AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

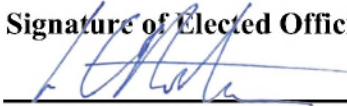**Date:** 6.28.2024

Meeting Date: 7.8.2024

Submitted By: Lance Anderson

Department: Purchasing

Signature of Elected Official/Department Head:

Court Decision:
This section to be completed by County Judge's Office

Johnson County
★ APPROVED ★
Commissioners Court

July 8, 2024

Description:

Consider and Approve with authorization for County Judge to sign - Votec
Software Maintenance, Warranty, & Support Agreement and Quotes.

_____

_____

_____

_____

_____

_____

_____

(May attach additional sheets if necessary)

Person to Present: Patty Bougeois

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one)   ☑ PUBLIC   ☐ CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5   minutes

Session Requested: (check one)

☑ Action Item ☐ Consent ☐ Workshop ☐ Executive ☐ Other _____

Check All Departments That Have Been Notified:

☑ County Attorney   ☐ IT   ☐ Purchasing   ☐ Auditor

☐ Personnel   ☐ Public Works   ☐ Facilities Management

Other Department/Official (list) Elections

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**

Approved in CC on 9/11/2023

VOTEC

Quote

0618-03

10920 Via Frontera
Suite 110
San Diego CA 92127
800.348.6832
www.votec.net

Date:
6/18/2024

Status:
Pending PO

Issued To:
Patty Bourgeois
Johnson County Elections Administrator, REO
103 S. Walnut St
Cleburne, Texas 76033

Description	Quantity	Unit Price	Total
WelcomeVoter Kiosk 4.0 Configuration includes: VOTEC Laptop Lockdown Imaging, LTSC Win10 Licensing Elo Voter Display Hardware Platform, QL-800 Brother Printer Custom Case with Handles and Wheels Laptop: HP x360 Fortiss 11 G11	23	$ 1,920.44	$ 44,170.12
Estimated Shipping Cost	23	$ 50.00	$ 1,150.00
		Subtotal	$ 45,320.12
		Tax rate	0.00%
		Sales tax	$ -
		Total	$ 45,320.12

OPTIONAL HARDWARE WARRANTY - YEAR TWO

Description	Quantity	Unit Price	Total
Annual Hardware Warranty	23	$ 46.09	$ 1,060.08

All VOTEC VoteSafe electronic Pollbook hardware comes with 1-year (from date of delivery) warranty. VOTEC offers a hardware warranty at a cost of 2.4 % (2.4 percent) of the original price per unit per year. To take advantage of this pricing, customer must purchase warranty by the start of year 2 and purchase again for each consecutive year. Any gap in coverage may lead to an increase in price.

John Medcalf	6/18/2024
Authorized by	**Date**

This quote is valid for 60 days from the date of issue.

VOTEC Corporation

VoteSafe^{tm} Annual Hosting Fees for 2024

The VoteSafe PollPower^{tm} management module is hosted in the AWS Gov cloud.
The following is how we compute the annual hosting fees.
Hosting fees cover cloud charges and VOTEC cloud management services.

PollPower Annual Hosting Fees:

- Main Instance
  - $2,000 base fee
  - $10 per field system license

- Secondary Instance for Overlapping Elections
  - $1000 base fee
  - $10 per field system license

AGREEMENT NO. _№ 7 2 2 1_____

SOFTWARE ESCROW AGREEMENT
Multi User Plan

BETWEEN:

Lincoln-Parry SoftEscrow, Inc.
400 Inverness Drive, South
Suite 200
Englewood, Colorado 80112

and

Votec Corporation
16980 Via Tazon
Suite 120
San Diego

(called the Escrow Agent)

(called the Licensor)

WHEREAS the Licensor carries on the business of licensing computer software and is desirous of making available severally to certain of its customers, each herein called the Licensee the benefits contemplated by this agreement, and;

WHEREAS the Licensor has granted or shall grant to the Licensee the right to use certain computer programs in object form and has agreed or shall agree to support the programs but wishes to maintain their confidentiality as trade secrets, and;

WHEREAS the Licensee is desirous of being assured that the source code, documentation and related materials for such programs will be made available to it for the purposes of self support if certain events named herein occur;

THEREFORE the parties agree as follows:

1. ESCROW MATERIALS

The computer programs to which this agreement applies are those named in the List of Escrow Programs. A program shall consist of the source code magnetically or optically stored, and such supporting documentation and related materials that are necessary for a reasonably competent programmer to routinely maintain and modify such programs. The programs shall be collectively referred to herein as the Software.

