

Subject: RE: IPRA Request (NM-OTERO-22-0604) (OC File #22PRR088)
Date: Monday, June 27, 2022 at 5:13:11 PM Eastern Daylight Time
From: Sylvia Tillbrook
To: AO Records
Attachments: image002.jpg, image003.jpg, Sylvia C Tillbrook2.vcf, Scan2158.pdf

EXTERNAL SENDER

Marwah,

Attached you will find the public information you had requested.
If I can be of further assistance, please do not hesitate to contact me.
This completes this public records request.



From: Sylvia Tillbrook [mailto:stillbrook@co.otero.nm.us]
Sent: Thursday, June 23, 2022 10:37 AM
To: 'AO Records' <records@americanoversight.org>
Subject: RE: IPRA Request (NM-OTERO-22-0604) (OC File #22PRR088)

Good Morning Marwah,
We will need additional time to respond to your request, until July 8, 2022.
Should you have any questions, please do not hesitate to contact me.



From: AO Records [<mailto:records@americanoversight.org>]

Sent: Thursday, June 23, 2022 8:12 AM

To: stillbrook@co.otero.nm.us

Subject: IPRA Request (NM-OTERO-22-0604)

Dear Custodian of Public Records:

Please find attached a request for records under New Mexico's Inspection of Public Records Act.

Sincerely,

--

Marwah Adhoob

Pronouns: she/her

Paralegal

American Oversight

records@americanoversight.org

www.americanoversight.org | @weareoversight

IPRA: NM-OTERO-22-0604



January 25, 2022

V.A. Shiva Ayyadurai, PhD
EchoMail, Inc.
701 Concord Avenue
Cambridge, MA 02138
e: vashiva@vashiva.com
m: 1-617-631-6874

Gerald Matherly, Couy Griffin, and Vickie Marquardt
Commissioners for Otero County Commission
101 New York Avenue
Alamogordo, NM 88310

RE: Otero County Audit of 2020 Election

Dear Honorable Commissioners:

EchoMail, Inc. (“ECHOMAIL”) is pleased to serve Otero County, (“CUSTOMER”) in the auditing of the November 2020 General Election (“Election”). Per our understanding, ECHOMAIL will be serve as the prime contractor and be responsible for the deployment of the EchoMail® Election Systems Integrity™ (ESI) platform to perform the audit for the Election. Based on our review of the requirements, EchoMail will provide the following:

- (1) **Integrated Data Warehouse** - Creation of an integrated data warehouse that will include such data as following: County’s Voter Rolls, Participating Voter List, Cast Vote Records (CVRs), Images of the Return Ballot Envelopes, Ballot Images (from the Election Management System – EMS), Paper Ballot Scans, Door-to-Door Canvass data. Ref. Schedule A.
- (2) **Data Analytics** – Data analysis will include evaluation of registrations and votes cast at the precinct level and by vote type.
- (3) **Processing of Ballot Images** - Employ EchoMail to analyze approximately up to 25,000 Ballot Images. The Ballot Images are defined to be those images that are produced from the scanning of paper ballots by the County during the Election from their election management system (“EMS”) . EchoMail will perform image analysis of the Ballot Images to calculate the vote counts for the Races. These vote counts will be compared with the Cast Vote Records (“CVR”). A formal report will be submitted of the findings. Ref. Schedule B.
- (4) **Paper Ballot Scan Comparison with Ballot Images** – Perform image analysis of the Paper Ballot Scans to calculate the vote counts for the Races (Paper Ballot Scans are the images generated by the scanning of the paper ballots). These vote counts will be compared with the Cast Vote Records (“CVR”). EchoMail will perform Image processing to determine the paired Paper Ballot Scan with its Ballot Image, and then evaluate if the vote counts across the pair are the same; and if not, will denote the discrepancies. A formal report will be submitted of the findings. Ref. Schedule C.
- (5) **Return Ballot Envelope Signature Presence Detection** - Perform EchoMail® Pattern Recognition Classification to determine presence of Blanks, Scribbles, and Signature on Return Ballot Envelope Images. A formal report will be submitted of the findings. Ref. Schedule D.

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701 Concord Avenue Cambridge, MA 02138 tel.: 617-354-8585



- (6) **Return Ballot Envelope Signature Verification Error Determination** - Perform an independent calculation of the error rates of the Count’s Signature Verification by employing EchoMail® Pattern Recognition Classification capabilities to determine how many of the signatures on unique EVB return envelopes would be classified as “Good Signatures” or “Bad Signatures” before any curing process is executed. Ref. Schedule E.
- (7) **Full Voter Registration Canvass** - Perform door-to-door canvass of Otero County voter registration database to determine accuracy of voter registration database. Canvass will be staffed by volunteers under the direction of New Mexico Audit Force (“Volunteers”) with guidance from EchoMail.

Total investment for this effort from Otero County will be \$49,750 as outlined in Schedule A. The County will not be liable for payment or portions of payments of line items in Schedule A in the event certain items cannot be obtained. The Payment Schedule is as follows:

<u>Timing</u>	<u>Amount</u>
Upon execution of this letter and Master Agreement and Schedule A	- \$24,875.00
March 1, 2022	- \$24,875.00

Note: Schedules B through E will be funded by EchoMail's partners.

Sincerely,

Dr. Shiva Ayyadurai
 President/CEO
 EchoMail, Inc.

Encl: Master Agreement
 Schedules A



MASTER LICENSE AND SERVICES AGREEMENT

This Agreement is entered into as of January 25, 2022 (“the Effective Date”) between EchoMail, Inc., a Delaware Corporation, its subsidiaries, affiliates, authorized resellers/distributors, (“ECHOMAIL”) and Otero County Commission its subsidiaries and affiliates, (“CUSTOMER”).

In consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

1.0 Definitions

As used herein, the following terms shall have the designated meanings:

- 1.1 “Licensed Software” shall mean the software designated on any Schedule as being licensed by ECHOMAIL to CUSTOMER under this Agreement.
- 1.2 “Schedule” shall mean any schedules or exhibits, including any Statements of Work included therein, executed by the parties and attached to the Agreement as of the date hereof and any Schedules or exhibits, including any Statement of Work included therein, subsequently executed by the parties and attached to this Agreement.
- 1.3 “Services” shall mean the services designated in any Schedule as being provided by ECHOMAIL to CUSTOMER under this Agreement.

2.0 License

- 2.1 If the agreed-upon offering from ECHOMAIL includes Licensed Software, ECHOMAIL will grant to CUSTOMER a non-perpetual, non-exclusive, non-transferable, non-sublicensable right and license to use the Licensed Software in object code form only to receive, process, analyze, transmit and respond to digital content i.e. messages, images, email, web pages, social media posts, etc. solely for its own business purposes subject to and in accordance with the provisions of this Agreement, the terms in Schedule, and the accompanying documentation.
- 2.2 If CUSTOMER requires access of Licensed Software by any consultants or third-party entities, then CUSTOMER agrees to ensure that such consultants or third-party entities execute a separate agreement with ECHOMAIL to ensure protection of ECHOMAIL’s Intellectual Property. CUSTOMER agrees that at no time will CUSTOMER allow any direct or indirect competitor of ECHOMAIL to access or to use the Licensed Software. CUSTOMER agrees to abide by ECHOMAIL’s reasonable definition of competitor, should there ever come a question as to if an entity is a competitor to ECHOMAIL or not.
- 2.3 The Licensed Software and documentation provided therewith are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable.

