

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT  
BY AND BETWEEN  
DOMINION VOTING SYSTEMS, INC.  
AND THE CITY OF BETHEL, AK

This Managed Services Agreement (the "Agreement"), dated May 4, 2017 (the "Effective Date"), for a voting system hardware services, software licenses and related services is made by and between City of Bethel, Alaska, having its principal office located at 300 State Highway, Bethel, AK 99559 (hereinafter the "Customer"), and Dominion Voting Systems Inc., having its principal office located at 1201 18<sup>th</sup> Street, Suite 210, Denver, CO 80202 (hereinafter "Dominion"). This Agreement may refer to Dominion and the Customer together as the "Parties," or may refer to Dominion or the Customer individually as a "Party."

WHEREAS, the Customer desires to lease voting system services, and a software use license; and

WHEREAS, Dominion designs, manufactures, licenses, voting system products, and provides services for its voting systems.

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

1. **Composition of Agreement.** Exhibits A and B are attached and incorporated herein by reference and form a part of this Agreement (the "Agreement"). This Agreement consists of the terms and conditions contained in the following sections and the listed Exhibits:

Exhibit A: Pricing/Payment Summary and Deliverables Description  
Exhibit B: Software License Terms and Conditions

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

- 2.1. "Acceptance" means the successful completion of the acceptance testing performed by the Customer on the Dominion Hardware, after delivery in accordance with testing criteria developed and updated from time to time by Dominion, or the occurrence of other events defined in Section 8.
- 2.2. "Dominion Software" means the ImageCast<sup>®</sup> Precinct Scanner firmware licensed to the Customer by Dominion and any associated documentation.
- 2.3. "Dominion Hardware" means the ImageCast<sup>®</sup> Precinct Scanner (or "ICP"), the ImageCast<sup>®</sup> Precinct Scanner with BMD (or "ICP-BMD") and the Plastic Ballot Boxes as more specifically described in Exhibit A.
- 2.4. "Election" means a single election event administered by the Customer including any absentee and early voting activity associated with the election event. Election

shall not mean any follow-on events occurring after the initial election event, including without limitations, run-offs or recall replacements elections. Any follow on event shall be considered an Election in and of itself.

2.5. "License" has the meaning set forth in Section 7.

2.6. "System" shall have the same meaning as the Dominion Hardware.

**3. Term of Agreement.** The "Term" of this Agreement shall begin on the Effective Date and shall continue until May 3, 2025.

**4. Dominion's Responsibilities.** Dominion shall:

4.1. Provide the System and services as described in Exhibit A - Pricing and Payment Summary and Deliverables Description.

4.2. Provide the Customer with a Dominion Software use License as described in Exhibit B - Software License Terms.

4.3. Assist in the Acceptance Testing process as described in Section 8 and Exhibit A.

4.4. Provide the Customer with one (1) reproducible electronic copy of the user documentation.

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

5.1. Pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice.

5.1.1. Dominion shall issue invoices to Customer pursuant to the invoice schedule listed in Exhibit A.

5.1.2. Payments specified in this Section 5 are exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which shall be reimbursed by the Customer. If the Customer is exempt from taxes, Customer shall supply Dominion a tax exemption certificate or other similar form demonstrating its exempt status.

5.2. Conduct Acceptance Testing process as required by Section 8.

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

6.1. Title to the System. The System shall be delivered by Dominion to the Customer as part of the managed services described herein. Title to the System or any portion thereof, shall not pass to the Customer and shall remain with Dominion.

