



Gregg County Purchasing Department

Kelli L. Davis, CPPB, NIGP-CPP, Purchasing Agent

101 E. Methvin St., Suite 205, Longview, Texas 75601

(903) 237-2684 ♦ purchasing@co.gregg.tx.us

June 30, 2023

David Bennett
VR Systems, Inc.

Mr. Bennett,

I am pleased to inform you that the Gregg County Commissioners Court awarded a contract for Voter Registration Software. (Contract RFP#2023-09) on June 29, 2023 to your firm/business.

I want to thank you for Qualification Statement; Gregg County looks forward to working with you.

If you have any questions or problems throughout the contract period; please feel free to contact my office.

Regards,

Kelli Davis, CPPB, NIGP-CPP
Gregg County Purchasing Agent
Longview, Texas

System License and Maintenance Agreement

Between:

VR Systems, Inc.
3773 Commonwealth Blvd.
Tallahassee, FL 32303

Gregg County, Texas Commissioners Court
101 E. Methvin, Suite 112
Longview, TX 75601

Agreement Date: June 16, 2023

System License and Maintenance and Support Agreement

Terms and Conditions

1. **System License.** VR Systems, Inc. ("VRS") hereby grants to the Gregg County, Texas Commissioners Court (the "Customer") and Customer hereby accepts from VRS, subject to all the terms, covenants, conditions, and limitations set forth in this "System License and Maintenance and Support Agreement", its cover sheet, and all Exhibits attached hereto (collectively the "Agreement"), a non-exclusive, nontransferable, indivisible, revocable right and license (the "License") to use and access to the computer-based **Voter Focus, Voter Registration and Elections Management** software package developed and owned by VRS, including all releases, enhancements, customizations, and other changes thereto, (the "System"), more fully described in "Exhibit B" attached hereto and the Documentation described in Paragraph 7. This License is granted upon the condition that Customer use only the designated computer hardware, and peripherals compatible therewith, that are recommended by VRS in accordance with "Exhibit C."
2. **Term of License.** This License shall be in effect for the Initial Term (Paragraph 10 below) of this Agreement and any renewals thereof, but only so long as: (a) Customer is not in breach of, or in default under, this Agreement; and (b) Customer is covered under VRS' Maintenance and Support Program described in Paragraph 21.
3. **Exhibits.** Attached and made a part hereof for all purposes are the following Exhibits:
 - Exhibit A: Fee Schedules
 - Exhibit B: Description of Modules for Voter Focus
 - Exhibit C: Recommended Hardware and Software for Voter Focus
 - Exhibit D: Description of Additional Interfaces
 - Exhibit E: Project Management Plan Outline
 - Exhibit F: Implementation and Training on Voter Focus

In the event of a conflict between the provisions of this Agreement and the provisions of any Exhibit, the provisions of this Agreement shall control.
4. **Location of the System.** The System shall be located at the location indicated on the cover page of this Agreement. Customer may relocate the System to another location of Customer that replaces the specified initial location. Should Customer desire to locate the System other than at the specified initial location, Customer shall notify VRS in writing of its intent to so relocate at least thirty (30) days before the desired relocation.

5. *Delivery and Installation of System.* The System and all Documentation agreed to be furnished by VRS shall be delivered to Customer and installed by VRS. Should Customer's hardware not be compatible for installation of and use with the System, VRS shall not be obligated to install the System until Customer, at Customer's sole obligation and expense, purchases or otherwise acquires all hardware and non-VRS software recommended by VRS (the "Exhibit C" "Recommended Hardware/Software"). VRS' judgment about compatibility of hardware and software is based on VRS' knowledge of the design of the System and will be exercised in Customer's best interest in order to insure the effective performance of the System. Customer recognizes that it is purchasing all necessary Recommended Hardware/Software directly from the manufacturer or its sales agents. VRS shall have no obligation to repair, replace, maintain, modify, or otherwise perform any services to any hardware or other equipment on which the System is installed or used. Any and all warranties, if any, on the Recommended Hardware/Software or hardware or software acquired independently by customer shall be provided solely by the manufacturer thereof. VRS makes no express or implied warranties whatsoever with respect to the Recommended Hardware/Software and shall have no liability or responsibility for the fitness, merchantability, performance, maintenance, or condition of same. VRS is not responsible for maintaining Customer's hardware, maintenance and management of the network, Microsoft Domain security or data backup.
6. *License Fees.* Customer agrees to pay VRS the first year's License Fee for the System as shown in "Exhibit A". This License Fee does not include: (a) the combined annual renewal fee for the annual License and Use and the annual Support and Maintenance (hereinafter "Annual Use/Maintenance/Support Fee") provided for in Paragraph 21(b) below and/or "Exhibit A"; nor (b) any costs for the Recommended Hardware/Software needed for the operation of the System.
7. *Documentation and Software.* Executable System software will be transmitted to Customer electronically through secure data transmission means. Regular updates will take place in the same manner. Electronic Documentation (or other similar medium) shall consist of the System Administration Manuals and Online Help which will be provided to Customer and which will be an integral part of the System software in order to assist Customer in the operation of the System. The System Administration Manuals and Help Functions may be printed in hard copy by Customer. Addenda and corrections will be supplied as the software develops.
8. *Customization.* In the event Customer requests consulting support or customization of the System, which support or modifications are beyond the scope of VRS' obligations under the System Warranty (Paragraph 11) or VRS' Maintenance and Support provisions included but not limited to "Exhibit B" and "Exhibit A", Customer shall notify VRS in writing of its needs for such support or customization. Should VRS agree to perform such consulting, support or customization, all such work requested by Customer will be provided by VRS at VRS' then current rates for these services. In addition, Customer shall reimburse VRS for all reasonable travel and

living expenses incurred by consultants and employees of VRS in implementing such services at rates statutorily allowed within Florida law for State employees.

9. **Confidentiality.** All information regarding Customer's business operations, business systems, and related confidential matters furnished or disclosed to VRS in the course of the negotiation and implementation of this Agreement shall be held in confidence by VRS, unless such information was previously known by VRS free of any obligation to keep it confidential, or has been, or is subsequently, made public by Customer or a third party lawfully in possession of such information, or unless such information is in the public domain. VRS agrees and understands that voter registration records are confidential and VRS hereby agrees that these records will not be used for any other purpose than those specified in this Agreement and by the Elections Official. These records will not be copied nor will any person be allowed to extract any information from these records without the consent of the Elections Official. Customer agrees to similarly treat any information provided to it by VRS and to instruct its employees who will work with the System about the restrictive covenants and conditions of this Agreement and about the safeguarding, security, and copying requirements hereinafter discussed. Notwithstanding any portion of this Agreement to the contrary, the provisions of State law, constitutional or statutory, pertaining to public records and open government ("Public Records Act"), and any cases construing such law, shall prevail over the provisions of this Agreement.
10. **Term.** The Commencement Date shall be the date the Customer commences registering voters. The "Initial Term" of this Agreement shall be five (5) years beginning on said Commencement Date.
11. **Warranty.** During the Initial Term, VRS warrants that the System will perform reasonably in the manner described in the Documentation supplied by VRS, provided Customer has not made any changes to the System. (No warranty is made, however, whether express or implied, for any part of the System copied or duplicated by Customer). VRS is entitled to written notice of any failure of the System and granted the exclusive right to undertake and complete changes, corrections or repairs necessary under the warranty within a reasonable period of time.
12. **Exclusion of All Other Warranties.** The sole liability of VRS to Customer for performance of the System is limited to the above warranty of repair, replacement, or pro-rata refund. This warranty is the sole and exclusive remedy of Customer and is in substitution of all other warranties, express, or implied, and is in lieu of any warranty of merchantability or fitness for any particular purpose or any other written, oral, or implied warranties (except as to title) arising out of any course of dealing, custom or usage of trade.
13. **Limitation of Actions and Liability.** The parties agree that no action may be instituted hereunder more than two (2) years after the cause of action occurred or should have been

