

C-2068

Konnech PollChief®

License, Maintenance and Support Agreement

Between

County of Loudoun, Virginia

and

Konnech, Inc.

4211 Okemos Rd., Ste. 3

Okemos, Michigan 48864

176072

License, Maintenance and Support Agreement

THIS AGREEMENT is effective on the 8th day of September 2014, by and between the **COUNTY OF LOUDOUN, VIRGINIA**, hereinafter referred to as the "County", and **KONNECH INC.** hereinafter referred to as "Konnech" and "Contractor" (collectively, the "parties").

WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **System License.** Konnech hereby grants the County, and County hereby accepts from Konnech, 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 the computer-based PollChief® Election Management software package developed and owned by Konnech, including all releases, enhancements, customizations, and other changes thereto (the "System"), more fully described in "Exhibit A" attached hereto and the Documentation described in Paragraph 7 below. This License is granted upon the condition that the County use only the designated computer hardware and peripherals compatible with the System that are recommended by Konnech as described in "Exhibit B" attached hereto.
 2. **Term of License.** This License shall be in effect throughout the Term of this Agreement (as defined in Paragraph 10 below), but only so long as: (a) County is not in breach of, or in default under, this Agreement; and (b) County is covered under Konnech's Maintenance and Support Program described in Paragraph 20 below.
 3. **Exhibits.** Attached and made a part hereof for all purposes are the following Exhibits:
 - Exhibit A: Description of Modules
 - Exhibit B: Recommended Hardware and Software
 - Exhibit C: Hosting Service
 - Exhibit D: Fee Schedule
 - Appendix A: County Internet Website Accessibility Requirements
- 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 used at the location indicated on the cover page of this Agreement. The County may use the System at other locations of the County in addition to the location of the Office of Elections at no additional cost.

5. **Delivery and Installation of the System.** The System and all Documentation agreed to be furnished by Konnech shall be delivered to the County and installed by Konnech. Should County hardware not be compatible for installation of and use with the System, Konnech shall not be obligated to install the System until the County at the County's sole obligation and expense, purchases or otherwise acquires all hardware and non-Konnech software recommended by Konnech (see, Exhibit B: Recommended Hardware/Software). Konnech's judgment about the compatibility of hardware and software is based on Konnech's knowledge of the design of the System and will be exercised in the County's best interest in order to insure the effective performance of the System.
6. **License Fees.** The County agrees to pay Konnech the one-time charge shown in Exhibit D, which includes License Fee and Hosting for the Initial Term of this Agreement, in two installments as follows: (a) 70% (\$28,000.00) within thirty (30) days after set up of the Test Server; and (b) 30% (\$12,000.00) within thirty (30) days after release of the production server System to the County. For each Renewal Term (as defined in Paragraph 10 below), the County agrees to pay the Annual Renewal Term Fee shown in Exhibit D, which includes License Fee and Hosting. The License Fee does not include any costs for the Recommended Hardware/Software needed for the operation of the System.
7. **Documentation and Software.** System software will be accessible to the County through web or other appropriate medium. Electronic Documentation consists of the System Administration Manuals which are provided to the County electronically and which will be revised and updated as needed in order to assist the County in the operation of the System. System Administration Manuals and Help Functions may be printed in hard copy by the County. Addenda and corrections will be supplied as the software develops.
8. **Customization.** In the event the County requests consulting support or customization of the System, which consulting support or customizations are beyond the scope of Konnech's obligations under the System Warranty (as described in Paragraph 11 below) or Konnech's Maintenance and Support provisions, including but not limited to those described in Exhibit A and Exhibit D attached hereto, the County shall notify Konnech in writing of its needs for such consulting support or customization. Should Konnech agree to perform such consulting support or customization, all such work requested by the County will be provided by Konnech at Konnech's then current rates for these services. In addition, the County shall reimburse Konnech for all reasonable and actual travel and living expenses incurred by consultants and employees of Konnech in implementing such services at the then current rates allowed County employees traveling on county business.