- 6.2. Software. Dominion Software is licensed, not sold. The original and any copies of the Dominion Software, or other software provided pursuant to this agreement, in whole or in part, including any subsequent improvements or updates, shall remain the property of Dominion, or any third party that owns such software.
- 6.3. Risk of Loss. Dominion shall bear the responsibility for all risk of physical loss or damage to each portion of the System until such portion is delivered to the "ship to" address, except to the extent such damage is caused by Customer. Customer shall provide Dominion with a single location for shipment and Dominion shall not be responsible for shipping to more than one location. To retain the benefit of this clause, Customer shall notify Dominion of any loss or damage within ten (10) business days of the receipt of any or all portions of the System, or such shorter period as may be required to comply with the claims requirements of the shipper, and shall cooperate in the processing of any claims made by Dominion.
- 7. Dominion Software License and Use.** Upon mutual execution of this Agreement, Dominion grants to the Customer, and the Customer accepts a non-exclusive, non-transferable, license ("License") to use the Dominion Software subject to the terms and conditions of this Agreement and the Software License Terms attached hereto as Exhibit B.
- 8. Acceptance.** After delivery of the Dominion Hardware, the Customer will conduct acceptance testing of such items, in accordance with the acceptance criteria developed and updated, from time to time, by Dominion. Such acceptance testing shall occur at a time mutually agreed upon by the Parties, but no later than ten (10) business days after delivery.
- 9. Dominion Software Warranty.**
- 9.1. Dominion Software Warranty. The Dominion Software Warranty is subject to the Software License Terms attached hereto as Exhibit B.
- 9.2. No Other Software Warranties. DOMINION DISCLAIMS ALL OTHER SOFTWARE 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.
- 10. Dominion Hardware Warranty.**
- 10.1. Dominion Hardware Warranty Terms. Dominion warrants that when used with the configuration approved by Dominion, each component of Dominion Hardware will be free of defects that would prevent the Dominion Hardware from operating in conformity in all material respects with its specifications. The Dominion Hardware Warranty shall remain in effect during the Agreement Term.
- 10.2. Dominion Hardware Warranty Services. Dominion shall repair or replace the

Dominion Hardware so that each item thereof operates in conformity with its specifications, so long as such Dominion Hardware is operated with its designated software and third party products (if applicable) approved by Dominion for use with the Dominion Hardware. If any Dominion Hardware item fails to operate in conformity with the specifications during the Agreement term, Dominion shall fully repair or, at Dominion's sole option, replace the Dominion Hardware. The following conditions apply to the Dominion Hardware services:

10.2.1. Dominion shall bear the shipping costs to return the malfunctioning item to Dominion, and Dominion shall bear the costs for shipping the repaired or replaced item to Customer.

10.2.2. The following services are not covered by the Dominion Hardware warranty, but may be available for purchase at Dominion's then current time and material rates:

- a. Except as otherwise provided in Section 3.3 of Exhibit A to this Agreement, replacement of consumable items including but not limited to batteries, pens, paper rolls, seals, printer ink, removable memory devices, etc.;
- b. Repair or replacement of Dominion Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper usage;
- c. Repair or replacement of Dominion Hardware modified by any person other than those expressly authorized in writing by Dominion;
- d. Repair or replacement of Dominion Hardware products from which the serial numbers have been removed, defaced or changed.

10.3. No Other Warranties. DOMINION 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.

## **11. Confidential Information.**

11.1. For purposes of this Agreement, confidential information ("Confidential Information") is defined as those materials, documents, data, and technical information, specifications, business information, customer information, or other information that the disclosing Party maintains as trade secrets or confidential and which are disclosed to a receiving Party in tangible form conspicuously marked as "confidential," or with words having similar meaning or which are expressly identified in this Subsection 11.1. Confidential Information includes, without

limitation, Dominion Software source code and associated documentation.

- 11.2. Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations.
- 11.3. Neither Party shall disclose the other Party's Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of, an obligation to any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court.
- 11.4. The parties understand and agree that Customer is a public entity that may be subject to Public Record Laws. Therefore, any covenant of confidentiality given by the Customer in this Agreement shall be governed by and superseded by the provisions and limitations of applicable Public Record Laws.
- 11.5. Any specific information that Dominion claims to be confidential must be clearly identified as such by the Customer. To the extent consistent with Public Record Laws, Customer shall maintain the confidentiality of all such information marked by Dominion as confidential. If a request is made to view such confidential information, Customer will notify Dominion of such request and the date the information will be released to the requestor unless Dominion obtains a court order enjoining such disclosure. If Dominion fails to obtain such court order enjoining such disclosure, the Customer will release the requested information on the date specified. Such release shall be deemed to have been made with Dominion's consent and shall not be deemed to be a violation of law or this Agreement.

