HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT

This Hardware Rental, Software License and Services Agreement (hereafter the "Agreement") dated this September 1, 2023, (the "Effective Date") is made between the City of Pueblo, Colorado, a municipal corporation under the laws of the State of Colorado ("Customer") and Dominion Voting Systems Inc., ("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."

1. **Composition of Agreement.** Exhibit A is attached and incorporated herein by reference and forms a part of this Agreement. This Agreement consists of the general terms and conditions contained in the following Sections, together with Exhibit A:

    Exhibit A: Hardware Rental, Services, Pricing and Payment Summary

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

    2.1. "Dominion Software" means the Dominion Democracy Suite® software certified for use in the Customer's State.

    2.2. "Hardware" means the ImageCast® system hardware as more specifically described in Exhibit A and certified for use in the Customer's State.

    2.3. "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 provided by Dominion.

3. **Term of Agreement.** The term of this Agreement ("Term") shall begin on the Effective Date and shall continue until February 29, 2024. The payment terms of Section 5, to the extent any payments are still due, shall survive any expiration of termination of this Agreement in accordance with their respective terms.

4. **Dominion's Responsibilities.**

    4.1. Dominion shall provide the Customer with the rental Hardware and Dominion Software, and the services described in Exhibit A.

    4.2. Dominion shall grant to the Customer a non-exclusive, non-transferable (except as provided herein), license ("License") to use the Dominion Software provided by Dominion pursuant to Section 6 of this Agreement.

    4.3. Dominion shall provide the invoice to the Customer for the items described in Exhibit A, upon the signing of the Agreement.

5. **Customer's Responsibilities.**

    5.1. In consideration for the rental, licenses and services described in this Agreement, Customer shall pay the amounts specified in Exhibit A within thirty days of receiving the Dominion invoice. 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.

5.2. If applicable, Customer shall provide Dominion with reasonable accommodations required for Dominion to perform its obligations, including premises access and electrical power.

5.3. Customer is solely responsible for assuring all relevant federal, State, and local laws, ruling and ordinances are complied with in regard to the use of Dominion's system for any Customer election, including all associated election guidelines and applicable election due dates. Notwithstanding any other provision in this Agreement to the contrary, to the extent permitted by law, Customer shall hold Dominion harmless from and against any and all claims, demands, damages, injuries, expenses (including reasonable attorneys' fees and court costs) and liability arising in connection with the Customer's responsibility pursuant to this Section 5

6. Dominion Software and Hardware Rental, License and Use.

6.1. Dominion agrees to rent the Hardware to Customer during the Term as described in Exhibit A herein.

6.2. <u>License</u>. Dominion grants Customer a non-exclusive, non-transferrable license to use the Dominion Software solely for the Customer's use in an election. The Customer cannot transfer or sublicense the License to any other third party.

6.3. <u>No Other Licenses</u>. 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 the Dominion Software outlined in Exhibit A herein, and agrees not to use any Dominion Software as a service bureau for elections outside the Customer's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of any Dominion Software. The Customer shall have no power to grant sub-licenses for the Dominion Software. Any use of all or any portion of the Dominion Software not expressly permitted by the terms of this Agreement is strictly prohibited.

6.4. <u>Prohibited Acts</u>. The Customer shall not:

6.4.1. Transfer or copy onto any storage device or hardware or otherwise copy the Dominion Software in whole or in part;

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

6.4.3. Alter or modify the Dominion Software in any way or prepare any derivative works of the Dominion Software;

6.4.4. Alter, remove or obstruct any copyright or proprietary notices from the Dominion Software, or fail to reproduce the same on any lawful copies of the Dominion Software;

6.4.5. Provide or transfer any Software or System component to any third party unless explicitly authorized in writing by Dominion.

6.5. <u>Proprietary Rights</u>. Customer acknowledges and agrees that Dominion owns the Dominion Hardware, Dominion Software, all documentation and training materials provided by Dominion, the design and configuration of the Dominion Hardware and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the Dominion Hardware. Customer has the right to use the aforementioned items to the extent specified in this Agreement. Dominion likewise owns all patents, trade-marks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of Dominion which are protected by law and are of substantial value to Dominion.

