LARAMIE COUNTY CLERK
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM PROCESSING FORM

1. **DATE OF PROPOSED ACTION:** April 15, 2014

2. **AGENDA ITEM:** ☐ Appointments ☐Bids/Purchases ☐Claims

☐Contracts/agreements/leases ☐Grants ☐ Land Use: Variances/Board App/Plats

☐Proclamations ☐Public Hearings/Rules & Reg's ☐Reports & Public Petitions

☐Resolutions ☐Other

3. **DEPARTMENT: County Clerk**

APPLICANT: Debbye Lathrop **AGENT:**

4. **DESCRIPTION:** Consideration of a contract, software license agreement and addendum in the amount of $48,000 between Votec Corporation and Laramie County for the purchase, installation, training and support of VoteSafe software.

Amount $$48,000 From **April 15, 2014** To

5. **DOCUMENTATION:** Originals

<table>
<tr><td colspan="2" align="center"><u>Clerks Use Only:</u></td></tr>
<tr><td><u>Commissioner</u></td><td><u>Signatures</u></td></tr>
<tr><td>Humphrey_____</td><td>Co Attny _____</td></tr>
<tr><td>Holmes_____</td><td>Assist Co Attny _____</td></tr>
<tr><td>Thompson_____</td><td></td></tr>
<tr><td>Ash_____</td><td></td></tr>
<tr><td>Hausenauer_____</td><td>Grants Manager_____</td></tr>
<tr><td>Action _____</td><td>Outside Agency_____</td></tr>
<tr><td>Postponed/Tabled_____</td><td></td></tr>
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VOTEC

Contract for Software and Services

THIS CONTRACT, made this _____ day of _____, 2014 by and between Laramie County, a political subdivision of the State of Wyoming, hereinafter referred to as COUNTY, and VOTEC CORPORATION, a corporation with a place of business in San Diego, California, hereinafter referred to as VENDOR.

WITNESSETH:

WHEREAS, in consideration of the covenants mutually exchanged, the parties desire to agree that the VENDOR shall provide Elections/Voter Registration licensed software and associated support services, and; WHEREAS, the parties desire to reduce this agreement to writing.

NOW THEREFORE, for the consideration hereinafter stated the parties to this agreement agree as follows:

SECTION I - VENDOR AGREES:

1. To install and train, in a professionally competent manner, the VoteSafe electronic poll book system.

2. VoteSafe will meet the specifications listed in Attachment I.

3. To appoint a VENDOR project coordinator to work with COUNTY throughout the implementation and acceptance process.

4. To adhere to COUNTY and State requirements for Elections in fulfilling contract services. The State of Wyoming will make requirements available to the VENDOR.

5. To handle all information made available by COUNTY in a confidential manner and in strict accordance with laws and COUNTY procedures.

6. To meet State requirements for data exchange in support of HAVA mandates.

7. VENDOR agrees to maintain a copy of all VoteSafe software source code with Lincoln-Parry Escrow subject to software escrow agreement No. 7221 between Lincoln-Parry SoftEscrow, Inc. and VOTEC Corporation. A copy is attached. COUNTY will be added to this escrow account for each software product for which customer is licensed.

8. VENDOR will work with COUNTY to obtain all existing voter data and related data in any format available to COUNTY from existing system. COUNTY will work with VENDOR to define all necessary terms.

Laramie County [handwritten annotation in left margin]

INDEMNIFICATION / HOLD HARMLESS

VENDOR shall indemnify, defend and hold harmless COUNTY, all officials, agents and employees of COUNTY, from and against all claims arising out of or resulting from the performance of the contract. "Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. VENDOR obligation to indemnify, defend, and hold harmless includes any claim by VENDOR agents, employees, representatives, or any subcontractor to its employees.

