

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

July 9, 2019

**FROM: BOB PAGE, Registrar of Voters
Registrar of Voters**

**SUBJECT: CONTRACT WITH DOMINION VOTING SYSTEMS, INC. FOR THE PURCHASE
OF A VOTING SYSTEM AND ELECTION SUPPORT SERVICES**

RECOMMENDATION(S)

Approve **Contract No. 19-453** with Dominion Voting Systems, Inc. for the purchase of a new, State-certified Voting System including software and hardware components, licensing, maintenance, extended warranties, and election support services in an amount not to exceed \$31,939,045, for the 15-year period from July 9, 2019 through July 8, 2034, with one five-year renewal option.

(Presenter: Bob Page, Registrar of Voters, 387-2100)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS AND OBJECTIVES

**Improve County Government Operations.
Operate in a Fiscally-Responsible and Business-Like Manner.**

FINANCIAL IMPACT

Approval of the item will result in the use of additional Discretionary General Funding (Net County Cost) after 2019-20. The total not to exceed cost of the recommended Contract with Dominion Voting Systems, Inc. (Dominion) consists of \$15,880,164 in one-time costs in Year 1 and ongoing costs totaling \$16,058,881 over the term of the Contract, which reflects \$1.1 million annually, subject to a 3% increase per year beginning in Year 8.

Adequate appropriation and revenue for Year 1 have been included in the Registrar of Voters (Department) 2019-20 budget for one-time costs. On June 11, 2019 (Item No. 106), the Board of Supervisors (Board) approved one-time funding in the amount of \$30 million for the purchase and implementation of a new, State-certified voting system. Of that amount, \$18.5 million is included in the Department's 2019-20 budget. The remaining allocation of \$11.5 million was placed in Reserves for additional one-time costs of the voting system replacement project. As needed, budget adjustments to access the reserve funds will be included in future quarterly countywide budget report(s) presented to the Board for approval.

cc: **ROV- Page w/agree**
Contractor c/o ROV w/agree
Purchasing- Rozko
ISD- Hilber
CAO- Duenas
File - w/agree
vh 7/10/19

ITEM 40

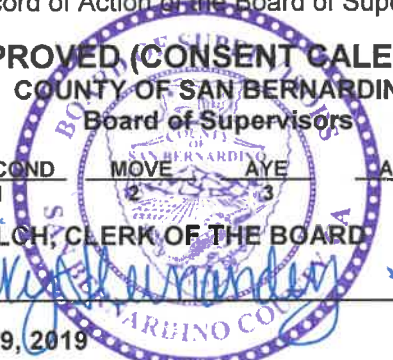
Record of Action of the Board of Supervisors
APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors

MOTION	<u>SECOND</u>	<u>MOVE</u>	<u>AYE</u>	<u>AYE</u>	<u>AYE</u>
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY *Nick...*

DATED: July 09, 2019



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Ongoing costs for Years 2 through 15 will be included in future recommended Department budgets. Ongoing Contract costs consist of annual licensing, extended warranties, and support services for the new voting system, including an allowable inflation increase of costs of no more 3% each year beginning Year 8. Additionally, the Department and the Information Services Department (ISD) will determine the level of ISD support required to assist the Department with maintenance of the Dominion system and develop an ongoing cost estimate for ISD support.

The total Dominion Contract cost constitutes a significant portion of the voting system replacement project, but not the entire project. The approved one-time funding for the project will also be expended on additional implementation costs, including those incurred to purchase new ballot-on-demand printers, mail ballot sorters/scanners, electronic poll books, supporting workstation hardware, and furniture/fixtures for workstations and voting equipment storage and delivery. Execution of the Dominion Contract will also result in additional ongoing costs that will have to be accounted for in future recommended Department budgets, including lease and utility costs for new warehouse space to store and stage the voting equipment.

The County entered into a revenue agreement with the Secretary of State (SOS) (March 19, 2019, Item No. 35) that will reimburse the County up to \$5.9 million in one-time expenditures related to the purchase and implementation of the new voting system. The adopted 2019-20 State budget includes more funding for counties to update voting systems, which could provide an additional \$2.95 million to the County for one-time costs of this voting system replacement project. A potential amendment to the revenue agreement with the SOS would be presented to the Board at a future date. These State funds would augment the \$30 million in one-time Discretionary General Funding allocated to the project.

BACKGROUND INFORMATION

The recommended agreement with Dominion will enable the Department to provide voters with modernized, easy-to-use, and accessible voting solutions, certified by the SOS, which is expected to increase efficiencies in election processes.

The Department's existing voting system consists of hardware and software used to design paper ballots, program accessible touchscreen voting machines, scan paper ballots, tabulate votes from both paper ballots and touchscreen voting machines, and produce election results. The voting system equipment and operating software were purchased in 2003-04 and have been augmented over time with new and refurbished used equipment.

On February 27, 2019, the SOS announced that most of California's voting systems will be decertified effective August 27, 2019, including the Department's current voting system, and that these decertified voting systems cannot be used for any election after February 27, 2020. Two complete voting systems that were tested and certified to meet the California Voting System Standards established in 2014 are available to counties needing to replace their voting systems by February 27, 2020. These two certified voting systems are compatible with the models of voting at polling places, by mail ballot, at early vote sites, and at vote centers. The SOS provided counties the opportunity to request approval to continue using an existing decertified system,

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recognizing that circumstances may hinder a county from implementing a new voting system by February 27, 2020.