3.0 ECHOMAIL Responsibilities

- 3.1 ECHOMAIL shall be solely responsible for the proper installation of the Licensed Software in machine-readable, object code form.
- 3.2 ECHOMAIL will also provide to CUSTOMER services for implementation, training, customization, maintenance, hosting and other services related to Licensed Software as requested by CUSTOMER as outlined in the appropriate Schedule(s).
- 3.3 ECHOMAIL agrees to provide to CUSTOMER access codes for the use of the Licensed Software. On the date that CUSTOMER uses any of those access codes to use the Licensed Software in a production format, the formal delivery of the Licensed Software is complete (“Delivery Date”).
- 3.4 Following the Delivery Date, ECHOMAIL shall provide software support and maintenance services under this Agreement in accordance with the terms and conditions set forth in the appropriate Schedule. ECHOMAIL shall provide the software support services set forth in Schedule for only the then current release of the Licensed Software.

3.5 ECHOMAIL will provide timely new releases and updated documentation of the Licensed Software at no additional cost to CUSTOMER.

4.0 Services

4.1 All work shall be performed in a workmanlike and professional manner by ECHOMAIL having a level of skill in the area commensurate with the requirements of the scope of work to be performed.

5.0 Price

The prices for all ECHOMAIL Licensed Software, Services and related maintenance and support services shall be set forth in the applicable Schedule. If CUSTOMER desires to add additional software to the Licensed Software or buy additional units, CUSTOMER shall have the right to do so during the term hereof for the prices set forth in applicable signed Schedule(s).

6.0 Payment

6.1 CUSTOMER shall pay ECHOMAIL the fees for all Licensed Software and related maintenance and according to the Payment Schedule as outlined in signed applicable Schedule(s).

6.2 ECHOMAIL shall invoice CUSTOMER for all CUSTOMER pre-approved Out-of-Pocket Expenses and any other amounts due as set forth in signed applicable Schedule(s) on a monthly basis. Each invoice shall contain detailed entries of Software, Service and other items. CUSTOMER shall pay all as denoted in signed applicable Schedule(s).

6.3 If CUSTOMER does not pay for the Licensed Software within the time limits as agreed upon in signed applicable Schedule(s), ECHOMAIL will contact CUSTOMER to obtain payment and attempt to resolve any discrepancies. If after 30 days, the discrepancy cannot be solved, CUSTOMER agrees that ECHOMAIL has the right to terminate CUSTOMER'S further use of the Licensed Software until payment is received.

6.4 All payments not made within the time periods specified herein shall bear interest at the rate of one and one half percent (1.5%) per month or the maximum allowed by law, whichever is less, until paid in full.

6.5 In the event of termination, CUSTOMER is responsible for any and all amounts due to EchoMail per the terms of any signed Schedules or Statement of Work(s).

7.0 Schedules

The applicable Schedule sets forth the ECHOMAIL Licensed Software and/or Services to be obtained by CUSTOMER. The parties may execute additional Schedules and such additional Schedules will be bound by the terms of this Agreement.

8.0 Publicity

ECHOMAIL may use CUSTOMER'S name and identifying logo on ECHOMAIL'S customer list and web site.

9.0 Transmission Difficulties

CUSTOMER acknowledges that it shall be fully and solely responsible for assuring that data sent by CUSTOMER to ECHOMAIL reach ECHOMAIL in proper condition, and ECHOMAIL shall have no liability in connection therewith.

10.0 Intellectual Property Rights

ECHOMAIL possesses, and shall at all times continue to possess and own, the entire right, title and interest in and to the Licensed Software, the results or deliverables of any Services performed hereunder (which shall be deemed to be Licensed Software for purposes of this Agreement) and all intellectual property rights of any nature whatsoever with respect to the foregoing. All right, title and interest in and to any programs, systems, data and materials furnished to ECHOMAIL by CUSTOMER are and shall remain the property of CUSTOMER and will be returned to CUSTOMER at the earlier of termination of this Agreement or the completion of Services.

11.0 Confidential Information

- 11.1 During the term of this Agreement, each party shall disclose to the other party, both orally and in writing, certain information of the disclosing party which concerns the disclosing party's business plans, customers, technology or products which are or contain confidential, proprietary or trade secret information (collectively the "Information"), which is either marked in a manner to indicate that it is considered proprietary or confidential or otherwise subject to limited distribution as provided herein, or is disclosed in such a manner that a reasonable person would understand the confidential nature of the Information disclosed. In addition, future business plans, customer, customer lists and financial information, and confidential information of third parties to which a party has had access shall be deemed Information. A party receiving Information shall hold such Information in strict confidence and shall not disclose such Information to any person or entity other than to the employees, agents or consultants of such party having a need to know in order for such party to perform properly its obligations under this Agreement. Such party shall make no other use of any nature whatsoever of any such Information. The Licensed Software constitutes Information of ECHOMAIL.
- 11.2 All vendors, service providers, consultants and other third-party agents engaged by the CUSTOMER that are involved in the use of or interaction with ECHOMAIL shall sign EchoMail Mutual Non-disclosure Agreement.
- 11.3 This Agreement shall impose no obligation of confidentiality upon a recipient with respect to any portion of the information received hereunder which is (a) now or hereafter, through no unauthorized act or failure to act on recipient's part, in the public domain; (b) known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records; (c) hereafter furnished to the recipient by a third party as a matter of right and without restriction on disclosure; (d) furnished to others by the disclosing party without restrictions on disclosure; (e) independently developed by the recipient without use of the disclosing party's Information; or (f) required to be disclosed pursuant to a requirement of a government agency or law, so long as the recipient provides prompt notice to the disclosing party of such requirement prior to any such disclosure and reasonably cooperates with the disclosing party if it elects to seek to limit or avoid such disclosure by any lawful means.
- 11.4 Each party acknowledges that in the event of any breach or threatened breach of this Section 11.0, the other party shall suffer irreparable harm and will not possess an adequate remedy at law. Accordingly, each party shall have the right to obtain injunctive relief to restrain such breach or threatened breach.
- 11.5 No right of ownership or title to any Information is transferred by either party to the other party under or pursuant to this Agreement.
- 11.6 CUSTOMER acknowledges that Licensed Software provided by ECHOMAIL is copyrighted by ECHOMAIL. The trademarks, trade names and logos under which ECHOMAIL markets the Licensed Software are the exclusive property of ECHOMAIL and this Agreement provides no rights thereto to CUSTOMER. Any copyright notice used by ECHOMAIL shall not be deemed to imply that any part of such item has been published or has been placed in the public domain.

12.0 Warranty

- 12.1 ECHOMAIL warrants for a period of sixty (60) days following the Delivery Date of the applicable Licensed Software to CUSTOMER that any Licensed Software provided by ECHOMAIL shall materially conform to ECHOMAIL'S then current documentation. In the event any Licensed Software does not so materially conform to then current documentation, ECHOMAIL shall undertake reasonable commercial efforts to correct such non-conformity. Such correction shall constitute CUSTOMER'S sole remedy and ECHOMAIL'S sole liability in the event of any breach of such warranty by ECHOMAIL.
- 12.2 EXCEPT AS OTHERWISE STATED IN THIS SECTION 12, ECHOMAIL MAKES NO WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE OR THE SERVICES PERFORMED UNDER THIS AGREEMENT AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, FREEDOM FROM BUGS, CORRECTNESS OR RELIABILITY, OR THAT THE LICENSED SOFTWARE'S USE WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE.