discovered by reasonable due diligence of Customer. The liability of VRS to Customer for performance of the System is limited to the above warranty on the Software System provided by VRS. In no event shall VRS be liable for any damages or remedies that might otherwise arise out of this Agreement or the use of the System, including, but not limited to: (a) general, special, indirect, incidental, foreseeable, normal, or consequential damages; (b) lost profits, loss of savings, loss of data or information, business interruption, finance charges, increased costs of doing business, reliance on any promise or premise; and (c) damages arising under any warranty, negligence, or breach of contract claims of customer against VRS. In any event, VRS' liability for damages under any theory or form of action shall not exceed the total amount paid by Customer under this Agreement to VRS as itemized in "Exhibit A" (exclusive of out-of-pocket reimbursements and the Annual Use/Maintenance/Support Fee).

14. *Title to System/Protective Covenants.* Customer acknowledges that the System and Documentation (including changes, enhancements, alterations, and additions provided under Maintenance and Support) are the sole and exclusive property of VRS; that the System and Documentation, and all parts and components thereof, constitute valuable assets, trade secrets, and give proprietary rights to VRS; that neither legal nor equitable title to the System or Documentation passes to Customer under the terms of this Agreement or under any other agreement or theory; and that any Information with respect to the System and the Documentation, is strictly confidential and to be strictly protected by Customer per Paragraph 9, whether or not all or any portion of the System or Documentation have been copyrighted or patented. No part or portion of the System or Documentation may be altered, modified or enhanced by Customer, or its agents or employees. All programs, documentation, and materials in machine-readable form supplied under the License shall be kept in a secure place, under access and use restrictions not less strict than those applied to Customer's most valuable and sensitive programs and data.

15. *Copying the System or Documentation.* Except for ordinary and necessary backup or archival purposes, Customer shall not copy, duplicate, print, or reproduce the System, or Documentation or any part or portion thereof. Moreover, Customer shall not, without the prior written consent of VRS, permit, either gratuitously or for consideration, any review, use, examination, or inspection of the System or any part thereof or any Documentation provided in connection therewith, for any person or entity whomsoever for any purpose, including training, other than the necessary employees of Customer for use by them in their regular services to Customer in operating the System. Customer further agrees not to disassemble, reverse compile or reverse engineer the System or any part thereof. Customer shall not reveal to any person or entity, and shall require its employees not to reveal to any person or entity, any information with respect to the System and Documentation, and Customer shall take appropriate action to insure that these obligations will be and are fulfilled.

16. **Use Restrictions.** Customer is restricted to using the System exclusively for Customer's own use and may not use the System to process the data of another county or any other governmental entity.
17. **Assignment; Binding Effect.** Neither party hereto may assign its right or obligations under this Agreement without the prior written consent of the other party except that VRS may assign this Agreement to any entity which acquires all or substantially all of its business by merger, sale of assets, or otherwise. Without the prior written approval of VRS, neither the Agreement or the License herein granted may be sub-licensed, transferred, given, assigned to, or leased or used by, any third party including but not limited to Customer's consultants or other counties or governmental entities. Any such transfer is of special concern as it involves any present or potential competitor of VRS, or anyone who might develop systems similar to the System, or who might use VRS' proprietary information in any manner whatsoever. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' permitted assigns and successors.
18. **Installation Responsibility.** Customer shall be solely responsible for site preparation, including unpacking, uncrating, and installing the hardware and making the hardware ready for operational use. The installation of all necessary cable, power connections, utility, network and communications services shall be performed by Customer.
19. **No Liability for Privacy of Information.** Due to the public nature of the Internet, all information should be considered publicly accessible, and important or private information should be treated carefully by Customer. VRS is not liable for protection or privacy of information transferred through the Internet or any other network provider that customers may utilize.
20. **Progress Reports/Meetings.** VRS and Customer shall, within thirty (30) days of this Agreement signing, jointly develop a Project Management Plan, "Exhibit F", which shall be attached to this Agreement as "Exhibit F", detailing tasks to be performed, responsibility for the accomplishment of each task, and a deadline for each task. Customer and VRS will conduct meetings to review progress on a regular basis, with the schedule to be jointly determined.
21. **Maintenance and Support.**
- (a) **Coverage.** During the Initial Term of this Agreement, subject to renewal or termination as otherwise provided, VRS agrees to:
- Provide unlimited telephone support in the effective use of the System on weekdays during the hours of 8:30 a.m. to 5:30 p.m. (Eastern Standard Time).
 - Provide Customer with the latest and most up to date version of Customer's System and Documentation, including any and all enhancements and improvements to them (but not

including new products developed by VRS for use in conjunction with the System and sold separately).

- Correct or replace the System and/or provide services necessary to remedy any programming error that is both attributable to VRS and that significantly affects the performance of the System. Such correction, replacement, or services will be promptly accomplished after Customer has identified and notified VRS of any such error in writing via email. At its expense, Customer agrees to provide VRS with information, including, but not limited to, sufficient access via Virtual Private Network VPN or modem to Customer's system, file dumps, screen dumps, error reports, as requested by VRS, and with sufficient support and test time on Customer's computer system to duplicate the problem encountered in order to ascertain that the problem is with the System and to correct the problem. Corrections for difficulties or defects traceable to Customer errors or unauthorized System changes, however, will be billed at VRS' standard time and material rates.

(b) Annual Fee and Annual Renewal. The Fee for the first year of Maintenance and Support is included in the original License Fee. Each subsequent annual Use/Maintenance/Support Fee shall be due and payable prior to the forthcoming year. Each such fee will be due upon receipt of invoice and must be paid in full within 30 days of said receipt and in any event not later than thirty (30) days prior to the forthcoming "Anniversary Date" (the recurring annual date first occurring one year after the *Commencement Date*, as described in *Exhibit A*). VRS shall have the option to increase said fee by not more than ten percent (10%) of the prior year's annual fee, after year five of the Initial Term.

(c) Late Charges; Termination. Interest on any overdue payments owed by Customer under this Paragraph, or under any other Paragraph of this Agreement, shall be charged and invoiced for as provided for in V.T.C.A., Government Code Chapter 2251. Customer understands and agrees that each annual Use/Maintenance/Support fee is a use fee for the right to the next year's annual License and the right to the next year's annual Maintenance and Support, and that these shall be deemed provided and complete, and payment therefore due, upon receipt of invoice as provided above. In the event Customer fails to timely pay any such annual fee, or any other fees or charges provided for in this Agreement, Customer's License to use the System and Documentation shall terminate after notice, as provided in V.T.C.A. Government Code Section 2251.051.

(d) Changes in Terms and Conditions. VRS may change the terms and conditions of this Agreement, but no such change shall be effective during the Initial Term of this Agreement, except that pricing may change from time to time for VRS' services not covered by Maintenance and Support (e.g. additional days of training and the like).

(e) Enhancements and Corrections. Any enhancements, corrections or alterations to, or new versions of, the System or Documentation delivered to Customer by VRS under this Agreement, shall be limited to one (1) copy of such enhanced, corrected, altered or new System or Documentation. Program changes, including training in the use and implementation of such

program changes, in order to meet any new statutory requirements will be provided under the Maintenance and Support portion of this Agreement.