9. **Confidentiality.** All information regarding the County's business operations, business systems, and related confidential matters furnished or disclosed to Konnech in the course of the negotiation and implementation of this Agreement shall be held in confidence by Konnech, unless such information: (a) was previously known by Konnech free of any obligation to keep it confidential; (b) has been, or is subsequently, made public by the County or a third party lawfully in possession of such information; or (c) is in the public domain. Konnech agrees and understands that voter registration records are confidential and Konnech hereby agrees that these records will not be used for any other purpose than those specified in this Agreement and by the County. These records will not be copied nor will any person be allowed to extract any information from these records without the consent of the County. The County agrees to similarly treat any information provided to it by Konnech 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 Virginia law, constitutional or statutory, including but not limited to the Virginia Freedom of Information Act at Section 2.2-3700 et seq. of the Code of Virginia, pertaining to public records and open government and any cases construing such law, shall prevail over the provisions of this Agreement.
10. **Term.** This Agreement will commence on the latter date shown on the execution page of this Agreement (the "Commencement Date"), and end twelve (12) months thereafter (the "Initial Term"). This Agreement may be renewed by the County for additional one (1)-year terms (each a "Renewal Term") upon payment of the Annual Renewal Term Fee shown in Exhibit D. As used herein, the word "Term" refers to both the Initial Term and any Renewal Term(s).
11. **Warranty.** During the Term of this Agreement, Konnech warrants that the System will perform in the manner described in the Documentation supplied by Konnech provided the County has not made any changes to the System. Konnech 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 promptly. The County shall use the testing facilities provided by the System to conduct trials, fully exercising all the essential functions of the System. Such System testing shall be done sufficiently in advance of, and at least ninety (90) days before, each election cycle so as to allow time for the resolution of any defects of the System and a re-test to verify proper performance of the System. Any defects discovered during System testing or during normal operation of the System shall be promptly communicated to Konnech by fax or email. Whatever additional materials that Konnech shall request relating to the defects or problems (such as information described in Paragraph 20 below) shall be promptly provided by the County on the appropriate medium. Upon such notification,

Konnech will promptly rewrite, repair or replace, at its cost, any part of the System which is not functioning according to this warranty, and will bear all labor, travel and lodging expenses for its personnel used in connection with warranty work. If Konnech is unable to repair or replace the System, it will, after the return of the System and Documentation intact and in proper condition, refund to the County the Annual Use/Maintenance/Support Fee on a pro-rata basis and this Agreement will automatically terminate without additional liability to the County. The pro-rata refund will be based on the number of months remaining in the then-current Renewal Term. If it is determined by the parties that the defects are attributable to changes made to the System by the County or others in the County's employ or at the County's direction, the County will pay Konnech within forty-five (45) days of Konnech's invoice for: (a) the time spent by Konnech personnel in evaluating the stated defects, at Konnech's then current rates for such services; and (b) the reasonable and actual travel expenses of Konnech's personnel incurred in connection with such evaluation of non-warranty work, at the then current rates allowed County employees traveling on County business, which such expenses shall be deemed pre-approved by the County and shall include travel to and from the County's site, lodging, meals, telephone, shipping, and the like. The foregoing warranty does not replace or eliminate in any way the County's obligations under Konnech's Maintenance and Support program as described in Paragraph 20 below.

12. **Exclusion of All Other Warranties.** THE SOLE LIABILITY OF KONNECH TO THE COUNTY FOR THE 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 THE COUNTY 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 LIABILITY OF KONNECH TO THE COUNTY FOR PERFORMANCE OF THE SYSTEM IS LIMITED TO THE ABOVE WARRANTY ON THE SOFTWARE SYSTEM.
14. **Title to the System/Protective Covenants.** The County acknowledges that the System and Documentation (including changes, enhancements, alterations, and additions provided under Maintenance and Support) are the sole and exclusive property of Konnech; that the System and Documentation and all parts and components thereof constitute valuable assets and trade secrets, and give proprietary rights to Konnech; that neither legal nor equitable title to the System or Documentation passes to the County under the terms of this Agreement or under any other agreement or theory; and that any

information with respect to the System and Documentation is strictly confidential and will be maintained in confidence by the County in the same manner and subject to the same exceptions as Konnech is obligated to maintain the confidentiality of County information per Paragraph 9 above, whether or not all or any portion of the System or Documentation has been copyrighted or patented. No part or portion of the System or Documentation may be altered, modified or enhanced by the County 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 the County's most valuable and sensitive programs and data.

