

SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2009, between Fort Bend County, a body politic and corporate of the State of Texas, hereinafter called COUNTY, and VOTEC Corporation of San Diego, California, hereinafter called CONTRACTOR or VOTEC.

WITNESSETH

WHEREAS, COUNTY requires the services of a CONTRACTOR qualified to provide modifications to VEMACS software for Fort Bend County Elections Administrator; and

WHEREAS, CONTRACTOR is qualified and willing to provide such services;

NOW, THEREFORE, the parties hereto agree as follows:

DEFINITIONS

LICENSED SUB-SYSTEM. A "LICENSED SUB-SYSTEM" is a set of computer code, validation tables, and associated documentation designed to manage the input, output, and storage of a major class of election data.

The current sub-systems licensed separately by CONTRACTOR are:

Voter Registration, Street Index, Mail Ballots, Election Initiation, Candidate Filing, Poll Workers, Polling Locations, Petition Tracking Campaign Finance, Ballot Preparation, and Elections Imaging.

ARTICLE I - TERM

This Agreement shall commence on June 1, 2009, and shall terminate on May 31, 2010, unless sooner terminated or further extended pursuant to Articles IV and V.

ARTICLE II - SCOPE

Services provided pursuant to this Agreement call for the maintenance and support of LICENSED SUB-SYSTEMS written by CONTRACTOR and the Oracle software sub-licensed through CONTRACTOR.

Fort Bend County's LICENSED SUB-SYSTEMS are: Voter Registration, Street Index, Mail Ballots, Early Voting, Election Initiation, Polling Locations and Elections Imaging.

7-23-09 Orig. ret. to Cheryl at Purchasing

CONTRACTOR'S deliverables under this Agreement are as follows:

- 1) Provide upgrades of the Oracle database products that are mutually agreed as beneficial to the COUNTY's licensed VEMACS system performance.
- 2) Provide warranty support as follows:
 - a) Correct any existing function that does not perform correctly.
 - b) Improve any existing or added function that performs uncharacteristically slowly and delays delivery of Board of Elections services.
 - c) Provide updates to the instructions for functions whose operation changes due to corrections or performance improvements.
 - d) Provide telephone, and when requested, written answers to questions from designated Elections and Information Services staff regarding the operation of the LICENSED SUB-SYSTEMS.
 - e) Provide support during COUNTY's scheduled work hours which include extended voting hours during elections.
 - f) Provide 24/7 phone assistance from the start of early voting until the election is certified.
 - g) Provide beta testing prior to new releases.
 - h) Provide written responses to requests submitted via the VOTEC Web Help Desk.
- 3) Provide upgrades to the LICENSED SUB-SYSTEMS to keep the COUNTY's LICENSED SUB-SYSTEMS in compliance with State and Federal mandates. All State and Federal mandates to be addressed within 14 days of notification by COUNTY of intent to comply.
 - a) Provide new or enhanced forms, batch processes, and/or reports required to keep the LICENSED SUB-SYSTEMS in compliance with State and Federal Elections Codes.
 - b) Provide documentation for the changes and additions installed.
- 4) Provide upgrades to the LICENSED SUB-SYSTEMS produced without a direct request of COUNTY. These are upgrades produced as a result of a request of another customer or as a result of the desire by CONTRACTOR to improve the product.
 - a) Provide improvements made to the LICENSED SUB-SYSTEMS for other customers as they are mutually agreed to be beneficial to the performance of COUNTY's system performance.

- b) Provide improvements made to the LICENSED SUB-SYSTEMS by CONTRACTOR as part of the LICENSED SUB-SYSTEMS as they are mutually agreed to be beneficial to the performance of COUNTY's system performance.
 - c) Provide documentation for the changes and additions installed.
- 5) Provide technology upgrades to the LICENSED SUB-SYSTEMS as developed by CONTRACTOR and deemed beneficial by the COUNTY.
- 6) Provide upgrades to the LICENSED SUB-SYSTEMS resulting from a direct request of COUNTY. CONTRACTOR's shall be billed separately as mutually agreed.
- a) Provide new or enhanced forms, batch processes, and/or reports as requested by COUNTY and agreed by CONTRACTOR.
 - b) Provide documentation for the changes and additions installed.

