

STATE OF TEXAS

**COUNTY OF FORT BEND**

§

## THIRD RENEWAL TO VOTEC SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

THIS THIRD RENEWAL ("3<sup>rd</sup> Renewal") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and VOTEC Corporation ("VOTEC"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have previously executed and accepted that certain software maintenance and license agreement for VOTEC software and maintenance services on or about February 23, 2016, and subsequently renewed on March 28, 2017, and again on December 19, 2017 (“collectively referred to as “Agreement”), incorporated by reference. County and VOTEC now desire to renew the Agreement a third time.

NOW, THEREFORE, in consideration of the foregoing, the Agreement between the County and VOTEC are hereby amended as follows:

1. **Terms.** County shall renew the license and maintenance services provided by VOTEC at the price rate schedule detailed in requisitions (attached as "Attachment A").
2. **Limit of Appropriation.** VOTEC clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Twenty Four Thousand, Four Hundred Sixty-six and 41/100 dollars (\$124, 466.41), specifically allocated to fully discharge any and all liabilities County may incur. VOTEC does further understand and agree, said understanding an agreement also being of the absolute essence of this Agreement, that the total maximum compensation that VOTEC may become entitled to and the total maximum sum that County may become liable to pay to VOTEC shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Twenty Four Thousand, Four Hundred Sixty-six and 41/100 dollars (\$124, 466.41).
3. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
4. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
5. **Confidential Information.** VOTEC expressly acknowledges that County is subject to the Texas Public Information Act, Tex. Gov't. Code Ann. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by VOTEC shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless VOTEC for any reason are hereby deleted.
7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by VOTEC in any way associated with the Agreement.
8. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
9. **Applicable and Governing Law.**
  - a. The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to the Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
  - b. As required by Chapter 2270, Government Code, VOTEC hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
  - c. By signature below, VOTEC represents pursuant to Section 2252.152 of the Texas Government Code, that VOTEC is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
10. **Conflict.** The Agreement remains in full force and effect. In the event there is a conflict between this Renewal and the Agreement, this Renewal controls to the extent of the conflict.
11. **Understanding, Fair Construction.** By execution of this Renewal, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Renewal. This Renewal, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

{EXECUTION PAGE FOLLOWS}

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IN WITNESS WHEREOF, this Renewal is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Renewal and the attachments hereto. This Renewal shall be effective upon execution by the County.

FORT BEND COUNTY

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

VOTEC CORPORATION

  
\_\_\_\_\_  
John Medcalf, CEO

Jan 3 2019  
\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

REVIEWED:

\_\_\_\_\_  
John Oldham, Elections Administrator

#### AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$\_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

#### Attachment A: Renewal Requisitions

# ATTACHMENT A



VOTEC Corporation

- INVOICE -

John Oldham  
Fort Bend Elections Administrator  
301 Jackson St  
Richmond TX 77469

Invoice # 12828  
October 1, 2018

Subject: BallotBoard Support - 10/01/2018 - 09/30/2019

Item	Quantity	Description	Unit Price	Extended
1	1	Ballot Board License - Base Fee	\$20,000.00	\$20,000.00
2	375,463	Ballot Board License - Per Voter Fee	\$0.01	\$3,754.63
		<b>Total</b>		<b>\$23,754.63</b>

Due and payable upon invoice.

Thank you.

**New Address**

10920 VIA FRONTERA, SUITE 110 • SAN DIEGO CA 92127 • 800.348.6832 • FAX: 858.574.6050



VOTEC Corporation

- INVOICE -

John Oldham  
Fort Bend Elections Administrator  
301 Jackson St  
Richmond TX 77469

Invoice # 12830  
October 1, 2018

Subject: VoteSafe Support - 10/01/2018 - 09/30/2019

Item	Quantity	Description	Unit Price	Extended
1	29	Field System Software Support	\$150.00	\$4,350.00
2	75	Field System Software Support	\$180.00	\$13,500.00
		<b>Total</b>		<b>\$17,850.00</b>

Due and payable upon invoice.

Thank you.

**New Address**

10920 VIA FRONTERA, SUITE 110 • SAN DIEGO CA 92127 • 800.348.6832 • FAX: 858.574.6050



VOTEC Corporation

- INVOICE -

John Oldham  
Fort Bend Elections Administrator  
301 Jackson St  
Richmond TX 77469

Invoice # 12829  
October 1, 2018

Subject: VEMACS Support - 10/01/2018 - 09/30/2019

Item	Quantity	Description	Unit Price	Extended
1	35	Oracle license for VEMACS Support	\$100.00	\$3,500.00
2	1	Base VEMACS support fee	\$1,200.00	\$1,200.00
3	375,463	VEMACS per voter fee per schedule - 2017		\$75,155.56
4	1	Per Voter Surcharge at 4 percent of VEMACS per voter schedule fee	\$3,006.22	\$3,006.22
		<b>Total</b>		<b>\$82,861.78</b>

Due and payable upon invoice.

Thank you.

**New Address**

10920 VIA FRONTERA, SUITE 110 • SAN DIEGO CA 92127 • 800.348.6832 • FAX: 858.674.6050