**12. Limitation of Liability.** Dominion's total aggregate liability for any loss, damage, costs or expenses under or in connection with this Agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of the Agreement. Neither party shall be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.

**13. Indemnification.** To the extent that the City is required to indemnify Dominion, the obligation to indemnify is effective only to the extent permitted by law. The obligation to indemnify is further conditioned on the availability of a valid existing appropriation to cover the obligation. The parties to this Agreement recognize and agree that the City has no current appropriation available to it to indemnify under the provisions of this Agreement and that the enactment of an appropriation in the future to finance a payment under these provisions remains in the sole discretion of the City Council and the City Council's failure to make the appropriation creates no further obligation or liability of the City. However, during all times pertinent to this Agreement, the City will maintain sufficient insurance coverage to protect against any damage to or suits arising out of City's use of Dominion's voting system and related software.

**14. Assignment.** Neither Party may assign its rights, obligations, or interests in this Agreement

without the written consent of the other Party.

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

**16. Termination for Non-Availability of Government Funds**

If the City Council fails to appropriate sufficient funds or to authorize the expenditure of sufficient funds to continue service under this agreement, City may submit a written notice to Dominion terminating this Agreement. Such notice shall be in writing and shall be not less than thirty (30) days prior to the date of termination. The notice shall include a written statement documenting the reason for termination and an official document certifying the non-availability of funds (e.g., city council action; official budget or other official government document). City shall be liable to Dominion for all charges and costs incurred for products and/or services prior to the effective date of the termination.

**17. Survival.** The provisions of Sections 2, 11, 12, 13, 19, and 20 shall survive the expiration or termination of this Agreement.

**18. Force Majeure.** Should any circumstances beyond the control of either Party occur that delay or render impossible the performance of any obligation due under this Agreement, such obligation will be postponed for the period of any delay resulting from any such circumstances, plus a reasonable period to accommodate adjustment to such extension. Such events may include, without limitation, accidents; war, acts of terrorism; natural disasters; labor disputes; acts, laws, rules or regulations of any government or government agency; or other events beyond the control of Dominion and Customer. Dominion shall not be liable under this Agreement for any loss or damage to the Customer due to such delay or performance failures. Notwithstanding the foregoing, both Parties shall use their best efforts to minimize the adverse consequences of any such circumstances. This Section shall not operate to excuse any Party from paying amounts that are owed pursuant to this Agreement.

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

If to Dominion:

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

If to the Customer:

City of Bethel  
Attn: Lori Strickler  
PO Box 1388  
Bethel, AK 99559

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

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

**22. Legality and Severability.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, court orders, and applicable governmental agency orders. If any term or provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The Parties agree that any court reviewing this Agreement shall reform any illegal or unenforceable provision to carry out the express intent of the Parties as set forth herein to the fullest extent permitted by law.

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

**24. Third-Party Beneficiary.** No person shall be a third-party beneficiary pursuant to this Agreement. No obligation of Dominion or Customer may be enforced against Dominion or Customer, as applicable, by any person not a party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF BETHEL, ALASKA**

*Peter Williams*

AUTHORIZED SIGNATURE

*Peter Williams*

PRINTED NAME

*City Manager*

TITLE

*5/29/17*

DATE

**DOMINION VOTING SYSTEMS, INC.**

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

John Poulos

\_\_\_\_\_  
PRINTED NAME

President & CEO

\_\_\_\_\_  
TITLE

5/26/2017

\_\_\_\_\_  
DATE

EXHIBIT A

VOTING SYSTEM AND MANAGED SERVICES AGREEMENT  
 BY AND BETWEEN DOMINION VOTING SYSTEMS, INC.  
 AND THE CITY OF BETHEL, AK

**PRICING AND PAYMENT SUMMARY AND DELIVERABLES DESCRIPTION**

1. Pricing/Payment Summary and Descriptions

1.1 **Pricing Summary.** The total annual managed service contract pricing shall equal \$6,437/year for a total of 8 years.

