



Los Angeles County Registrar-Recorder/County Clerk

DEAN C. LOGAN
Registrar-Recorder/County Clerk

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

31 October 30, 2018

CELIA ZAVALA
EXECUTIVE OFFICER

October 30, 2018

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ESSVR, LLC – VOTER INFORMATION MANAGEMENT SYSTEM LICENSING AND SUPPORT AGREEMENT (ALL DISTRICTS) (3 VOTES)

CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION () DISAPPROVE ()

SUBJECT

The Registrar-Recorder/County Clerk (RR/CC) requests retroactive approval to execute an Agreement with ESSVR, LLC to provide a continued software license, maintenance services, and support of its election Voter Information Management System (VIMS), with a base term effective May 10, 2018 through June 30, 2019, and up to six (6) three-month optional renewals through December 30, 2020. This contract was last amended in June 2015 to extend the contract for 3 years, until May 9, 2018.

IT IS RECOMMENDED THAT THE BOARD:

1. Delegate authority to the Department Head, or designee, to execute an Agreement (Attachment I) with ESSVR, LLC to provide VIMS licensing and maintenance, effective May 10, 2018 through June 30, 2019, and up to six (6) three-month optional renewals through December 30, 2020, for a maximum dollar amount of \$1,295,385, including extensions.
2. Delegate authority to the Department Head, or his designee, to enter into additional as-needed support services up to the total maximum contract sum of \$401,976.
3. Delegate authority to the Department Head, or designee, to negotiate and execute amendments

provided that County Counsel approval is obtained.

4. Delegate authority to the Department Head, or designee, to terminate the contract as necessary provided that County Counsel approval is obtained.

5. Delegate authority to the Department Head, or designee, to execute increases to the original contract sum by no more than ten percent (10%), granted your Board is notified at least 14 days prior to executing this additional authority to accommodate unforeseen increases during the contracting period.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to ensure the continued licensing and maintenance of the VIMS and related services. VIMS is a voter registration database containing voter, precinct, vote by mail, petition, precinct officer, and polling location files.

This contractor has provided licensing, maintenance and support services since the initial development and implementation of VIMS in 2009. Additionally, due to software proprietary issues, complexities with managing voter information system and mission critical need for uninterrupted services, the incumbent Contractor is the only source that can provide maintenance and support services for VIMS. The continuation of their services is paramount to conducting successful elections in the County of Los Angeles.

Implementation of Strategic Plan Goals

This request supports the County Strategic Plan as follows:

Strategy III.3 – Pursue Operational Effectiveness for our Internal Customers and Communities. Provide the public with beneficial and responsive services with easy access and convenience while ensuring service delivery systems are efficient, effective, and goal-oriented.

The services provided under the Agreement will ensure optimal performance of the County's VIMS and thus ensure critical information is ready and available to conduct federal, State, and local elections.

FISCAL IMPACT/FINANCING

The total possible maximum cost of the agreement is \$1,697,361. This includes software license and maintenance services, and as-needed onsite support services, training, and system enhancements (Attachment II). There is sufficient funding in the RR/CC FY 2018-2019 Final Adopted Budget for year one of the agreement. Funding to finance FY 2019-20 and FY 2020-21 will be addressed through the annual budget process.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

RR/CC is responsible for the registration of voters, maintenance of the voter records, precincting, vote by mail, petitions, precinct officers and polling location files, and the conduct of federal, State, and special elections that affect Los Angeles County.

On January 30, 2007, your Board adopted a five (5) year contract with three (3) one-year extension

options with Data Information Management Systems (DIMS), a wholly owned subsidiary, at the time, of Diebold Election Systems, Inc. for continued system licensing, maintenance and support services of VIMS and any future system enhancements which were legally mandated by the Help America Vote Act (HAVA) and/or State of California law, regulation, or statute. DIMS later became part of ESSVR, LLC an Election Systems & Software LLC subsidiary. On May 5, 2015, your Board approved Amendment No. 8 that extended the base term of the VIMS agreement until May 9, 2018.

VIMS enabled increased reliability, operational efficiencies, improved service delivery, and automated functions for elections management. VIMS also allowed for Board approved partnerships with local jurisdictions for on-line VIMS access which has helped to improve the quality of the voter, pollworker and polling place data used by all jurisdictions.

This Agreement ensures continuation of mission critical services and provides the necessary resources to interface with the state of California's interim Statewide Voter Registration Database, VOTECAL system. This process will meet functional, business, and legal requirements mandated by State Regulations, California Elections Code, and HAVA.