On March 19, 2019 (Item No. 35), the Board authorized the Department to initiate a formal competitive procurement for a replacement voting system, approved a \$5.9-million revenue agreement with the State to reimburse the County for a portion of the cost to replace the County's voting system, and authorized the Department to submit a request to the SOS for conditional approval to continue using the existing voting system through December 31, 2020.

Approval of the recommended Contract with Dominion will enable the Department to purchase and install the certified Democracy Suites 5.2 voting system. This procurement includes software and hardware required to produce paper ballots, provide accessible voting options for voters at polling places, and scan and tabulate voted ballots. Also included is vendor support for implementation, training for staff and poll workers, and outreach to voters.

After the Contract is approved, the Department will develop an implementation schedule with Dominion that strives to meet the SOS' deadline. The Department's success is dependent on the Department securing additional space to store and stage the equipment for use in an election and completing procurements for additional equipment that is compatible with Dominion's certified hardware and software. Should the Department be unable to complete all of these additional tasks to meet the SOS' deadline, the Contract authorizes the Registrar of Voters to modify the implementation schedule with Dominion.

The SOS has not yet approved the County's extension request. The Department will advise the SOS about the achievement of a major milestone accomplished through approval of this Contract and the outstanding tasks still to be completed, including:

- Securing additional warehouse space to store and stage the voting equipment
- Completing procurements for new ballot-on-demand printers, mail ballot sorters/scanners, and electronic poll books

Separate contracts for the lease and additional procurements will be presented to the Board at future dates.

PROCUREMENT

On March 19, 2019, the Board approved the use of a formal, competitive Invitation to Negotiate (ITN) procurement process to select and purchase a State-certified replacement voting system. On March 28, 2019, the Department issued ITN No. ROV119-ROV3324 in conjunction with the Purchasing Agent. The Department received proposals from both known vendors with State-certified systems by the submittal deadline as follows:

Vendor	One-time Costs (Initial Purchase)	Ongoing Costs (Annual)
Dominion Voting Systems, Inc.	\$9,575,829	\$814,670
Hart InterCivic, Inc.	\$10,792,279	\$1,126,598

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An evaluation team facilitated by the Purchasing Department, including staff from the Department and the Information Services Department evaluated the proposals based on qualifications and experience, technical review, cost, references, and system demonstration. The evaluation committee recommended Dominion for a contract based on the overall best value to the County. Hart InterCivic, Inc. (Hart) was notified of the recommended award to Dominion by e-mail on May 23, 2019, and did not appeal the recommended award.

The Department and Purchasing negotiated a contract with Dominion that resulted in a higher initial purchase cost than Dominion's cost proposal amount of \$9,575,829. During the evaluation process, the committee reviewed the cost of Dominion and Hart equipment with similar functionality. Once the committee recommended award to Dominion, the Department requested the purchase of an additional type of proposed equipment and increased quantities of evaluated equipment to better meet the Department's needs. The Department recommends the purchase of eight Dominion high speed ballot scanners; Hart did not offer a comparable scanner. The recommended Contract also increases the not to exceed amount of system servers, polling place ballot scanners, and workstations for processing ballots, as well as adds costs for delivery, taxes and a contingency.

The recommended Contract includes a non-standard provision that limits Dominion's liability, in the aggregate, to the total dollar amount of the Contract excluding Dominion's indemnification obligations. The County standard contract terms do not include a limitation of liability. This liability cap provision is commonly requested by software vendors.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Chief Assistant County Counsel, 387-4270) on June 17, 2019; Purchasing (Laurie Rozko, Director, 387-2074) on June 17, 2019; Information Services (Jennifer Hilber, Chief Information Officer, 387-5501) on June 18, 2019; Finance (Elias Duenas, Administrative Analyst, 387-4052) on June 24, 2019; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on June 25, 2019.



Contract Number
19-453

SAP Number

Registrar of Voters

Department Contract Representative	<u>Bob Page, Registrar of Voters</u>
Telephone Number	<u>909-387-2100</u>
Contractor	<u>Dominion Voting Systems, Inc.</u>
Contractor Representative	_____
Telephone Number	_____
Contract Term	<u>7/9/2019-7/8/2034</u>
Original Contract Amount	<u>\$31,939,045</u>
Amendment Amount	_____
Total Contract Amount	<u>\$31,939,045</u>
Cost Center	<u>6800001000</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (County) desires a cost-effective modern voting system providing for transparency and security to be used in any voting model afforded in California law. This includes, but is not limited to, all-mail ballots, traditional polling place, or voting centers; and

WHEREAS, the County conducted a competitive process to find Dominion Voting Systems, Inc. (Contractor) to provide the Services as defined in the Scope of Work (Attachment C) (Services), and

WHEREAS, the County finds Contractor qualified to provide a Voting System, as defined herein; and

WHEREAS, the County desires that such Services be provided by Contractor and Contractor agrees to perform these Services as set forth below.