13.0 Infringement

- 13.1 ECHOMAIL shall defend, indemnify and hold harmless CUSTOMER from all costs, expenses, damages, suits and other proceedings incurred by CUSTOMER, its officers, directors, employees or agents in connection with any claim that the Licensed Software infringes any patent, copyright, trade secret or other proprietary rights of any third party, provided that (a) CUSTOMER promptly informs ECHOMAIL of any such action, and (b) CUSTOMER furnishes to ECHOMAIL all information and assistance in connection therewith which may be reasonably requested by ECHOMAIL from time to time. ECHOMAIL shall have the sole right to settle, defend, or otherwise handle any such claim. In the event the use of any Licensed Software is enjoined, ECHOMAIL shall, at its option, either (a) procure for CUSTOMER the right to continue to use such Licensed Software, (b) replace or modify the same to make it non-infringing, or (c) terminate the license to such Licensed Software and provide a pro rata refund to CUSTOMER of all amounts paid by CUSTOMER for the allegedly infringing Licensed Software to ECHOMAIL hereunder, based upon a five (5) year life of such Licensed Software.
- 13.2 ECHOMAIL'S obligations under this Section 13.0 shall be only for the benefit of CUSTOMER. ECHOMAIL shall not be obligated to defend or to be liable under this Section 13.0 to the extent the infringement asserted arises out of (a) compliance with specification originating with CUSTOMER, (b) use or combination of Licensed Software with items not provided by ECHOMAIL to the extent such infringement would not have occurred but for such use or combination with such other items; (c) use of other than the latest unmodified version of Licensed Software if such infringement would have been avoided by the use of such later version; or (d) modification of Licensed Software other than by ECHOMAIL.
- 13.3 This Section 13.0 states the exclusive remedy of CUSTOMER and the entire liability of ECHOMAIL with respect to infringement of any patent, copyright, or other proprietary rights of third parties by items furnished by ECHOMAIL hereunder.

14.0 Indemnification

- 14.1 Each party shall indemnify and hold harmless the other party, its subsidiaries, their officers, directors, agents and employees from any claims for loss, cost, damage, expense or liability by reason of bodily injury (including death) or tangible property damage arising out of, as a result of, or in connection with, the indemnifying party's performance under this Agreement or the negligent actions or omissions or willful wrongdoing of the indemnifying party, provided that the indemnified party gives the indemnifying party prompt written notice of such claims and, full information, reasonable assistance and authority for the defense or settlement of such claims.

15.0 Limitation of Liability

EXCEPT AS EXPRESSLY PROVIDED HEREIN, ECHOMAIL'S LIABILITY UNDER THIS AGREEMENT, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO EVENT EXCEED AMOUNT PAID BY CUSTOMER TO ECHOMAIL UNDER THIS AGREEMENT CONTRACT PRICE, AS SET FORTH IN SCHEDULE FOR LICENSED SOFTWARE AND/OR SERVICES, WHICH ALLEGEDLY DAMAGED CUSTOMER. THE CONTRACT PRICE, AS SET FORTH IN SCHEDULE A. IN NO EVENT SHALL ECHOMAIL HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF ECHOMAIL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

16.0 Term

Unless earlier terminated in accordance with Section 17.0 hereof, the term of this Agreement shall commence as of the date hereof and shall continue in full force and effect for three (3) years thereafter. This Agreement shall automatically renew for successive one (1) year terms, thereafter, unless terminated by either party by written notice to the other at least thirty (30) days prior to the renewal date.

17.0 Termination

- 17.1 In the event of a breach of this Agreement by a party hereto (including without limitation use of the Licensed Software by CUSTOMER in excess of the use limitations specified in any applicable Schedule(s), the non-breaching party shall give notice of such default to the other party and, if the breach is not cured within sixty (60) calendar days of such notice, the non-breaching party shall be entitled to terminate this Agreement immediately upon notice to the other party.
- 17.2 In the event a party hereto files a voluntary petition for bankruptcy, has an involuntary petition for bankruptcy filed against it which remains undismissed for at least sixty (60) days, makes an assignment for the benefit of its creditors, or has a receiver appointed for all or a substantial portion of its property, the other party shall have the right to terminate this Agreement immediately upon notice.
- 17.3 The rights and obligations of the parties under Sections 2.3, 6.0, 8.0, 10.0, 11.0, 12.0, 13.0, 14.0, 15.0, 17.3 and 18.0 hereof shall survive any termination of this Agreement. Except for the foregoing, immediately upon the effective date of any termination, all rights and obligations of the parties under this Agreement shall cease and terminate. CUSTOMER shall, within ten (10) days after the effective date of any termination, promptly, first, deliver to ECHOMAIL all copies of any Licensed Software provided by ECHOMAIL and all ECHOMAIL'S Information then in CUSTOMER'S possession; second, destroy any copies of Licensed Software whatsoever in CUSTOMER'S possession; third, allow ECHOMAIL access to hardware systems that contained or contain Licensed Software to verify and ensure termination of use of Licensed Software.
- 17.4 In the event of early termination, CUSTOMER is obligated to pay to ECHOMAIL any and all amounts due for Services performed through the date of termination.
- 17.5 CUSTOMER may terminate this Agreement at any time on sixty (60) days prior written notice and CUSTOMER, in such event is obligated to pay to ECHOMAIL any and all amounts due per the terms of any Schedules agreed upon by both parties.

18.0 Miscellaneous

- 18.1 Each party irrevocably agrees that in any court proceedings initiated by CUSTOMER, the state and federal courts located in the State of Arizona shall have exclusive jurisdiction to settle any dispute, and for any court proceedings initiated by ECHOMAIL, the state and federal courts located in the Commonwealth of Massachusetts shall have exclusive jurisdiction to settle any dispute with respect to any matters relating to this Agreement.
- 18.2 The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereto submit to the non-exclusive jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts with respect to any matters relating to this Agreement.
- 18.3 Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes of whatever nature and any other reason beyond the reasonable control of either party.
- 18.4 In the event that any provision of this Agreement shall be held to be void or unenforceable by any court of competent jurisdiction, such determination shall not affect the remainder of this Agreement, which shall remain in full force and effect, and the void or unenforceable provision shall be enforced to the maximum extent legally permissible.
- 18.5 This Agreement shall not be transferable or assignable by CUSTOMER without the prior written consent of ECHOMAIL, such consent not to be unreasonably withheld. Notwithstanding the foregoing, upon notice to ECHOMAIL, CUSTOMER may assign this Agreement or any rights, duties or obligations hereunder to a corporation controlling, controlled by or under common control with CUSTOMER. Any assignment or transfer in violation of this provision shall be void and without effect.
- 18.6 This Agreement shall not be transferable or assignable by either party without the prior written consent of the other party. Any assignment or transfer in violation of this provision shall be void and without effect.
- 18.7 This Agreement embodies and sets forth the entire agreement and understanding of the parties and



SCHEDULE A

Customer Name: Otero County Commission ("CUSTOMER")
Customer Address: 101 New York Avenue, Alamogordo, NM 88310
Effective Term: January 25, 2022 – May 30, 2022
County: Otero County ("County")
Election: 2020 General Election ("Election")

Title: Integrated Data Warehouse and Analytics

Statement of Work

- (1) Integrated Data Warehouse - Creation of an integrated data warehouse that will include such data as following: County's Voter Rolls, Participating Voter List, Cast Vote Records (CVRs), Images of the Return Ballot Envelopes, Ballot Images (from the Election Management System – EMS), Paper Ballot Scans, Door-to-Door Canvass data.
(2) Data Analytics – Data analysis will include evaluation of registrations and votes cast at the precinct level and by vote type.