The Chief Information Office (CIO) has reviewed this Board letter and recommends approval. The CIO determined that because the recommended action does not include any new information technology related matters, no formal CIO Analysis is required.

The CEO has reviewed this Board letter and recommends approval. County Counsel has approved the attached Agreement as to form.

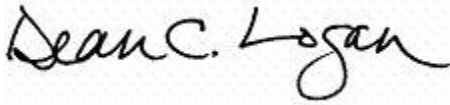
CONTRACTING PROCESS

The Agreement was developed through contract negotiations with the incumbent Contractor. There was no additional contracting process conducted.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

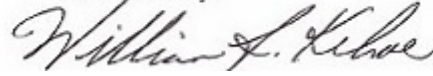
Approval of the recommendation will ensure uninterrupted service to the Voter Information Management System, which maintains voter records for over 6.3 million registered voters and provides quality voter data, pollworker and polling place data.

Respectfully submitted,



DEAN C. LOGAN
Registrar-Recorder/County Clerk

Reviewed by:



WILLIAM KEHOE
Chief Information Officer

DCL:RF:APL
FP:VW:jw

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Chief Information Officer

**ESSVR, LLC.
VOTER REGISTRATION SYSTEM LICENSE AND SUPPORT SERVICES AGREEMENT**

This Agreement is made as of the Effective Date (as hereinafter defined),

BETWEEN: ESSVR, LLC, a Delaware limited liability company (“ESSVR”);

AND: The Los Angeles County Registrar-Recorder/County Clerk (“Customer”).

RECITALS:

- A. Customer has agreed to license certain voter registration software from ESSVR for use in the State of California, County of Los Angeles (the “Jurisdiction”). The terms and conditions under which such license support and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.
- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):
 - Exhibit A (Pricing and Payment Summary)
 - Exhibit B (ESSVR Software Description)
 - Exhibit C (ESSVR Software License and Support Services)
 - Exhibit D (Additional Services)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of California**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ESSVR, LLC
11128 John Galt Boulevard, Suite 200
Omaha, NE 68137
Fax No.: (402) 970-1291

County of Los Angeles
12400 Imperial Highway
Norwalk, CA 90650
Fax No.

Signature

Signature

Name (Printed or Typed)

Name

Title

Title:

Date

Date

GENERAL TERMS
ARTICLE 1
DEFINITIONS

1.1 The following capitalized terms used, but not defined, in these General Terms or on an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials created by ESSVR for use with the ESSVR Software.
- b. "ESSVR Software" means ESSVR's proprietary voter registration software as set forth on Exhibit B as well as all Updates and items delivered to Customer under this Agreement.
- c. "ESSVR Software license, maintenance and support" means those services described on Exhibit C.
- d. "System" means, collectively, the ESSVR Software and Third Party Products.
- e. "Third Party Products" means hardware, software and equipment which have been manufactured, created and/or licensed by parties other than ESSVR.

ARTICLE 2
LICENSE OF ESSVR SOFTWARE AND SERVICES TO BE PROVIDED BY ES&S

2.1. **Grant of License.** Subject to the terms and conditions of this Agreement, ESSVR hereby grants to Customer a revocable, nonexclusive, nontransferable and nonassignable license for its bona fide full-time employees, part-time employees and temporary employees to use the ESSVR Software, described on Exhibit B, and related Documentation in the Jurisdiction. The License allows Customer to use and copy the ESSVR Software (in object code only) and the Documentation, solely for the purposes of managing the voter registration process and other election-related activities exclusively for and within the Jurisdiction. The licenses granted in this Section 2.1 do not permit Customer to possess or use the source code for the ESSVR Software. In addition, Customer may also allow the full-time employees, part-time employees, or temporary employees of other local government agencies located solely within the Jurisdiction to use the licensed ESSVR Software, provided that each such local government agency agrees to all of the restrictions for such use set forth in paragraph 2.2 below. In no event shall any local government agency employees be given access to the ESSVR Software source code, nor shall such local government agencies be provided with any copies of the ESSVR Software to reside within such jurisdictions.