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

A.1. Acceptance: Any variations thereof, means the successful completion by the County of the acceptance testing performed on each component of Dominion Hardware and Software, after delivery in accordance with testing criteria developed and agreed to by the parties, or the occurrence of other events defined in Section E.

A.2. Board: The San Bernardino County Board of Supervisors.

- A.3. Contract: The Contract between the County and the Contractor resulting from the award issued pursuant to the Invitation to Negotiate (ITN).
- A.4. Contractor: Dominion Voting Systems, Inc.
- A.5. Dominion Hardware: The ImageCast® system hardware as more specifically described in Attachment A.
- A.6. Dominion Software: means software and firmware programs licensed to the County by the Contractor and any associated documentation as more specifically described in Attachment A.
- A.7. Election: A single election event administered by the County 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.
- A.8. Election Management System: A combination of software components that manage the County's voter registration, districts, contests, candidates and other related information.
- A.9. Election Management System Hardware or EMS Hardware: Third party hardware required for operating Dominion Software as used in conjunction with the Dominion Hardware.
- A.10. Project: means the initial implementation of the Voting System, including delivering, installing, testing, and accepting of the hardware and software, as well as the Contractor provided training on how to use the new system and election support.
- A.11. Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing Services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.
- A.12. Secretary of State (SOS): the State of California Agency statutorily empowered to oversee all federal and state elections within California and which tests and certifies all voting equipment used in the state.
- A.13. System: The combination of Dominion Software, Dominion Hardware and EMS Hardware.
- A.14. Third Party Software: Manufacturer supplied software, or firmware owned by third parties, which Contractor provides to County 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.
- A.15. Voting System: A system that facilitates the processes of election setup; casting, recording, and tabulating votes using electromechanical or electronic devices; and includes the procedures of casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.

B. CONTRACTOR RESPONSIBILITIES

- B.1. Deliver the System and Services as described below and in Attachment A - Pricing and Payment.
 - B.1.1. All Dominion Hardware and Software required for the November 2019 Election must be delivered no later than August 29, 2019.
 - B.1.2. The remaining Dominion Hardware and Software identified in the Project Plan, Section I.1., must be delivered by November 29, 2019.
 - B.1.3. Ancillary and/or Accessories for the Dominion Hardware and Software must be delivered by December 31, 2019.

- B.1.4.** The County's Representative, the Registrar of Voters, is authorized to agree to modifications to the delivery schedule pursuant to the deliverables/implementation timelines established in the Project Plan, section I.1.
- B.2.** Provide the County with a Dominion Software License as described in Attachment B - Software License Terms and Conditions.
- B.3.** Assign a Dominion project manager ("Dominion Project Manager") to oversee the general operations of the Project. The Dominion Project Manager will be the primary contact for all project needs. The Dominion Project Manager will be responsible for all deliverables and Services including, resource planning and coordination, product delivery, issue resolution and for all administrative matters such as invoices and payments.
- B.4.** Assist in the Acceptance testing process as required by Section F herein.
- B.5.** Provide County with one (1) reproducible electronic copy of the documentation described in Attachment A.
- B.6.** Provide invoices to County pursuant to the payment schedule in Attachment A and the payment terms described in Section J herein.
- B.7.** Provide Services described in Attachment C, Scope of Work.
- B.8.** Contractor will refresh computer hardware (server, workstations, reformatting station and printers) per County's request, one time during the Term of the Contract, see Section D., below, period at no additional cost to the County as set forth in Attachment A.
- B.9.** Should County want to purchase additional equipment i.e. hardware, Contractor will honor the pricing set forth in Attachment A for the Term of the Contract and any extensions.
- B.10.** Contractor will provide five (5) days of training per year, at no additional cost to the County, throughout the Term of the Contract including any extensions.
- B.11.** Contractor will provide onsite and offsite support for the 2020 Presidential Election Preparation and Training as set forth in Attachment A.
- B.12.** Contractor will provide ongoing election support as described in Attachment A.
- B.13.** Contractor will provide offsite phone support at no cost to the County throughout the term of the Contract including any extensions.
- B.14.** Contractor will be responsible for the disposal of the County's existing/old voting system as described in Attachment D. The disposal of said equipment will meet SOS disposal requirements.
- B.15.** Contractor shall deliver the Dominion Hardware and the EMS Hardware to the location specified by the County.

C. GENERAL CONTRACT REQUIREMENTS

C.1. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2. Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original

Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.3. Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.4. Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.5. Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.6. Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C.7. Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8. Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.9. Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to

the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.10. Confidentiality

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

C.11. Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.12. County Representative

The *Registrar of Voters* or his/her designee shall represent the County in all matters pertaining to the Services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.13. Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C.14. Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.15. Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

C.15.1. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

- C.15.2.** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3.** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.16. Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.17. Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.18. Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.19. Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.20. Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.21. Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.22. Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.23. Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

Per California Elections Code section 19006(a) requires the County to use a voting system that the Secretary of State (SOS) has approved for use in California, therefore Contractor's Voting System is required to be fully certified from the SOS.

C.24. Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.25. Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.26. Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.27. Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.28. Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract specifically for the sole use of the County, shall be considered property of the County upon payment for Services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Section IV–Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

C.29. Participation Clause

The County desires that Counties within the State of California, which Counties are purchasing similar volumes under substantially the same terms and conditions in this Agreement, may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

C.30. Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.31. Records

Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.32. Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Any provision of this Contract that may appear to give the County any right to direct the Contractor concerning the details of performing the Services/Scope of Work, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the County concerning the end results of the performance.