15. **Copying the System or Documentation.** Except for ordinary and necessary backup or archival purposes, the County shall not copy, duplicate, print, or reproduce the System or Documentation or any part or portion thereof. Moreover, the County shall not, without the prior written consent of Konnech, 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, by any person or entity whomsoever for any purpose, including training, other than the necessary employees of the County for use by them in their regular services to the County in operating the System. The County further agrees not to disassemble, reverse compile or reverse engineer the System or any part thereof. The County 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 the County shall take appropriate action to insure that these obligations will be and are fulfilled.
16. **Use Restrictions.** The County is restricted to using the System exclusively for the County's own use and may not use the System to process the data of another county or any other non-County 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 Konnech may assign this Agreement to any entity which acquires all or substantially all of its business by merger, sale of assets, or otherwise upon notice to the County. Without the prior written approval of Konnech, neither this Agreement nor 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 the County's consultants or other counties or non-County governmental entities. Any such transfer is of special concern as it involves any present or potential competitor of Konnech, or anyone who might develop systems similar to the System, or who might use Konnech's 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.** The County 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, utility, and network and communications connections and services shall be performed by the County.
19. **Progress Reports/Meetings.** Konnech and the County shall conduct meetings to review progress on a regular basis, with the schedule to be jointly determined.
20. **Maintenance and Support.**
 - (a) **Coverage.** During the Term of this Agreement, subject to renewal or termination as otherwise provided herein, Konnech agrees to:

Provide unlimited telephone support in the effective use of the System on weekdays during the hours of 8:00 A.M. to 5:00 P.M. (Central Standard Time).

Provide additional support hours before and on each election date, which will be defined between the County and Konnech.

Provide the County with the latest and most up to date version of the System and Documentation, including any and all enhancements and improvements to them (but not including new products developed by Konnech 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 Konnech and that significantly affects the performance of the System. Such correction, replacement, or services will be promptly accomplished after the County has identified and notified Konnech of any such error in writing via facsimile or email. At its expense, the County agrees to provide Konnech with information, including, but not limited to, sufficient access via Virtual Private Network (VPN) or modem to the County's system, file dumps, screen dumps and error reports, as requested by Konnech, and with sufficient support and test time on the County'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 County errors or unauthorized System changes, however, will be billed at Konnech's standard time and material rates.
 - (b) **Annual Fee and Annual Renewal.** The annual fee for Use/Maintenance/Support shall be due and payable prior to each forthcoming Renewal Term. Each such fee will be due upon receipt of invoice and must be paid in full within thirty (30) days of said receipt and in any event not later than forty-five (45) days prior to the start of the forthcoming Renewal Term. Konnech shall

have the option to increase said fee by not more than five percent (5%) of the prior year's annual fee or the rate of inflation as measured by the Consumer Price Index, whichever is greater. In order to give notice of the fee for budgeting purposes and also renew this Agreement annually, Konnech shall provide written notice to the County not later than March 1st of each calendar year, of the amount of the annual Use/Maintenance/Support fee for the next Renewal Term.

- (c) *Late Charges; Termination.* The County understands and agrees that each annual Use/Maintenance/Support fee is a fee for the right to continue to have a License to use the System and Documentation and receive the Maintenance and Support described above for an additional twelve (12) months, and payment therefore is due and payable upon receipt of Konnech's invoice as provided in Subparagraph 20(b) above. Subject to the provisions of Paragraph 21 below, in the event the County fails to timely pay any such annual fee, or any other fees or charges provided for in this Agreement, the County's License to use the System and Documentation shall terminate on the earlier of thirty (30) days' notice from Konnech, or as of the year-end of the then-current year's Maintenance and Support services for which payment is due.
 - (d) *Changes in Terms and Conditions.* Konnech and the County may, by mutual written agreement signed by authorized representatives of Konnech and the County change the terms and conditions of this Agreement, and pricing may change from time to time for Konnech's 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 the County by Konnech 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, made in order to meet any new statutory requirements will be provided as per Subparagraph 20(a) above.
 - (f) *Travel Expenses.* The County shall reimburse Konnech for any reasonable and actual travel expenses incurred by Konnech at the then current rates allowed County employees traveling on County business. Such expenses shall be pre-approved by the County and may include travel to and from the County's site, lodging, meals, telephone, shipping, and the like.
21. **Breach/Default Generally.** In the event the County is in default in the payment of any Fee set forth above and that payment is not in dispute or fails to carry out any other requirement of this Agreement, Konnech shall notify the County in writing by certified mail. If the County fails to remedy the default or breach within thirty (30) days of receipt of such notification, Konnech 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 the County 's hardware and equipment). In the event of such default or breach, the County agrees to immediately cease use of the System, remove the System from any medium onto which the County has downloaded it, and deliver to Konnech the System and all System backups, Documentation, and other materials delivered by Konnech to the County. Konnech shall have no duty to perform under this Agreement in the event the County defaults under or breaches this Agreement and fails to remedy such default or breach as provided herein. The County will pay any amounts not disputed but if a payment is in dispute, payment will be withheld pending verification of the amount claimed and the validity of the claim. Payments in dispute will not be considered a default under this Agreement.