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

1.2.1 Year 1 shall cover the time period from the Agreement Effective Date through 5/3/2018. The Year 1 invoice of \$6,259 shall be issued immediately after System Acceptance by the Customer.

1.2.2 Year 2: 5/4/2018 – 5/3/2019: \$6,259 invoice shall be issued on 5/4/2018.

1.2.3 Year 3: 5/4/2019 – 5/3/2020: \$6,259 invoice shall be issued on 5/4/2019.

1.2.4 Year 4: 5/4/2020 – 5/3/2021: \$6,259 invoice shall be issued on 5/4/2020.

1.2.5 Year 5: 5/4/2021 – 5/3/2022: \$6,259 invoice shall be issued on 5/4/2021.

1.2.6 Year 6: 5/4/2022 – 5/3/2023: \$6,259 invoice shall be issued on 5/4/2022.

1.2.7 Year 7: 5/4/2023 – 5/3/2024: \$6,259 invoice shall be issued on 5/4/2023.

1.2.8 Year 8: 5/4/2024 – 5/3/2025: \$6,259 invoice shall be issued on 5/4/2024.

2. System Description

DESCRIPTION	QTY	UNIT PRICE	EXTENSION
<b>Precinct Tabulation Hardware &amp; Software</b>			
<b>ICP BMD Audio Tabulator (320C)</b>	2	\$4,500	\$9,000
<i>Each ICE-DD Tabulator includes:</i>			
<i>-Tabulator / Scanner</i>			
<i>-Internal Back-up Battery</i>			
<i>-Thermal Printer with Paper Roll</i>			
<i>-Two 8G Flash Memory Cards</i>			
<i>-Two I-Buttons</i>			
<i>-Paper Based ADA Solution</i>			
<i>-ADA Audio Tactile Interface (ATI) w/headphones</i>			
<b>ICP Ballot Box - Plastic</b>	2	\$1,000	\$2,000
<b>Sub-Total:</b>			<b>\$11,000</b>
<b>Implementation Services</b>			
<b>Year 1 fees:</b>			
<i>Project Management &amp; Implementation</i>	1	\$3,000	\$3,000

Democracy Suite EMS Programming - Base Setup	1	\$2,000	\$2,000
Democracy Suite EMS Programming - Per Precinct	3	\$50	\$150
Democracy Suite EMS Programming - Per Tabulator	2	\$30	\$60
On-site Services - Election Day *	1	\$5,000	\$5,000
Delivery of election media	1	\$50	\$50
Onsite User Training - ICP	1	\$3,000	\$3,000

**Sub-Total:** \$13,260

<b>Accessories and Consumables</b>
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ICP Cleaning Sheet	3	\$20.00	\$60
ICP Paper Roll (85')	5	\$4.00	\$20
ICP I-Button Security Key - Black	2	\$25.00	\$50
ICP Plastic Ballot Box Adapter Kit	2	\$0.00	\$0

**Sub-Total:** \$130

<b>Shipping Services</b>
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<b>Estimated Shipping</b>	<b>\$1,526</b>
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**Sub-Total:** \$1,526

<b>Election Support Fees: Yr 2 - 8</b>
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<b>Yr2 fees:</b>	<b>\$2,260</b>
<b>Yr3 fees:</b>	<b>\$2,260</b>
<b>Yr4 fees:</b>	<b>\$2,260</b>
<b>Yr5 fees:</b>	<b>\$2,260</b>
<b>Yr6 fees:</b>	<b>\$2,260</b>
<b>Yr7 fees:</b>	<b>\$2,260</b>
<b>Yr8 fees:</b>	<b>\$2,260</b>