Pricing Schedule

Table with 6 columns: Part Number, Part Description, Units, Unit Cost, One-Time, Recurring. Rows include Professional Services (Project Planning, Data Warehouse, Hardware Forensics, Data Analytics and Reporting) and Licenses (EchoMail@ DataWarehouse) with sub-totals and a final NET-Total of \$49,750.00.

Other Terms:

Additional charges shall apply at the Unit Price set forth above in the event that quantity of use of the foregoing licensed Software and Services exceeds purchased amounts hereunder. Such additional charges shall be billed to the CUSTOMER on monthly basis. ECHOMAIL shall issue no credits to CUSTOMER for any licenses not used by CUSTOMER On the expiration date, and unused licenses may not be carried over into subsequent periods.

In the event CUSTOMER requests ECHOMAIL with prior written confirmation to ECHOMAIL to take specific actions, for example travel for onsite training or strategy meeting, shipping data on physical media such as tapes or disks etc., costs of shipping, telecommunications, mailing, traveling and out-of-pocket expenses incurred by EchoMail, Inc. in the performance of such actions are not included herein, and will be billed directly to CUSTOMER on a monthly basis.



This Schedule is governed by the EchoMail Software & Services Licensing Agreement. If there is any conflict between this Schedule and the EchoMail Software & Services Licensing Agreement, all terms of the EchoMail Software & Services Licensing Agreement shall control, except payment terms. Payment is due prior to start of work and use of Software and Services. Both parties agree to the foregoing as of this 25th day of January in the year of 2022, and to execute their performance obligations as set forth herein.

ECHOMAIL Authorized Representative

Signature: *Shiva Ayyadurai*

Name: Shiva Ayyadurai

Title: President/CEO

CUSTOMER Authorized Representative

Signature: *Gerald Motherly*

Name: Gerald Motherly

Title: Chairman



March 17, 2022

V.A. Shiva Ayyadurai
EchoMail, Inc.
701 Concord Avenue
Cambridge, MA 02138
e: vashiva@vashiva.com

Commissioners for Otero County
101 New York Avenue
Alamogordo, NM 88310

RE: Delivery of Contracted Services for 2020 Election Audit

Dear Honorable Commissioners:

Per the Master Agreement and the sole Schedule signed on January 26, 2022 between Otero County and EchoMail, EchoMail is contracted to perform two (2) specific tasks: 1) Creation of an integrated data warehouse; and, 2) Data analysis of the registrations and votes cast at the precinct level and by vote type.

EchoMail has completed both of these tasks.

Concerning the first task - creation of the integrated data warehouse - attached on the USB stick is the integrated data warehouse that is approximately 17GB containing the Cast Vote Records in MySQL database format, Cast Vote Records in an import-friendly format, Voter Rolls, Ballot Images, Paper Ballot Scans, and County Canvass data. We have received payment of \$24,875 for this task per the Schedule.

Concerning the second task - data analysis of the registrations and votes (ballots) cast at the precinct level and by vote type - on the same USB is a PDF containing the data analysis. As of March 1, 2022, we were to be paid the remainder \$24,875 for the completion of the data analysis, for which we have yet to receive payment. The delivery of this USB concludes our contracted services with the County. It has been a pleasure working with you. Kindly make arrangements for the outstanding payment.

Sincerely,

A handwritten signature in black ink, appearing to read "Shiva Ayyadurai".

Dr. Shiva Ayyadurai
President/CEO
EchoMail, Inc.

Encl.: USB stick containing data warehouse and data analysis.



February 18, 2022

V.A. Shiva Ayyadurai, PhD
EchoMail, Inc.
701 Concord Avenue
Cambridge, MA 02138
e: yashiva@vashiva.com
m: 1-617-631-6874

RE: EchoMail® Project Update Memo As of February 21, 2022

This memorandum provides an update on the current status of the project pursuant to Schedule A executed between EchoMail, Inc. ("EchoMail") and Otero County, ("County").

February 2, 2022 – EchoMail Setup of EchoMail Data Warehouse

EchoMail has setup the EchoMail® Data Warehouse (DW) that includes hardware and software to receive and store data that may include: County's Voter Rolls, Participating Voter List, Cast Vote Records (CVRs), Images of the Return Ballot Envelopes, Ballot Images (from the Election Management System – EMS), Paper Ballot Scans, Door-to-Door Canvass data. Ref. Schedule A.

February 5, 2022 – Importing of Voter Rolls into EchoMail®/DW™

EchoMail imported Voter Rolls received from the County via EH into the EchoMail®/DW.

February 9, 2022 – Project Kickoff Meeting Held

EchoMail and the County held a Project Kickoff meeting pursuant to Schedule A,

Attendees:

Dr. Shiva Ayyadurai, EchoMail (SA)
Robyn Holmes, County Clerk (RH)
Pamela Heltner, County Manager (PH)
Erin Hughes, County Commissioned Volunteer (EH)
John Medlar, EchoMail (JM)
R.B. Nichols, County Attorney (RBN)

The meeting involved: a. Introductions, b. Review of the EchoMail Project Plan, c. Review of the EchoMail process, d. Review of the outstanding data elements needed for EchoMail to perform the Audit, and e. Next Steps.

February 9 – 18, 2022 – EchoMail Awaiting Additional Data

EchoMail and EH have had various follow up meetings to get the additional data required for Audit.



January 25, 2022

V.A. Shiva Ayyadurai, PhD
EchoMail, Inc.
701 Concord Avenue
Cambridge, MA 02138
e: vashiva@vashiva.com
m: 1-617-631-6874.

Gerald Matherly, Couy Griffin, and Vickie Marquardt
Commissioners for Otero County Commission
101 New York Avenue
Alamogordo, NM 88310

RE: Otero County Audit of 2020 Election

Dear Honorable Commissioners:

EchoMail, Inc. ("ECHOMAIL") is pleased to serve Otero County, ("CUSTOMER") in the auditing of the November 2020 General Election ("Election"). Per our understanding, ECHOMAIL will be serve as the prime contractor and be responsible for the deployment of the EchoMail® Election Systems Integrity™ (ESI) platform to perform the audit for the Election. Based on our review of the requirements, EchoMail will provide the following:

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- (2) **Data Analytics** – Data analysis will include evaluation of registrations and votes cast at the precinct level and by vote type.
- (3) **Processing of Ballot Images** – Employ EchoMail to analyze approximately up to 25,000 Ballot Images. The Ballot Images are defined to be those images that are produced from the scanning of paper ballots by the County during the Election from their election management system ("EMS"). EchoMail will perform image analysis of the Ballot Images to calculate the vote counts for the Races. These vote counts will be compared with the Cast Vote Records ("CVR"). A formal report will be submitted of the findings. Ref. Schedule B.
- (4) **Paper Ballot Scan Comparison with Ballot Images** – Perform image analysis of the Paper Ballot Scans to calculate the vote counts for the Races (Paper Ballot Scans are the images generated by the scanning of the paper ballots). These vote counts will be compared with the Cast Vote Records ("CVR"). EchoMail will perform Image processing to determine the paired Paper Ballot Scan with its Ballot Image, and then evaluate if the vote counts across the pair are the same; and if not, will denote the discrepancies. A formal report will be submitted of the findings. Ref. Schedule C.
- (5) **Return Ballot Envelope Signature Presence Detection** - Perform EchoMail® Pattern Recognition Classification to determine presence of Blanks, Scribbles, and Signature on Return Ballot Envelope Images. A formal report will be submitted of the findings. Ref. Schedule D.