22. **Breach/Default as to Certain Use/Disclosure Restrictions; Attorney's Fees.** The County agrees that for any breach of the restrictions upon the use, sale, transfer, or disclosure of the System as provided for in Paragraphs 9, 14, 15, 16 and 17 of this Agreement, monetary damages shall not be a sufficient remedy or protection for Konnech, and Konnech shall be entitled to seek injunctive or other equitable relief that it may deem proper or necessary in a court of competent jurisdiction in addition to being entitled to seek any other legal or equitable relief. In any legal action 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 legal action if so ordered by a competent court of jurisdiction.
23. **Patent and Copyright Indemnification.** Konnech agrees to defend, indemnify and hold the County harmless from any claim, suit, or action relating to a patent or copyright infringement arising out of the County's use as directed of the software developed by Konnech or tools employed in the development of its software and shall pay all reasonable legal fees, costs, and expense of the County incurred in the defense of any patent or copyright claim or suit, provided that: (a) the County 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 Konnech and not third parties; (c) the County notifies Konnech promptly in writing of any patent or copyright claim; and (d) Konnech 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 Konnech's opinion is likely to be made, Konnech 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 the County the License Fee paid hereunder.
24. **Taxes and Duties.** The County 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

during the Term of this Agreement, the County agrees that it and not Konnech will pay any such taxes or duties that may become due as a consequence of this Agreement.

25. **Use of the County's Name.** The County agrees that Konnech may include the County's name in any marketing materials listing Konnech customers, for Konnech's own marketing efforts, subject to the County's prior review and approval.
26. **Notices.** Except to the extent otherwise specifically provided herein, any and all notices, designations, consents, offers, acceptances, or any other communications provided for herein shall be in writing and addressed to the parties at their respective addresses set forth in this Agreement and deposited with the United States Postal Service for delivery by certified or registered mail, postage prepaid and return receipt requested. Any notice so sent shall be deemed to be both given and received three (3) business days after being so deposited. Either party may from time to time change the notice address set forth herein by delivering notice to the other party in accordance with this Paragraph, setting forth the new address and the date on which it will become effective.
27. **Waiver or Modification.** No waiver or modification of this Agreement 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. **Notice of Required Disability Legislation Compliance.** The County is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, the County may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability by public entities. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the

Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

30. **Ethics in Public Contracting:** The provisions contained in §§ 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the County. A copy of these provisions may be obtained from the Purchasing Agent upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

31. **Faith Based Organizations.** The County does not discriminate against faith-based organizations.
32. **Immigration Reform and Control Act of 1986.** By entering this Agreement, the Contractor certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
33. **Contractual Disputes.** The Contractor shall give written notice to the Purchasing Agent of his/her intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier. The written claim shall be submitted to the Purchasing Agent no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the bidder within thirty (30) days of receipt of the claim. The Contractor shall institute any legal action until all statutory requirements have been met. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.
34. **Payment to Subcontractors.** Within seven (7) days after receipt of amounts paid by the County for work performed by a subcontractor under this Agreement, the Contractor shall either: a) pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Agreement; or b) notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment and the reason for non-payment. The Contractor shall pay interest to the subcontractor on all amounts owed that remain

unpaid beyond the seven (7) day period except for amounts withheld as allowed in item b. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the County.

