VOTEC Software Maintenance, Warranty, and Support Agreement

THIS AGREEMENT entered into this   day of   , 20   , between Webb 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 modifications to VEMACS software 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 as of the Agreement date are VEMACS and VoteSafe.

LICENSEE. Includes county employees, agents and representatives.

ARTICLE I - TERM

This Agreement shall commence on October 1, 2019, and shall terminate on September 30, 2020, unless terminated sooner or further extended pursuant to Articles IV and V of this Agreement..

ARTICLE II - SCOPE

Services provided pursuant to this Agreement call for the maintenance and support of LICENSED PRODUCTS and their LICENSED SUB-SYSTEMS licensed by VENDOR to COUNTY and for support of Oracle products used by VOTEC products and sub-licensed by VOTEC to COUNTY.

PRODUCT license(s) are granted and accepted using a VOTEC Software License Agreement.

Oracle products are sub-licensed from Oracle Corporation to COUNTY by the "VOTEC Corporation Software License Oracle Sub-License Addendum" granted by VOTEC and accepted by COUNTY.

VENDOR'S deliverables to COUNTY 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 COUNTY registration and election 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 PRODUCT.

   e) Provide support during COUNTY's scheduled work hours which include extended voting hours during election periods as specified by LICENSEE.

   f) Provide 24/7 telephone assistance from the commencement of early voting until the election is certified.

   g) Provide beta testing prior to new releases.

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 by vendor within 14 days of written 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 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 the performance of 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.

5) Provide upgrades to the LICENSED SUB-SYSTEMS resulting from a direct request of COUNTY. VENDOR'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 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.

Warranty

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

LICENSOR further agrees to make the product conform to any subsequent legal registration and election software mandates for the State of Texas and of the United States of America while this Agreement is in effect.

EXCEPT FOR THE FOREGOING, LICENSOR MAKES NO WARRANTIES EITHER EXPRESSED OR IMPLIED WITH RESPECT TO THE SYSTEM, AND WARRANTIES OF MERCHANTABILITY FOR ANY OTHER PURPOSES OR FITNESS FOR ANY OTHER PURPOSE ARE HEREBY EXPRESSLY DISCLAIMED.

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 III - PAYMENT

1) In consideration of services specified in this Agreement, the COUNTY agrees to pay VENDOR a total of $42,955.15 for all services covered under this Agreement except as the COUNTY chooses to purchase additional services as described in Article II, Section 5.

   $1,000.00 of the above fee is for Oracle support.

   $45,755.15 is for Warranty, Maintenance and Support minus the sales discount of $5,000.00.

   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 – 2017" using a voter count of 121,773 in the November, 2018 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 VENDOR travel expenses for any trip required for VENDOR to provide timely and comprehensive response to Warranty or Mandated update needs.

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

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

6) 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.

7) Payment is due within 30 calendar 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 30 days written notice of termination to VENDOR via certified mail or delivery service.

2) This Agreement may be terminated by VENDOR if payment is not made when payment is due by VENDOR giving COUNTY 30 days 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 – 2017" or successors thereto.

   The component fees 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 VENDOR services as needed.

ARTICLE VI - 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: Jose Salvador Tellez
                Webb County Elections Office
                1110 Washington, Suite 103
                Laredo, TX, 78040

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

This document and referenced License and Sub-License agreements 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.

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 LICENSOR: Acceptance by LICENSEE:

VOTEC Corporation   **Webb County, Texas**

_____   _____
Authorized Signature   Authorized Signature

_____   _____
Name and Title   Name and Title

_____   _____
Date   Date