



Annette Berry <aberry@gordoncounty.org>

Fwd: 2022 Extended Warranty Agreement for Voting System

1 message

James Ledbetter <jledbetter@gordoncounty.org>

Mon, Nov 22, 2021 at 11:13 AM

To: Annette Berry <aberry@gordoncounty.org>, Shea Hicks <shicks@gordoncounty.org>

Annette, Please put this request on the next BOC agenda.

Yours Truly,
James F. Ledbetter
Attorney at Law
Administrator
Gordon County, Ga.
P.O. Box 580
Calhoun, Ga. 30703
Office: (706) 879-2314
Cell: (706) 263-8235
Fax: (706) 629-9516
E-Mail: jledbetter@gordoncounty.org

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----- Forwarded message -----

From: **Shea Hicks** <shicks@gordoncounty.org>
Date: Wed, Nov 17, 2021 at 3:25 PM
Subject: Fwd: 2022 Extended Warranty Agreement for Voting System
To: James Ledbetter <jledbetter@gordoncounty.org>

Jim,

Attached is the warranty agreement for our new voting system. Do the County Commissioners need to sign this agreement and approve this warranty agreement?

If they do, can this be put on the agenda for the next board meeting for them to execute the agreement so I can get this returned to Dominion.

My board does want to purchase the extended warranty at least for the 1st year to see how the equipment holds up for repairs. Also, we will receive 149 printer cartridges with the warranty, so that in itself is worth keeping the warranty for the 1st year.

Please let me know if you have any questions.

Shea Hicks,
Chairperson
Gordon County Board of Elections and Voter Registration Office
PO Box 715
Calhoun, GA 30703-0715

706-629-7781
Fax: 706-629-7198

Know

Before

You Go.....

Are you registered to vote? - Where to vote? - Who's on the Ballot? - When to vote?

----- Forwarded message -----

From: **Barry Herron** <barry.herron@dominionvoting.com>

Date: Wed, Nov 17, 2021 at 2:11 PM

Subject: 2022 Extended Warranty Agreement

To: shicks@gordoncounty.org <shicks@gordoncounty.org>

Cc: Fran Leathers <fran.leathers@dominionvoting.com>, Barry Herron <barry.herron@dominionvoting.com>

Shea,

Thank you for confirming your intent to have Gordon County move forward with the Extended Warranty program. The Agreement is attached.

Once signed please send to me so we may affix the Dominion signature and return a fully executed Agreement back to you.

Barry

BARRY HERRON | REGIONAL SALES MANAGER – DEALER MANAGER

DOMINION VOTING

1201 18th Street Suite 210, Denver, CO 80202

1.866.654.8683 x 9250 | DOMINIONVOTING.COM

419-350-8455 MOBILE

 **Gordon 2022 EX Warranty Agreement, 11-17-21 .pdf**
203K

HARDWARE WARRANTY AGREEMENT
BY AND BETWEEN
DOMINION VOTING SYSTEMS, INC.
AND GORDON COUNTY, GA

This Hardware Warranty Agreement (the “Agreement”) dated January 1, 2022, (the “Effective Date”), is made between Gordon County, GA (“County”) and Dominion Voting Systems, Inc. (“Dominion”). This Agreement may refer to Dominion and the County together as the “Parties,” or individually as a “Party.”

WHEREAS, the Secretary of State of the State of Georgia entered into a Master Solution Purchase and Services Agreement contract (the “State Contract”) with Dominion on July 29, 2019;

WHEREAS, the State Contract authorizes the County to purchase voting system hardware warranties for voting system items purchased by the State of Georgia for use by the County;

WHEREAS, The County desires to purchase voting system hardware warranties;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with the terms and conditions set forth herein, Dominion agrees to sell voting system hardware warranties as described more fully below.

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 the Exhibit A. The total compensation payable under this Agreement shall be in accordance with the item prices incorporated within Exhibit A.

2. Definitions.

2.1. “Confidential Information” means those materials, documents, data, and technical information, specifications, business information, County information, or other information that a Party (the “Disclosing Party”) maintains as trade secrets or confidential and which are disclosed to the other Party (the “Receiving Party”) in tangible form marked as “confidential,” or with words having similar meaning, which includes without limitation, Dominion software.

2.2. “Hardware” means the ImageCast[®] system hardware listed in Exhibit A of this Agreement.

2.3. “Specifications” means descriptions and data regarding the features, functions and performance of the Hardware, as set forth in user manuals or other applicable documentation provided by Dominion.

3. Term of Agreement. The Term of this Agreement shall begin on the Effective Date and shall continue until the first anniversary of the Effective Date. This Agreement shall automatically renew on an annual basis for an additional three (3) years, subject to the warranty fees and terms defined in Exhibit A. The County, at its sole discretion, may choose to terminate the Agreement prior to any annual renewal. Notification of termination must be in writing and provided to Dominion within forty-five (45) calendar days of expiration.

4. Dominion's Responsibilities. Dominion shall provide this Hardware warranty based upon the terms defined herein. Dominion shall provide invoices to County for the warranty items listed in Exhibit A and pursuant to the payment schedule described in Section 5 and Exhibit A.

5. County's Responsibilities. County shall pay invoices no later than thirty (30) calendar days from receipt of a Dominion invoice. Payments specified in this Section 5 are exclusive of all excise, sale, use and other sales taxes imposed by any governmental authority. If County is exempt from taxes, County shall supply Dominion with a tax exemption certificate or similar form demonstrating its exempt status upon request.

6. Warranties. The following warranties shall apply to the Hardware.

6.1. Hardware Warranty Terms. Dominion warrants that when used with the hardware and software configuration purchased through or approved by Dominion, each component of Hardware will be free of defects that would prevent the Hardware from operating in conformity in all material respects with its Specifications. The Hardware warranty shall remain in effect during the Term.