(f) Travel Expenses. Customer shall reimburse VRS for any travel expenses incurred by VRS at rates statutorily allowed within Florida law for State employees in performing its Maintenance and Support obligations. Such expenses shall be pre-approved by Customer and may include travel to and from Customer's site, lodging, meals, telephone, and shipping, and the like.

22. ***Breach/Default Generally.*** In the event Customer is in default in the payment of any Fee set forth above or fails to carry out any other requirement of this Agreement, VRS may notify Customer in writing by certified mail. If Customer fails to remedy the default or breach within 10 days of receipt of such notification, VRS shall have the right, at its option, to terminate this Agreement and take possession immediately of the System, the Documentation, and all accompanying materials and documents (excluding Customer's hardware and equipment). In the event of such default or breach, Customer agrees to immediately cease use of the System, remove the System from Customer's CPU(s) and deliver to VRS the System and all System backups, Documentation, and other materials delivered by VRS to Customer. VRS shall have no duty to perform under this Agreement in the event Customer defaults under or breaches this Agreement.
23. ***Breach/Default as to Certain Use/Disclosure Restrictions; Attorneys' Fees.*** Customer agrees that for any breach of the restrictions upon the use, sale, transfer, or disclosure of the System as provided for in this Agreement (Paragraphs 9, 14, 15, 16, and 17) monetary damages shall not be a sufficient remedy or protection for VRS, and VRS shall be entitled to seek injunctive or other equitable relief that it may deem proper or necessary in a court of competent jurisdiction without any requirement to post bond or surety thereon as a condition of such relief, in addition to being entitled to seek any other legal or equitable relief. In any legal proceeding (including litigation, arbitration, mediation, or other legal proceedings) which may arise from any breach or default relating to said Paragraphs (and only said Paragraphs) the prevailing party shall be entitled to recover all attorneys' fees which is defined to include all costs, fees, collection costs, and other expenses of said litigation.
24. ***Patent and Copyright Indemnification.*** VRS agrees to hold Customer harmless from any claim, suit, or action relating to a US patent or US copyright infringement arising out of Customer's use of the software developed by VRS or tools employed in development of its software and shall pay all reasonable legal fees, costs, and expense of Customer incurred in the defense of any US patent or US copyright claim or suit, provided that: (a) Customer is not in default under any of the provisions of this Agreement; (b) the software against which the claim is made was manufactured, created and developed by VRS and not third parties; (c) Customer

notifies VRS promptly in writing of any patent or copyright claim; and (d) VRS has an opportunity to fully participate in the defense and/or agrees to a settlement of any such claim. If a patent or copyright claim is made, or in VRS' opinion is likely to be made, VRS may at its sole option, either replace or revise the System or Documentation so that the System or Documentation will be non-infringing on claimant, obtain a right to use the System from the claimant, or refund to Customer the License Fee paid hereunder. Either of said options shall be the maximum exposure of VRS for any such copyright or patent infringement claim.

25. *Taxes and Duties.* Customer is currently a tax-exempt entity and is not liable for any sales, service, use, excise, lease, or similar taxes. However, should this status change Customer agrees that it and not VRS will be liable for and promptly pay any such taxes or duties that may become due as a consequence of this Agreement.
26. *Use of Customer's Name.* Customer agrees that VRS may include Customer's name in any complete or partial listing of VRS Customers, for VRS' own marketing efforts, at VRS' sole discretion.
27. *Waiver or Modification.* No waiver or modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this Agreement or the rights or obligations of any party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this Paragraph may not be waived except as herein set forth.
28. *Severability.* The provisions of this Agreement are severable, and in the event that any provision hereof is held by any court to be void, voidable or unenforceable, such provision shall be deemed stricken from this Agreement. All other terms and conditions shall remain in full force and effect, and the parties agree to remain bound by and perform in accordance with the terms hereof, as so amended.
29. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all previous written or oral agreements between the parties with respect to such subject matter of this Agreement. All prior proposals, bids, negotiations, discussions, conversations, representations, and statements of every nature whatsoever are integrated and merged into this instrument, and only this Agreement shall have any force or effect hereafter. Customer acknowledges that it has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained herein.

30. *Applicable Law.* The laws of the State of Texas shall govern the interpretation of this Agreement.
31. *Arbitration/Mediation.* If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to litigation.
32. *Force Majeure.* Neither party shall be responsible to the other for nonperformance due to acts of God, fire, flood, epidemic, acts of government, wars, riots, civil unrest, strikes, accidents in transportation, or other causes beyond the control of the parties.
33. *Section and Paragraph Heading.* Section and paragraph headings used throughout this Agreement are for reference and convenience and in no way define, limit, or describe the scope or intent of this Agreement or affect its provisions.
34. *Multiple Copies or Counterparts of Agreement.* The original and one or more copies of this Agreement may be executed by one or more of the parties hereto. In such event, all of such executed copies shall have the same force and effect as the executed original, and all of such counterparts, taken together, shall have the effect of a fully executed original.
35. *Non-appropriation of Funds.* All funds for payment by Customer under this Agreement are subject to the availability of an annual appropriation for this purpose by Customer. In the event of non-appropriation of such funds by the Customer for the services provided under this Agreement, Customer shall terminate the Agreement, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by VRS with thirty (30) days prior written notice, but failure to give such notice shall be of no effect and Customer shall not be obligated under this Agreement beyond the date of termination.
36. *Confidentiality of Voter Records and Public Records Requests.* VRS shall not copy voter registration records or permit its employees to extract any information from such records without the consent of the Elections Official. VRS acknowledges that Customer is subject to the Texas Public Information Act found in Chapter 552 of the Texas Government Code (the "Public Information Act"). The parties believe that VRS is a private entity and not a governmental body, or acting as an agency of a governmental body, and its internal communications, documents,

information and proprietary and trade secrets (collectively "proprietary information") are not public records or are exempt under Subchapter C¹ of the Public Information Act. VRS shall, with respect to any public records it maintains in connection with this Agreement, comply with the provisions of Chapter 552 of the Texas Government Code. VRS shall notify Customer of any public records request it may receive and shall cooperate with Customer in the determination of which, if any, requested public records are exempt or confidential, and that must not be disclosed except as authorized by law. In the event the Customer receives a request under the Public Information Act for confidential or proprietary information, it shall notify VRS. It is expressly agreed that upon request by VRS, the Customer shall request a determination from the Attorney General of the State of Texas in regard to the application of the Public Information Act to any requested information and whether the information is to be made available to the public, or is exempt. The Customer shall be entitled to rely on the decision of the Attorney General of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in manner and form sufficient to bind them as of the date signed by the last party to sign this Agreement as indicated below.