2. BENEFICIARIES

All Licensees of the Software shall separately become a beneficiary hereunder upon the filing by the Licensor with the Escrow Agent of a notification in the form described in Schedule C and shall have full standing under this agreement as though signed by each of the Licensees.

3. DELIVERY AND CERTIFICATION

The following procedure shall be adopted for the presentation and certification of the Software into escrow.

(a) Within 10 days after the signing of this agreement by both parties, the Escrow Agent shall supply to the Licensor a

standard sized container, which is capable of being sealed, and in which the Software shall be stored.

(b) The Licensor shall thereupon deposit the Software into the said container, identifying it by name and release number, and shall certify as to the authenticity of the contents in the sealed container on the form supplied by the Escrow Agent.

(c) The Licensor shall seal the container and shall deliver it to the Escrow Agent to hold in accordance with the terms of this agreement.

(d) The Licensor will deposit new releases into escrow, and upon the filing by the Licensor with the Escrow Agent of a Direction to Return or Destroy in the form described in Schedule E the Escrow Agent shall return earlier deposits to the Licensor or destroy the earlier deposits as directed.

(e) The Escrow Agent shall hold the container in its sealed state and shall not open, cause or permit it to be opened under any circumstances whatsoever except as may be permitted under this agreement or amendments thereto.

4. EVENTS CAUSING RELEASE

The Software shall be held in escrow by the Escrow Agent until the earliest of the following events:

(a) A cessation of the use of the Software by the Licensee and the termination or expiry of its program license agreement with the Licensor, or the termination or expiry caused or permitted by the Licensee of the Software maintenance and support services portion of the said program license agreement.

(b) A termination of this agreement by consent of the Licensor and Licensee, or the Licensee alone.

(c) The occurrence of any of the following events, and provided in all events that the Licensor has not made suitable alternate arrangements for the continued maintenance of the Software:

1. A petition in bankruptcy, or an assignment for the benefit of creditors of the Licensor is filed by the Licensor, or a third party against the Licensor and is not dismissed within thirty (30) days of its filing;

2. A cessation of normal business operations by the Licensor during the term of this agreement.

3. A failure or refusal by the Licensor to provide the Software maintenance and support services required of it under its program license agreement with the Licensee, which failure has been preceded by a notice in writing to the Licensor that its continued default would cause the Licensee to invoke its rights under this agreement fifteen (15) days after the date of the said notice.

5. RETURN TO THE LICENSOR

The Escrow Agent shall deliver the Software back to the Licensor if any of the events named in Section 4(a) or 4(b) occurs before any of the events named in Section 4(c), provided that a Termination Notice in the form set out in Schedule A and signed by the Licensor and Licensee has been delivered to the Escrow Agent along with the balance of any fees and charges that are due, and further provided that no other Licensee is a beneficiary under this agreement at the time. Where any materials lodged in escrow are to be returned by the Escrow Agent to the Licensor pursuant to the terms of this agreement, the Licensor shall select the method of delivery and the carrier, and shall bear the shipping cost.

6. RETURN TO LICENSEE

The Escrow Agent shall deliver the Software to the Licensee if any of the events named in Section 4(c) occurs before any of the events named in Sections 4(a) or 4(b), provided that the procedure set out below has been followed and the conditions met.

(a) The Licensee has delivered to the Escrow Agent a written request for the release of the Software, accompanied by a sworn affidavit from a senior officer of the Licensee stating the particulars of the reasons for its request with reference to the events named in Section 4 of this agreement.

(b) A copy of the request and affidavit have been delivered by the Escrow Agent to the Licensor in a timely manner, and the Licensor has received at least the notice period named in Section 4(c)(3).

(c) No dispute in writing has been received from the Licensor by the Escrow Agent within fifteen (15) days of the Licensor's receipt of the Licensee's request and affidavit.

(d) The Licensee has signed a non disclosure covenant in the form set out in Schedule B and delivered it to the Escrow Agent.

(e) All outstanding charges under this agreement have been paid to the Escrow Agent, and the Licensee has paid copying charges. The Licensee shall select the method of delivery and the carrier, and shall bear the shipping cost.