2.2. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ESSVR Software or the Documentation:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ESSVR Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ESSVR Software or Documentation, in whole or in part, to or by any third party, including, but not limited to, any transfer of possession to, or use of the ESSVR Software or Documentation by any third party to perform any services for Customer without ESSVR's prior written consent; or
- c. Cause or permit any change to be made to the ESSVR Software without ESSVR's prior written consent; or

d. Cause or permit any copying, reproduction or printing of any output generated by the ESSVR Software in which ESSVR owns or claims any registered or common law proprietary intellectual property rights (e.g., copyright, trademark, patent or patent pending).

2.3. **License Fee.** In consideration for ESSVR's grant of the License for the ESSVR Software described in Section 2.1, Customer shall pay ESSVR the ESSVR Software License Fees set forth on Exhibit A.

2.4. **Term of License.** The license granted in Section 2.1 shall be in effect during the Term as defined in Section 3.1 below and shall terminate immediately upon the earlier of expiration of this Agreement or either party's earlier termination as provided herein. Upon the earlier of expiration of the Term, termination as provided herein or Customer's discontinuance of the use of any ESSVR Software, Customer shall immediately return such ESSVR Software and the related Documentation (including any and all copies thereof) to ESSVR, or (if requested by ESSVR) destroy such ESSVR Software and Documentation and certify in writing to ESSVR that such destruction has occurred.

2.5. **Updates.** During the Term of the Agreement, ESSVR may (but shall be under no obligation to) provide new releases or upgrades to the ESSVR Software, together with appropriate Documentation ("Updates"), on a schedule defined by ESSVR. Customer is solely responsible for obtaining any paying for any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be ESSVR Software for purposes of this Agreement upon delivery. Customer may install the Updates in accordance with ESSVR's installation instructions. ESSVR may charge Customer at its then-current applicable rates as set forth on Exhibit A to (i) deliver the Updates to the Customer, (ii) train Customer on Updates, if such training is requested by Customer; or (iii) provide maintenance and support on the ESSVR Software that is required as a result of Customer's failure to timely or properly install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to timely and properly install and use the most recent Update provided to it by ESSVR. If Customer proposes changes in the ESSVR Software to ESSVR and ESSVR elects to make such changes, such changes will become ESSVR's exclusive property. ESSVR may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ESSVR represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ESSVR Software in accordance with applicable law. Customer shall report any failure of performance of an Update via the ESSVR help desk telephone number set forth on Exhibit C within five (5) business days after the Update is, or is required to be, installed.

2.6. **Services.**

a. **ESSVR Software License, Maintenance and Support Services.** During the Term of this Agreement, ESSVR shall provide license, maintenance and support services for the ESSVR Software ("Software License, Maintenance and Support"). The specific ESSVR Software License, Maintenance and Support services provided by ESSVR and each party's obligations with respect to such services are set forth on Exhibit C. In consideration for ESSVR providing Software License, Maintenance and Support, the Customer agrees to pay ESSVR the fees set forth on Exhibit A.

b. **Additional Services.** During the Term of the Agreement and upon request by the Customer, ESSVR may provide those additional services as set forth on Exhibit D in ESSVR's sole and absolute discretion. In the event ESSVR agrees to provide such additional services, the Customer agrees to pay ESSVR the fees set forth on Exhibit A prior to the time in which such services are to be provided. ESSVR and the Customer shall mutually agree in writing in advance upon the date and time in which ESSVR will provide the requested services.

2.7 Disclaimer of Warranties. **ESSVR EXPRESSLY DISCLAIMS ALL WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

ARTICLE 3 MISCELLANEOUS

3.1 **Term; Termination.** This Agreement shall be effective on May 10, 2018 (the "Effective Date") and shall continue on a month-to-month basis through June 30, 2019 (the "Term") upon Customer's timely payment of the monthly fees set forth on Exhibit A. The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. The Term of this Agreement may be extended up to six (6) separate three-month renewal options (each a "Renewal Term"). Any Renewal Term must be agreed upon by both parties in a written amendment executed at least thirty (30) calendar days prior to expiration of the Term or any subsequent Renewal Term, as applicable. The obligations of ESSVR and the Customer may be terminated prior to the termination or expiration of the Agreement as follows:

- a. By ESSVR in the event Customer fails to make a monthly payment within five (5) business days after its due date hereunder;
- b. By either party if the other party breaches any material provision hereof (other than payment as set forth in 3.1.a above) and does not cure such breach within thirty (30) days after it receives notification thereof from the non-breaching party; or
- c. By either party upon thirty (30) days prior written notice of its intent to terminate the Agreement.

