

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

601



**FROM:** Registrar of Voters

**SUBMITTAL DATE:**

October 26, 2010

**SUBJECT:** Approval of Software License Agreement with Dominion Voting Systems, Inc.

**RECOMMENDED MOTION:** That the Board approve the software license agreement with Dominion Voting Systems, Inc. for use of WinEDS election management system software and authorize the Registrar of Voters to sign the agreement.

**BACKGROUND:** The Registrar of Voters has used Sequoia Voting System's WinEDS software to tabulate election results since 2000. Dominion Voting Systems, Inc. recently acquired Sequoia's assets and intellectual property, including their WinEDS vote tabulating software.

The term of the agreement is through December 31, 2013 and maintains the same terms and fees as the existing agreement.

*Barbara Dunmore*

Barbara Dunmore  
Registrar of Voters

**FINANCIAL  
DATA**

Current F.Y. Total Cost: \$ 35,000  
Current F.Y. Net County Cost: \$ 35,000  
Annual Net County Cost: \$ 35,000

In Current Year Budget: Yes  
Budget Adjustment: No  
For Fiscal Year: FY 2010/11

**SOURCE OF FUNDS:** General Fund

Positions To Be Deleted Per A-30 ☐  
Requires 4/5 Vote ☐

**C.E.O. RECOMMENDATION:**

**APPROVE**

BY: *Stephanie Persi*  
Stephanie Persi

**County Executive Office Signature**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL

BY: *10/26/10*  
MARSHAL L. VICTOR DATE

Dep't Recomm.: ☐ Consent ☒ Policy  
Per Exec. Ofc.: ☐ Consent ☒ Policy

Prev. Agn. Ref.:

District: ALL

Agenda Number:

3.10

717 17<sup>th</sup> St. Suite 310  
Denver, CO 80202  
Tel: (866) 654 - 8683  
Fax: (416) 762 - 8663

## SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is made on the 1<sup>st</sup> day of October, 2010

BETWEEN

DOMINION VOTING SYSTEMS INC., located at 717 17th Street, Suite 310, Denver, CO 80202 ("Dominion")

AND

RIVERSIDE COUNTY REGISTRAR OF VOTERS, located at 2724 Gateway Drive, Riverside, CA 92507 ("Customer").

Dominion Voting Systems Inc ("Dominion") and the Customer (as listed above) hereby enter into this Software License Agreement ("Agreement") as of the date of the last signature set forth below (the "Effective Date"). The Customer and Dominion are sometimes hereinafter referred to collectively as the "Parties" and each individually as a "Party". This Agreement consists of this "Signature Page," the below standard terms and conditions, and Exhibit A, Pricing and Payment Schedule, attached hereto and incorporated herein by this reference:

The parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

**SIGNED** for and on behalf of

**SIGNED** for and on behalf of

**DOMINION VOTING SYSTEMS, INC.**

**RIVERSIDE COUNTY REGISTRAR OF VOTERS, CA**

By: 

By: \_\_\_\_\_

Name: John Aoules

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: October 20, 2010

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

FORM APPROVED COUNTY COUNSEL

BY:  10/26/10  
MARSHAL L. VICTOR DATE

## STANDARD TERMS AND CONDITIONS

### 1. Definitions.

1.1. "Dominion Software" means software and firmware owned by Dominion and licensed by Dominion hereunder, in object code form, including all documentation therefore.

1.2. "Effective Date" has the meaning set forth in the Signature Page.

1.3. "Specifications" means descriptions and data regarding the features, functions and performance of the Dominion Software, as set forth in user manuals or other applicable documentation.

1.4. "Third-Party Products" means any software or hardware obtained from third-party manufacturers or distributors and provided by Dominion hereunder.

2. **Term.** This Agreement is effective as of the Effective Date, unless earlier terminated or extended as provided herein, expires on September 30, 2013. After the first year, Customer may extend the effectiveness of this Agreement each year thereafter by paying the Annual Software License Fee set forth in Exhibit A of the Agreement at least 30 after receiving the renewal Invoice. The period during which this Agreement is in effect is referred to herein as the "Term". The Annual Software License Fee set forth in Exhibit A of the Agreement shall not increase during the Term of this Agreement. On expiration of the Term (a) the licenses granted in this Agreement will automatically terminate, (b) Customer shall cease any further use of the Dominion Software and (c) Dominion may cease performing the maintenance services set forth in this Agreement. Notwithstanding such expiration or termination, Section 4 (Payment) to the extent any payment is due and Section 8 (Confidential Information) will survive any expiration or termination of this Agreement in accordance to their respective terms. The terms of this Agreement that do not survive expiration or termination will nonetheless be effective in determining the Parties' rights and obligations for conduct or events taking place before such expiration or termination.

### 3. License Terms.

3.1. License to Dominion Software. Subject to the terms of this Agreement, Dominion grants Customer a non-exclusive license, without the right to transfer or sublicense, to use, during the Term, for the purpose of preparing for and conducting federal, state or local elections, run-offs, referenda and other similar voting events that take place within the jurisdiction identified on Page 1 of this Agreement. This License includes the types and numbers of copies specified in Exhibit A of the Dominion Software applications identified therein. This License may be exercised by Customer officials, employees and volunteers authorized by Customer to conduct the above-described elections.

