is now available online at:

[Voting Technology Applications Status | California Secretary of State](#)

System	Type	Applicant	Submission Date	Testing Phase
ExpressPoll EZRoster V3.3.1.0	ePollBook	Election Systems & Software	08/26/2016	Application (Review)
Asked V.3.4	ePollBook	Robis	01/05/2017	Application (Review)
PollPad2 CA	ePollBook	KNOWiNK	01/30/2017	Application (Review)
EA Tablet System	ePollBook	Election Administrators	01/30/2017	Application (Review)
EViD ePollBook 16.0.40.0	ePollBook	VR Systems	02/01/2017	Application (Review)