3.2 **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ESSVR's total liability to Customer arising out of or relating to this Agreement shall not exceed the aggregate amount actually paid to ESSVR hereunder during the Term, or any Renewal Term, as applicable. For purposes of clarification, ESSVR's total liability to Customer during the Term shall not exceed the aggregate amount actually paid to ESSVR during the Term for any claims arising during the Term and ESSVR's total liability to Customer during any Renewal Term shall not exceed the aggregate amount actually paid to ESSVR during any Renewal Term for any claims arising during such Renewal Term. By entering into this Agreement, The Customer agrees to accept responsibility for (a) the use of the System; and (b) the selection of, use of and results obtained from any equipment, software or services not provided by ESSVR and used with the System. **ESSVR WILL NOT BE LIABLE UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY LIABILITY FOR ANY CLAIM, DAMAGE, LOSS, JUDGMENT, PENALTY, COST, AMOUNT PAID IN SETTLEMENT OR FEE WHICH IS CAUSED BY (X) ACTS, ERRORS OR OMISSIONS BY THE CUSTOMER IN THE CUSTOMER'S USE OF THE SYSTEM, (Y) THE CUSTOMER'S FAILURE TO INSTALL AND USE THE MOST RECENT UPDATE PROVIDED TO IT BY ESSVR OR (Z) THE CUSTOMER'S ELECTION NOT TO RECEIVE, OR TO TERMINATE, THE LICENSE AND MAINTENANCE SERVICES PROVIDED UNDER EXHIBIT C. CUSTOMER HEREBY IRREVOCABLY WAIVES AND RELEASES ESSVR FROM ANY CLAIM THAT COULD BE BROUGHT IN CONTRACT, TORT OR OTHERWISE FOR DAMAGES ALLEGEDLY ARISING FROM ANY ACT OR OMISSION OF ESSVR OR FROM ANY FAULT, FAILURE OR DEFECT OF THE SYSTEM OCCURRING DURING THE PERIOD FROM THE EFFECTIVE DATE OF THIS AGREEMENT THROUGH THE EXECUTION DATE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR DAMAGES ARISING FROM ANY OF CUSTOMER'S ELECTIONS OCCURRING PRIOR TO THE EXECUTION OF THIS AGREEMENT.**

3.3 **Proprietary rights.** ESSVR shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with

Customer or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein or based thereon. Except as, and to the extent, expressly provided herein, ESSVR does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.

3.4 **Confidentiality.** During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes the Documentation, the information imparted during training provided by ESSVR, and any other information relating to the Customer's or ESSVR's operations, services, products, research or development. In the event that the Disclosing Party makes an oral or visual disclosure of information which it considers to be Confidential Information, it shall confirm the confidentiality of such disclosure in writing to the Receiving Party within fifteen (15) calendar days after its initial disclosure. "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons shall be informed of and will agree to the provisions of this Section, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control.

3.5 **Indemnification.** Customer hereby agrees to fully indemnify and hold harmless ESSVR and all of its respective members, directors, officers, agents, employees, successors and assigns from and against all claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, arising out of, or resulting from: (a) Customer's breach or non-compliance with any provision or obligation hereunder, (b) Customer's use of the System not in accordance with ESSVR's verbal or written recommendations or instructions, (c) Customer's use of the System with equipment, software or services not provided by ESSVR and used with the System, (d) any issues experienced in Customer's elections occurring prior to the execution of this Agreement, or (e) Customer's act, error or omission with respect to the use or misuse of the System under this Agreement, including, without limitation, the loss of use resultant therefrom to the extent caused in whole or in part by any act, error or omission of Customer or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

3.6 **Taxes: Interest.** This transaction is exempt from California sales or use taxes. See, e.g., CA Code Reg. § 1502(f)(1)(D). If the State of California's Board of Equalization nevertheless deems sales or use taxes apply, Customer shall pay, or shall reimburse ESSVR for, all applicable California sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on ESSVR's income. Any undisputed payment which is past due to ESSVR will bear interest at the rate of one and one-half percent per month (or such greater amount as may be permitted by applicable) for each month or portion thereof during which it remains unpaid.

3.7 **Excusable Nonperformance.** If ESSVR is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ESSVR agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.8 **Counterparts; Execution By Electronic Mail Transmission.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of electronic mail transmission, and the receipt of such executed counterparts by electronic mail transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

3.9 **Independent Contractor.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. ESSVR is providing the ESSVR Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ESSVR will not be responsible for (a) user errors or (b) compatibility problems encountered through the use of the Software with equipment or software not meeting ESSVR's specifications.