Agreed By:

Mindy J. Perkins
for Mindy J. Perkins, President & CEO
VR Systems, Inc., Tallahassee, FL

Bill Stoudt
Bill Stoudt, County Judge
Gregg County, Texas

Date: 6/30/2023

Date: 6-29-2023

Exhibit A: Fee Schedules

Gregg County, Texas Commissioners Court

Term of Contract: 5 Years

Description	Purchase Price	Total Annual Cost	Total Monthly Cost
Schedule of Initial Products			
Year 1 - Voter Focus License for Voter Registration and Election Management System and Generic Electronic Pollbook Interface License, and Voter Focus annual maintenance and support.	\$37,281.00	\$47,281.00	\$3,940.08
Implementation, installation, remote data conversion, Go Live support, and remote training.	\$10,000.00		
Schedule of Annual Renewal Fees			
Year 2 - Voter Focus License for Voter Registration and Election Management System and Generic Electronic Pollbook Interface License, and Voter Focus annual maintenance and support.		\$37,281.00	\$3,106.75
Year 3 - Voter Focus License for Voter Registration and Election Management System and Generic Electronic Pollbook Interface License, and Voter Focus annual maintenance and support.		\$37,281.00	\$3,106.75
Year 4 - Voter Focus License for Voter Registration and Election Management System and Generic Electronic Pollbook Interface License, and Voter Focus annual maintenance and support.		\$37,281.00	\$3,106.75
Year 5 - Voter Focus License for Voter Registration and Election Management System and Generic Electronic Pollbook Interface License, and Voter Focus annual maintenance and support.		\$37,281.00	\$3,106.75
Total 5-year Cost		\$196,405.00	

Payment Terms:

Initial Fees will be due upon Commencement, when registering voters. Annual Renewal Fees will be due each year on anniversary of Commencement. Prices in effect until August 31, 2023.

Agreed By:

M. J. Perkins

for Mindy J. Perkins, President & CEO
VR Systems, Inc., Tallahassee, FL

Bill Stoudt

Bill Stoudt, County Judge
Gregg County, Texas

Date: 6/30/2023

Date: 6-29-2023

Exhibit B: Description of Modules

Voter Registration & Election Management Systems

Voter Focus is a complete voter registration and election management solution that is used to manage:

- Elections
- Voter registration
- Voting history
- Tracking of mail, provisional, limited, and special ballots
- Production of pollbook registers
- Street segment setup
- Districts and precincts setup and assignments
- Office holders
- Verification of petition signatures
- Document management
- Voter correspondence

Exhibit C: Recommended Hardware and Software

Introduction

The purpose of this document is to help your County to plan for hardware configuration changes that may be needed in order to support running Voter Focus and other support processes associated with VRS' products and services. Please note that this information is based on a "generic" assessment for a county of the specified size (estimated number of active registered voters 5 years from the date of installation of Voter Focus). VRS will remain an active member of the team as we work together to fine tune the equipment configuration. We expect this configuration would provide very acceptable performance.

To assist you in customizing this for your specific County, we have divided the specification into the following categories, typical of a large county.

- **Database server(s)** – These machines will service all database queries and updates
- **Image server(s)** – These machines will service all image lookup and storage requests
- **Workstation computers** – These are the typical machine for the average staff user.
- **Scanner workstation(s)** – These are the machines that have a scanner attached to them for the purpose of capturing images (Images can be indexed to a voter from any workstation)
- **Network architecture for Local Area Networks (LAN)**
- **Network architecture for Wide Area Networks (WAN)** (between physical locations that otherwise cannot be served by a LAN)

VRS requires the completion of a "site survey" interview. During this interview process our technical staff will review your specific county configuration, the information we learn will enable us to fine tune these specifications for your particular needs, including recommended numbers for each of the categories above.

Online Disk Storage Capacity

Server Disk Capacity

- 750-1000GB: This is total capacity and could conceivably be on several machines based on how the County decides to implement the image and binary services.
- The database server should have a minimum of 400GB for the online database files. These should be on a RAID 10 infrastructure.
- Typically, counties store at least 3-5 days of SQL Backups "online" – meaning on disk. These files do not have to be on RAID disk or on the primary DB server. Estimated storage need is 310GB.
- The images (voter registration cards, signatures, etc.) will require effectively the same space taken today in your current system. Add 50 GB to your existing storage for expansion.

- The program files (programs and supporting files) will require a maximum of 50GB.
- The system requires "Vault Archive" storage space. This will continue to grow as each election cycle enters the Vault (the information is offloaded from the online database). We estimate 15GB per major election cycle (county-wide elections) and 4GB for municipal elections.

Database Server

The server is a critical resource. Purchase computers designed to be a file server from a reputable manufacturer Dell, IBM, HP, etc...The specifications below will handle the load requirements of Voter Focus. VRS requires the database server be dedicated to Voter Focus. VRS recommends purchasing a database server that can be expanded should the need arise, although we do not anticipate any changes at this point that would force an upgrade to this specification. For very large counties, multiple redundant process configurations should be considered (Virtual Servers in a cluster, Clustered SQL Server, Hot-swap servers, or some similar configuration). VRS can discuss redundant configuration alternatives with your technical team. VRS requires that the Voter Focus database be run on a dedicated SQL Server instance – the main purpose of this requirement is to ensure that maintenance can be performed in coordination with the Elections Official and their delegated IT support team only.

- **CPU configuration, Bus architecture, Cache Infrastructure**
 - Dual Processor (multi-core recommended), 64-bit
 - a. If you are using a virtual machine for the SQL Server database, we recommend a minimum of 4 cores.
 - Configurations vary greatly between manufacturers. As such, the recommendation here is to purchase a processor configuration that is toward the leading edge of the manufacturer's line – but not necessarily their leading edge. This will provide the most "headroom" for future growth.
- **Memory:** 12GB min, 32GB recommended
- **Network Interface Card (NIC):** 1Gbit or better recommended
- **Operating System:** Windows 2012 Server or later.
- **Database Software:** Microsoft SQL Server 2012 Standard Edition or later required.

File Server(s) (Images and Programs)

The images and programs server(s) is (are) also a critical resource, but does (do) not require the CPU capacity that a database server requires. Allocate a server designed to be a file server from a reputable manufacturer Dell, IBM, HP, etc. This server can be used for other file services, provided such use does not degrade the access time required to retrieve images for your typical transaction volumes. VRS recommends allocating an image server that can be expanded should the need arise. Keep in mind your county-specific imaging requirements. NOTE: It is very likely that you may have sufficient capacity within your existing File Servers. If you believe this is the case, our migration team will work with you to qualify the environment.

Workstation Computer

Voter Focus operates well in workstation configurations dating back to Windows 8.1. NOTE: if you plan to deploy notebook computers, a notebook computer configured similarly to the below specification will suffice, with the exception of disk capacity as noted below.

- **CPU configuration:** CPU configurations should be younger than 4 years ~ meaning that a workstation purchased more than 4 years ago should be retired soon. Also the CPU configuration should be compatible with the Operating System used on the workstation.
- **Memory:** 1GB min, 2GB recommended when you purchase future replacement systems – in other words it is not required that you have 2GB for existing equipment.
- **Disk Capacity:** There is no special requirement here. Several GB of free space would be more than ample; Voter Focus can be installed and run in less than 100 MB of disk space on a client workstation.
- **Recovery (backup requirements):** There is no need to back up the workstations for the purpose of Voter Focus. This does not alleviate the need to back up the workstation for other uses you may have for the workstation.
- **Operating System:** Windows 8.1 or greater (Microsoft Windows operating system). See note above in the introduction.
- **Microsoft Office (optional – see note):** Version 2010 or later. This is required only for workstations that have a need to create and/or output mail merge letters and other word processing output.

Scanner Workstation

This can be a regular workstation configured with an attached TWAIN compatible scanner. We have found that many different brand scanners are acceptable given that they incorporate a TWAIN driver that is compatible with our coding interface.

Network Architecture for Local Area Network (LAN)

The Voter Focus system must have well-constructed network architecture in order to provide the user with the appropriate response times. Slow networks or networks that have intermittent connectivity loss can cause very slow responses or a requirement to restart processes. For the office environment (meaning the regular workstation connection to the database and image servers) a 100 Mbit network connection is very satisfactory as long as there are no network anomalies that would disrupt normal traffic (anomalies include things like excessive network collisions, improperly matched network speeds between routers and NICs, etc.). Connection speeds less than 100 Mbit are typically a sign of trouble on a network. If you have configured a network to specifically run at less than 100 Mbit, VRS should be consulted to determine the impact on response times. We highly recommend the database server, and image server be connected via a 1Gbit connection.