7. Limited Warranties.

7.1. <u>Dominion Software</u>. Dominion warrants that, during the term of this agreement, the Dominion Software will function in accordance with the Specification. If the Customer believes that the Dominion Software is not functioning substantially in accordance with this agreement, the Customer shall provide Dominion with written notice of the material failure within three (3) days of discovering the material failure. Dominion shall use reasonable efforts to correct the material failure of the Dominion Software. The foregoing warranty shall be void in the event of the Dominion Software (i) has been modified by any party other than Dominion or (ii) has been used by the Customer for purposes other than those described herein.

7.2. <u>Third-Party Products</u>. The warranties herein 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 the Customer all warranties such manufacturers make to Dominion regarding the operation of such third party products.

7.3. <u>NO OTHER WARRANTIES.</u> 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.

8. Indemnification. To the extent permitted by law, each Party to this Agreement shall indemnify, defend, and hold harmless the other Party and its officers, directors, agents, employees, and owners from and against any and all demands, claims, damages to persons or property, losses, and liabilities, including reasonable attorneys' fees (collectively,

"Claims"), arising out of or caused by the indemnifying party's gross negligence or willful misconduct in connection with the services contemplated by this Agreement. In addition, to the extent permitted by law, Customer shall indemnify and hold harmless Dominion from any third party claims arising from, or alleged to arise from, Customer's failure to operate properly the Software and Hardware licensed under this Agreement, in the manner designated by Dominion.

9.   **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, 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.

10.   **Confidential Information.**

10.1.   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 10.1. Confidential Information includes all Dominion Software source and object code and written documentation associated therewith.

10.2.   Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations.

10.3.   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, to any person properly seeking discovery before any such agency or court, or as may be required by law.

10.4.   Each Party shall be given the ability to defend the confidentiality of its Confidential Information to the maximum extent allowable under the law prior to disclosure by the other Party of such Confidential Information.

11. **Termination.** 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.

12. **Risk of Loss Insurance, Title.** Customer shall bear the risk of loss or damage to the Hardware and Dominion Software after Customer receipt of the Hardware and Dominion Software to the degree that Dominion demonstrates that the Customer is responsible for the loss or damage to the Hardware and Software. The occurrence of any such loss or damage shall not permit Customer to delay or reduce the payment of any fees prescribed under this Agreement. Customer may, at its own expense and option, obtain and maintain property and casualty insurance for the Hardware and Dominion Software against all risks of loss or damage. The amount of such insurance shall not be less than the replacement cost of the Hardware and Dominion Software. All policies for such insurance shall (i) designate Dominion as an additional insured and Dominion and Customer as loss payees, as their interests may appear and (ii) contain a provision that entitles Dominion to written notice prior to cancellation or modification of such insurance policy. Title to the Hardware and Dominion Software will remain with Dominion and will not pass to the Customer.

13. **Assignment and Right to Subcontract.** Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party.

14. **Governing Law.** This Agreement will be construed under the laws of the Customer's State, and the courts within the Customer's State shall have jurisdiction for all actions to enforce this Agreement.

15. **Survival.** The provisions of Sections and Subsections 1, 2, 3, 7, 8, 9, 14, and 18 shall survive the expiration or termination of this Agreement.

16. **Force Majeure.** Should any circumstances beyond the control of Dominion or Customer occur that delay or render impossible the performance of any obligation due under this Agreement, such obligation will be postponed for the period of any delay resulting from any such circumstances, plus a reasonable period to accommodate adjustment to such extension, or cancelled if performance has been rendered impossible thereby. Such events may include, without limitation, war, acts of terrorism; natural disasters; pandemic; industry-wide labor disputes; acts, laws, rules or regulations of any government or government agency; or other events beyond the control of both Dominion and Customer. Neither party shall be liable under this Agreement for any loss or damage to the other Party due to such delay or performance failures. Notwithstanding the foregoing, both Parties shall use their best efforts to minimize the adverse consequences of any such circumstances.