C.33. Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

C.34. Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

C.35. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.36. Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

C.36.1. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

C.36.2. Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

C.36.3. Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

C.37. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.38. Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a one-hundred eighty (180) day written notice of termination. Such termination may include all or part of the Services described herein. Upon such termination, payment will be made to the Contractor for Services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue Services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports. However, the County shall pay for any Services or deliverables that have been incurred by the Contractor, prior to the effective date of the termination under this provision.

C.39. Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.40. Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

C.41. Successors and Assigns

This Contract shall be binding upon County and Contractor and their respective successors and assigns.

Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Contractor without the prior written consent and approval of County.

Death or Incapacity: If the Contractor transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any Services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Contractor and any one of them die or become incapacitated and the others continue to render the Services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Contractor herein, and

if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Contractor.

C.42. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.43. Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.44. Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of Services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision “key employees” includes any individuals providing direct service to the County. “Key employees” do not include clerical personnel providing service at the firm’s offices or locations.

C.45. Reserved

C.46. Reserved

C.47. Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C.48. Reserved

D. TERM OF CONTRACT

This Contract is effective as of July 9, 2019 and expires July 8, 2034 but may be terminated earlier in accordance with provisions of this Contract. The Contract term may be extended for one additional five-year period under the same terms and conditions of the original Contract by mutual agreement of the parties.

E. SOFTWARE LICENSE AND USE

E.1. License. Upon mutual execution of this Contract, Contractor grants to the County, and the County accepts a non-exclusive, non-transferable, license (“License”) to use the Dominion Software subject to the terms and conditions of this Contract and the Software License Terms attached hereto as Attachment B.

E.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. County consents to the terms and conditions of the third party license agreements by County’s first use of the System.

F. ACCEPTANCE

F.1. Dominion Software or Dominion Hardware Testing. After delivery of Dominion Software or Dominion Hardware, the County will conduct Acceptance testing of such units, in accordance with the Acceptance criteria developed and updated, from time to time, by Contractor. Such Acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after installation.

F.2. System Acceptance Testing. To the extent not tested as part of the testing pursuant to Subsections F.1, upon completing the installation of the System, the County will conduct system acceptance testing, according to the Acceptance test procedures developed and updated, from

time to time, by Contractor. 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.

- F.3.** Acceptance/Rejection. After testing, if the Dominion Software, Dominion Hardware, or the System does not conform to user documentation or Contractor provided Acceptance criteria, County will notify Contractor in writing within five (5) business days. Contractor will, at its own expense, repair or replace the rejected Dominion Software, Dominion Hardware, or System within thirty (30) days after receipt of County's notice of deficiency. The foregoing procedure will be repeated until County finally accepts or rejects the Dominion Software, Dominion Hardware, or System in writing in its sole discretion.
- F.4.** System Conformance. County will not refuse to grant Acceptance of the System, in whole or in part, solely for the reason that it fails to conform with the specifications, requirements and functions set out in the Contract in a manner that does not affect the performance of the System, in whole or in part, and Contractor shall provide a plan of action to cure such non-conformity with reasonable dispatch.

G. WARRANTIES

- G.1.** Dominion Software Warranty. The Dominion Software warranty is subject to the terms and conditions of Attachment B - the Software License Terms and Conditions.
- G.2.** Third Party Products. The warranties in this Sections G 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 third party products.
- G.3.** Dominion Hardware Warranty Terms. Contractor warrants that when used with the hardware and software configuration purchased through or approved by Contractor, 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 Contractor. The Dominion Hardware Warranty shall remain in effect until one year after Acceptance or through any extended warranty period as set forth in Attachment A.
- G.4.** Dominion Hardware Warranty Services. If any Dominion Hardware component fails to operate in conformity with its specifications during the warranty period as set forth in Attachment A, Contractor shall provide a replacement for the Dominion Hardware component or, at Contractor'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 Contractor for use with the Dominion Hardware. The following conditions apply to the Dominion Hardware warranty:
- G.4.1.** Contractor shall perform one (1) on-site preventative maintenance inspection ("PM") per year on Dominion Hardware during the Term of the Contract 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. Contractor shall perform the annual PM and will replace any and all parts that fail due to normal use during the warranty period as set forth in Attachment A. In the event of a warranty claim outside of the scheduled PM, additional on-site service will be available at Contractor's then current time and material rates. There are no additional charges for parts covered by this warranty.
- G.4.2.** The following Services are not covered by this Contract, but may be available at Contractor's current time and material rates:

- G.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.;
- G.4.2.2. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;
- G.4.2.3. Repair or replacement of Dominion Hardware modified by any person other than those authorized in writing by Dominion;
- G.4.2.4. Repair or replacement of Dominion Hardware from which the serial numbers have been removed, defaced or changed.