Network Architecture for Wide Area Network (WAN)

Connections between the LAN that serves the database and image servers and other LANs must be very carefully configured. For "high speed" connections between LANs where there are many workstations on a remote LANs (not on the database LAN), we recommend VRS review your setup for suitability.

VRS' Technical Support Access

It is a requirement that VRS have access to your database server for technical support activities. VRS uses GotoAssist access. Support staff use SQL Server Client tools and we require System Administrator access to SQL Server for this work.

Texas Election Administration Management (TEAM) System

Texas requires that each County maintain the official voter record in the State of Texas Election Administration Management (TEAM) System. To accommodate this requirement, Voter Focus provides an import process to receive updates provided by the Texas Secretary of State for import in to Voter Focus and an export process to export updates from Voter Focus for upload in to the TEAM System for batch updating. Access to TEAM is required by a user at the County.

Other Components

- **Bar Code Reader Wands or Bar Code scanners:** (Optional) needed at each workstation that enters voting history, final notice returns and/or absentee ballot returns.
- **Label Printer**
 - Dymo LabelWriter LW330 Turbo printer (optional) with Large Address labels # 30321
 - These are used for absentee address label and ballot number + ballot number bar code for in office voting and those voters who pick up an absentee ballot. They can also be used for one-off address labels for individual voters and can include a bar code of the voter's registration number.

Exhibit D: Description of Additional Interfaces

3rd Party Election Pollbook Interface License

Using this interface, counties deploying an electronic poll book that was not developed by VRS can:

- Receive Voter Focus-generated precinct-register data for entry into electronic poll books. This information can then be used during Early Voting and on Election Day to verify voter eligibility and check voters in to vote at the polling place.
- Process Early Voting and Election Day check-in data from those poll books into voter records. This step is analogous to the swiping of precinct registers to capture voting history data.

This interface ensures that voter's check-ins are added to the Precinct Register table (also called the pseudo precinct register) in the voter registration database, so that the check-ins can be verified against tabulation totals. When reconciliation of the two sets of totals has been achieved, you can then perform the voting history update (just as if the books had been swiped) and the permanent voting history will be updated in Voter Focus.

Exhibit E: Project Management Plan Outline

Progress Reports/Meetings

VRS and the **Customer** shall, within thirty (30) days of an Agreement signing, jointly develop a Project Management Plan, "Exhibit F", ... detailing tasks to be performed, responsibility for the accomplishment of each task, and a deadline for each task. The **Customer** and **VRS** will conduct meetings to review progress on a regular basis, with the schedule to be jointly determined. The following list highlights the primary tasks required for implementation to be included in the Project Management Plan.

1. Voter Focus Data Conversion Questionnaire delivered for the Elections Administrator's staff to itemize codes and print standard correspondence and forms.
2. The Voter Focus Project Manager meets with Gregg County key staff to identify internal processes to customize training and system options.
3. The Elections Administrator's staff plan printing needs and form specifications.
4. If needed, send front office staff for further training on Microsoft® Office products.
5. Data Conversion processes begin that will identify anomalies or inconsistencies of data. This will be communicated to the Elections Administrator's staff for normalization.
6. Clean up data as much as possible in the current pre-converted database, i.e., overlapping street segments, precinct/district assignments, invalid data, etc.
7. Gregg County will install server, workstations, and printers, set up the network, backup, etc., as needed.
8. Staff training on Voter Focus.
9. Final pickup of data for final run of data conversion program.
10. System freeze. Once the final pull of data is complete, all data entry and changes to TEAM should stop until Go Live.
11. Run reports and statistics in TEAM to facilitate database totals and reconciliation. Precinct totals are run just before pickup to aid reconciliation.
12. Install newly imported database files, reconcile totals between the old system and the newly installed Voter Focus, and run reports for archiving.
13. Final adjustments of printing facilities of the Voter Focus system to the installed printers.
14. Gregg County will verify data by comparing reports from the frozen system with reports from Voter Focus using the final extract of converted data.
15. Begin registering voters.

Exhibit F: Implementation and Training on Voter Focus

The following represents a breakdown of the VR Systems resources and expenses associated with this project.

Project Manager:

3 days on site post-implementation support includes the following:

- Project Manager: 4 days
- Lodging: 4 nights
- Meals: 4 days
- Travel: 1 round trip air travel

Trainers:

1 trainer for remote training for 7 days includes the following:

- Trainer: 7 days
- Lodging: Not Applicable
- Meals: Not Applicable
- Travel: Not Applicable

EXHIBIT A

STANDARD TERMS & CONDITIONS

By returning a response to this RFP with price(s) quoted and forms executed, Respondent's certify and agree to the following:

1. Alternate bids will not be considered unless authorized. If there is any question as to the specifications or any part thereof, Respondent may submit to the Gregg County, Texas Purchasing Agent, a request for clarification. Such requests must be received a minimum of five (5) days prior to scheduled opening date.
2. Non-performance or non-compliance of the Standard Terms & Conditions, or non-performance or non-compliance with the Specifications shall be basis for termination by Gregg County of the bid or final executed contract. Termination in whole, or in part, by the County may be made solely at the County's option and without prejudice to any other remedy to which Gregg County may be entitled by law or in equity, or elsewhere under this Bid or the agreement, by giving thirty (30) days written notice to the vendor with the understanding that all work being performed under this agreement shall cease upon the date specified in such notice. Gregg County shall not pay for work, equipment, services or supplies, which are unsatisfactory. The Respondent may be given reasonable opportunity prior to termination to correct any deficiency. This however shall in no way be construed as negating the basis for termination for non-performance or non-compliance.
3. Respondent shall make all inquiries necessary to be thoroughly informed as to the specifications and all other requirements proposed in the Bid. Any apparent omission or silence of detail in the description concerning any point in the specifications shall be interpreted on the basis of best commercial practices, and best commercial practices shall prevail.
4. The Respondent shall affirmatively demonstrate Respondent's qualifications by meeting or exceeding the following minimum requirements:
 - ✓ Have adequate financial resources, or the ability to obtain such resources as required.
 - ✓ Be able to comply with any required or proposed delivery schedule.
 - ✓ Have a satisfactory record of performance.
 - ✓ Have a satisfactory record of integrity and ethics.
 - ✓ Be otherwise qualified and eligible to receive the award.
5. Invoices shall be sent to the Gregg County Purchasing Department, 101 East Methvin, St. 205, Longview, TX, 75601. Invoices must detail the materials/equipment/services delivered and **must reference the Gregg County Purchase Order Number.** Payments are processed after the Purchasing Department has verified that the material or equipment and/or services have been delivered in good condition and that no unauthorized substitutions have been made according to specifications. Neither a signed receipt nor payments shall be construed as an acceptance of any defective work, improper materials, or release of any claim for damage.