6.2. Hardware Warranty Services. If any Hardware component fails to operate in conformity with its specifications during the warranty period, Dominion shall provide a replacement for the Hardware component or, at Dominion's sole option, shall repair the Hardware component, so long as the Hardware is operated with its designated Dominion software and with third party products approved by Dominion for use with the Hardware. The following conditions apply:

6.2.1. County shall bear the shipping costs to return the malfunctioning Hardware component to Dominion, and Dominion shall bear the costs for shipping the repaired or replaced Hardware component to County.

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

6.2.2.1. Replacement of consumable items including but not limited to batteries, toner¹, paper rolls, ribbons, seals, smart cards, and removable memory devices, scanner rollers, disks, etc.;

6.2.2.2. Repair or replacement of Hardware damaged by of accident, disaster, theft, vandalism, neglect, abuse, or any improper use;

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

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

6.2.3. County is not authorized to provide or transfer any Hardware or other voting system component to a third party unless explicitly authorized in writing by Dominion. Providing or transferring Hardware will void the terms of the Warranty and shall be considered a breach of the Agreement.

¹ Toner will be included for Counties choosing the ICX warranty with annual replacement toner option.

6.3. 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.

7. Confidential Information.

- 7.1. Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations and 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.
- 7.2. Subject to the requirements of the County's public record laws ("PRL"), 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.
- 7.3. Any specific information that Dominion claims to be confidential must be clearly marked or identified as such by Dominion. To the extent consistent with PRL, County shall maintain the confidentiality of all such information marked by Dominion as confidential. If a request is made to view such Confidential Information, County 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 County 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.

8. Force Majeure. Should any circumstances beyond the control of Dominion or County occur that delay or render impossible the performance of any obligation due under this Agreement, such obligation will be postponed for the period of any delay resulting from any such circumstances, plus a reasonable period to accommodate adjustment to such extension or cancelled if performance has been rendered impossible thereby. Such events may include, without limitation, accidents; war, acts of terrorism; natural disasters; pandemic; labor disputes; acts, laws, rules or regulations of any government or government agency; or other events beyond the control of both Dominion and County. 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 commercially reasonable 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.

9. Indemnification. Dominion, at its sole expense, will indemnify and defend the County, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) arising out of a claim, suit or action that the System infringes, violates, or misappropriates a Third Party's patent, copyright, trademark, trade secret or other intellectual property or proprietary rights.

10. Limitation of Liability. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT AND ANY WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, DOMINION'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY OR ANY OTHER DUTY SHALL IN NO CIRCUMSTANCES EXCEED THE TOTAL DOLLAR AMOUNT OF THE AGREEMENT. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Assignment. Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party, providing however that Dominion may assign the proceeds of this Agreement to a financial institution without prior consent of the County.

12. Termination. In the event either Party violates any provisions of this Agreement, the non-violating Party may serve written notice upon the violating Party identifying the violation and providing a reasonable cure period. Except as otherwise noted herein, such cure period shall be at least thirty (30) days. In the event the violating Party has not remedied the infraction at the end of the cure period, the non-violating Party may terminate this Agreement, and seek legal remedies for breach of contract as allowed hereunder. If the breach identified in the notice cannot be completely cured within the specified time period, no default shall occur if the Party receiving the notice begins curative action within the specified time period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable, but in no event shall the cure period exceed sixty (60) days without written consent by the non-breaching party.

13. 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.

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

15. 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.

16. 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 certified or registered mail, return receipt requested, addressed to the intended recipient or e-mailed as follows:

If to Dominion:

Dominion Voting Systems, Inc.
Attn: Contracts Administrator
PO Box 343
Broomfield, CO 80038
Email: contracts@dominionvoting.com

If to the County:

Gordon
Attn: Shea Hicks
408 Court Street
Calhoun, GA 30701
Email: shicks@gordoncounty.org

17. Independent Contractor. Dominion and its agents and employees are independent contractors performing professional services for the County and are not employees of the County. Dominion and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of County vehicles, or any other benefits afforded to employees of the County as a result of this Agreement. Dominion acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

18. Entire Agreement. This Agreement constitutes the entire agreement, understanding and representations between Dominion and the County, 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 County and Dominion, and incorporated as an amendment hereto.

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

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

DOMINION VOTING SYSTEMS, INC.

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

GORDON COUNTY, GEORGIA

AUTHORIZED SIGNATURE

PRINTED NAME

TITLE

DATE

EXHIBIT A

PRICING AND PAYMENT SUMMARY

1. Pricing Summary

DESCRIPTION	QTY	UNIT PRICE	EXTENSION
Annual Hardware Fees*			
ICP Annual Hardware Warranty	18	\$146.00	\$2,628.00
ICC Annual Hardware Warranty	1	\$1,200.00	\$1,200.00
ICX Annual Hardware Warranty (with annual replacement toner supply**)	149	\$136.00	\$20,264.00
MBP Annual Hardware Warranty	1	\$375.00	\$375.00
Total Annual Fees:			\$24,467.00

* Dominion reserves the right to adjust the Annual Hardware Warranty Fee within three percent (3%) of the then current fee.

** For Counties choosing the ICX Warranty with annual replacement toner supply, Dominion shall ship 1 toner cartridge per unit annually.

- 2. Payment Schedule** - Dominion shall provide invoices to the Customer as described below. The Customer shall pay invoices in a timely manner and no later than thirty (30) calendar days from receipt of a Dominion invoice. Payments specified in this Exhibit are exclusive of all excise, sale, use and other taxes imposed by any governmental authority, all of which taxes shall be reimbursed by the Customer. The initial invoice shall be provided at the Agreement signing and on each anniversary of the Effective Date thereafter through the Term.