3.2. Third-Party Products. Subject to the terms of this Agreement, Dominion agrees to sublicense any software that constitutes or is contained in Third-Party Products, in object code form only, to Customer for use during the Term as part of the System for the purposes described in Section 3.1 of this Agreement. This sublicense is conditioned on Customer's continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which such software is provided.

3.3. No Other Licenses. Other than as expressly set forth in this Agreement, (a) Dominion grants no licenses, expressly or by implication, and (b) Dominion's entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party. Without limiting the foregoing sentence, Customer agrees to use each copy of the firmware and/or software outlined in Exhibit A hereto, with which the copy is supplied, agrees not to use any Dominion Software as a service bureau for elections outside the jurisdiction identified on Page 1 of this Agreement and agrees not to reverse engineer or otherwise attempt to derive the source code of any Dominion Software.

4. **Payment.** Customer shall pay Dominion the amounts specified in Exhibit A at the times specified therein. Customer is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or products or services provided under this Agreement. If Customer is exempt from such taxes or duties, Customer shall provide Dominion with a tax exemption certificate.

5. **Dominion Software Maintenance.** During the Term, Dominion shall maintain the Dominion Software so that it operates in conformity at all times with the warranties set forth in the Agreement. Dominion shall correct any reproducible error affecting the Dominion Software. Suspected error conditions will be investigated and corrected by Dominion personnel at the Dominion office to the extent possible. Repair or replacement under this Agreement will be the exclusive remedy of Customer for defects in the operation of the Dominion Software. If a problem cannot be resolved using remote diagnostics, upon Customer's prior authorization, Dominion will send a specialist to the Customer's premises under the following terms:

5.1 Software Faults. If the problem lies solely with Dominion Software, Dominion is responsible for all expenses associated with the resolution of the problem, provided that Customer has incorporated all error corrections or changes to the Dominion Software within ten days after receiving them for Dominion.

5.2 External Faults. If the problem is due to acts or omissions by Customer or a third party, including by the failure to incorporate all error corrections or changes in a timely manner, Customer is responsible for all fees and expenses at Dominion's then-current consulting service rate. Such problems include those that arise from the failure of Third-Party Products, installation of the Dominion Software on hardware that was not approved by Dominion, or improper use of the Dominion Software or the hardware upon which it was installed.

5.3 Customer Cooperation. As is reasonably necessary for Dominion to provide maintenance and support, Customer shall provide access to its personnel and premises, be responsible for maintaining all necessary computer hardware (other than Warranted Hardware), communications equipment, telephone lines, cabling and modems, and make available paper, disk packs and other similar supplies.

6. **Enhancement and Upgrades.** During the Term, Dominion may provide Enhancements and Upgrades (each as defined below) to Customer under the following terms and conditions.

6.1 Enhancements. Dominion may provide Customer with unsolicited error corrections or changes to the Dominion Software that Dominion determines from time to time are necessary for proper operation of the System ("Enhancements").

6.2 Upgrades. Dominion may release Dominion Software improvements that add to or change the functionality characterizing the Dominion Software as of the Effective Date ("Upgrades"). Upgrades do not include later released versions of the Dominion Software with a higher version number.

6.3 Incorporation. Customer shall incorporate each Enhancement and Upgrade within ten days after receipt from Dominion, unless Dominion consents in writing to a delay in such incorporation. Each Enhancement and Upgrade will be, from and after delivery to Customer, licensed to Customer under this Agreement and treated for all purposes as part of the Dominion Software.

6.4 Certification Requirement. Notwithstanding any term of this Agreement to the contrary, Dominion shall not provide, and shall not be obligated to provide, under this Agreement any Upgrade, Enhancement or other software or firmware update that has not been qualified under applicable federal laws and regulations and certified under any and all the applicable provisions of the election laws and regulations of the Customer's State as identified on Page 1 of this Agreement.

**7. Warranties.** The following warranties will apply to all Dominion Software during the Term.

**7.1. Dominion Software.** Dominion warrants that Dominion Software will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications, so long as such Dominion Software is operated with Dominion Hardware and with Third-Party Products approved by Dominion for use with the Dominion Software.

**7.2. Third-Party Products.** The warranties in this Sections 7 do not apply to any Third-Party Products. However, to the extent permitted by the manufacturers of Third-Party Products, Dominion shall pass through to Customer all warranties such manufacturers make to Dominion regarding the operation of such Third-Party Products.