7. DISPUTES AND ARBITRATION

If the Licensor enters a dispute as contemplated by paragraph 6(c) then the procedure set out below shall be followed before the Software is delivered to the Licensee.

(a) The Licensor and Licensee shall within ten (10) days after the entering of a dispute name an arbitrator to decide whether the Licensee is entitled to receive the Software. If they are unable to agree upon the selection of an arbitrator then the Escrow Agent shall make the said selection.

(b) The arbitration shall otherwise be conducted in accordance with the Rules for the American Arbitration Association, and the Escrow Agent shall immediately upon the expiry of any appeal period carry out the decision of the arbitration.

(c) In addition to such other powers as may be conferred on the arbitrator under enabling legislation the arbitrator shall be empowered to decide whether an event described in Section 4 has occurred, whether all other conditions for release have been met, and to order or enjoin release. The arbitrator's decision shall be binding. The Escrow Agent shall act upon the decision of the arbitrator immediately after the expiry of any appeal period.

(d) The Licensor and Licensee shall each pay one half of the fees and charges of the arbitration.

8. VERIFICATION PROCEDURE

In order to verify the authenticity of the contents of any container deposited by the Licensor and being held in escrow the Licensee may at any time call for its inspection in the manner and subject to the conditions below:

(a) The Licensee shall notify the Licensor and the Escrow Agent in writing of its demand to inspect the contents of a container, and such notification shall be made at least thirty (30) days in advance of the date appointed for such inspection.

(b) The Escrow Agent shall appoint the location for such inspection.

(c) The Escrow Agent shall attend the appointment time and place and shall thereat produce the sealed container in question.

(d) The contents of the container shall be removed and inspected by the Licensee and a determination made as to whether they are as purported by the Licensor on its certificate.

(e) If the contents are determined to be as purported, they will be resealed and returned to the Escrow Agent to continue to hold in escrow. The Licensee shall pay all costs associated with the inspection, including machine time, operating personnel travel, food, lodging and a reasonable per diem fee for the attendance of all the parties attending at the inspection.

If the contents of the container are determined not to be as purported, then the Licensor shall pay all of the costs named above and shall also forthwith deliver to the Escrow Agent a copy of the authentic software as purported on the Licensor's certification, and the Licensee may first verify that the same are authentic.

9. DUTIES OF ESCROW AGENT

(a) The Escrow Agent shall store the sealed containers in a safe and secure location of its own choosing.

(b) The Licensor may direct the Escrow Agent to store the sealed containers in a location selected by the Licensor, in which event the Escrow Agent shall comply

with such direction provided that access to the location is under the Escrow Agent's control and that any additional cost incurred by the Escrow Agent in using the site are paid by the Licensor.

(c) The Licensor represents that the Software does not require any storage conditions other than office environment conditions. The Escrow Agent shall exercise reasonable judgment in the handling of the Software in event of a dispute and shall not be liable to either party except for grossly or deliberately negligent conduct.

10. FEES, CHARGES AND TERM

The Licensor shall pay to the Escrow Agent the following fees and charges:

(a) An annual fee of $540.00 payable upon execution by the Licensor of this agreement and on each anniversary date thereafter unless earlier terminated by either party.

(b) This agreement shall continue thereafter on a yearly basis unless terminated by either party by giving the other at least thirty (30) days written notice prior to any anniversary date, and provided that all named beneficiaries have either ceased to hold a use license for the Software or have consented to the termination of this agreement.

(c) Respecting each issued standard size container in excess of one a fee of $54.75 per year or part year payable on the anniversary date of this agreement.

(d) Respecting each notice in writing sent by the Escrow Agent a fee of $27.25 payable on receipt of invoice.

(e) Respecting all expenses incurred by the Escrow Agent for media, copying, shipping or delivery, special storage requested by either the Licensor or Licensee a charge for such amounts disbursed due and payable on receipt of account.

(f) Respecting any attendance made by the Escrow Agent in carrying out its obligation under this agreement or related thereto, travel, lodging and legal representation expenses incurred if any plus the then current per diem attendance fee payable on receipt of invoice.

(g) The term of this agreement shall continue so long as any beneficiary has rights under it.

(h) The Escrow Agent may resign at the end of any year provided that it has delivered at least ninety (90) days prior written notice to the Licensor to find a replacement.