G.5. No Other Warranties. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, AND REPRESENTATIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

H. COUNTY RESPONSIBILITIES

- H.1. Assign a County project manager ("County Project Manager"), who shall be responsible for review, analysis and acceptance of the System and the coordination of County personnel, equipment, vehicles and facilities. The County Project Manager shall be empowered to make decisions on behalf of the County with respect to the work being performed under this Contract. The County Project Manager shall also have direct access to the County's top management at all times for purposes of problem resolution.
- H.2. Conduct Acceptance testing process as required by Section F.
- H.3. County shall provide reasonable access and entry into all County property required by the Contractor to perform the Services described in this Contract. All such access and entry shall be provided at County's expense.
- H.4. When applicable, for election setup and database creation Services as described in Attachment A, the County shall review and approve or identify issues to all Contractor deliverables related to such service within two (2) business days of receipt by the County. In the event the County discovers an issue, it shall provide written notice to Contractor immediately following the discovery of any issue and Contractor shall rectify the issue at no additional cost to the County. In the event the County approves the deliverable and subsequent to such approval, request that a change be made to the deliverable, then Contractor may provide the change at an additional cost based upon Contractor's then current published service rates.
- H.5. County may purchase Precinct Scanners (ImageCast Evolution) equipment however, may decline delivery of said equipment based on the certification of the new precinct scanning equipment. The County reserves the right to purchase the new precinct scanning equipment upon certification by the Secretary of State at rate agreed upon by both parties.

I. MUTUAL RESPONSIBILITIES

- I.1. Deliverables/Implementation Timelines (Project Plan) – within 14 days of execution of the Contract, the parties will meet to complete the detailed Project Plan. The parties agree to follow the deliverable/implementation timelines to be established in the Project Plan and as set forth in section B.1., above. The deliverables/implementation timelines may be modified by either party upon mutual agreement and the requesting party must notify the other party in writing within two

(2) business days. The County's Representative, the Registrar of Voters, is authorized to agree to modifications to the Project Plan.

J. FISCAL PROVISIONS

J.1. The maximum amount of payment under this Contract shall not exceed \$31,939,045. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's Services and expenses incurred in the performance hereof, including travel and per diem.

J.2. The Contractor will provide an invoice for the Dominion Hardware and Software based upon the pricing in Attachment A and the quantities agreed upon in Project Plan, Section I.1., for the November 2019 and March 2020 elections within 10-20 days as outlined in the following milestone payments. Sales taxes are estimated and paid by Customer:

J.2.1. 40% upon completion of the initial Project Plan

J.2.2. 40% upon Acceptance of System

J.2.3. 20% upon Certification of March 2020 Primary

Payment terms are net 45 days from receipt of Services and / or invoice, whichever is later.

J.3. The Contract will provide an invoice annually for ongoing costs set forth in Attachment A.

Payment terms are net 45 days from receipt of Services and / or invoice, whichever is later.

J.4. The Contractor will provide an invoice with 10-20 days of providing election Services.

Payment terms are net 45 days from receipt of the Services and/or invoice, whichever is later.

J.5. The not-to-exceed amount in Section J.1 includes additional funds to allow for the purchase of future equipment needs. Should the Project Plan, Section I.1., be modified to increase the quantity of Dominion Hardware and Software the County will purchase, the Contractor will provide an invoice for the additional Dominion Hardware and Software within 10-20 days as outlined in the following milestone payments. Sales taxes are estimated and paid by Customer:

J.5.1. 40% of the cost of the additional Dominion Hardware and Software upon completion of the revised Project Plan

J.5.2. 40% of the cost of the additional Dominion Hardware and Software upon Acceptance of the additional System components

J.5.3. 20% of the cost of the additional Dominion Hardware and Software upon Certification of the first election in which the additional Dominion Hardware and Software is used

Payment terms are net 45 days from receipt of Services and / or invoice, whichever is later.

J.6. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

J.7. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

J.8. Costs for Services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

- J.9.** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for Services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- J.10.** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
- J.11.** Buyback Schedule – Contractor will agree to a five (5) year buyback and/or swap-out options set forth in Attachment A.
- J.12.** Contractor shall not have an increase of ongoing cost over an aggregate of 3% in any given year beginning in year 2026. Contractor shall submit price increases consistent with this limitation in writing a minimum of thirty (30) days prior to the anticipated effective date of the increase. Price increases consistent with this limitation shall be approved in writing by the County's Representative. Price increases are not cumulative; if the Contractor does not request a price increase in any given year, the price increase for subsequent years will remain 3%.

K. INDEMNIFICATION AND INSURANCE REQUIREMENTS

K.1. Indemnification

Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

Except for the indemnification obligations contained in this Contract, Contractor's total aggregate liability for any loss, damage, costs, or expenses under or in connection with this Contract, 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 Contract. 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.

K.2. Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

K.3. Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

K.4. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

K.5. Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

K.6. Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of Services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

K.7. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

K.8. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

K.9. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

K.10. Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

K.11. Insurance Specifications

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

K.11.1. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing Services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

K.11.2. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- K.11.2.1. Premises operations and mobile equipment.
- K.11.2.2. Products and completed operations.
- K.11.2.3. Broad form property damage (including completed operations).
- K.11.2.4. Explosion, collapse and underground hazards.
- K.11.2.5. Personal injury.
- K.11.2.6. Contractual liability.
- K.11.2.7. \$2,000,000 general aggregate limit

K.11.3. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

K.11.4. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

K.11.5. Professional Services Requirements – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

K.11.6. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

L. RIGHT TO MONITOR AND AUDIT

L.1. Right to Monitor

The County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of Contractor in the delivery of Services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by the County. Contractor shall repay to County within thirty (30) days of receipt of

audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

L.2. Records

Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Contract.