COUNTY shall be notified in advance of any CONTRACTOR technical services which CONTRACTOR considers to be outside the scope of Sections 1-5 of this Article. Work which is to be billed separately shall only be undertaken after written authorization by the COUNTY.

COUNTY's responsibilities under this Agreement (exclusive of payment)

- 1) The Voter Registration Coordinator and one Information Services staff member to serve as liaison under this Agreement for the exchange of technical information.
- 2) Maintain phone lines, modems, and computer hardware and software for connection to the server directly and to at least one PC workstation.
- 3) All request for technical service including questions for which you wish documented answers to be submitted via the VOTEC Web Help Desk.
- 4) Provide problem diagnosis using Elections and Information Services staff to discriminate CONTRACTOR issues from hardware and system software issues prior to forwarding problems to CONTRACTOR. CONTRACTOR staff time to diagnosis problems originating solely from COUNTY purchased hardware and system software shall be billed at the then current rate.

ARTICLE III - PAYMENT

- 1) In consideration of services specified in this Agreement, the COUNTY agrees to pay CONTRACTOR a total of \$54,377.60 for all services covered under this Agreement except as the COUNTY chooses to purchase additional services as described in Article II, Section 6.

\$3,500.00 of the above fee is for Oracle support.

\$50,877.60 is for Warranty, Maintenance and Support.

A one-time discount of 9,565.52 is being offered for 2009 making the total invoice amount \$44,812.08.

The Warranty, Maintenance, and Support portion of the fee is based on the fee structure provided to the COUNTY in "VOTEC System Warranty, Maintenance and Support Fees – 2009-2010" using a voter count of 245,776 in the November, 2007 election.

- 2) The hourly rate for additional programmer services for the first year of this contract shall be \$210.00 per hour.
- 3) The fee stated in the first paragraph of this Article includes CONTRACTOR travel expenses for any trip required for CONTRACTOR to provide timely and comprehensive response to Warranty or Mandated update needs.
- 4) Shipping charges and phone charges for calls originated by CONTRACTOR shall be borne by CONTRACTOR.
- 5) The costs for hardware and non-CONTRACTOR software arising from CONTRACTOR fulfillment of State or Federal mandates shall be borne by the COUNTY.
- 6) The costs for hardware and non-CONTRACTOR software arising from installation of new technology as mutually agreed by COUNTY and CONTRACTOR shall be borne by the COUNTY.
- 7) Payment is due within 30 days of the first date services are due under this Agreement.

ARTICLE IV - TERMINATION

- 1) This Agreement may be terminated by the COUNTY for the COUNTY's convenience by giving written notice of termination to CONTRACTOR via certified mail or delivery service.
- 2) This Agreement may be terminated by CONTRACTOR if payment is not made when payment is due by giving written notice of termination via certified mail or delivery service.

ARTICLE V - CONTRACT EXTENSION

- 1) The COUNTY shall have the option to extend this Agreement. Modification or extension shall be by formal written amendment and executed by the parties hereto.
- 2) Fees for periods covered by contract extensions shall be governed by the document " VOTEC System Warranty, Maintenance and Support Fees – 2009-2010" or revisions thereto.

The fees per voter shall not increase more than 8% (eight percent) in any one year as long as this Agreement is in effect.

- 3) COUNTY may extend this Agreement for more or fewer CONTRACTOR services as needed.
- 4) The Warranty, Mandates, Standard Updates, and Technology Upgrade Involvement portion of the fee must be paid without interruption for COUNTY to receive technology upgrades without additional charges for the New Technology software. Interruption of payment for this service during any extension of this Agreement makes further technology upgrades subject to the then current charges for these features.

ARTICLE VI - GENERAL

Performance hereunder shall be construed and regulated in accordance with the laws of the State of Texas.

Fort Bend notices required by this Agreement shall be in writing and shall be delivered via registered or certified mail or delivery service addressed as follows:

COUNTY: Elections Administrator
 Fort Bend County Elections Department
 4520 Reading Rd - Suite A
 Rosenberg, TX 77471

VOTEC: President
 VOTEC Corporation
 16980 Via Tazon, Suite 120
 San Diego, CA 92127

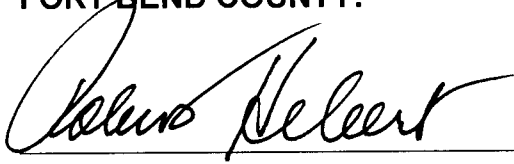
This document constitutes the entire Agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment and signed by the parties.