VENDOR expressly agrees to indemnify, defend, and hold harmless COUNTY for any claim arising out of or incident to VENDOR or any subcontractor's performance or failure to perform the contract. VENDOR obligation to indemnify, defend, and hold harmless COUNTY shall not be eliminated or reduced by any actual or alleged concurrent negligence of COUNTY or its agents, agencies, employees and officials.

SECTION II - COUNTY AGREES:

1. To pay VENDOR for a VoteSafe Perpetual Software License, data conversion, installation, training, and First Year Maintenance and Support for documented competent services rendered and accepted by COUNTY.
   a. VoteSafe license fees for 70 Field systems @ $600 = $42,000.00.
   b. VoteSafe project management fee of $6,000.00.
   c. **Total first year payment** will be the sum of a + = **$48,000.00**.
   d. Subsequent year's VoteSafe support fee will be $8,400.
   e. Support fees will be due and payable on the first and subsequent anniversaries of the date of first production use of the VoteSafe system.

2. To provide computer access and on-site working space to support VENDOR employees assigned under this agreement.

3. To appoint a COUNTY project manager to work with VENDOR throughout Term of contract.

4. To dedicate appropriate COUNTY personnel to the specification, installation, testing, training, and operation of the licensed software.

5. To adhere to the VOTEC Corporation Software License Agreement.

6. To adhere to the VOTEC Corporation Software License Oracle Sub-License Addendum.

7. To order, install, test, and maintain all hardware and operating system software including data backup software.

8. To promptly notify VENDOR of changes proposed or being made to the network hardware and/or software that may affect the performance of the VoteSafe software.

9. To provide support for remote communications by the VENDOR with the network, including resolving technical communications problems occurring on site in the COUNTY. Access shall be under control of the COUNTY utilizing WebEx and/or LogMeIn supplied by VENDOR.

10. To provide local system administrator level access to the VENDOR on the VoteSafe server for system installation and testing.

SECTION III - BOTH PARTIES AGREE:

1. With regard to establishing final specifications:

    a. COUNTY shall certify that all requirements are consistent with COUNTY's understanding and application of all applicable laws.

2. In the event of a conflict between this agreement and the terms and conditions of the attached Appendices, the terms and conditions of this agreement shall govern.

3. With regard to system installation:

    a. All hardware and all software provided by the COUNTY will be installed and tested before the VENDOR installs VENDOR provided software. VENDOR will provide remote support if necessary.

    b. All operationally essential system modifications will be tested by the COUNTY, with converted COUNTY data, and determined to be functioning in accordance with specifications prior to using the VoteSafe software for daily operations.

    c. COUNTY will assist in the installation of the system by providing prompt responses to any hardware or communications problems that arise on site and by identifying any apparent inconsistencies between the installed system and the specified requirements.

    d. Vendor understands that County uses virtualization by VM-Ware and agrees to support the use of this technology.

IN WITNESS WHEREOF, the parties executed this agreement on the day and year first written above.

Acceptance by LICENSOR: Acceptance by LICENSEE:

VOTEC Corporation   **Laramie County, Wyoming**

_____   _____
Authorized Signature   Authorized Signature

_____   _____
Name and Title   Name and Title

_____   _____

ATTACHMENT I – VoteSafe Functional Specifications

Voter Check-in
- Lookup by name, state ID#, drivers license #
- Limit check-in to eligible status codes
- Print labels identifying voter precinct and ballot style
- Label reprint
- Same site, same day check-in removal to correct mistaken check-in
- Correction of check-ins on Management System at any time
- Track provisional voters
- Review list of checked-in voters on screen
- Copy check-ins to all Internet connected Field Systems for Early Voting and Super Precincts / Vote Centers

Live Help
- Field System initiated instant message style communications with central office Management System
- Automatic reference of voter record currently on screen
- Tracking of messages by site and user
- Management initiated messages to individuals
- Management initiated messages to all Field Systems at a site
- Archiving of all messages

Election Setup
- Import voter, polling place, ballot style, precinct, poll worker data from state voter registration system or from local databases where it is available
- Enter data not available from Voter Registration system
- Verify consistency of data
- Produce JAR files for Field Systems

