

**COST-SHARING AGREEMENT
FOR STATEWIDE VOTER REGISTRATION DATABASE**

This Agreement is entered into by and between COCHISE COUNTY, a body politic and corporate of the State of Arizona ("County"), on behalf of the COCHISE COUNTY RECORDER ("Recorder") and the OFFICE OF THE SECRETARY OF STATE ("Secretary").

Recitals

- A. The Secretary entered into an agreement by and between the State of Arizona and Election Services & Software, Inc. ("ES&S") dated July 1, 2017 for software and software maintenance services for the statewide voter registration database ("ES&S Agreement") from July 1, 2017 to June 30, 2019. A copy of the ES&S Agreement is attached hereto as Exhibit 1.
- B. The County utilizes the goods and services provided by the ES&S Agreement and the residents of the County receive a substantial benefit as a result of the Recorder being able to utilize the goods and services provided by the ES&S Agreement.
- C. Both the Secretary and the County have a duty towards the continued existence and maintenance of the statewide database of voter registration information and protection of access to voter registration information in the database. A.R.S. § 16-168. The authorizing statutes allow for the Secretary and the County to enter into a cooperative agreement for the purpose of compliance with A.R.S. § 16-168, the National Voter Registration Act, codified at 52 U.S.C. § 20503 et seq., and the Help America Vote Act, codified at 52 U.S.C. § 20901 et seq.
- D. The Secretary and the County have mutually determined that the County's fair share of all costs associated with the ES&S Agreement is \$8,039.19 per fiscal year for fiscal year 2018 and fiscal year 2019. The County has paid its share of costs for fiscal year 2018 but has not yet paid its share of costs for fiscal year 2019.
- E. The Secretary and the County acknowledge that the current ES&S Agreement is anticipated to be extended for a three month period (through September 30, 2019) and that the Secretary has awarded a new contract to Sutherland Government Solutions, Inc. that will replace the current ES&S Agreement after the anticipated agreement. The Secretary and the County intend that the Recorder will have the opportunity to access any such replacement software in substantially the same manner as the Recorder now accesses that software provided for in the ES&S Agreement and that the parties will reach a separate agreement as to cost-sharing for the extension of the ES&S Agreement and the new contract with Sutherland Government Solutions, Inc.

NOW, THEREFORE, the County and the Secretary, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

Agreement

1. **Purpose.** The Recorder and the Secretary desire to share the costs for software and software maintenance services for the statewide voter registration database under the ES&S Agreement.
2. **Cost-Sharing.** The Secretary and the County have mutually determined that the County's fair share of all costs associated with the ES&S Agreement is \$8,039.19 for services rendered in fiscal year 2019. The County will render payment in that amount once the County receives an invoice from the Secretary.
3. **Term.** This Agreement will be effective on the date it is fully executed by both parties and will continue until June 30, 2019, unless it is, prior to the expiration of such period, extended or terminated by agreement of the parties.
4. **Insurance.** All parties to this agreement are government entities. Neither entity is required to procure special insurance coverage for their obligations under this Agreement.
5. **Compliance with Laws.** The parties will comply with all federal, state and local laws, rules, regulations, standards, and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes. Any action relating to this Agreement will be brought in a court in Maricopa County.
6. **Non-Discrimination.** The parties will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out their duties under this Agreement. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Agreement by reference.
7. **ADA.** The parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 C.F.R. Parts 35 and 36.
8. **Severability.** If any provision of this Agreement, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application.

SOS ESS Cost-Sharing Agreement - Cochise County
FY19 Payment

9. **Conflict of Interest.** The requirements of A.R.S. § 38-511 apply to this Agreement. This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
10. **Non-Appropriation.** Notwithstanding any other provision in this Agreement, every payment obligation of the parties under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligations. If funds are not appropriated, allocated and available or if the appropriation is changed by the appropriating body resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the affected party or any other affected agency of the County or State at the end of the period for which funds are available. No liability shall accrue to the affected party or any other affected agency of the County or State in the event this provision is exercised, and neither the affected party nor any other affected agency of the County or State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
11. **Recordkeeping.** Pursuant to A.R.S. §§ 35-214 and 35-215, the parties shall retain all records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State of Arizona at reasonable times. Upon request, the County shall produce the original of any or all such records at the offices of the Secretary.
12. **A.R.S. § 41-4401 Compliance - Immigration Laws and E-Verify Requirement.** The parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrants compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads in part: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.")
 - a. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the breaching party may be subject to penalties up to and including termination of the Agreement.
 - b. The Secretary retains the legal right to inspect the papers of any employee who works on the Agreement to ensure compliance with this paragraph.
13. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement will be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will be liable for any debts, accounts, obligations, or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

14. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
15. **Notice.** Any notice required or permitted to be given under this Agreement must be in writing and served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party) :

County:

David W. Stevens
Cochise County Recorder
1415 Melody Lane
Building B
Bisbee, AZ 85603
Phone: 520-432-8358
Fax: 520-432-8368

Secretary:

Honorable Katie Hobbs
Arizona Secretary of State
1700 West Washington Street,
Floor 7
Phoenix AZ 85007-2808
Phone: (602) 542-4285

With copies to:

County Administrator

Edward T. Gilligan
1415 Melody Lane
Building G
Bisbee, AZ 85603

Clerk of the Board

Arlethe G. Rios
1415 Melody Lane
Building G
Bisbee, AZ 85603

16. **No Indemnification.** Notwithstanding any provision of the Agreement to the contrary, the Secretary is not authorized to indemnify the County.
17. **Arbitration.** The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.
18. **Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this Agreement. This Agreement may not be modified, amended, altered, or extended except through a written amendment signed by the parties.

THIS AGREEMENT MAY BE SIGNED IN COUNTERPARTS

IN WITNESS WHEREOF, the parties execute this Agreement:

COCHISE COUNTY BOARD OF SUPERVISORS

Peggy Judd, Chair

Date

ATTEST:

Arlethe G. Rios, Clerk of the Board of Supervisors

Date

APPROVED AS TO CONTENT:

David W. Stevens, Cochise County Recorder

OFFICE OF THE SECRETARY OF STATE



Katie Hobbs, Secretary of State

March 25, 2019

Date