17. **No Third Party Beneficiaries.** Dominion and Customer agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any

third party, and that there are no third-party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

18. **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.

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

20. **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.
> > PO Box 343
> > Broomfield, CO 80038
>
> If to the Customer:
> > Marisa Stoller
> > City Clerk, City of Pueblo
> > 1 City Hall Place
> > Pueblo, CO 81003
> > mstoller@publo.us
>
> > CC: City Attorney
> > 1 City Hall Place
> > Pueblo, CO 81003
> > cityattorney@pueblo.us

21. **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.

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

DOMINION VOTING SYSTEMS, INC.

_____
AUTHORIZED SIGNATURE

John Poulos_____
PRINTED NAME

President & CEO_____
TITLE

 9/21/2023_____
DATE

FOR CUSTOMER
City of Pueblo, Municipal Corporation

By:_____   Date:_____
Nick Gradisar, Mayor

ATTEST:

By:_____   Date:_____
Marisa Stoller, City Clerk

BALANCE OF APPROPRIATION EXISTS FOR THIS
CONTRACT AND FUNDS ARE AVAILABLE.

By: _____   Date:_____
Alexandria Romero, Finance Director

APPROVED AS TO FORM:
Attorney for City of Pueblo

By: _____   Date:_____
City Attorney

EXHIBIT A

HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT

Hardware Rental, Services, Pricing and Payment Summary

System Description. Prices of equipment rental, licenses, and related services for voting, vote counting, and result processing. Note: There may be additional costs for consumable items, such as iButtons. These will be invoiced at a later date. Payment on additional invoices will be due within thirty (30) days of issuance by Dominion.

Product/Service	Qty	Rental Price	Extension
Central Scanning: Absentee / Vote By Mail Hardware			
ImageCast Central Kit - G2140	3	$4,000.00	$12,000.00
		Sub-Total	**$12,000.00**
Election Management Hardware			
EMS Express Server Kit	1	$0.00	$0.00
EMS Adjudication Workstation Kit	1	$0.00	$0.00
		Sub-Total	**$0.00**
Election Management Software			
Democracy Suite Standard - Level 1	1	$5,000.00	$5,000.00
Adjudication Module	1	$0.00	$0.00
		Sub-Total	**$5,000.00**
Support Services			
Election Database Setup - Tier 3	1.0	$2,448.00	$2,448.00
On-site Services - Election Day	1.0	$4,500.00	$4,500.00
		Sub-Total	**$6,948.00**
Training			
Training (/day)	1.0	$2,000.00	$2,000.00
		Sub-Total	**$2,000.00**
Estimated Shipping			
Shipping (estimated)	1	$1,400.00	$1,400.00
		Sub-Total	**$1,400.00**
		TOTAL	**$27,348.00**

Rental Pricing Notes:

- The above pricing involves the **rental** of the tabulators and software for the election event.
- The above pricing does not include applicable taxes, which will be charged extra.
- The Estimated Shipping rate charge shown above is based on Dominion's standard shipping plan and schedule for equipment and consumables. Any extra shipping charges incurred due to the Customer causing a deviation from Dominion's standard shipping plan and schedule will be charged extra.

- After the election, the Customer must repackage the tabulators and peripheral equipment in the same manner in which they were delivered, for pickup by the Dominion shipper. This includes packing equipment in their respective boxes. If the equipment was delivered via skids, the Customer will place the equipment back on the same skids and wrap the skids with shrink wrap. Dominion reserves the right to charge the Customer extra if equipment is not repackaged for pickup in the same way it was delivered.
- The above pricing does not include ballots.
- All equipment must be returned to Dominion no later than February 29, 2023, or additional equipment rental charges may apply (at Dominion's discretion).

Payment Terms. Payment in full is due on January 23, 2024.