Reports
- Check-in statistics by site, Field System, date, and party
- Voter check-in lists by site, Field System, date, and party
- Logons by site and user

Exports
- Field Systems can export their check-in list and audit log if they were not running in connected mode. Management System can import these files
- Management System provides daily and final exports for state voter registration system
- Automatic Archiving

Agreement dated this_____ day of_____, 2014 by and between Laramie County, a political subdivision of the state of Wyoming, hereinafter referred to as the LICENSEE, and VOTEC CORPORATION of San Diego, California, hereinafter referred to as LICENSOR, for the installation, training, and licensing of the following Software, hereinafter referred to as LICENSED SOFTWARE, to LICENSEE under the terms and conditions contained herein.

(Numbered headings used in this Agreement are for the convenience of the reader and do not add meaning to the Agreement.)

1. LICENSED SOFTWARE:

All screens, reports, and batch processes to support the mandated or otherwise agreed upon database functions of LICENSEE in the following areas:

VoteSafe Product
- Field System
- Management System

Oracle products are not licensed by this Agreement alone. Oracle products are sub-licensed by a combination of this Agreement and the "VOTEC Corporation Software License Oracle Sub-License Agreement".

2. INSTALLATION SITE AND COMPUTERS

LICENSED SOFTWARE is licensed for use on computers operated by the LICENSEE in support of voter data management and elections data management within LICENSEE's jurisdiction.

3. LICENSE

LICENSOR agrees to grant, and LICENSEE agrees to accept, on the following terms and conditions, for valuable consideration the sufficiency of which is hereby acknowledged, a non-exclusive LICENSE to use the LICENSED SOFTWARE as set forth in this agreement.

4. SOFTWARE REGISTRATION AND PROTECTION

LICENSEE agrees that the LICENSEE in the conduct of its business shall use the LICENSED SOFTWARE set forth hereinabove. The LICENSEE further agrees that all applicable LICENSOR copyrights and patent rights plus all LICENSOR copying protection, and security provisions will be strictly observed by LICENSEE, its employees, agents, and representatives.

5. PROTECTION AND SECURITY

LICENSEE acknowledges that the LICENSED SOFTWARE constitutes a valuable asset of the LICENSOR, and the LICENSOR has proprietary rights and interest in and to the LICENSED SOFTWARE and that portions thereof are confidential. Accordingly, LICENSEE agrees as follows:

a) LICENSEE may make Working copies of the LICENSED SOFTWARE in machine-readable format for backup purposes and in accordance with LICENSEE's standard software backup policies only.

b) LICENSEE agrees that it shall not make any copies of manuals, flow charts, or other related documents, or portions thereof, directly or indirectly, except for purposes of maintaining voter data and conducting elections within LICENSEE's jurisdiction.

c) LICENSEE agrees not to reveal the Licensed SOFTWARE materials including manuals, flow charts, program code, and related materials to anyone other than LICENSEE's employees except in the event of catastrophic interruption of LICENSOR's business or as otherwise required by law.

6. PATENT AND COPYRIGHT INDEMNIFICATION

LICENSOR agrees to defend and hold LICENSEE harmless from any patent, trade secret, or copyright infringement claim arising out of LICENSEE's use of the LICENSED SOFTWARE.

7. LIMITATION OF LIABILITY

LICENSOR shall not be liable for any loss or damage, consequential or otherwise, caused by LICENSEE employees, agents, or representatives occurring out of or in connection with the use or performance of the LICENSED SOFTWARE. LICENSOR may license the LICENSED SOFTWARE to other customers without any consideration or liability to LICENSEE whatsoever.

8. TERMINATION

This is a perpetual license subject to continual use by LICENSEE so long as no un-remediated breach of Section 4 (SOFTWARE REGISTRATION AND PROTECTION) and Section 5 (PROTECTION AND SECURITY) has led to termination of this license. Conditions for remediation are at the sole discretion of LICENSOR.