(i) The fees above shall be in force for a period of one year. Thereafter the Escrow Agent may alter the fees provided that any increase is part of a general fee increase.

11. DEFAULT IN PAYMENT

If the Licensor fails to pay any fee or charge on its due date, then the Escrow Agent may, after giving the Licensor and Licensee hereunder thirty (30) days prior written notice to make such payment, terminate this agreement and either destroy or return the escrow materials in its possession at the Escrow Agent's option. The remedies above do not exclude any other remedies that are otherwise available to the Escrow Agent. This notice shall be sent to the Contact and Address provided on the most recently dated Schedule C forms received by the Escrow Agent, and shall be conclusively deemed as having been received upon being sent.

12. INSPECTION

For the purpose of insuring that any sealed container delivered to and held by the Escrow Agent under this agreement remains in a sealed state, either the Licensor or the Licensee may at any time demand to inspect such container at the offices of the Escrow Agent, and the Escrow Agent shall produce such container on a timely basis for inspection.

13. NOTICES

Any notice required to be given in writing under this agreement shall be conclusively deemed to have been given and received when made at the sender's option by fax, email, first class post, courier

or prepaid certified or registered post, return receipt requested, to the respective, fax numbers, email addresses or street addresses appearing on Schedule D or to such other fax numbers, email address or street addresses as the parties may from time to time direct.

14. TITLE

Title to the Software shall remain in the Licensor either in its own right or as agent for the owner. The Escrow Agent shall have title to the physical storage medium but not to the Software residing on it.

15. GOVERNING LAW

This agreement shall be governed in accordance with the laws of the State of TEXAS without giving effect to its conflict of laws provisions.

16. ENUREMENT

This agreement shall be binding upon and enure to the benefit of parties and the beneficiaries named by the Licensor and the assignees of each of them. This agreement may not be assigned by the Escrow Agent without the prior written consent of the Licensor.

17. GENERAL

The Escrow Agent may rely on all documents, notices and communications on their face, and is not required to make further inquiry into their authenticity or the veracity of their contents.

END OF TERMS AND CONDITIONS

IN WITNESS WHEREOF the parties have by their representatives so authorized executed this agreement to go into force on the date below first mentioned.

ESCROW AGENT:
Lincoln-Parry SoftEscrow, Inc.

(signature)

_____
Authorized Representative

Audrey Rud
_____
Name

Trust officer
_____
Title

March 25/02
_____
Date

LICENSOR:
VOTEC Corporation

(signature)

_____
Representative

Bill Bilyeu
_____
Name

President
_____
Title

March 22, 2002
_____
Date

LIST OF ESCROW PROGRAMS

No.	Program Name	Description	Release No.
1	VEMACS	VOTEC Election Management and Compliance System	5.5
2			
3			
4			
5			
6			
7			

* The Licensor shall deposit updates, if any, to the Software above-listed not less frequently than annually, and such updates shall be considered as included in the Software.

SCHEDULE C - NOTIFICATION

TO: Lincoln-Parry SoftEscrow, Inc.
    400 Inverness Drive, South
    Suite 200
    Englewood, Colorado 80112
    Central Fax: 613-839-1362

BE INFORMED THAT THE FOLLOWING

Cuyahoga County, Ohio (Cleveland)
Michael Coletta, Election IS Director
2925 Euclid Avenue
Cleveland OH 44115
216-443-6557

Clark County, Nevada
Larry Lomax, Registrar of Voters
P.O. Box 551761
Las Vegas NV 89155-1761
702-455-2869

Collin County, Texas
Sharon Rowe, Elections Administrator
920 East Park Blvd - Suite 120
Plano TX 75074
972-633-3210

Guilford County, North Carolina
George Gilbert, Elections Director
301 West Market Street
Greensboro, NC 27401
336-373-3836

Chester County, Pennsylvania
Linda Cummings, Director
601 Westtown Road – Suite 150
West Chester PA 19382
610-344-6410

St. Louis County, Missouri
Judy Taylor, Director
12 Sunnen Drive
St. Louis MO 63143
314-951-0100

Fort Bend County, Texas
David Beirne, Elections Administrator
4520 Reading Road – Suite A
Rosenberg TX 77471
281-341-8670