These terms and conditions are severable and should any be deemed invalid, then only that provision shall fail and the remainder of the terms and conditions shall be of full force and effect. All rights and remedies of the parties hereto, whether evidence hereby or by any other agreement, instrument, or paper, shall be cumulative and may be exercised singularly or concurrently.

In the event either party shall on any occasion fail to perform any term of this Agreement and the other party shall not enforce that term, failure to enforce on that occasion shall not prevent enforcement on any other occasion.

IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement.

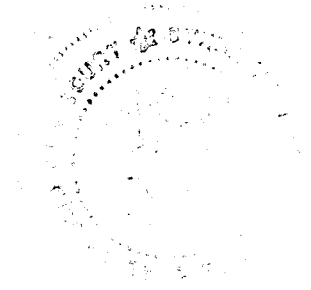
FORT BEND COUNTY:



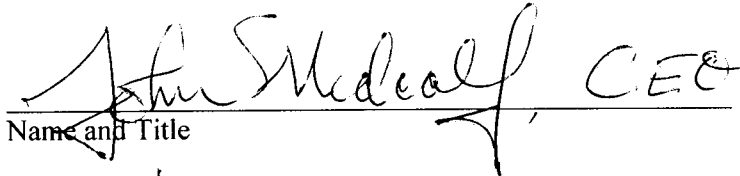
Name and Title Robert Hebert, County Judge

July 7, 2009

Date



CONTRACTOR - VOTEC Corporation:



Name and Title

June 15, 2009

Date

ATTEST:

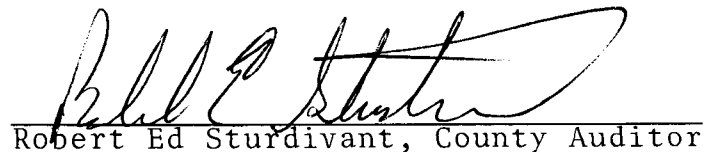


Dianne Wilson, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of ~~54,377.60~~ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

RAK
45,000.00 RAK
~~50,000.00~~


Robert Ed Sturdivant, County Auditor



VOTEC System Warranty, Maintenance and Support Fees – 2009-2010

Oracle Annual Support Fees

These fees are charged to offset our support fees to Oracle Corporation. These fees are applicable starting with your first use of VEMACS as your production voter registration system. If additional licenses are purchased, the first year's Oracle support fees will be due along with the license fees for the new licenses.

Per named user per year	\$100	\$1,000 minimum (10 user minimum)
Unlimited user, single processor	\$5,000	

VEMACS™ Annual Support Fees

Fees for VEMACS warranty, maintenance, and support are based on a per customer fee plus a fee based on the number of active voters in the most recent November election preceding the first day of the contract year.

The per customer fee is \$1,200.

Voter Bracket	New	Cum
1 - 20,000	\$0.50	10,000
20,001 - 30,000	\$0.44	14,400
30,001 - 40,000	\$0.38	18,200
40,001 - 50,000	\$0.32	21,400
50,001 - 70,000	\$0.26	26,600
70,001 - 100,000	\$0.20	32,600
100,001 - 200,000	\$0.125	45,100
200,001 - 400,000	\$0.10	65,100
400,001 - 800,000	\$0.075	95,100
800,001 +	\$0.0625	

The fees are cumulative. For example: the charge for a county of 25,602 active voters is:

$$10,000 \text{ (cumulative through 20,000 voters)} + 5,602 \times .44 \\ = \$10,000 + \$2,464.88 = \$12,464.88 \text{ (plus per customer \$1,200 + Oracle Fees)}$$

VoteSafe™ Software Annual Support Fees

Support is charged annually at a rate of 20% of the original license price. Oracle fees will be additional unless Oracle has been licensed for VEMACS.

Special Order Time and Materials

Special order technical services are offered at \$210.00 per hour.

Fees are subject to change for service years starting after December 31, 2010.