6. Only the Commissioners Court of Gregg County, Texas acting as a body may enter into any type of agreement or contract on behalf of Gregg County. Department heads, other elected or appointed officials, are not authorized to enter into any type of agreement or contract on behalf of Gregg County, or to agree to any type of supplemental agreements or contracts for goods or services. Contracts are subject to review by the County's attorney prior to signature by the authorized County official.
7. The Respondent shall be considered an independent Contractor and not an agent, servant, employee or representative of the County in the performance of the work. No term or provision, hereof, or act of the Respondent shall be construed as changing that status.
8. The Respondent shall defend, indemnify, and shall save whole and harmless the County and all its officers, agents, employees from and against all suits, actions, or claims of the character, name and description brought for or on account of any injuries or damages (including but not restricted to death) received or sustained by any person(s) or property on account of, arising out of, or in connection with the performance of the work, including without limiting the generality of the foregoing, any negligent act or omission of the Respondent on the execution or performance of the Contract.
9. The Respondent agrees, during the performance of the work, to comply with all applicable codes and ordinances of the City of Longview, Gregg County, or State of Texas as they may apply, as these laws may now read or as they may hereafter be changed or amended.
10. The Respondent shall obtain from the appropriate City, Gregg County, or State of Texas the necessary permit(s) required by the ordinances of the City, County, or State, for performance of the work.
11. The Respondent shall not sell, assign, transfer or convey the agreement in whole or in part, without the prior written consent of the County.
12. The parties herein agree that the agreement shall be enforceable in Gregg County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Gregg County, Texas.
13. The agreement shall be governed by, and construed in accordance with, the Laws of the State of Texas and all applicable Federal Laws.
14. Funding Clause - Payments required to be made by Gregg County under the terms of the agreement shall be contingent upon and subject to the initial and continuing appropriation of funding for the agreement by and through the Commissioners Court of Gregg County, Texas. In the event appropriations for funding of the agreement are not approved by and through the Commissioners Court, the contract shall terminate. Gregg County shall, submit written notice to Respondent thirty (30) days prior to such termination. Upon notice of termination, as provided in this paragraph, the Respondent may submit a final invoice to the County and coordinate with the Purchasing Agent to remove all property belonging to said Respondent as soon as possible. Payment for final invoice will be subject to

verification and approval by the purchasing agent. Thereupon, Gregg County will be released from its obligation to make further payments.

15. Gregg County is exempt from federal excise and sales taxes, ad valorem taxes and personal property taxes; therefore, tax must not be included in Bids tendered. Bids offered must be complete and all inclusive. Gregg County will not pay additional taxes, surcharges or other fees not included in bid prices.
16. Prices shall remain firm for the term of the contract, unless economic adjustments are agreed upon by both parties and based on the most recent published Consumer Price Index at the time of the request. Gregg County will use the most recent year-over-year data available at the time of request. Gregg County reserves the right to accept or reject the request for a price increase and if appropriate, to utilize other resources in evaluating escalation requests, including requesting confirmation from the manufacturer. This clause also enables Gregg County to seek de-escalation on the basis of the same cited index, terms, and other resources.
17. Gregg County expressly reserves the right to accept or reject in part or in whole, any bids submitted, and to waive any technicalities or formalities as to such waiver is determined to be in the best interest of Gregg County.
18. In case any one or more of the provisions contained in the agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and the agreement shall be considered as if such had never been contained herein.
19. Bids may be withdrawn prior to the official opening. Alterations made before the time of official opening must be initialed by Respondent guaranteeing authenticity. Bids may not be amended, altered or withdrawn after the official opening, except upon the explicit recommendation of the Purchasing Agent and the formal approval of the Commissioners Court.
20. The agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties. A contract will be executed after determination of the award.
21. Respondent must provide a certificate of insurance conforming to the below listed requirements or a statement of Respondent's insurance carrier certifying that the required coverage shall be obtained by Respondent within ten (10) days of formal award of the Contract. In the case where a certification letter from an insurance carrier is attached to the bid in lieu of an insurance certificate, any formal award of a contract shall be contingent upon required coverage being put into force **prior** to any performance required by subject agreement.

22. Gregg County reserves the right to terminate an agreement/contract at any time, without cause, upon ten (10) days written notice to Respondent. Upon termination, Gregg County shall pay Respondent for those costs directly attributable to work done or supplies obtained in preparation for completion or compliance with the Contract, except no payment shall be made for costs recoverable by Respondent in the normal course of doing business or which can be mitigated through the sale of supplies or materials obtained for use under this Contract. It is further agreed by Respondent that Gregg County shall not be liable for loss or reduction in any anticipated profit.
23. Additional or alternate bonds may be required in accordance with Texas statutes as outlined in the specifications.
24. Gregg County is wholly committed to developing, establishing, maintaining, and enhancing minority business involvement in the total procurement process. The County, its contractors, their suppliers and sub-contractors, vendors of goods, equipment, services, and professional services, shall not discriminate on the basis of race, color, religion, national origin, age, handicap, or sex in the award and/or performance of contracts. However, competition and quality of work remain the ultimate standards in contractor, sub-contractor, vendor service, professional service, and supplier utilization. All vendors, suppliers, professionals and contractors doing business or anticipating doing business with Gregg County shall support, encourage and implement steps toward our common goal of establishing equal opportunity for all citizens of Gregg County.
25. Respondents must agree to provide the following information as part of this Bid:
 - ✓ Form of business. (If a corporation, limited partnership or limited liability company, indicate the state of creation).
 - ✓ Name of contact person (single point of contact with the Respondent).
 - ✓ List of all criminal charges, civil lawsuits or dispute resolutions to which Respondent is a party in the past five (5) years and the nature of the issue. Indicate if and how it was resolved.
 - ✓ List all criminal charges, civil lawsuits, or alternative dispute resolutions to which Respondent becomes a party for the period beginning with the submission of the Bid until the rejection or award of the bid/RFP.
26. Gregg County reserves the right to accept or reject any or all bids, with or without cause, to waive technicalities, or to accept the bid which, in its sole judgment, best serves the interest of the County, or to award a contract to the next most qualified Respondent if a successful Respondent does not execute a contract within 10 business days after approval of the selection by the Gregg County Commissioners Court. Gregg County Reserves the right to award multiple contracts as necessary and in the best interest of the County.
27. Gregg County reserves the right to request clarification of information submitted and to request additional information of one or more Respondents.
28. Costs of preparation of a response to this request for bids are solely those of the Respondent. Gregg County assumes no responsibility for any such costs incurred by the

Respondent. The Respondent also agrees that Gregg County assumes no responsibility for any costs associated with any administrative or judicial proceedings resulting from the solicitation process.

29. The awarding Respondent shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least two (2) years after completion of the contract resulting from this request for Bid. Gregg County shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of this agreement.
30. Respondent understands and agrees that in returning a response to this Bid/bid that it is neither an "offer" nor an "acceptance" until such time a formal contract is authorized/awarded by the Gregg County Commissioners Court; if any.
31. Bids must be submitted on the forms provided. Bids will not be considered if submitted by telephone, fax or any other means of rapid dispatch, nor will a Bid be considered if submitted to any other person or department other than specifically instructed.
32. Gratuities– Gregg County may, by written notice to the Respondent, cancel this contract without liability to Respondent if it is determined by Gregg County that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Respondent, or any agent or representative of the Respondent, to any officer or employee of Gregg County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Gregg County pursuant to this provision, Gregg County shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Respondent in providing such gratuities.
33. Termination - The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Respondent of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer.
34. Force Majeure - If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemies, orders of any kind of government of the United States or the State of Texas or

any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

35. Assignment Delegation - No right or interest in this contract shall be assigned or delegation of any obligation made by Respondent without the written permission of the Buyer. Any attempted assignment or delegation by Respondent shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
36. Waivers - No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
37. Modification - Contract can be modified or rescinded only by a written and signed agreement by both of the parties duly authorized agents.
38. Applicable Law - This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
39. Advertising - Respondent shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
40. Right to Assurance - Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
41. Venue - Both parties agree that venue for any litigation arising from this contract shall be in Longview, Gregg County, Texas.
42. No negotiations, decisions, or actions shall be executed by the Respondent as a result of any discussions with any public service official, employee and/or consultant. Only those transactions provided in written form may be considered binding.