36. **Governing Law/Forum.** This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of laws provisions. Any judicial action shall be filed in the Commonwealth of Virginia, County of Loudoun. The Contractor expressly waives any objection to venue or jurisdiction of the Loudoun County Circuit Court, Loudoun County, Virginia. The Contractor expressly consents to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Va. Code § 8.01-286.1.
37. **Authority to Transact Business in Virginia.** A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into an Agreement with the County pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Agreement. The County may void any Agreement with a business entity if the business entity fails to remain in compliance with the provisions of this section.
38. **Counterparts.** This Agreement and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Agreement or any amendment or renewal. A signature by any party to this Agreement provided by facsimile or electronic mail is binding upon that party as if it were the original.
39. **Employment Discrimination by Contractors Prohibited**

Every Contract of over \$10,000 shall include the following provisions:

 - A. During the performance of this Contract, the Contractor agrees as follows:
 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is

a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

B. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

40. Drug-free Workplace

Every Contract of over \$10,000 shall include the following provisions:

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

41. Non-Visual Access to Technology. All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any state agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this agreement:

- Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;

- The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- Non-visual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- The Technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. Compliance with the foregoing non-visual access standards shall not be required if the County determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available. Installation of hardware, software or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices. If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration. The herein shall be construed to achieve full compliance with the Information Technology Access Act, §2.2-3500-2.2-3504 of the *Code of Virginia*.

42. **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. The County acknowledges that it has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained herein.
43. **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.
44. **Section and Paragraph Headings.** Section and Paragraph headings used throughout this Agreement are for reference and convenience only and in no way define, limit, or describe the scope or intent of this Agreement or affect its provisions.
45. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years.** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

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.

Konnech, Inc., Okemos, MI



By: Eugene Yu, President

Date: 9/9/2014

County of Loudoun, Virginia



By: Sandra A. Lineberry, CPPB, Contracting Officer

Date: 9/10/14



Exhibit A: Description of Modules

Foundation--Poll Location Management System (PLMS)

PLMS manages polling places and provides base information for all other poll management functions.

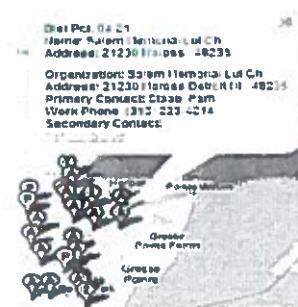
Poll Building Information

PLMS lists all possible sites with their identifying info, their owners (e.g., School Board), and the on and offsite contacts. It creates a separate list of potential alternative buildings with site survey information such as handicap accessibility, signage, parking, photo, map location, Election Day layout, etc.

All Buildings (110)		Review and set buildings to be used for: Potential				Search	
Building ID	Building Name	Organization	Phone	Address	Status	Action	Keyword ?
10001	ALL SAINTS ANGLICAN CHURCH	All Saints Anglican Church	(517) 381-1830	32303	Potential	Ed	Organization Type
10002	ALL SAINTS ANGLICAN CHURCH	All Saints Anglican Church	(517) 231-9448	32303	Inactive	Ed	All
10003	BETHEL AME CHURCH	Bethel AME Church	(517) 230-2945	32310	Inactive	Ed	Status
10004	BETHEL METHODIST CHURCH	BETHEL METHODIST CHURCH	(517) 555-6690	32304	Potential	Ed	☐ Unusable
10005	BETHELONA AME CHURCH	BETHELONA AME CHURCH	(517) 555-4099	32312	Potential	Ed	☐ Inactive
10006	BRADFORDVILLE BAPTIST CHURCH	Bradfordville Baptist Church	(517) 555-4781	32312	Potential	Ed	☒ Potential

Mapping Locations

PLMS shows maps of the Precincts along with the polling sites; clicking on the map will reveal details about the proposed site. The maps show how many voters are registered within a precinct along with most recent election voter turnout, which helps in planning ballot printing and selecting sites to accommodate suburbs with growing populations. The data is filtered by election and building status. Potential sites as well as sites actually used in each election are presented. The satellite image assists the selection of polling sites.

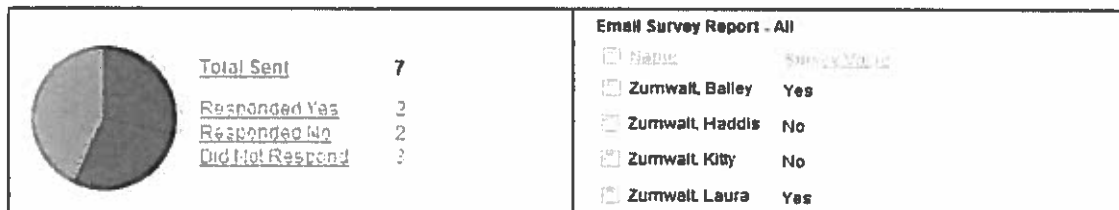


Poll Location Asset Planning

This feature annotates item needs unique to specific buildings such as extra extension cords, handicap ramps, particular traffic signs, etc. It also tracks delivery constraints. The special building needs are transmitted into the Poll Asset Management System so the system can manage the inventory and plan shipping.