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

**8. Confidential Information.** Neither Party will use or disclose the other Party's Confidential Information without the other Party's prior written consent. "Confidential Information" means, as to Dominion, the Dominion Software and, as to either Party, any information designated as confidential by the Party when or before it is disclosed. This paragraph does not apply to information (a) after it becomes publicly known through no fault of the receiving Party, (b) already rightfully in the receiving Party's possession when received, (c) developed by the receiving Party without the use of the other Party's Confidential Information or (d) required to be disclosed by law so long as the other Party is given immediate notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure. Each Party acknowledges that its breach of this Section 8 may cause the other Party substantial and irreparable harm for which the other Party would be entitled to equitable relief in addition to any available legal remedies. Each Party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief. County acknowledges that the System represents and embodies certain trade secrets and confidential and proprietary information of Dominion. In the event that a request is made upon the County for disclosure of materials designated by Dominion to be confidential, proprietary or a trade secret, and if Dominion has provided County with prior written notice of such designation, County shall notify Dominion of such request as soon as possible. Upon receipt of notification from the County, Dominion may choose to prevent or limit the disclosure of the information. In this event, Dominion shall seek to prevent or limit the disclosure of the information at its own expense and the County will not disclose such materials unless ordered to do so by a court of competent jurisdiction or as authorized by Dominion in writing.

## **9. Indemnification**

**9.1. Claims.** If notified promptly in writing of any action brought against Customer alleging that the Customer's use of the Dominion Software in compliance with this Agreement infringes a United States patent, copyright or trademark ("Claim"), Dominion will defend the Claim at its expense and pay any costs and damages awarded against the Customer; provided that Dominion has sole control of, and Customer's reasonable cooperation in, the defense or settlement of the Claim.

**9.2. Injunction.** If a Claim results in an injunction against the Customer's use of any component of Dominion Software, or if Dominion reasonably anticipates such an injunction, Dominion will procure for the Customer the right to continue using the component, replace the component, or modify the component to avoid the Claim while retaining substantially the same functionality.

**9.3. Exclusions.** Customer shall be responsible for any expenses or damages arising from a third-party patent, copyright or trademark infringement claim arising from Dominion's compliance with Customer's specific designs or instructions.

Each Party shall indemnify the other Party from third-party claims for injury, death or property damage based on the other Party's alleged gross negligence or willful misconduct.

**10. Limitation of Liability.** Dominion will not be liable for damages arising out of this Agreement unless caused by Dominion's negligence or willful misconduct. Neither Party will be liable under this Agreement for (1) consequential, special, punitive or incidental damages or (2) compensatory damages in excess of the total of all amounts payable under this Agreement during the 12 month period preceding the event or events giving rise to liability.

**11. Force Majeure.** Dominion's obligations hereunder will be suspended so long as its performance is impeded or prevented by causes beyond Dominion's reasonable control, including acts of God, embargoes, acts of war, terrorist attacks, labor disturbances and acts or regulations of governmental entities.

**12. Termination for Cause.** If either Party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching Party, the non-breaching Party may terminate this Agreement as of a termination date specified in that notice or in a subsequent notice delivered within the 30-day period. If the breach cannot be completely cured within the 30-day period, no default will occur if the Party receiving the notice begins curative action within the 30-day period and thereafter proceeds with diligence and in good faith to cure the breach as soon as practicable.

## **13. Miscellaneous.**

**13.1. Assignment.** Neither Party may assign any rights or delegate any obligations under this Agreement without the prior written consent of the other Party; provided that Dominion may subcontract Services upon 30 days' prior written notice to Customer. Any attempted assignment in violation of this Section 13.1 will be null and void.

**13.2. Severability.** If any term of this Agreement is held to be unenforceable, the other terms of this Agreement will be enforced to the fullest extent permitted by law.

**13.3. Governing Law.** This Agreement will be construed under the laws of the Customer's State identified on Page 1 of this Agreement, and the state and federal courts within the Customer's State have non-exclusive jurisdiction for all actions to enforce this Agreement.

**13.4. Waiver.** No waiver or failure by a Party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.

**13.5. Notices.** All notices under this Agreement will be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown below or such other address as may be specified by either Party to the other Party in compliance with this Section 13.6. Notices will be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier or such mailing by U.S. mail.

**13.6. Interpretation.** This Agreement, including all Exhibits, is the complete and final expression of the Parties' agreement regarding its subject matter and supersedes all prior or contemporaneous communications or agreements, written or oral, by the Parties regarding such subject matter. In the event of any conflict between these Terms and Conditions and any provisions set forth in any other part of this Agreement, these Terms and Conditions will prevail. No amendment or supplement to this Agreement is effective unless in writing and signed by both Parties' authorized representatives. The word "include" (or any derivatives) is deemed to be followed in all contexts by the words "without limitation." Headings are included for convenience and will be ignored in interpreting this Agreement.

**EXHIBIT A**  
**PRICING AND PAYMENT SCHEDULE**

Annual Software License Fee

Year	Product Description	Unit Price	Extended Price
2011	WinEDS Election Management System	\$35,000	\$35,000
2012	WinEDS Election Management System	\$35,000	\$35,000
2013	WinEDS Election Management System	\$35,000	\$35,000
<b>Total Price</b>			<b>\$105,000</b>

Payment Term

Customer shall pay the amounts indicated within 30 days from receipt of Dominion's invoice,

Agreement Term

October 1, 2010 through September 30, 2013