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- (6) **Return Ballot Envelope Signature Verification Error Determination** - Perform an independent calculation of the error rates of the Count's Signature Verification by employing EchoMail® Pattern Recognition Classification capabilities to determine how many of the signatures on unique EVB return envelopes would be classified as "Good Signatures" or "Bad Signatures" before any curing process is executed. Ref. Schedule E.
- (7) **Full Voter Registration Canvass** - Perform door-to-door canvass of Otero County voter registration database to determine accuracy of voter registration database. Canvass will be staffed by volunteers under the direction of New Mexico Audit Force ("Volunteers") with guidance from EchoMail.

Total investment for this effort from Otero County will be \$49,750 as outlined in Schedule A. The County will not be liable for payment or portions of payments of line items in Schedule A in the event certain items cannot be obtained. The Payment Schedule is as follows:

<u>Timing</u>	<u>Amount</u>
Upon execution of this letter and Master Agreement and Schedule A	- \$24,875.00
March 1, 2022	- \$24,875.00

Note: Schedules B through E will be funded by EchoMail's partners.

Sincerely,

Dr. Shiva Ayyadurai
 President/CEO
 EchoMail, Inc.

Encl: Master Agreement
 Schedules A



MASTER LICENSE AND SERVICES AGREEMENT

This Agreement is entered into as of January 25, 2022 ("the Effective Date") between EchoMail, Inc., a Delaware Corporation, its subsidiaries, affiliates, authorized resellers/distributors, ("ECHOMAIL") and Otero County Commission its subsidiaries and affiliates, ("CUSTOMER").

In consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

1.0 Definitions

As used herein, the following terms shall have the designated meanings:

- 1.1 "Licensed Software" shall mean the software designated on any Schedule as being licensed by ECHOMAIL to CUSTOMER under this Agreement.
- 1.2 "Schedule" shall mean any schedules or exhibits, including any Statements of Work included therein, executed by the parties and attached to the Agreement as of the date hereof and any Schedules or exhibits, including any Statement of Work included therein, subsequently executed by the parties and attached to this Agreement.
- 1.3 "Services" shall mean the services designated in any Schedule as being provided by ECHOMAIL to CUSTOMER under this Agreement.

2.0 License

- 2.1 If the agreed-upon offering from ECHOMAIL includes Licensed Software, ECHOMAIL will grant to CUSTOMER a non-perpetual, non-exclusive, non-transferable, non-sublicensable right and license to use the Licensed Software in object code form only to receive, process, analyze, transmit and respond to digital content i.e. messages, images, email, web pages, social media posts, etc. solely for its own business purposes subject to and in accordance with the provisions of this Agreement, the terms in Schedule, and the accompanying documentation.
- 2.2 If CUSTOMER requires access of Licensed Software by any consultants or third-party entities, then CUSTOMER agrees to ensure that such consultants or third-party entities execute a separate agreement with ECHOMAIL to ensure protection of ECHOMAIL's Intellectual Property. CUSTOMER agrees that at no time will CUSTOMER allow any direct or indirect competitor of ECHOMAIL to access or to use the Licensed Software. CUSTOMER agrees to abide by ECHOMAIL's reasonable definition of competitor, should there ever come a question as to if an entity is a competitor to ECHOMAIL or not.
- 2.3 The Licensed Software and documentation provided therewith are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable.

3.0 ECHOMAIL Responsibilities

- 3.1 ECHOMAIL shall be solely responsible for the proper installation of the Licensed Software in machine-readable, object code form.
- 3.2 ECHOMAIL will also provide to CUSTOMER services for implementation, training, customization, maintenance, hosting and other services related to Licensed Software as requested by CUSTOMER as outlined in the appropriate Schedule(s).
- 3.3 ECHOMAIL agrees to provide to CUSTOMER access codes for the use of the Licensed Software. On the date that CUSTOMER uses any of those access codes to use the Licensed Software in a production format, the formal delivery of the Licensed Software is complete ("Delivery Date").
- 3.4 Following the Delivery Date, ECHOMAIL shall provide software support and maintenance services under this Agreement in accordance with the terms and conditions set forth in the appropriate Schedule. ECHOMAIL shall provide the software support services set forth in Schedule for only the then current release of the Licensed Software.

3.5 ECHOMAIL will provide timely new releases and updated documentation of the Licensed Software at no additional cost to CUSTOMER.

4.0 Services

4.1 All work shall be performed in a workmanlike and professional manner by ECHOMAIL having a level of skill in the area commensurate with the requirements of the scope of work to be performed.

5.0 Price

The prices for all ECHOMAIL Licensed Software, Services and related maintenance and support services shall be set forth in the applicable Schedule. If CUSTOMER desires to add additional software to the Licensed Software or buy additional units, CUSTOMER shall have the right to do so during the term hereof for the prices set forth in applicable signed Schedule(s).

6.0 Payment

6.1 CUSTOMER shall pay ECHOMAIL the fees for all Licensed Software and related maintenance and according to the Payment Schedule as outlined in signed applicable Schedule(s).

6.2 ECHOMAIL shall invoice CUSTOMER for all CUSTOMER pre-approved Out-of-Pocket Expenses and any other amounts due as set forth in signed applicable Schedule(s) on a monthly basis. Each invoice shall contain detailed entries of Software, Service and other items. CUSTOMER shall pay all as denoted in signed applicable Schedule(s).

6.3 If CUSTOMER does not pay for the Licensed Software within the time limits as agreed upon in signed applicable Schedule(s), ECHOMAIL will contact CUSTOMER to obtain payment and attempt to resolve any discrepancies. If after 30 days, the discrepancy cannot be solved, CUSTOMER agrees that ECHOMAIL has the right to terminate CUSTOMER'S further use of the Licensed Software until payment is received.

6.4 All payments not made within the time periods specified herein shall bear interest at the rate of one and one half percent (1.5%) per month or the maximum allowed by law, whichever is less, until paid in full.

6.5 In the event of termination, CUSTOMER is responsible for any and all amounts due to EchoMail per the terms of any signed Schedules or Statement of Work(s).

7.0 Schedules

The applicable Schedule sets forth the ECHOMAIL Licensed Software and/or Services to be obtained by CUSTOMER. The parties may execute additional Schedules and such additional Schedules will be bound by the terms of this Agreement.

8.0 Publicity

ECHOMAIL may use CUSTOMER'S name and identifying logo on ECHOMAIL'S customer list and web site.

9.0 Transmission Difficulties

CUSTOMER acknowledges that it shall be fully and solely responsible for assuring that data sent by CUSTOMER to ECHOMAIL reach ECHOMAIL in proper condition, and ECHOMAIL shall have no liability in connection therewith.

