

STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND       §

**SIXTH RENEWAL TO VOTEC SOFTWARE LICENSE  
AND MAINTENANCE AGREEMENT**

THIS SIXTH RENEWAL (“6<sup>TH</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 (collectively referred to as the “parties”).

WITNESSETH:

WHEREAS, the parties 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, December 19, 2017, January 15, 2019, November 5, 2019, and again on December 15, 2020, (collectively referred to as the “Agreement”), incorporated fully by reference. County and VOTEC now desire to renew the Agreement a sixth time.

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

- I.       Amendments
  
- 1.   **Scope of Services.** VOTEC shall continue to provide product and/or services as described in VOTEC’s Invoice # 13639, attached as Exhibit “1” and incorporated fully by reference.
  
- 2.   **Term.** This Agreement shall renew and is effective as of October 1, 2021, and shall expire no later than September 30, 2022, unless terminated sooner pursuant to this Agreement. This Agreement shall not automatically renew, but may renew upon written agreement of the parties.
  
- 3.   **Limit of Appropriation.** VOTEC’s fees shall be calculated at the rates set forth in the attached Exhibit 1. The Maximum Compensation for the performance of services within the Scope of Services as described in Exhibit 1 is \$149,559.46. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order. 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 \$149,559.46, specifically allocated to fully discharge any and all liabilities County may incur. VOTEC does further understand and agree, said understanding and 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 \$149,559.46.

4. **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.
5. **Confidential Information.** VOTEC acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by VOTEC or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by VOTEC shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by VOTEC) publicly known or is contained in a publicly available document; (b) is rightfully in VOTEC's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of VOTEC who can be shown to have had no access to the Confidential Information.

VOTEC agrees to hold Confidential Information in strict confidence, using at least the same degree of care that VOTEC uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. VOTEC shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, VOTEC shall advise County immediately in the event VOTEC learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and VOTEC will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or VOTEC against any such person. VOTEC agrees that, except as directed by County, VOTEC will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, VOTEC will promptly turn over to County all documents, papers, and other matter in VOTEC's possession which embody Confidential Information.

VOTEC acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County

that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. VOTEC acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

VOTEC in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

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 or any other party for any reason are hereby deleted.
7. **Applicable Law; Arbitration; Attorney Fees.** 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 this 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. 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. County does not agree to pay any and/or all attorney fees incurred by VOTEC in any way associated with the Agreement.
8. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, VOTEC ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
9. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, VOTEC hereby verifies that VOTEC and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
  - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
  - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, VOTEC does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.

- c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, VOTEC does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
  - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, VOTEC does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
10. **Remote Access.** If VOTEC requires remote access to County Systems for support, installation, integrations, configurations, and/or maintenance, except as otherwise agreed by the parties and approved by the County's Information Technology Director in writing, the below requirements must be met before VOTEC is granted remote access to County Systems:
- a. VOTEC will adhere to the restricted and monitored channels that are provided by the County, or other technologies approved in advanced in writing by the County's Information Technology Security Manager or the Assistant Information Technology Manager.
  - b. VOTEC will neither implement nor deploy a remote access solution which bypasses and/or is designed to bypass County provided or approved controls. VOTEC will not access County Systems via unauthorized methods.
  - c. VOTEC's remote access to County Systems will only be requested and activated on as-needed basis and disabled when not in use.
  - d. Remote access is restricted only to County Systems necessary for VOTEC to provide product and/or services to County pursuant to this Agreement.
  - e. VOTEC will allow only its Workforce approved in advance by County to access County Systems. VOTEC will promptly notify County whenever an individual member of VOTEC's Workforce who has access to County Systems leaves its employ or no longer requires access to County Systems. VOTEC will keep a log of access when its Workforce remotely accesses County Systems. VOTEC will supply County with evidence of access logs concerning remote access to County Systems upon written request from County. Such access logs will be provided to County, within three business days from the date of County's request. These requests may be used to confirm compliance with these terms and/or to investigate a security incident.
  - f. If any member(s) of VOTEC's Workforce is provided with remote access to County Systems, then VOTEC's workforce will not remotely log-in to County Systems from a public internet access device (e.g., airport computer terminal, or Internet café). This is due to the possibility of sensitive information being monitored by video or computer surveillance in public areas.

- g. Failure of VOTEC to comply with this Section may result in VOTEC and/or VOTEC's Workforce losing remote access to County Systems. County reserves the right at any time to disable remote access to protect County Systems.
  - h. For purposes of this Section, "Workforce" means employees, agents, subcontractors (where permitted), and/or other persons whose conduct, in the performance of work for VOTEC, is under the direct control of VOTEC, whether or not they are paid by VOTEC and who have direct or incidental access to County Systems.
  - i. For purposes of this Section, "Systems" means any: (i.) computer programs, including, but not limited to, software, firmware, application programs, operating systems, files and utilities; (ii.) supporting documentation for such computer programs, including, without limitation, input and output formats, program listings, narrative descriptions and operating instructions; (iii.) data and/or media; (iv.) equipment, hardware, servers, and/or devices; and/or (v.) network(s).
11. **Modifications.** Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
12. **Conflict.** If there is a conflict among documents, the most recently executed document will prevail with regard to the conflict.
13. **Understanding, Fair Construction.** By execution of this 6<sup>th</sup> Renewal, the parties acknowledge that they have read and understood each provision, term and obligation contained in this 6<sup>th</sup> Renewal. This 6<sup>th</sup> Renewal, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
14. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this 6<sup>th</sup> 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 6<sup>th</sup> Renewal and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

**FORT BEND COUNTY**

**VOTEC CORPORATION**

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

  
Authorized Agent - Signature

\_\_\_\_\_  
Date

JOHN MERDALF  
Authorized Agent- Printed Name

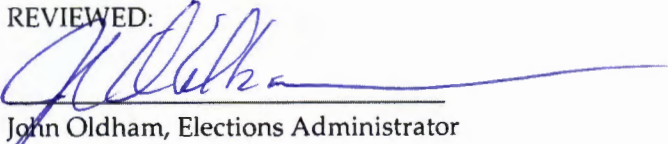
ATTEST:

CEO  
Title

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

2/18/22  
Date

REVIEWED:

  
John Oldham, Elections Administrator

REVIEWED:

Robyn Doughtie  
Information Technology Department

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under this Agreement.

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

Exhibit 1: VOTEC's Invoice # 13639

# EXHIBIT 1



**VOTEC Corporation**

- INVOICE -

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

Invoice # 13639  
October 1, 2021

Subject: VEMACS Support - 10/01/2021 - 09/30/2022  
Reference: Merged Invoice of 13638, 13639 and 13640

If you have any questions concerning this invoice, please contact us at: [accounts.receivable@votec.net](mailto:accounts.receivable@votec.net)

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	445,573	VEMACS per voter fee per schedule - 2017		\$82,201.57
4	82,201	Per Voter Surcharge at 16 percent of VEMACS per voter schedule fee	\$0.16	\$13,152.16
5	29	Field System Software Support	\$150.00	\$4,350.00
6	115	Field System Software Support	\$180.00	\$20,700.00
7	1	Ballot Board License - Base Fee	\$20,000.00	\$20,000.00
8	445,573	Ballot Board License - Per Voter Fee	\$0.01	\$4,455.73
		<b>Total</b>		<b>\$149,559.46</b>

Due and payable upon invoice.

Thank you.