3.10 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed e-mail and sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid. All communications shall be sent to the attention of the persons listed below unless other names, addresses or e-mail addresses are provided by either or both parties. Copies of such notices shall be delivered by email, in addition to the other methods set forth above, to the persons identified below.

If to the Customer:

County Project Director
Aman Bhullar
Assistant Registrar-Recorder/County Clerk, IT Bureau
12400 Imperial Hwy.
Norwalk, CA 90650
E-Mail: ABhullar@rrcc.lacounty.gov

If to ESSVR:

Office of General Counsel
ESSVR, LLC
11128 John Galt Boulevard, Suite 200
Omaha, NE 68137
E-Mail: legal@essvote.com

3.11 **Payment Disputes.**

- a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ESSVR, (2) the amount due to ESSVR for any product or service, or (3) the due date of any payment, Customer shall timely pay all other undisputed amounts to ESSVR. Such payment shall not constitute a waiver by Customer or ESSVR of any of its rights and remedies against the other party.

- b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ESSVR is past due more than five (5) business days, ESSVR may suspend performance under this Agreement until such amount is paid or immediately terminate this Agreement.

3.12 **Entire Agreement.** This Agreement, including Exhibits A through D (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. ESSVR may engage duly qualified subcontractors to perform certain of the services to be provided hereunder, but shall remain fully responsible for such performance. The provisions of Article 2, 3.2-3.5, 3.7, 3.10, 3.11 this Section 3.12 shall survive the termination of this Agreement, to the extent applicable. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles.

[END OF GENERAL TERMS]

**EXHIBIT A
PRICING AND PAYMENT SUMMARY**

Fee Summary:		
Description	Refer to	Fee Per Month During the Term (May 2018 – June 2019)
Software License and Maintenance Fees	Exhibit C	\$39,000.00
Additional Services Fees During the Term: On-Site Support Services: \$1,650 per day per person with a minimum of three days Enhancements: \$175.00/hour Training: \$1,650 per day person with a minimum of three days Daily Fees for On-Site Support Services and Training shall apply to travel days to and from Customer's location	Exhibit E	TBD
Total Fees Per Month		\$39,000.00

Terms and Conditions:

Note 1: Payment Terms for the Services Provided herein shall be as follows:

- **Software License and Maintenances:** These fees will be billed in monthly payments. Each monthly payment shall be due prior to the start of the applicable month in which the license and maintenance services are to be provided. Customer acknowledges that monthly fees for the period of May 2018 through November 2018 (7 months) (the "Historical Payment") are due and payable no later than November 15, 2018. In the event that ESSVR fails to receive the Historical Payment by November 15, 2018, this Agreement shall immediately terminate without further notice on November 16, 2018 and be of no further force and effect and ESSVR shall have no further obligations or liability hereunder.
- **Additional Services Fees:** ESSVR shall invoice the Customer upon Customer's request for the applicable service. Payment shall be due prior to ESSVR completing the requested service.
- **All Software License and Maintenance Fees and all Additional Service Fees set forth in the Pricing and Payment Summary above shall increase by Five Percent (5%) above the applicable Fees charged during the Term for any Renewal Terms occurring from July 1, 2019 through June 30, 2020 ("First Year Renewals") and by an additional Five Percent (5%) above the applicable Fees charged during the First Year Renewals for any Renewal Terms from July 1, 2020 through December 31, 2020.**

Note 2: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.6. Premium or rush transportation services incurred in connection with deliverables included in the Total Fees are additive and will be billed as incurred.

EXHIBIT B
ESSVR Software Licensed by the Customer

DIMS.net Voter Registration Software

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EXHIBIT C
ESSVR Software License, Maintenance & Support

1. **SERVICES PROVIDED.** Upon Customer's payment of the Software License, Maintenance and Support fees set forth on Exhibit A (the "Maintenance Fee"); ESSVR shall provide Software License, Maintenance and Support during the Term. The respective support responsibilities of the parties for license, maintenance and support are set forth herein.

2. **SYSTEM ADMINISTRATORS.** The customer shall always have two (2) designated County System Administrators. ESSVR shall be notified of their names, telephone numbers and email addresses.

3. **UPDATES.** During the Term of the Agreement, Updates will be provided in accordance with Section 2.5(a) of the General Terms.