**Sub-Total:** \$15,820

<b>Ongoing Annual Fees:</b>
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<b>Firmware Licenses Per Year</b>			
ICP	2	\$228	\$456
<b>Extended Warranty Per Year</b>			
ICP	2	\$135	\$270

**Sub-Total:** \$726

<b>Managed Services Program - Annual Fee:</b>	<b>\$6,437</b>
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<b>Managed Services Program - Total Cost of Ownership (8 Years)</b>	<b>\$51,494</b>
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*INCLUDES: 12 Mo. Hardware Warranty & Software License  
Amounts due in years 2 and thereafter are subject to annual increases reflective of inflation*

**All Shipping Costs to be invoiced separately to customer**

## Detailed Description

- 2.1 **ImageCast® Precinct Scanner and Tabulator (Hardware and Software)** is a precinct optical scan ballot tabulator designed to scan marked paper ballots, interpret voter marks on the paper ballot, communicate these interpretations back to the voter and upon acceptance by the voter, deposit the ballots into the ballot box. Each ImageCast® provided to the Customer shall consist of the following items:
- 2.1.1 Two (2) optical imaging scanners for creating a duplex scanned image of each side of the ballot. Ballots can be fed in all four (4) orientations.
  - 2.1.2 uClinux Operating System
  - 2.1.3 Two (2) Compact Flash memory cards. Compact Flash Memory Cards are placed behind two securable doors (Administrator Door and Pollworker Door). Dominion shall provide a standard securing device for the Administrator Door at no additional cost to the Customer. Any replacement securing devices will be the responsibility of the Customer.
  - 2.1.4 An integrated interactive electronic display in the form of an ultra-high contrast graphical LCD screen, with white background, 5.7" diagonal viewing area, and a built-in touch screen for administration purposes. The LCD display screen is located on the top right side of the machine.
  - 2.1.5 An internal thermal printer and five (5) paper rolls for generating reports.
  - 2.1.6 Two (2) administrative security keys (iButtons) used with an integrated receptacle (physically attached to the top of the unit and electrically connected to the motherboard) used for a variety of verification and security tasks such control, data confidentiality and integrity functions.
  - 2.1.7 A motorized paper feed mechanism for detecting and moving the ballot within the scanner. Ballots used with the ImageCast® must be 8.5" wide by a variable length (11", 14", 17" and 22"). The paper feed mechanism is physically capable of moving the ballot forward into the machine, across image sensors, enabling complete image capture of both sides of the ballot.
  - 2.1.8 Power supply module uses 120 Vac, 60 Hz, one phase power. It has a power consumption of 0.07 Amps at 120 Volts AC.
  - 2.1.9 An internal battery which is rated to provide two (2) hours of normal use in the absence of AC power.
  - 2.1.10 Audit functionality, known as the AuditMark®. For each ballot that is scanned, interpreted and accepted into the unit, a corresponding ballot image is created and stored for audit purposes. The image consists of two parts described below. These images can be used to audit the unit's interpretation of each individual ballot.
    - The top portion of the image contains a scanned image of the ballot.
    - The bottom portion consists of a machine-generated type-out showing each mark that the unit interpreted for that particular ballot. This is referred to as an AuditMark®.
- 2.2 The ImageCast® Precinct Scanner and Tabulator does not include consumable products including, without limitation, pens, seals, replacement batteries, additional

paper rolls, additional Compact Flash Memory Cards not specifically itemized in this Agreement, and voting booths.