10.0 Intellectual Property Rights

ECHOMAIL possesses, and shall at all times continue to possess and own, the entire right, title and interest in and to the Licensed Software, the results or deliverables of any Services performed hereunder (which shall be deemed to be Licensed Software for purposes of this Agreement) and all intellectual property rights of any nature whatsoever with respect to the foregoing. All right, title and interest in and to any programs, systems, data and materials furnished to ECHOMAIL by CUSTOMER are and shall remain the property of CUSTOMER and will be returned to CUSTOMER at the earlier of termination of this Agreement or the completion of Services.

11.0 Confidential Information

- 11.1 During the term of this Agreement, each party shall disclose to the other party, both orally and in writing, certain information of the disclosing party which concerns the disclosing party's business plans, customers, technology or products which are or contain confidential, proprietary or trade secret information (collectively the "Information"), which is either marked in a manner to indicate that it is considered proprietary or confidential or otherwise subject to limited distribution as provided herein, or is disclosed in such a manner that a reasonable person would understand the confidential nature of the Information disclosed. In addition, future business plans, customer, customer lists and financial information, and confidential information of third parties to which a party has had access shall be deemed Information. A party receiving Information shall hold such Information in strict confidence and shall not disclose such Information to any person or entity other than to the employees, agents or consultants of such party having a need to know in order for such party to perform properly its obligations under this Agreement. Such party shall make no other use of any nature whatsoever of any such Information. The Licensed Software constitutes Information of ECHOMAIL.
- 11.2 All vendors, service providers, consultants and other third-party agents engaged by the CUSTOMER that are involved in the use of or interaction with ECHOMAIL shall sign EchoMail Mutual Non-disclosure Agreement.
- 11.3 This Agreement shall impose no obligation of confidentiality upon a recipient with respect to any portion of the Information received hereunder which is (a) now or hereafter, through no unauthorized act or failure to act on recipient's part, in the public domain; (b) known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records; (c) hereafter furnished to the recipient by a third party as a matter of right and without restriction on disclosure; (d) furnished to others by the disclosing party without restrictions on disclosure; (e) independently developed by the recipient without use of the disclosing party's Information; or (f) required to be disclosed pursuant to a requirement of a government agency or law, so long as the recipient provides prompt notice to the disclosing party of such requirement prior to any such disclosure and reasonably cooperates with the disclosing party if it elects to seek to limit or avoid such disclosure by any lawful means.
- 11.4 Each party acknowledges that in the event of any breach or threatened breach of this Section 11.0, the other party shall suffer irreparable harm and will not possess an adequate remedy at law. Accordingly, each party shall have the right to obtain injunctive relief to restrain such breach or threatened breach.
- 11.5 No right of ownership or title to any Information is transferred by either party to the other party under or pursuant to this Agreement.
- 11.6 CUSTOMER acknowledges that Licensed Software provided by ECHOMAIL is copyrighted by ECHOMAIL. The trademarks, trade names and logos under which ECHOMAIL markets the Licensed Software are the exclusive property of ECHOMAIL and this Agreement provides no rights thereto to CUSTOMER. Any copyright notice used by ECHOMAIL shall not be deemed to imply that any part of such item has been published or has been placed in the public domain.

12.0 Warranty

- 12.1 ECHOMAIL warrants for a period of sixty (60) days following the Delivery Date of the applicable Licensed Software to CUSTOMER that any Licensed Software provided by ECHOMAIL shall materially conform to ECHOMAIL'S then current documentation. In the event any Licensed Software does not so materially conform to then current documentation, ECHOMAIL shall undertake reasonable commercial efforts to correct such non-conformity. Such correction shall constitute CUSTOMER'S sole remedy and ECHOMAIL'S sole liability in the event of any breach of such warranty by ECHOMAIL.
- 12.2 EXCEPT AS OTHERWISE STATED IN THIS SECTION 12, ECHOMAIL MAKES NO WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE OR THE SERVICES PERFORMED UNDER THIS AGREEMENT AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, FREEDOM FROM BUGS, CORRECTNESS OR RELIABILITY, OR THAT THE LICENSED SOFTWARE'S USE WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE.

13.0 Infringement

- 13.1 ECHOMAIL shall defend, indemnify and hold harmless CUSTOMER from all costs, expenses, damages, suits and other proceedings incurred by CUSTOMER, its officers, directors, employees or agents in connection with any claim that the Licensed Software infringes any patent, copyright, trade secret or other proprietary rights of any third party, provided that (a) CUSTOMER promptly informs ECHOMAIL of any such action, and (b) CUSTOMER furnishes to ECHOMAIL all information and assistance in connection therewith which may be reasonably requested by ECHOMAIL from time to time. ECHOMAIL shall have the sole right to settle, defend, or otherwise handle any such claim. In the event the use of any Licensed Software is enjoined, ECHOMAIL shall, at its option, either (a) procure for CUSTOMER the right to continue to use such Licensed Software, (b) replace or modify the same to make it non-infringing, or (c) terminate the license to such Licensed Software and provide a pro rata refund to CUSTOMER of all amounts paid by CUSTOMER for the allegedly infringing Licensed Software to ECHOMAIL hereunder, based upon a five (5) year life of such Licensed Software.
- 13.2 ECHOMAIL'S obligations under this Section 13.0 shall be only for the benefit of CUSTOMER. ECHOMAIL shall not be obligated to defend or to be liable under this Section 13.0 to the extent the infringement asserted arises out of (a) compliance with specification originating with CUSTOMER, (b) use or combination of Licensed Software with items not provided by ECHOMAIL to the extent such infringement would not have occurred but for such use or combination with such other items; (c) use of other than the latest unmodified version of Licensed Software if such infringement would have been avoided by the use of such later version; or (d) modification of Licensed Software other than by ECHOMAIL.
- 13.3 This Section 13.0 states the exclusive remedy of CUSTOMER and the entire liability of ECHOMAIL with respect to infringement of any patent, copyright, or other proprietary rights of third parties by items furnished by ECHOMAIL hereunder.

14.0 Indemnification

- 14.1 Each party shall indemnify and hold harmless the other party, its subsidiaries, their officers, directors, agents and employees from any claims for loss, cost, damage, expense or liability by reason of bodily injury (including death) or tangible property damage arising out of, as a result of, or in connection with, the indemnifying party's performance under this Agreement or the negligent actions or omissions or willful wrongdoing of the indemnifying party, provided that the indemnified party gives the indemnifying party prompt written notice of such claims and, full information, reasonable assistance and authority for the defense or settlement of such claims.

15.0 Limitation of Liability

EXCEPT AS EXPRESSLY PROVIDED HEREIN, ECHOMAIL'S LIABILITY UNDER THIS AGREEMENT, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO EVENT EXCEED AMOUNT PAID BY CUSTOMER TO ECHOMAIL UNDER THIS AGREEMENT CONTRACT PRICE, AS SET FORTH IN SCHEDULE FOR LICENSED SOFTWARE AND/OR SERVICES, WHICH ALLEGEDLY DAMAGED CUSTOMER. THE CONTRACT PRICE, AS SET FORTH IN SCHEDULE A. IN NO EVENT SHALL ECHOMAIL HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF ECHOMAIL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

16.0 Term

Unless earlier terminated in accordance with Section 17.0 hereof, the term of this Agreement shall commence as of the date hereof and shall continue in full force and effect for three (3) years thereafter. This Agreement shall automatically renew for successive one (1) year terms, thereafter, unless terminated by either party by written notice to the other at least thirty (30) days prior to the renewal date.

