

## **SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT**

THIS AGREEMENT entered into this                      day of                      , 2011, 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.

### **ARTICLE I - TERM**

This Agreement shall commence on June 1, 2010, and shall renew annually until terminated 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.

***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 \$56,894.80 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.

\$53,394.80 is for Warranty, Maintenance and Support.

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 – 2010-2011" using an active voter count of 270,948 from the November, 2009 election. Active voter figures are taken from the Texas Secretary of State Web site accessed by <http://www.sos.state.tx.us/elections/historical/nov2009.shtml>.

- 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 RENEWAL**

- 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 renewal years 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) The Warranty, Maintenance, and Support portion of the fee must be paid without interruption for COUNTY to receive upgrades without additional charges for new software features. Interruption of payment for Warranty, Maintenance and Support service makes further upgrades subject to the then current charges for these software 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

Commissioners Court Date: August 24, 2010

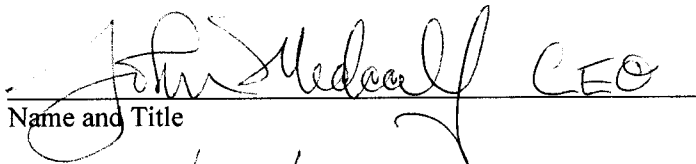
Date Signed March 8, 2011

ATTEST.



Dianne Wilson, County Clerk

**CONTRACTOR - VOTEC Corporation:**

 CEO

Name and Title

1/25/2011

Date