All records relating to the Contractor's personnel, Contractors, Subcontractors, Service/Scope of Work and expenses pertaining to this Contract shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to Services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

M. CORRECTION OF PERFORMANCE DEFICIENCIES

- M.1.** In the event that the Contractor becomes aware of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.
- M.2.** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- M.3.** Contractor's Primary Contact and County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee, and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

- M.4.** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - M.4.1.** Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County, but not less than thirty (30) calendar days; and/or
 - M.4.2.** Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - M.4.3.** Withhold funds pending duration of the breach; and/or
 - M.4.4.** Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - M.4.5.** If the breach is not cured within the time specified in M.4.1 herein, terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner

deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

M.5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

N. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino
Registrar of Voters
777 East Rialto Avenue
San Bernardino, CA 92415*

*Dominion Voting Systems, Inc.
1201 18th Street, Suite 210
Denver, CO 80202*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

O. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

IN WITNESS WHEREOF, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

▶ *Curt Hagman*
Curt Hagman, Chairman, Board of Supervisors

Dated: 7/9/19
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Laura H. Welch*
Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino
Deputy



Dominion Voting Systems, Inc.

(Print or type name of corporation, company, contractor, etc.)

By *[Signature]*
(Authorized signature - sign in blue ink)

Name John Poulos
(Print or type name of person signing contract)

Title President & CEO
(Print or Type)

Dated: 6/28/2019

Address 1201 18th Street, Suite 210
Denver, CO 80202

FOR COUNTY USE ONLY

Approved as to Legal Form
▶ *[Signature]*
Penny Alexander-Kelley, Chief Assistant
County Counsel
Date July 2, 2019

Reviewed for Contract Compliance
▶ _____
Date _____

Reviewed/Approved by Department
▶ *[Signature]*
Bob Page, Registrar of Voters
Date 7/12/19

Dominion Voting Systems, Inc. - Price List

Election Management: Ballot Creation & Output Management				One-Time Costs*			Ongoing Costs - License*			Ongoing Costs* - Warranty (optional)		Ongoing Costs-Service & Support*
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	One time Subtotal	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)			Cost of Service & Support (Annual)	
Software : Democracy Suite (complete system) 5.2	1	\$ 130,000.00	\$ 130,000.00	1	\$ 26,000.00	\$ 26,000.00		Included			Included	
Software: Automated Test Deck Generation 5.2	1	\$ 39,000.00	\$ 39,000.00	1	\$ 7,800.00	\$ 7,800.00		Included				
Workstation(s): EMS Workstation	2	\$ 1,700.00	\$ 3,400.00		N/A	\$ -						
Printer(s): EMS Report Printer - LBP6230DW	2	\$ 125.00	\$ 250.00		N/A	\$ -						
EMS Standard Server Kit (R630/WS2012/SS2016)	3	\$ 17,000.00	\$ 51,000.00		N/A	\$ -						
Reformatting Station Kit	1	\$ 1,200.00	\$ 1,200.00		N/A	\$ -						
* Dominion will refresh computer hardware (server, workstations, reformatting station and printers) per county's request, one time during contract period at no additional cost to the county.												
			Sub-Total \$ 224,850.00				Sub-Total \$ 33,800.00					
Accessible Ballot Marking Device				One-Time Costs*			Ongoing Costs - License*			Ongoing Costs* - Warranty (optional)		Ongoing Costs-Service & Support*
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)			Cost of Service & Support (Annual)	
Accessible Ballot Marking Device : ImageCast X BMD 21" Classic KIT 5.2	1,200	\$ 3,175.00	\$ 3,810,000.00	1,200	\$ 150.00	\$ 180,000.00	1st year	\$ 186,000.00			Included	
Accessible Booth: ICX Voting Booth	1,200	\$ 295.00	\$ 354,000.00			\$ -						
ATI Kit - ICS - USB	1,200	\$ 375.00	\$ 450,000.00			\$ -						
Printer(s)	1,200	INCLUDED	\$ -			\$ -						
Smart-UPS C 1500VA ICD 120v 1000W	1,200	\$ 555.00	\$ 666,000.00			\$ -						
Transport Bags: ICX Transport Bag kit	1,200	\$ 125.00	\$ 150,000.00			\$ -						
Removable Storage Devices: USB Flash Drive 8GB 3.0	100	\$ 16.60	\$ 1,660.00			\$ -						
			Sub-Total \$ 5,431,660.00				Sub-Total \$ 180,000.00	Sub-Total \$ 186,000.00				
Precinct Scanning				One-Time Costs*			Ongoing Costs - License*			Ongoing Costs* - Warranty (optional)		Ongoing Costs-Service & Support*
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)			Cost of Service & Support (Annual)	
Precinct Scanner: ImageCast Evolution KIT 5.2	1,440	\$ 8,200.00	\$ 11,808,000.00	1,440	\$ 228.00	\$ 328,320.00	1st Year	\$ 338,400.00			Included	
Security/Authentication Tokens: ICE iButton Technician Key (Yellow)	100	\$ 25.00	\$ 2,500.00			\$ -						
Removable Storage Devices 16GB	2,400	\$ 36.75	\$ 88,200.00			\$ -						
Ballot Boxes	1,200	INCLUDED	\$ -			\$ -						
			Sub-Total \$ 11,898,700.00				Sub-Total \$ 328,320.00	Sub-Total \$ 338,400.00				