Denton County, Texas

Don Alexander, Elections Administrator
401 West Hickory Street - Suite 125
Denton TX 76201-9026
940-565-8514

McLennan County, Texas
Kathy E. Van Wolfe, Elections Administrator
County Records Building
214 North 4th Street, Suite 300
Waco TX 76701
254-757-5043

Skagit County, Washington
Norma Hickok-Brummett, Auditor
700 South 2nd Street, Room 201
Mt. Vernon WA 98273
360-336-9411

Jackson County, Missouri
Charlene Davis, Director
Independence Square Court House
Independence, MO 64051
816-521-4600

San Luis Obispo County, California
Julie Rodewald, Registrar of Voters
1144 Monterey Street
San Luis Obispo, CA 93408
805-781-5144

Guadalupe County, Texas
J.R. Perez, Elections Administrator
307 W. Court St.
Seguin TX 78155
830-303-6363

Larimer County, Colorado
Jan Kuehn, Deputy for Elections
200 W. Oak Street
Fort Collins, CO 80521
970-498-7859

Douglas County, Colorado
John Green, Deputy County Clerk
301 N. Wilcox St
Castle Rock CO 80104
(303) 663-7643

Weld County
Randy Propp, Deputy County Clerk
1402 17th Avenue
Greeley CO 80631-9563
970-304-6525

Harris County Clerk, Texas
John German, Deputy IT Director

P.O. Box 1525
Houston TX 77251-1525
713-755-5792

Adams County
Carol Snyder, Clerk and Recorder
450 South 4th Avenue
Brighton CO 80601
303-654-6025

Eagle County, Colorado
Damon Baillee, Deputy for Elections
P.O. Box 537
Eagle CO 81631
970-328-8715

Ector County, Texas
Sharon Wilson, Elections Administrator
P.O. Box 11149
Odessa TX 79760-8149
915-498-4030

Arapahoe County, Colorado
Tracy Baker, Clerk and Recorder
5334 South Prince Street
Littleton, Colorado 80166-0001
303-795-4511

City and County of Broomfield, Colorado
Russ Ragsdale, Clerk and Recorder
One DesCombes Dr.
Broomfield CO 80020-2495

Jefferson County, Colorado
Gary Vande Stouwe, Office of the Clerk and Recorder
100 Jefferson County Pkwy
Golden Co 80419
303-271-8169

El Paso County, Colorado
J. Patrick Kelly, Clerk and Recorder
2200 S. Cascade Avenue
Colorado Springs, CO 80903
(719) 520-6216

have become licensed users of those programs included in the Software described or otherwise included in Software Escrow Agreement No. ___№ 7221___ and bearing date _July 8, 2024_ between you and VOTEC Corporation (Licensor) which are listed below and as such become entitled to the rights of a beneficiaries there- under upon filing of this Notification with the Escrow Agent. The Licensee's rights under this Agreement shall relate to the Software in those container(s) held by the Escrow Agent for which the Licensee has a valid license agreement that is not in arrears or otherwise in default, at such time as those rights are exercised.

Programs of the software licensed by the Licensee:

1. __VEMACS release 5.5__
2. _____
3. _____
4. _____

Licensor: VOTEC Corporation

Bill Bily (signature)
_____
Authorized Representative

Bill Bilyeu
_____
Name

President
_____
Title

March 22, 2002
_____
Date

VOTEC Software Maintenance, Warranty, and Support Agreement

THIS AGREEMENT entered into this   day of   , 2024, between Johnson County, a political subdivision of the State of Texas, hereinafter called COUNTY, and VOTEC Corporation of San Diego, California, hereinafter called VENDOR or VOTEC.

WITNESSETH

WHEREAS, COUNTY requires the services of a VENDOR qualified to provide support, modifications and upgrades to VOTEC proprietary software and hardware used by COUNTY; and

WHEREAS, VOTEC 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 registration and/or election data.

LICENSED PRODUCT. A "LICENSED PRODUCT" is a set of LICENSED SUB-SYSTEMS sold as one item. VOTEC's products licensed to COUNTY as LICENSED SUB-SYSTEMS as of the Agreement date are VoteSafe.
C
LICENSEE. Includes county employees, agents, and representatives.

ARTICLE I – TERM

This Agreement shall be in effect for a year from the Effective Date stated in the first paragraph above, covering all elections within the Jurisdiction beginning immediately after the Effective Date (the "Term"). This Agreement may be extended annually per the terms in Article VIII – CONTRACT EXTENSION.