- 2.3 **ImageCast® Precinct Scanner with BMD (Hardware and Software)** includes all of the components of the standard ICP described in this Exhibit A, Section 2.1, and in addition includes the following items:
- 2.3.1 An integrated inkjet printer for producing marked paper ballot during the accessible voter sessions.
  - 2.3.2 One (1) ATI is included with the ImageCast Precinct BMD. The ATI connects to the ImageCast Precinct BMD via the port located on the right side of the unit. A set of headphones (also included) connects directly to the ATI controller.
- 2.2 **ImageCast® Precinct Scanner and Tabulator Software** see section 2.1 of this Exhibit A for general description. The annual license fee shall be paid on the first anniversary of the Agreement's Effective Date and in each successive year thereafter pursuant to the terms of the Software License Agreement.
- 2.3 **Additional Compact Flash Memory Cards** are provided for Customer spare or replacement Compact Flash Memory Cards
- 2.4 **Plastic Ballot Boxes.** The System includes two (2) textured molded plastic ballot boxes made of three compartments, designed for use with the ICP.
- 2.5 **Annual Election Programming Costs.**
- 2.5.1 **Democracy Suite EMS programming - base set-up.** Dominion will provide one (1) day of remote programming.
  - 2.5.2 **Democracy Suite EMS Programming - per precinct, includes one absentee precinct.** Dominion will provide three (3) programmed sets of compact flash cards..
  - 2.5.3 **Democracy Suite EMS programming - per tabulator.** Dominion will provide remote (not onsite) programming of 2 cards and 2 iButtons per tabulator, and return shipping to customer.
- 2.6 **Implementation and System Training.** Dominion will provide one (1) day of Implementation services and System training
- 2.7 **On-Site Support during the Election.** Dominion will provide direct onsite support for the first Customer Election.
- 2.8 **Standard and Extended Hardware Warranty** provisions are defined in the terms and conditions section of this Agreement.
- 2.9 **Software Warranty** provisions are defined in the terms and conditions section of this Agreement and related Software License Agreement.

EXHIBIT B  
VOTING SYSTEM AND MANAGED SERVICES AGREEMENT  
BY AND BETWEEN DOMINION VOTING SYSTEMS, INC.  
AND THE CITY OF BETHEL, AK

**SOFTWARE LICENSE TERMS AND CONDITIONS**

**1. Definitions.**

- 1.1. "Licensee" shall mean the City of Bethel.
- 1.2. "Licensor" shall mean Dominion Voting Systems, Inc.
- 1.3. "Party" or "Parties" Licensor and Licensee may hereinafter be referred to individually as a Party and collectively as the Parties.
- 1.4. "Software" means the Democracy Suite<sup>®</sup> and ImageCast<sup>®</sup> software licensed by Licensor hereunder, in object code form, including all documentation therefore.
- 1.5. "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.
- 1.6. "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 of this Agreement, 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 to this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable print copyright license as defined in Schedule A.
- 2.3. Third-Party Products. Subject to the terms of this Agreement and when applicable, Licensor agrees to sublicense any software that constitutes or is contained in Third-Party Products, in object code form only, to Licensee for use during the Term as part of the System. This sublicense is conditioned on Licensee'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.
- 2.4. No Other Licenses. Other than as expressly set forth in this Agreement, (a) Licensor grants no 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. Without limiting the foregoing sentence, 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 by the terms of this Agreement is strictly prohibited.

**3. Payment.** In consideration of the grant of the license, the Licensee shall pay the 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 provisions of the election laws and regulations of the Licensee's State, Licensor may make the certified software upgrade available to the Licensee and install the upgrade during a regularly schedule preventive maintenance as described in Exhibit A.

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 Licensee's State.

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

5.1. Software. Licensor warrants that during the Term, the Software will function substantially in accordance with the Specification. If the Licensee believes that the Software is not functioning substantially in accordance with the Specifications, 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 foregoing warranty shall be void in the event of the Software (i) having been modified by any party other than Licensor or (ii) having been used by the Licensee for purposes other than those for which the Software was designed by Licensor. If Licensor establishes that the reported 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.

5.2. Third-Party Products. The warranties in this Section 5 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.

5.3. 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.

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

6.1. 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;

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

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

6.4. 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.

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