Dominion Voting Systems, Inc. - Price List

Central Scanning				One-Time Costs*			Ongoing Costs - License*			Ongoing Costs* - Warranty (optional)		Ongoing Costs-Service & Support*
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)	Cost of Service & Support (Annual)			
Scanners: ImageCast Central Kit (HiPro) 5.2	8	\$ 183,000.00	\$ 1,464,000.00	8	\$ 10,300.00	\$ 82,400.00	1st Year	\$ 68,000.00	Included			
Workstations: Ability to scan 100,000 cards per 8 hr day		Included	\$ -			\$ -						
Software (if needed)		Included	\$ -			\$ -						
Security/Authentication Tokens		Included	\$ -			\$ -						
Sub-Total \$ 1,464,000.00				Sub-Total \$ 82,400.00			Sub-Total \$ 68,000.00					

Central Tabulation				One-Time Costs*			Ongoing Costs - License*			Ongoing Costs* - Warranty (optional)		Ongoing Costs-Service & Support*
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)	Cost of Service & Support (Annual)			
Workstations: EMS Client Workstation Kit	8	\$ 1,700.00	\$ 13,600.00		N/A	\$ -		N/A	Included			
Software (if needed)		included	\$ -			\$ -						
Security/Authentication Tokens		Included	\$ -			\$ -						
Sub-Total \$ 13,600.00				Sub-Total \$ -			Sub-Total \$ -					

Ballot Adjudication				One-Time Costs*			Ongoing Costs - License*			Ongoing Costs* - Warranty (optional)		Ongoing Costs-Service & Support*
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total	# of Units	Ongoing Costs	Ongoing Subtotal	Initial Warranty Period	Cost of Warranty (optional Annual)	Cost of Service & Support (Annual)			
Software: ImageCast Adjudication 5.2	1	\$ 105,000.00	\$ 105,000.00	1	\$ 21,000.00	\$ 21,000.00		Included	Included			
Workstations: EMS Adjudication Workstation Kit	8	\$ 1,700.00	\$ 13,600.00			\$ -						
Security/Authentication Tokens		Included	\$ -			\$ -						
Sub-Total \$ 118,600.00				Sub-Total \$ 21,000.00			Sub-Total \$ -					

Implementation (Project Management & Initial Training)				One-Time Costs*		
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total			
Project implementation (# of days)	45	Included	\$ -			
Sub-Total \$ -						

Outreach				One-Time Costs*		
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total			
Materials:		Included	\$ -			
Support:	10 Days	Included	\$ -			
Sub-Total \$ -						

Dominion Voting Systems, Inc. - Price List

Election Training & Support		One-Time Costs*		Ongoing Costs - License*		
Description (Make/Model/Service and/or Reason)	# of Units	Cost per Unit	Initial Cost Total	# of units	Ongoing Costs	Ongoing Subtotal
Materials:		Included	\$ -			\$ -
			\$ -			\$ -
Onsite 2020 Presidential Election Preparation and Training (30 non-consecutive days ea. Primary and General)	65	\$ 1,500.00	\$ 97,500.00			\$ -
			\$ -			\$ -
Ongoing Election Support - Onsite (# of days) anytime				20	\$ 1,500.00	\$ 30,000.00
*Dominion will provide 5 days of training per year, at no additional cost to the county, through the term of the contract.			\$ -			\$ -
			\$ -			\$ -
			Sub-Total \$ 97,500.00			Sub-Total \$ 30,000.00

Purchase Sub-total	Annual Ongoing Sub-Total	Extended Warranty (optional) Annual Sub-total
\$ 19,248,910.00	\$ 675,520.00	\$ 592,400.00
Discount \$ (7,122,096.70)	Discount \$ (129,104.00)	Discount \$ (118,480.00)
Trade Allowance \$ (196,800.00)		
One-time Purchase \$ 11,930,013.30	Annual Cost \$ 546,416.00	Annual Cost \$ 473,920.00

5 Year buyback Schedule for Precinct Equipment

Dominion will provide a buyback that will be a credit towards equipment and services.

Year 1: 75%, Year 2: 50%, Year 3: 25%, Year 4 25%, Year 5: 25%

5 Year swap-out Options on Precinct Equipment

Dominion' swap out proposal is based on the same numbers as the Buyback. If chosen, Dominion is willing to further negotiate terms.