4. **CONDITIONS.** ESSVR shall not be obligated to provide Software License, Maintenance and Support services if:

- (a) the ESSVR Software is not used with hardware and software meeting specifications supplied by ESSVR;
- (b) the hardware and software used with the ESSVR Software is not in good operating order or is not installed in a suitable operating environment;
- (c) the hardware does not have a current warranty or support agreement by the original vendor
- (d) the ESSVR Software or any hardware or software with which the ESSVR Software is used is modified, changed or altered without ESSVR's prior authorization or approval in writing;
- (e) the data and/or the database structure used in conjunction with the ESSVR Software is manipulated using application software other than the ESSVR Software;
- (f) the failure of performance is caused by Customer, its employees or authorized representatives, or any third party;
- (g) Customer does not notify ESSVR of the failure of performance within ten (10) business days after it occurs and is otherwise not in compliance with its obligations hereunder; or
- (h) Customer does not pay any Maintenance Fee on a timely basis.

5. **SUPPORT HOURS.** ESSVR shall establish a Help Desk to manage and track any technical problems and failures encountered by County. ESSVR shall provide county with a toll-free telephone number to Help Desk staffed 24 hours per day, seven (7) days a week.

6. **SUPPORT CONTACT INFORMATION.** The following is the support contact information for ESSVR.

Phone: 1-800-553-3467
Email: dimshelp@essvrlc.com

Only send non-critical support request to our Internet e-mail address. Upon receipt, your request will be entered into our call tracking system and will follow the same process had you called the helpdesk from our toll-free number.

EXHIBIT D
ADDITIONAL SERVICES

1. **SYSTEM ENHANCEMENTS.** From time to time, the Customer may request enhancements to the system. Enhancements can be requested due to changes in state or federal law, as well as modifications the Customer or the State would like to the system. When an enhancement is needed, it should be requested through the ESSVR helpdesk as they will log an enhancement into the ESSVR's tracking system. ESSVR will review such Customer requests and determine, in its sole discretion, whether or not to make the requested enhancement. In the event ESSVR makes the decision to proceed with the requested enhancement, a change order will then be presented to the Customer for signature that outlines the work level and fees for each enhancement.
2. **TRAINING.** ESSVR will provide training to the Customer on the use of the Voter Registration software as needed. A minimum 30-day notice shall be given to ESSVR prior to requesting a training session to allow for proper planning of the training. ESSVR shall invoice the Customer upon request of each individual training session. Payment shall be due prior to ESSVR performing the requested services.
3. **SERVICE FEES.** Additional Services may be requested by Customer from time to time under this Agreement. All additional changes will be presented through the change order process. Customer shall only pay for those services which Customer requests and for which services are performed.

REGISTRAR-RECORDER/COUNTY CLERK
 FINANCE AND MANAGEMENT DIVISION
 CONTRACTS AND GRANTS SECTION

	FY 2018-19 <i>*includes May 2018-June 2019</i>	FY 2019-20 <i>*includes July 2019-June 2020</i>	FY 2020-21 <i>*includes July 2020-December 2020</i>	TOTALS PER CATEGORY
License and Maintenance	\$546,000 @\$39,000 monthly	\$491,400 <i>*includes 5% increase from previous year per terms and conditions.</i>	\$257,985 <i>*includes 5% increase from previous year per terms and conditions.</i>	\$1,295,385
Onsite Support Services Per person per day (min. 3 days) <i>*As-needed</i>	\$39,600 (\$1650 x 8) <i>*11/2018 - 6/2019</i>	\$62,388 (\$1733 x 12) <i>*includes 5% increase from previous year per terms and conditions.</i>	\$32,760 (\$1820 x 6) <i>*includes 5% increase from previous year per terms and conditions.</i>	\$134,748
Training <i>*As-needed</i>	\$39,600 (\$1650 x 8) <i>*11/2018 - 6/2019</i>	\$62,388 (\$1733 x 12) <i>*includes 5% increase from previous year per terms and conditions.</i>	\$32,760 (\$1820 x 6) <i>*includes 5% increase from previous year per terms and conditions.</i>	\$134,748
Enhancements <i>*As-needed</i>	\$42,000 (\$175 x 240 hours)	\$44,160 (\$175 x 240 hours)	\$46,320 (\$175 x 240 hours)	\$132,480
TOTALS PER FISCAL YEAR	\$667,200	\$660,336	\$369,825	\$1,697,361

\$401,976