ARTICLE II – SCOPE

Services provided pursuant to this Agreement are for the maintenance and support of products and their sub-systems licensed by VENDOR to COUNTY.

PRODUCT license has been granted using a VOTEC Software License Agreement.

ARTICLE III - VENDOR'S deliverables to COUNTY under this Agreement are as follows:

1) 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 Elections office services.

   c) Provide updates to the instructions for functions whose operation changes due to corrections or performance improvements.

   d) Provide telephone responses, 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 telephone assistance from the commencement of early voting until the election is certified.

2) Provide upgrades to meet State and Federal mandates. Except for simple changes that do not require expedited handling and which will be provided at no additional cost, VOTEC will work with all counties that wish to be involved to define the upgrade plan.

   a) COUNTY shall provide to VENDOR the requirements in written form which may include flow charts, examples of reports and screens, and performance requirements pertaining to new or updated State and Federal mandates.

   b) VENDOR shall provide a project and cost estimate for implementing upgrades to the LICENSED SUB-SYSTEMS to keep the COUNTY's LICENSED SUB-SYSTEMS in compliance with State and Federal mandates. The cost estimate is provided for discussion. VOTEC is the final arbiter of necessary charges.

   c) Components of the upgrades to be provided include:

      i) Provide new or enhanced screens, batch processes, and reports required to keep the LICENSED SUB-SYSTEMS in compliance with State and Federal Elections Codes.

      ii) Provide documentation and training for the new and enhanced items.

   d) Upgrades to be done by VENDOR shall only be undertaken after written authorization by the COUNTY. VENDOR recognizes that some requirements may be handled outside our software by some counties.

   e) Upgrades to address mandates authorized by multiple VOTEC customers shall be billed to those customers proportional to their most recently invoiced maintenance and support fee.

3) 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 VENDOR 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 COUNTY's system performance.

    b) Provide improvements made to the LICENSED SUB-SYSTEMS by VENDOR 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 technology upgrades to the LICENSED SUB-SYSTEMS as developed by VENDOR and deemed beneficial by the COUNTY.

    d) Provide documentation for the changes and additions installed.

4) Provide upgrades to the LICENSED SUB-SYSTEMS resulting from a direct request of COUNTY. COUNTY shall be billed separately as mutually agreed.

    a) Provide new or enhanced forms, batch processes, and/or reports as requested by COUNTY and agreed to by VENDOR.

    b) Provide documentation for the changes and additions installed.

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

5) Provide and manage on behalf of COUNTY elections, an Amazon GOV Cloud environment to run the PollPower™ component of VoteSafe. This environment and service will be billed according to fees specified in "VOTEC - VoteSafe Hosting Fee Schedule for 2024.pdf" which is included by reference

6) Maintain an escrow agreement covering the licensed software. VOTEC maintains the following agreement with Lincoln-Parry Escrow. "VOTEC_Lincoln-Parry-Escrow_Agreement_7221.pdf" which is included here by reference.

ARTICLE IV – WARRANTY

VENDOR warrants the product, as delivered, will perform in the manner described in the accompanying System Documentation for the term of this Agreement.

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE IN TRADE.

Notwithstanding any other provision of this Agreement, VENDOR shall defend, indemnify, hold, and save harmless the COUNTY from and against any and all Claims for bodily injury or property damage sustained by or asserted against Purchaser arising out of, resulting from, or attributable to the negligent or willful misconduct of VENDOR, its employees, subcontractors, representatives, and agents; provided, however, that VENDOR shall not be liable herein to indemnify COUNTY against liability for damages arising out of bodily injury to people or damage to property to the extent that such bodily injury or property damage is caused by or resulting from the actions, negligent or otherwise, of the COUNTY, its agents, contractors, subcontractors, or employees.