43. The contents of each Responders bid, including specifications shall remain valid for a minimum of 60 calendar days from the Bid due date.
44. All documents submitted as part of the Responders offering will be deemed confidential during the evaluation process.
45. Subcontracting: The Responder must function as the single point of responsibility for the Agency. No Responder shall submit a Bid comprised of separate software packages from multiple subcontractors.
46. Investigation of Conditions: Before submitting a bid, respondent should carefully examine the specifications and fully inform themselves to the conditions of the equipment and limitations.
47. Contract Award:
 - 1) Gregg County reserves the right to reject any or all bids and to waive any minor informality or irregularity in a Responders response if deemed in the best interests of the County.
 - 2) Award of a contract (if any) resulting from this bid will be made only by written authorization from Gregg County Commissioners Court.
48. Conflict of Interest: No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171. State Law (CHAPTER 176 of the Local Government Code) requires the filing of a CONFLICT OF INTEREST QUESTIONNAIRE by certain individuals and businesses.
49. Design, Strength, Quality of materials and workmanship must conform to the highest standards of manufacturing and engineering practice.
50. All Hardware of any other item offered in this bid must be new and unused, unless otherwise specified, in first-class condition and of current manufacture.
51. Descriptions: Whenever an article or material is defined or used in the BID specifications by describing a proprietary product or by using the name of a manufacturer, model number, or make, the term "or equal" if not inserted, shall be implied. Any reference to specified article or material shall be understood as descriptive, NOT restrictive, and is used to indicate type and quality level desired for comparison purposes unless otherwise noted. Bids must be submitted on units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.
52. Addendum: Any interpretations, corrections or changes to this Bid and Specifications will be made by addendum, unless otherwise stated. Issuing authority of addendum shall be the Commissioners' Court of Gregg County, Texas. Addendum will be mailed, emailed,

or faxed to all that are known to have received a copy of the Bid. Respondents shall acknowledge receipt of all addenda and include receipt and response to addenda with submission.

53. Patents/Copyrights: The successful Respondent agrees to protect Gregg County from claims involving infringements of patents and/or copyrights.
54. Contract Administrator: The Contract Administrator will serve as sole liaison between the Gregg County Commissioners Court and affected Gregg County Departments and the successful Respondent. Unless directly outlined in this specification the Respondent shall consider no one but the Contract Administrator authorized to communicate, by any means, information or suggestions regarding or resembling this bid throughout the Bid process. The Contract Administrator has been designated the responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. The County will not pay for work, equipment or supplies, which it deems unsatisfactory. Respondents will be given a reasonable opportunity to correct deficiencies before termination. This however, shall in no way be construed as negating the basis for termination for non-performance.
55. Packing slips or other suitable shipping documents shall accompany each special order shipment and shall include:
 - (a) Name and address of successful Respondent;
 - (b) Name and address of receiving department and/or location;
 - (c) Gregg County Purchase Order number; and,
 - (d) Descriptive information of the materials shipped or services rendered, including item numbers, serial numbers, quantities, number of containers and package numbers, address/location of services rendered, as applicable.
56. Unless otherwise indicated, items will be new, unused, and in first class condition in containers suitable for damage-free shipment and storage.
57. Invoices must show all information as stated above, and will be issued for each purchase order.
58. Equipment/Good/Services supplied under this contract shall be subject to the County's approval. Item(s) found defective or not meeting specifications shall be picked up and replaced by the successful Respondent within one (1) week after notification at no expense to the County. If item(s) is not picked up within one (1) week after notification, the item(s) will become a donation to the County for disposition.
59. Warranty: Successful Respondent shall warrant that all equipment/goods/services shall conform to the proposed specifications and/or all warranties stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.
60. Remedies: The successful Respondent and Gregg County agree that both parties have all

rights, duties, and remedies available as stated in the Uniform Commercial Code.

61. Silence of Specification: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
62. The Respondent shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Respondent, its agents, representatives, volunteers, employees or subcontractors. The Respondents insurance coverage shall be primary insurance with respect to the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be considered in excess of the Respondents insurance and shall not contribute to it. Further, the Respondent shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. **All Certificates of Insurance and endorsements shall be furnished to the County's Purchasing Agent and approved by the County before work commences.**
63. ***Standard Insurance Policies Required:***
 - a. Commercial General Liability Policy
 - b. Automobile Liability Policy
 - c. Worker's Compensation Policy

General Requirements applicable to all policies:

- a. Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- b. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- c. "Claims Made" policies will not be accepted.
- d. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Gregg County.
- e. All insurance policies shall be furnished to Gregg County upon request.

Commercial General Liability

- a. General Liability insurance shall be written by carrier with an A:VIII or better rating in accordance with the current Best Key Rating guide.
- b. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily Injury and property damage with Gregg County named as an additional insured.
- c. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

Automobile Liability

- a. General Liability Insurance shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
- b. Minimum Combined Single Limit of \$600,000.00 per occurrence for bodily injury and property damage.

64. **Workers Compensation Insurance** - Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas compensation insurance policy; either directly through their employer's policy (the Respondents or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Respondents and subcontractors must use that portion of the form whereby the hiring Respondent agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

The worker's compensation insurance shall include the following terms:

- a. Employer's Liability limits of \$500,000.00 for each accident is required.
- b. "Texas Waiver of Our Right to Recover from Others Endorsement" shall be included in this policy. (Waiver of Subrogation)

Pursuant to the explicit terms of Title 28, Section 110.110 (c) (7) of the Texas Administrative Code, the Bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Worker's Compensation Commission, or a coverage agreement (TWCC-81), TWCC-83, or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Respondents/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in section 406.096 {of the Texas Labor Code}) - includes all persons or entities performing all or part of the services the Respondent has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the

project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage respondents, office supply deliveries, and delivery of portable toilets.

- The Respondent shall provide coverage, based on the proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Respondent providing services on the project, for the duration of the project.
- The Respondent must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- If the coverage period shown on the Respondents current certificate of coverage ends during the duration of the project, the Respondent must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- The Respondent shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file providing services on the project, and certificates of coverage showing coverage for all person; and
 - (2) no later than seven calendar days after receipt by the Respondent, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (3) The Respondent shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The Respondent shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Respondent knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

The Respondent shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The Respondent shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, that meets the statutory

- requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the Respondent, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Respondent, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (4) obtain from each other person with whom it contracts, and provide to the Respondent:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) Contractually require each person with whom it contracts, to perform as required; with the certificates of coverage to be provided to the person for whom they are providing services.

By signing a contract with Gregg County, or providing, or causing to be provided a certificate of coverage, the Respondent who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Providing false or misleading information may subject the Respondent to administrative penalties, criminal penalties, civil penalties, or other civil actions.

CERTIFICATES OF INSURANCE shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

- a. The company is licensed and admitted to do business in the State of Texas.
- b. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- c. All endorsements and insurance coverage according to requirements and instructions contained herein.
- d. The form of the notice of cancellation, termination, or change in coverage provisions to Gregg County.
- e. Original endorsements affecting coverage required by the section shall be furnished with the certificates of insurance.