November 2019 Election, Dominion will provide:

- All Election Management components needed for Ballot creation and Output Management
- 60 - ICX BMD Kits and ancillary components
- 2 - ImageCast Central Kit (HiPro) 5.2
- 2 - Central Tabulation Workstations
- Adjudication Software
- 2 - Adjudication workstations
- 20 - Additional Onsite Election preparation and Training days (above training included in the Project Implementation Plan)

***Costs does not include taxes**

ATTACHMENT B

SOFTWARE LICENSE TERMS AND CONDITIONS

1. Definitions.

- 1.1. "Agreement" shall mean the agreement between the Parties for the use of the licensed Software.
- 1.2. "Licensee" shall mean the Customer defined in the general terms and conditions of this Agreement.
- 1.3. "Licensor" shall mean Dominion Voting Systems, Inc.
- 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 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 user manuals or other applicable documentation provided by Licensor.
- 1.7. "Third-Party Products" means any software or hardware obtained from third-party manufacturers or distributors and provided by Licensor hereunder.

2. License Terms.

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

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

3. **Payment.** In consideration of the grant of the license, the Licensee shall pay the license fees set forth in Exhibit A of this Agreement.
4. **Upgrades and Certification.** During the Term, Licensor may provide upgrades to Licensee under the following terms and conditions.
 - 4.1. **Upgrades.** In the event that Licensor, at its sole discretion, certifies a Software upgrade under the applicable laws and regulations of the State of California, Licensor shall make the certified Software upgrade available to the Licensee at no additional cost.
 - 4.2. **Certification Requirement.** Notwithstanding any other terms of this Agreement, Licensor shall not provide, and shall not be obligated to provide under this Agreement any upgrade, enhancement or other software update that has not been certified under the applicable provisions of the election laws and regulations of the State of California.
5. **Prohibited Acts.** The Licensee shall not, without the prior written permission of Licensor:
 - 5.1. Transfer or copy onto any other storage device or hardware or otherwise copy the Software in whole or in part except for purposes of system backup;
 - 5.2. Reverse engineer, disassemble, decompile, decipher or analyze the Software in whole or in part;
 - 5.3. Alter or modify the Software in any way or prepare any derivative works of the Software or any part of parts of the Software;
 - 5.4. Alter, remove or obstruct any copyright or proprietary notices from the Software, or fail to reproduce the same on any lawful copies of the Software.
6. **Return of Software.** Upon termination or expiration of this Agreement, Licensee shall (i) forthwith return to Licensor all Software in its possession or control, or destroy all such Software from any electronic media, and certify in writing to Licensor that it has been destroyed.
7. **Warranties.** The following warranties will apply to all Software during the Term.
 - 7.1. **Software Warranty Terms.** Licensor warrants that the Software will function substantially in accordance with the Specification during the Term. The Licensor also warrants that the Software shall comply with the State of California certification requirements and election laws (collectively the "Requirements") in effect as of the date the Software is certified by the

State of California. This provision applies to the initially installed Software as well as any subsequent upgrades pursuant to Section 3 herein. However, the Licensor will not be required to make modifications to the Software or System as a result of changes in the Requirements. The foregoing warranty will 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 material failure 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.

- 7.2. Corrections. If the Licensee believes that the Software is not functioning substantially in accordance with the Specifications or Requirements, the Licensee shall provide Licensor with written notice of the material failure within thirty (30) days of discovering the material failure, provided that the Licensee can reproduce the material failure to Licensor. The Licensor shall correct the deficiencies, at no additional cost to the Licensee and incorporate such corrections into the next version certified by the State of California.
- 7.3. 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, Licensor shall pass through to Licensee all warranties such manufacturers make to Licensor regarding the operation of such Third-Party Products.
- 7.4. NO OTHER WARRANTIES. LICENSOR 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.** For the purposes of this Agreement, the following are defined terms:
 - 1.1. "Derivative Works" shall mean any work that is based upon or derived from the Licensor's voting systems' ballots, including without limitation, sample ballots and voting booklets.
 - 1.2. "Voting Systems' Ballots" shall mean any ballot created for use with any voting system owned or licensed by the Licensor.

2. **Print Copyright License and Use.**
 - 2.1. Copyright License Grant. Licensor grants to the Licensee a non-exclusive, non-transferable copyright license to print, reproduce, distribute or otherwise copy the Licensor's Voting Systems' Ballots or any Derivative Works (collectively the "Materials") pursuant to the terms and conditions of this Schedule A.
 - 2.2. Copyright License Use. Other than as expressly set forth herein, (a) Licensor grants no other licenses, expressly or by implication, and (b) Licensor's entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Licensor to Licensee or any third party, (c) the copyright license granted herein cannot be transferred or sublicensed and the Voting Systems' Ballots or Derivative Works cannot be reproduced by any third party without the prior written consent of the Licensor, including without limitation:
 - 2.2.1. any commercial or non-commercial printer
 - 2.2.2. 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.

PHYSICAL EQUIPMENT INVENTORY REPORT**As of May 10, 2019**

		EDGE II	ACW	VVPAT
AVAILABLE -PM		595	701	1483
DEMO		0	0	0
AVAILABLE W/ NEED:				
NEEDS PM		230	0	0
KEEP UNTILS	56		23	0
TOTAL		56		
TOTAL AVAILABLE		881	724	1483
Container 31 Dispose				737
Container 25 Dispose		159	61	
TOTAL EQUIP ACCOUNTED FOR		1040	785	2220
Pallets of Misc. Parts (Cartridges, Power Cords, Read Heads, Motors, Etc.)		3		
400C Ballot Scanners		19		