Notwithstanding any other provision of this Agreement, if any claim is asserted, or action or proceeding brought against the COUNTY that alleges that all or any part of the LICENSED PRODUCT or LICENSED SUB-SYSTEMS, or hardware in the form supplied, or modified by VENDOR, or the COUNTY'S use thereof, infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title, or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other proprietary right of any third party, the COUNTY, upon notice of said violation, shall give VENDOR prompt written notice thereof. VENDOR shall defend, and hold COUNTY harmless against, any such claim or action with counsel as mutually agreed upon by the parties at VENDOR'S expense and shall indemnify the COUNTY against any liability, damages, and costs resulting from such claim. Without waiving any rights pursuant to sovereign immunity, the COUNTY shall cooperate with and may monitor VENDOR in the defense of any claim, action, or proceeding and shall, if appropriate, make employees available as VENDOR may reasonably request with regard to such defense.

If the LICENSED PRODUCT or LICENSED SUB-SYSTEMS becomes the subject of a claim of infringement or misappropriation of a copyright, patent, or trade secret or the violation of any other contractual or proprietary right of any third party, VENDOR shall, at its sole cost and expense, select and provide one of the following remedies, which selection shall be in VENDOR'S sole discretion: (i) promptly replace the LICENSED PRODUCT or LICENSED SUB-SYSTEMS with a compatible, functionally equivalent, non-infringing system; or (ii) promptly modify the LICENSED PRODUCT or LICENSED SUB-SYSTEMS to make it non-infringing; or (iii) promptly procure the right of the COUNTY to use the LICENSED PRODUCT or LICENSED SUB-SYSTEMS as intended.

ARTICLE V – LIMITATION OF LIABILITY

VENDOR and COUNTY recognize that all software is potentially data dependent and may have bugs that will not surface until a particular data set is processed. Therefore, VENDOR limits potential liability under this warranty to fixing bugs promptly and delivering those fixes at VENDOR's costs unless decided otherwise by a court of competent jurisdiction.

COUNTY is responsible for proofing all outputs of the software including but not limited to reports, letters, web content, and internal content and statistics upon which VENDOR may rely. Financial responsibility for reliance on the outputs of the LICENSED PRODUCT remains with the COUNTY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VENDOR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) HOWEVER CAUSED AND ON ANY LEGAL OR EQUITABLE THEORY OF LIABILITY, AND WHETHER OR NOT FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY BREACH OF CONDITION(S) OR FUNDAMENTAL TERM(S) OR FOR A FUNDAMENTAL BREACH (S). IN ANY CASE, VENDOR'S AND ITS SUPPLIERS' ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT RECEIVED BY VENDOR FROM COUNTY FOR THE SOFTWARE MAINTENANCE AND SUPPORT FOR THE THREE MONTHS OF MAINTENANCE AND SUPPORT NEAREST TO AN EVENT TRIGGERING ANY PROPOSED LIABILITY.

THIS LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL SUCH PARTY'S EXPENDITURES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT.

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

1) Designate a project manager with final responsibility for specifying COUNTY's needs regarding this Agreement.

2) Designate an elections office staff member and an information technology staff member to serve as liaison under this Agreement for the exchange of technical information.

3) Maintain network access for connection to the servers supporting VOTEC products and to provide monitored access to PC workstations upon request for training and problem diagnosis.

4) Submit electronically all requests for technical service including questions for which you wish documented answers.

5) Provide problem diagnosis using Elections and Information Services staff to discriminate VENDOR issues from hardware and system software issues prior to forwarding problems to VENDOR. VENDOR staff time to diagnosis problems originating solely from COUNTY purchased hardware and system software shall be billed at VENDOR's then current rate.

ARTICLE VI – PAYMENT

1) In consideration of services specified in this Agreement, the COUNTY agrees to pay VENDOR according to the fees for supporting VoteSafe application and for hosting in the AWS Cloud according to the schedules attached under the titles:
"VOTEC - VoteSafe Hosting Fee Schedule for 2024".pdf"

2) Support fees are charged annually on the anniversary of the invoice for installation and first use.

3) The hourly rate for additional programmer services shall be $250.00 per hour.

4) The fees for VoteSafe support cover VENDOR travel expenses for any trip required for VENDOR to provide timely response to Warranty or mandated update needs.

5) Payment for shipping charges and phone charges for calls originated by VENDOR shall be the responsibility of VENDOR.

6) The costs for hardware and non-VENDOR software arising from VENDOR fulfillment of State or Federal mandates shall be paid by the COUNTY.

7) The costs for hardware and non-VENDOR software arising from installation of new technology as mutually agreed by COUNTY and VENDOR shall be paid by the COUNTY.

8) Payment is due within 30 calendar days of date invoice is produced after billable services are delivered under this Agreement.