17.0 Termination

- 17.1 In the event of a breach of this Agreement by a party hereto (including without limitation use of the Licensed Software by CUSTOMER in excess of the use limitations specified in any applicable Schedule(s), the non-breaching party shall give notice of such default to the other party and, if the breach is not cured within sixty (60) calendar days of such notice, the non-breaching party shall be entitled to terminate this Agreement immediately upon notice to the other party.
- 17.2 In the event a party hereto files a voluntary petition for bankruptcy, has an involuntary petition for bankruptcy filed against it which remains undismissed for at least sixty (60) days, makes an assignment for the benefit of its creditors, or has a receiver appointed for all or a substantial portion of its property, the other party shall have the right to terminate this Agreement immediately upon notice.
- 17.3 The rights and obligations of the parties under Sections 2.3, 6.0, 8.0, 10.0, 11.0, 12.0, 13.0, 14.0, 15.0, 17.3 and 18.0 hereof shall survive any termination of this Agreement. Except for the foregoing, immediately upon the effective date of any termination, all rights and obligations of the parties under this Agreement shall cease and terminate. CUSTOMER shall, within ten (10) days after the effective date of any termination, promptly, first, deliver to ECHOMAIL all copies of any Licensed Software provided by ECHOMAIL and all ECHOMAIL'S Information then in CUSTOMER'S possession; second, destroy any copies of Licensed Software whatsoever in CUSTOMER'S possession; third, allow ECHOMAIL access to hardware systems that contained or contain Licensed Software to verify and ensure termination of use of Licensed Software.
- 17.4 In the event of early termination, CUSTOMER is obligated to pay to ECHOMAIL any and all amounts due for Services performed through the date of termination.
- 17.5 CUSTOMER may terminate this Agreement at any time on sixty (60) days prior written notice and CUSTOMER, in such event is obligated to pay to ECHOMAIL any and all amounts due per the terms of any Schedules agreed upon by both parties.

18.0 Miscellaneous

- 18.1 Each party irrevocably agrees that in any court proceedings initiated by CUSTOMER, the state and federal courts located in the State of Arizona shall have exclusive jurisdiction to settle any dispute, and for any court proceedings initiated by ECHOMAIL, the state and federal courts located in the Commonwealth of Massachusetts shall have exclusive jurisdiction to settle any dispute with respect to any matters relating to this Agreement.
- 18.2 The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereto submit to the non-exclusive jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts with respect to any matters relating to this Agreement.
- 18.3 Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes of whatever nature and any other reason beyond the reasonable control of either party.
- 18.4 In the event that any provision of this Agreement shall be held to be void or unenforceable by any court of competent jurisdiction, such determination shall not affect the remainder of this Agreement, which shall remain in full force and effect, and the void or unenforceable provision shall be enforced to the maximum extent legally permissible.
- 18.5 This Agreement shall not be transferable or assignable by CUSTOMER without the prior written consent of ECHOMAIL, such consent not to be unreasonably withheld. Notwithstanding the foregoing, upon notice to ECHOMAIL, CUSTOMER may assign this Agreement or any rights, duties or obligations hereunder to a corporation controlling, controlled by or under common control with CUSTOMER. Any assignment or transfer in violation of this provision shall be void and without effect.
- 18.6 This Agreement shall not be transferable or assignable by either party without the prior written consent of the other party. Any assignment or transfer in violation of this provision shall be void and without effect.
- 18.7 This Agreement embodies and sets forth the entire agreement and understanding of the parties and



SCHEDULE A

Customer Name: Otero County Commission ("CUSTOMER")
Customer Address: 101 New York Avenue, Alamogordo, NM 88310
Effective Term: January 25, 2022 – May 30, 2022
County: Otero County ("County")
Election: 2020 General Election ("Election")

Title: Integrated Data Warehouse and Analytics

Statement of Work

- (1) Integrated Data Warehouse - Creation of an integrated data warehouse that will include such data as following: County's Voter Rolls, Participating Voter List, Cast Vote Records (CVRs), Images of the Return Ballot Envelopes, Ballot Images (from the Election Management System – EMS), Paper Ballot Scans, Door-to-Door Canvass data.
(2) Data Analytics - Data analysis will include evaluation of registrations and votes cast at the precinct level and by vote type.

Pricing Schedule

Table with 6 columns: Part Number, Part Description, Units, Unit Cost, One-Time, Recurring. Rows include Professional Services (Project Planning, Data Warehouse, Hardware Forensics, Data Analytics and Reporting) and Licenses (EchoMail@ DataWarehouse) with sub-totals and a NET-Total of \$49,750.00.

Other Terms:

Additional charges shall apply at the Unit Price set forth above in the event that quantity of use of the foregoing licensed Software and Services exceeds purchased amounts hereunder. Such additional charges shall be billed to the CUSTOMER on monthly basis. ECHOMAIL shall issue no credits to CUSTOMER for any licenses not used by CUSTOMER On the expiration date, and unused licenses may not be carried over into subsequent periods.

In the event CUSTOMER requests ECHOMAIL with prior written confirmation to ECHOMAIL to take specific actions, for example travel for onsite training or strategy meeting, shipping data on physical media such as tapes or disks etc., costs of shipping, telecommunications, mailing, traveling and out-of-pocket expenses incurred by EchoMail, Inc. in the performance of such actions are not included herein, and will be billed directly to CUSTOMER on a monthly basis.

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This Schedule is governed by the EchoMail Software & Services Licensing Agreement. If there is any conflict between this Schedule and the EchoMail Software & Services Licensing Agreement, all terms of the EchoMail Software & Services Licensing Agreement shall control, except payment terms. Payment is due prior to start of work and use of Software and Services. Both parties agree to the foregoing as of this 25th day of January in the year of 2022, and to execute their performance obligations as set forth herein.

ECHOMAIL Authorized Representative

Signature: *Shiva Ayyadurai*

Name: Shiva Ayyadurai

Title: President/CEO

CUSTOMER Authorized Representative

Signature: *Gerald Metherly*

Name: Gerald Metherly

Title: Chairman

EchoMail, Inc.
701 Concord Avenue
Cambridge, MA 02138



Inv# EM-OCC-7748 \$24875.00
ECHOMAIL, INC
01/31/2022 # Pages 15 FP15 DOC51S16740
PO# 20220648

Invoice

Date	Invoice #
1/31/2022	EM-OCC-7748

Bill To
RB Nichols, County Attorney Commissioners for Otero County Commission 101 Newyork Avenue Alamogordo, NM 88310

				P.O.No.	TERMS
					Due on receipt
ITEM	DESCRIPTION	RATE	QTY	AMOUNT	
EM-BALLOT	Upon Execution of Master Agreement and Schedule A	24,875.00	1	24,875.00	
Thank you for your business.				Total	\$24,875.00

RECEIVED
FEB - 8 2022
By _____

Mode of Payment:
1. Transfer to Bank Account:
Bank Name: People's United Bank
Account Name: EchoMail, Inc
Account Number: 0751007666
Routing Number: 221172186
2. Mail check to:
EchoMail, Inc.
701 Concord Ave
Cambridge, MA 02138

partial pay PO# 20220648

Purchase Order

Fiscal Year 2022

Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.	
Purchase Order #	20220648-00

BILL TO

OTERO COUNTY
ATTN: ACCOUNTS PAYABLE
1101 NEW YORK AVE
ALAMOGORDO, NM 88310-6923

Delivery must be made within doors of specified destination.