➤ Bids /may be withdrawn at any time prior to the official opening. Alterations made before

the opening time must be initialed by Respondent guaranteeing authenticity. After the official opening, Bids become the property of Gregg County and may not be amended, altered or withdrawn without recommendation of the Gregg County Purchasing Agent and the approval of the Gregg County Commissioners Court.

- This Bid is issued in compliance with the County Purchasing Act Texas Local Government Code 262.030.
- **Prompt Payment Clause** - Gregg County, Texas will, after acceptance of goods or services and the receipt of a proper invoice from the awarded Respondent, process request for payment, said payment to be paid within forty-five (45) days. Prime Respondents shall then be required to ensure payment is made to any designated small or disadvantaged business (subcontractors), within fifteen (15) workdays of receipt of payment to the prime Respondent from the County. Upon satisfactory completion of a contract, the County and/or prime Respondent will ensure that any retainage payments are returned within thirty (30) workdays. Failure to comply with the terms of this requirement may be grounds for termination of the contract by the County.
- **Confidentiality:** Any material that is to be considered confidential in nature must be clearly marked as such and may be treated as confidential to the extent allowable in the Texas Public Information Act. Pricing information is not considered to be confidential. Trade secrets or confidential information **MUST** be placed in a separate envelope marked “CONFIDENTIAL INFORMATION” and EACH PAGE must be marked “CONFIDENTIAL INFORMATION”. Please be advised that Gregg County cannot and will not make any agreement to withhold information from the public that is contrary to the County’s responsibility under the Act.
- Bids will be considered non-responsive if they show any omissions, alteration of form, additions or conditions not called for, or inconsistencies of any kind. However, Gregg County reserves the right to waive any inconsistencies mentioned above to make an award in the best interest of the County.
- Respondents may be disqualified and their Bids not considered, among other reasons, for any of the following specific reasons:
 1. Reason for believing collusion exists among the Respondents.
 2. Reasonable grounds for believing that any respondent is interested in more than one Bids for the work contemplated.
 3. The Respondent being interested in any litigation against the county.
 4. The Respondent in arrears on any existing contract or having defaulted on a previous contract.
 5. Lack of competency as revealed by a financial statement, experience. And equipment etc.
 6. Respondents shall not owe delinquent property tax in Gregg County.
 7. Respondent past performance record with Gregg County.
 8. Limited competition.

- The successful Respondent may not assign their rights and duties under award without written consent of Gregg County Purchasing Agent. Such consent shall not relieve the assignor of liability in the event of default by the assignee.
- Respondents are encouraged to review this entire Request for Bids Packet (BID). All questions regarding this Bid must be in writing and sent by email to Purchasing Agent Kelli Davis at kelli.davis@co.gregg.tx.us or by fax to 903-237-2682. Contact with other personnel of the county other than the Purchasing Agent regarding the Request for Bids may be grounds for elimination from the selection process.
- TO THE EXTENT PERMITTED BY LAW, RESPONDENT AGREES TO DEFEND, INDEMNIFY AND HOLD GREGG COUNTY, ITS OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO OWNER'S BUSINESS AND ANY RESULTING LOST PROFITS), EMPLOYMENT MATTERS, AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO OR ARISE OUT OF OR BE OCCASIONED BY (i) RESPONDENTS BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF RESPONDENT, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE PERFORMANCE OF THIS AGREEMENT. RESPONDENT(S) WILL COMPLY WITH ALL STATE, FEDERAL, AND LOCAL LAWS INCLUDING BUT NOT LIMITED TO THE AMERICANS WITH DISABILITIES ACT, TITLE VII OF THE CIVIL RIGHTS OF 1964, AGE DISCRIMINATION IN EMPLOYMENT ACT, CIVIL RIGHTS ACT OF 1991, FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA), FAIR LABOR STANDARDS ACT, EQUAL PAY ACT OF 1963 AND THE AFFORDABLE HEALTH CARE ACT, AS TO TREATMENT AND COMPENSATION OF ITS EMPLOYEES.

RESPONDENT(S) WILL PREPARE PAYROLL CHECKS, MAKE ALL NECESSARY DEDUCTIONS AND PAY ALL TAXES, MAINTAIN INSURANCE REQUIRED BY FEDERAL, STATE, AND LOCAL LAWS. RESPONDENT ACCEPTS FULL RESPONSIBILITY FOR THE PAYMENT OF WAGES, COMPENSATION, OVERTIME, AND BENEFITS TO PERSONNEL. RESPONDENT ACCEPTS RESPONSIBILITY FOR PAYMENT OF ALL TAXES, ASSESSMENTS, FEES, AND FINES THAT MAY BE DUE AND OWING TO ANY LOCAL, STATE, OR FEDERAL GOVERNMENT AGENCIES.

BONDING REQUIREMENTS

If applicable, a Bid Bond shall be required. Pursuant to the provisions of Section 262.032 (a) of the Texas Local Government Code, if the contract contemplated by this request is a bid for the construction of public works, or will be under a contract exceeding \$100,000.00, Gregg County may require the Respondent to execute a good and sufficient bid bond in the amount of five percent (5%) of the total contract price. Said bond shall be executed with a surety company authorized to do business in the State of Texas.

If applicable, a Performance Bond shall be required. Pursuant to the provisions of Section 262.032 (b) of the Texas Local Government Code, within thirty (30) days of the date of the signing of a contract or issuance of a purchase order following the acceptance of a bid by Gregg County Commissioners Court and prior to commencement of the actual work, the successful Respondent shall furnish a performance bond to Gregg County for the full amount of the contract if the contract exceeds \$50,000.00. Said bond shall be for the purpose of insuring the faithful performance of the work in accordance with the plans, specifications and contract documents associated with the contract.

If applicable, a Payment Bond shall be required. Pursuant to the provisions of Section 2253.021, Texas Government Code, if the amount of the contract awarded to the successful Respondent exceeds \$25,000.00, the successful Respondent shall execute a payment bond in the amount of the contract. Said bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime Respondent or a subcontractor to supply public work labor or material. This bond must be issued to the County within ten (10) days of the award of the contract and before Respondent begins the work.

If applicable, a Performance Bond shall be required. Pursuant to the provisions of Section 2253.021, Texas Government Code, if the amount of the contract awarded to the successful Respondent exceeds \$100,000.00, the successful Respondent shall execute a performance bond in the amount of the contract. Said performance bond is solely for the protection of Gregg County and is conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. This bond must be issued to the County within ten (10) days of the award of the contract and before the Respondent begins the work.

CRIMINAL BACKGROUND CHECKS

Criminal background checks will be performed on any Awarded Respondents, and employees that will require them to enter/work in any sensitive security areas at any of Gregg County's Facilities. These include, but are not limited to, Gregg County Airport, Gregg County Courthouse, Gregg County Sheriff's Department and/or Gregg County Jails and Gregg County Juvenile.

The following will apply to awarded Respondent personnel.

- The successful respondent shall provide information, including, but not limited to, name, date of birth, and driver's license number for each individual who will be performing work on Gregg County property.
- Respondent personnel who perform work on Gregg County property must submit to and pass a Sheriff's Department Criminal Background Check. That status must be maintained by all Respondent personnel entering County buildings for the duration of the contract.
- Criminal Background checks conducted by your firm may or may not be acceptable to certain departments depending on their particular requirements. The County reserves the right to conduct additional Criminal Background Checks as it deems necessary.
- Award of a contract could be affected by your firms' refusal to agree to these terms. Award could also be affected if your firm is unable to supply personnel who can pass a Criminal Background Check. **The Criminal Background Check applies to the individual and not the company.**