ARTICLE VII - TERMINATION

1) This Agreement may be terminated by the COUNTY for the COUNTY's convenience by giving 30 days written notice of termination to VENDOR via certified mail or delivery service. Support fees are not automatically refundable.

2) This Agreement may be terminated by VENDOR if payment is not made when payment is due by giving 30 days written notice of termination via certified mail or delivery service. COUNTY may cancel the termination by paying in full within said 30 days.

3) This Agreement may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives written notification thereof from the non-breaching party.

ARTICLE VIII – CONTRACT EXTENSION

Extension may be by purchase order or by written amendment executed by the parties hereto.

1) This contract will be automatically extended on each anniversary unless the COUNTY has given notice of termination or proposed or requested an amendment extending the contract.

2) As long as this Agreement is in effect. The application software support fees shall not increase more than 4% (four percent) in any one year.

3) Hosting fees will be adjusted upward or downwards as AWS and/or Oracle fees are adjusted and as usage requires more or fewer resources.

4) The extension of this contract as provided above is contingent on the appropriation of necessary funds by Commissioners Court for the fiscal year in question. Upon the failure of Commissioners Court to so appropriate in any year, vendor may elect to terminate this agreement, with no additional liability to the County. County and Vendor agree that termination shall be Vendor's sole remedy under this circumstance.

ARTICLE IX - GENERAL

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

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
Johnson County
PO Box 895
Cleburne, TX 76033

VOTEC: President
VOTEC Corporation
10920 Via Frontera Suite 110
San Diego, CA 92127

The parties herein agree that this Contract shall be enforceable in Johnson County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in a court of competent jurisdiction in Johnson County, Texas. This Contract shall be governed by and construed in accordance with the laws of the State of Texas and all applicable Federal Laws.

This document and referenced software licenses, fee schedules, and escrow agreement constitute the entire Agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by the parties.

The terms and conditions contained herein are severable and should any be adjudged 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.

Acceptance by VENDOR: Acceptance by COUNTY:

VOTEC Corporation   **Johnson County, Texas**

_____   _____
Authorized Signature   Authorized Signature

Randy Propp – President   **Christopher Boedeker, County Judge**
Name and Title   Name and Title

June 24, 2024   **July 8, 2024**
Date   Date

VR Request for Purchase Approval to Use Chapter 19 Funds TAC 81.13

Date: 6 /24 /24 County Name: Johnson   Voter Registrar's Name: Patty Bourgeois

County Fax Number: (817) 556-6048

Check one or all that apply to this request:

☐ Increase the number of registered voters in the State
☐ Maintain and report an accurate list of the number of registered voters
☑ Increase the efficiency of the voter registration office through the use of technological equipment

Introduction - PURPOSE FOR THE PURCHASE

Product Name/Number: Anticipated Cost: $ 45,320.12

23 WelcomeVoter Kiosk 4.0

HOW WILL THE PURCHASE ENHANCE THE VOTER REGISTRATION PROCESS?

These units will help maintain the voter registration list during all elections.

Activity/Process - WHAT PERCENTAGE OF TIME WILL THIS PURCHASE BE USED BY THE VR DEPARTMENT? PLEASE PROVIDE AN EXAMPLE AND OUTLINE BELOW

EXAMPLE OF VR USAGE:

During all uniform and special elections.

WHAT OTHER AREA'S WILL HAVE ACCESS AND USAGE OF THIS PRODUCT OR SERVICE?:

Conclusion – PROVIDE A DETAILED EXPLANATION OF PURCHASE AND WHY IT SHOULD BE CONSIDERED for the use of CHAPTER 19 FUNDS?

Increase the efficiency of the voter registration office through the use of technological equipment.

Return to Elections Funds Management by :

- FAX: 512-463-7552 (*no cover sheet needed*)
- E-mail: elections@sos.state.tx.us   OR
- Mail: P.O. BOX 12060, Austin, Texas 78711

FOR SOS APPROVAL ONLY

☐ Increase the number of registered voters in the State
☐ Maintain and report an accurate list of the number of registered voters
☑ Increase the efficiency of the voter registration office through the use of technological equipment

EFM Manager: ___M E___ 06 / 25 / 2024
              (Initial)   DATE

☑ Approved
☐ Disapproved - _Mary Eliasen_____