VENDOR

ECHOMAIL, INC
701 CONCORD AVE
CAMBRIDGE MA 02138
UNITED STATES

SHIP TO

OTERO COUNTY
1101 NEW YORK AVE
ALAMOGORDO NM 88310

Vendor Phone Number	Vendor Fax Number	Requisition Number	Delivery Reference		
617-354-8585		166081			
Date Ordered	Vendor Number	Date Required	Freight Method/Terms	Department/Location	
02/08/2022	12689			GENERAL FUND OPERATING	
Item#	Description/Part No.	Qty	UOM	Unit Price	Extended Price
1	ANALYST FOR OTERO COUNTY 2020 ELECTION AGREEMENT: COMMISSION APPROVED 1/13/22 MTG ITEM NO. 17 110023 - 5310	1.0	EACH	\$49,750.00	\$49,750.00
					\$49,750.00

partial pay 24,875.00 2-8-22 CQ

PAYMENT VOUCHER COPY

Total Ext. Price	49,750.00
PO Total	\$49,750.00

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims is entered into between Otero County, New Mexico (“County”), and EchoMail all of whom may also be referred to collectively as “the Parties.”

RECITALS

WHEREAS, the County entered into a Master License and Services Agreement (hereinafter “Contract”) with EchoMail as its contractor, executed on or about January 25th, 2022 for integrated data warehousing and analytics of the 2020 General Election (“Project”); and

WHEREAS, on February 24, 2022, the County paid \$24,875 to EchoMail pursuant to the Contract;

WHEREAS, the County believes the value of the services received from EchoMail is \$9,750.00 and EchoMail disputes this claim.

WHEREAS, on March 17, 2022, EchoMail demanded the balance of \$24,875 be paid;

WHEREAS EchoMail believes the unpaid balance is due and payable; and

WHEREAS, the County disputes whether payment is due and owing; and

WHEREAS, on April 15, 2022 the County requested the return of \$15,125.00

WHEREAS, it is the position of EchoMail they fulfilled their obligations under the Contract and found No Election Fraud as a result of their services.

WHEREAS, the Parties have agreed to settle claims against one another prior to litigation without admitting or conceding liability as to any matter at issue;

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND IN CONSIDERATION OF THE COVENANTS CONTAINED HEREIN, THE PARTIES AGREE TO THE FOLLOWING:

UNDERLYING SETTLEMENT TERMS

1. In consideration for payment described herein in paragraph 5, EchoMail dismisses, waives, releases, and discharges Otero County, its current and former commissioners, directors, departments, attorneys, legal representatives, predecessors, insurers, successors, assigns, employees and agents from all manners of liabilities, claims, demands, and causes of action, known or unknown, fixed or contingent, arising in the past, present, or future which EchoMail or anyone claiming through EchoMail may personally have or claim to have against Otero County as a result of the dispute over the January 25, 2022 Contract with prejudice. This Agreement includes all demands, obligations, actions, claims, damages, costs, or rights EchoMail, its agents, successors, and assigns now have or may have against Otero County that could be related to the Contract between the Parties. This shall be a fully binding and complete settlement between the Parties, and each party's agents, successors and assigns.

2. In consideration for payment described herein, the County dismisses, waives, releases, and discharges EchoMail, its directors, attorneys, legal representatives, predecessors, insurers, successors, assigns, employees and agents from all manners of liabilities, claims, demands, and causes of action, known or unknown, fixed or contingent, arising in the past, present, or future which the County or anyone claiming through the County may personally have or claim to have against EchoMail as a result of the dispute over the January 25, 2022 Contract with prejudice. This Agreement includes all demands, obligations, actions, claims, damages, costs, or rights the County, its agents, successors, and assigns now have or may have against EchoMail that could be related to the Contract. This shall be a fully binding and complete settlement between the Parties, and each party's agents, successors and assigns.

3. The Parties understand that this is a general release encompassing all claims against one another arising under federal, state, or local law, including but not limited to claims arising

under state and federal statutes, as well as any claims arising under any theory of common law concerning the Contract. Claims released are those of which the Parties are presently aware, and those of which it may be unaware, for breach of contract or otherwise. This general release is binding upon the current and former directors, departments, attorneys, legal representatives, predecessors, insurers, successors, assigns, and employees of the Parties.

4. It is expressly understood and agreed that the payment of the sum described in the below paragraphs, is not and shall not be construed as an admission of liability by either Party. The Parties are settling and compromising disputed claims as to which they expressly deny any liability.

CONSIDERATION

5. Pursuant to this Settlement Agreement and Release of All Claims, EchoMail agrees to pay the County in settlement of the above dispute, the sum of \$15,125.00. The aforementioned amount will be made payable to the County within 30-days of execution.

SUPPLEMENTAL DOCUMENTS

6. EchoMail and the County agree to cooperate fully to execute any and all supplementary documents, and take all additional actions that may be necessary to give full force and effect to this Settlement Agreement and Release of All Claims.

FEES

7. Each Party shall bear its own costs and fees, including attorneys' fees associated with the underlying contract and/or settlement agreement.

ADVICE OF COUNSEL

8. The Parties acknowledge they are represented by counsel and have read and understood the effects of this Settlement Agreement and Release of All Claims. The Parties further

state they execute this Settlement Agreement and Release of All Claims of their own free will and accord, for the purpose and consideration set forth in this Agreement.

INTEGRATION

9. This Settlement Agreement and Release of All Claims contains the entire understanding between the Parties hereto concerning the subject matter contained herein.

10. EchoMail and the County agree that each paragraph and component of this Settlement Agreement and Release of All Claims is a material term and that failure to comply with any of the provisions contained herein constitutes a material breach of this Agreement.

11. The Parties represent and warrant that there have been no representations or promises made by either Party on which they relied in connection with the Settlement Agreement and Release of All Claims, other than what is set forth herein in writing.

12. The Parties further represent and warrant that it is not being induced to enter into this Agreement by anything other than the written words contained in this Agreement.

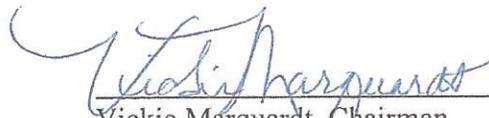
13. This Settlement Agreement and Release of All Claims constitutes the entire agreement and understanding between EchoMail and the County and shall not be modified or altered, except in writing, and signed by the Parties to this Settlement Agreement and Release of All Claims.

14. This Settlement and Release of All Claims shall be effective following execution by the Parties. Facsimile signatures shall be acceptable as original for all purposes.

15. The Parties acknowledge that the signatories to this Settlement and Release of All Claims have the necessary authority to bind their respective entities to its terms.

16. The parties further agree “electronic signatures” are sufficient to legally execute and bind this agreement and shall be deemed valid and binding, as if original.


V.A. Shiva Ayyadurai 4/28/2022
EchoMail Representative DATE


Vickie Marquardt, Chairman 4/28/2022
Board of County Commissioners DATE
of Otero County, New Mexico