

December 3, 2015

Mrs. Lewis,

We received your letter dated November 19, 2015 referencing the costs associated with our requested recount. In response to an email you sent to us on November 6<sup>th</sup> detailing the costs, we asked for exact costs as the stated costs appeared unfair and asked whether election officials would be paid for a full day even if they did not work a full day. You did not reply to that email.

Please also note that the language in NMSA Sec. 3-8-68 relating to the costs of the recount was deemed unconstitutional and was changed in the general election code, but not the municipal code, by the New Mexico Legislature. At this time, we do not plan to challenge this in the courts; however, fairness and understanding on the part of the City would be appreciated.

We acknowledge our requirement to pay costs related to the recount, but we have some concerns with the costs you listed:

NMSA Sec. 3-8-68 nor your previous communications refer to a cost associated with programming the ballot machines. Therefore, we do not feel obliged to pay such expenses (\$1,500).

In your letter, you list a "cost for sites" fee of \$250.00. In Section 3-8-68, there is no such cost listed; and as such, we do not feel obliged to pay such expenses. The \$50 fee per site is not an expense, but a "security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election," according to NMSA Sec. 3-8-68-D.

The mileage to serve the summons to each of the poll workers was calculated to be 67.5 miles according to your breakdown. At the rate of \$0.575, this cost would be \$38.82, not the \$68.08 you stated. We also noted that none of the summons were properly notarized. Please complete that as well for our files.

NMSA Sec. 3-8-68-F states, "if no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of ... fees and mileage of precinct board members, **at the same rates allowed witnesses in civil actions**" (emphasis added). According to this, your stated fees of \$200 and \$150 for president judge and election board members, respectively, are not consistent with the statute. We are willing to pay the same rate allowed to witnesses in civil actions.

Please send updated documentation and fees so we can make payment. All communication can be sent to our respective home addresses.

Sincerely,



Richard Hall



Eli Guzman



December 10, 2015

Mr. Melecio Guzman  
145 W. Chestnut  
Las Cruces, NM 88005

[guzman4council@gmail.com](mailto:guzman4council@gmail.com)

Mr. Richard Hall  
1801 Sequoia  
Las Cruces, NM 88001

[nmgymnast7@aol.com](mailto:nmgymnast7@aol.com)

VIA U.S. MAIL AND EMAIL

**Re: Election Recount Costs**

Dear Mr. Guzman and Mr. Hall:

This follows your letter of December 3, 2015 concerning the cost bill related to your request for a recount for the 2015 Municipal Elections at five of the polling places. I have reviewed your letter and agree in part with part of your request. N.M.S.A. 1978 Section 3-8-68 F. provides that:

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, it shall not be entitled to such mileage or fees.

The expenses related to this recount did include the expense of reprogramming the voting machines to count ballots cast for District One and District Four positions for which you were candidates and had asked for the recount in voting locations you had specifically requested. I have enclosed a copy of the invoice for your review. While the cost of the reprogramming was not known at the time of your inquiry with the City Clerk's office and my subsequent discussion with you, it is a legitimate expense of the recount and must be paid by you.

With respect to the cost of mileage involved in serving the polling officials, the amount of cost related to mileage should be reduced to \$38.82.

Finally there is no cost for sites related to a recount. This provision of the statute under N.M.S.A 1978 Section 3-8-68 C relates to establishing an amount as a security deposit rather than a cost of

Mr. Guzman/Mr. Hall  
December 10, 2015  
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the recount. This amount of \$250 should be removed for the total costs of the recount and will be applied to overall amount related to expenses and costs of the recount.

Accordingly the revised expense and costs of the recount total is \$4838.42. Given your initial payment of \$1804.40 towards the total cost, a remaining \$3034.42 is due. If you could please remit the remaining payment no later than December 17, 2015 to the City Clerk's office, I would appreciate it. If you have any questions, please feel free to contact me at (575) 541-2128.

Sincerely,

A handwritten signature in blue ink, appearing to read 'WRB', is written over a faint, illegible typed name.

William R. Babington Jr.  
City Attorney

WRB/bjh

cc: Linda Lewis, CMC

# DOMINION VOTING



1201 18th Street, Suite 210  
Denver CO 80202 United States  
FED ID#27-0565149

**Bill To:**

Las Cruces City, NM  
Linda Lewis  
700 North Main  
Las Cruces NM 88001

Invoice Date	11/24/2015
Invoice #	DVS114835
Page	1

**Ship To:**

Las Cruces City, NM  
Linda Lewis  
700 North Main  
Las Cruces NM 88001

Purchase Order No.		Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.										
NOV 18 2015 RECOUN		USNMLASCRU	MROMERO	BEST WAY	Net 30	11/24/2015	17,762										
Ordered	Shipped	B/O	Item Description	Item Number	Discount	Unit Price	Ext. Price										
1.00	1.00	0.00	City of Las Cruces Recount - Ballot Programming		\$ 0.00	\$ 1,500.00	\$ 1,500.00										
<b>REMIT TO:</b> Dominion Voting Systems, Inc. P.O. Box 538214 Atlanta, GA 30353-8214					<b>COURIER ADDRESS:</b> Dominion Voting Systems, Inc. Lockbox #538214 1669 Phoenix Parkway, Suite 210 College Park, GA 30349		<table border="1"> <tr> <td>Subtotal</td> <td>\$ 1,500.00</td> </tr> <tr> <td>Tax</td> <td>\$ 0.00</td> </tr> <tr> <td>Freight</td> <td>\$ 0.00</td> </tr> <tr> <td>Trade Discount</td> <td>\$ 0.00</td> </tr> <tr> <td><b>Total</b></td> <td><b>\$ 1,500.00</b></td> </tr> </table>	Subtotal	\$ 1,500.00	Tax	\$ 0.00	Freight	\$ 0.00	Trade Discount	\$ 0.00	<b>Total</b>	<b>\$ 1,500.00</b>
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**Comments:**

Pricing Is per State Price Agreement #  
30-370-13-00011.