This may be terminated by the LICENSOR at any time, with thirty (30) days written notice, if LICENSEE fails to comply with any of the terms, conditions or provisions of Sections 4 or 5 of this License.

VOTEC SLA 2012-2

In the event of default by LICENSEE of any of the terms of Sections 4 or 5 of this Agreement and a subsequent termination by LICENSOR, LICENSOR shall be entitled to immediate possession of the LICENSED SOFTWARE and LICENSEE shall forthwith return all copies and related documents and materials.

LICENSEE shall be allowed continued use of the LICENSED SOFTWARE for up to 120 days upon written notice to LICENSOR in order to conclude work on elections whose election date is within the 90 days following written notice of termination.

9. GENERAL

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

This Agreement is not assignable and any attempt to assign any rights, duties or obligations under this Agreement will be void.

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 evidenced hereby or by any subsequent 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.

10. ACCEPTANCE

Acceptance by LICENSOR: Acceptance by LICENSEE:

VOTEC Corporation   **Laramie County, Wyoming**

_____   _____
Authorized Signature   Authorized Signature

_____   _____
Name and Title   Name and Title

_____   _____
Date   Date

ADDENDUM TO CONTRACT FOR SOFTWARE AND SERVICES AND SOFTWARE LICENSE AGREEMENT
between
LARAMIE COUNTY and VOTEC CORPORATION

THIS ADDENDUM is made and entered into by and between Laramie County, 309 West 20th Street , P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY") and VOTEC CORPORATION of San Diego, California ("VOTEC"), (hereinafter referred to as "CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Addendum is to modify the Contract for Software and Services (5 pages with Attachment 1) and VOTEC Corporation Software License Agreement (3 pages) attached hereto as Attachment A, collectively "Agreement."

II. ADDITIONAL PROVISIONS

A. Entire Agreement: This Addendum (3 pages), and Attachment A (Contract for Software and Services (5 pages with Attachment 1) and VOTEC Corporation Software License Agreement (3 pages)), represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

B. Confidentiality: CONTRACTOR recognizes the duties and obligations of COUNTY may be limited and controlled by the operation of State or Federal law regarding the expenditure of public funds, and the disclosure of publicly held records. CONTRACTOR agrees that COUNTY shall not be held in breach or default of this Addendum in the event information related to this Addendum and its subject matter is released in accord with and pursuant to any applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq., as amended. CONTRACTOR further agrees that it bears the sole responsibility for demonstrating in any court or other forum that any information it designates as proprietary or confidential is in fact confidential, and not subject to disclosure.

C. Modification: The Agreement and this Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

D. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with the Agreement and this Addendum, nor were gratuities, kick-backs or contingency fees made contingent upon the award of the Agreement and this Addendum.

E. Applicable Law/Venue: The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. Venue for any dispute arising under this Agreement shall be the First Judicial District, Laramie County, Wyoming. This provision is not intended nor shall it be construed to waive COUNTY's statutory governmental or sovereign immunity.

F. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/ Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 through 121 (as amended), by entering into the Agreement and this Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law.

G. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Agreement and this Addendum described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from the Agreement and this Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Agreement and this Addendum.

H. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

I. Compliance with Law: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

(Remainder of this page is intentionally left blank)

ADDENDUM TO CONTRACT FOR SOFTWARE AND SERVICES
AND SOFTWARE LICENSE AGREEMENT
between
LARAMIE COUNTY and VOTEC CORPORATION
Signature page

LARAMIE COUNTY, WYOMING

By:_____   Date _____
    Diane Humphrey, Chairman, Laramie County Commissioners

ATTEST:

By:_____   Date _____
    Debbye Lathrop, Laramie County Clerk

CONTRACTOR: VOTEC CORPORATION

By:_____   Date _____
    Name (printed):
      Title:

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY

By:_____   Date _____
    Bernard Haggerty, Deputy Laramie County Attorney