Location Communications

PLMS prevents the miscommunications that lead to buildings failing to open on Election Day. PLMS sends mass letters, mass emails, and mass phone calls to each location, records their replies automatically, and builds spreadsheets of their responses. For instance, "will you be able to unlock the building at 4:00 am" or "press '3' to confirm that building is unlocked".



Poll Worker Management System (PWMS)

PWMS ensures that every poll worker gets recruited, appointed to an appropriate job classification, trained, assigned to a convenient location, evaluated after Election Day, and paid promptly and accurately.

Poll Worker Database PWMS lists and profiles all potential workers.

ID	00000001	Residence Address	Coming Election	Poll Workers (1551)	Applicants (0)
Last Name	BALEY	Street # / Pre / Street	Senate Election 2014	NAME	DATE
First Name	BALEY	Type / Sub / Apt	Gov Bar Code	Rating	Home
Middle Initial	B	City / State	013000030000163	APPLICANT	PCT
Date of Birth	04/12/1990	Zip	Training Bar Code	Republican	Poor
Sex	MALE	Home Precinct	013000030000163	APPLICANT	Republican RAJ Good 197
Race	OTHER	Mailing Address	Interested	APPLICANT	Republican RC Excellent 197
Party	DEM	Street # / Pre / Street	Outside Home PCT?	APPLICANT	Republican INS Average
Voter Type	COURT WORKER	Type / Sub / Apt	Assignment	APPLICANT	Democrat DJ Poor 150
Driver License	012125	City / State	Job Title (PCT)	APPLICANT	Republican RC Average 678
Foreign Language 1	SPANISH	Zip	H - Assistant Clerk	APPLICANT	Democrat DJ Excellent 318
Foreign Language 2		Contact Info	Working Place	APPLICANT	Republican RC Good 158
School ATH / YTD	13050	Home / Evening Phone	Parent PCT	APPLICANT	Republican RJ Average
Home	05/11/2010	Work / Daytime Phone	Building ID	APPLICANT	
Status	Y - ACTIVE P	Mobile Phone	Building Name	APPLICANT	
Comments	WILL DRIVE CARPOOL	E-mail	Training Class	APPLICANT	
Work History			20 - FOR THE	APPLICANT	
Training History			POLLWORKERS	APPLICANT	
Payroll History			21 - TUTORIAL 1 Optical	APPLICANT	
Activity Log			Scan Machine	APPLICANT	
Communication Log			22 - TUTORIAL	APPLICANT	
Task Schedule			23 - TUTORIAL	APPLICANT	
Comprehensive Log			24 - 00 RC TER	APPLICANT	
			Payroll	APPLICANT	
			Training	APPLICANT	

Planning at a Glance

One click displays the payroll budget projection.

Job Title Budget Report

Title	Pay Type	Per Day	Hours	Total	Per Day
Rever	Per Unit	\$130.00	\$25.25	8	\$1,250.00
Deputy	Lump Sum	\$108.50	\$0.00	97	\$10,524.00
Inspector	Lump Sum	\$108.50	\$0.00	213	\$33,960.00
Substitute	Per Unit	\$30.00	\$0.00	8	\$240.00
MACHINE INSPECTOR	Lump Sum	\$108.50	\$0.00	97	\$10,524.00
Clerk	Lump Sum	\$157.50	\$38.25	282	\$63,682.00
Monitor Clerk	Lump Sum	\$157.50	\$0.00	0	\$0.00
Technical Clerk	Lump Sum	\$135.50	\$0.00	94	\$12,831.00
Assistant Clerk	Lump Sum	\$135.50	\$0.00	94	\$12,831.00
Subtotal:					\$145,022.00

One click displays the "sensitivity" balance assigned to each precinct—party, ethnicity, gender, and age

Precinct	All	Poll Worker Total: 839
Sex	1203 MALE	1206 FEMALE
Party	1255 DEM	1301 REP
Race	1303 NATIVE AMERICAN	1309 HISPANIC
Foreign Language	1311 English	1313 Spanish

Click on the balloon, then on a green job title to add a worker to fill the open slot.
Green balloons are not yet fully staffed.
Red balloons are fully staffed.
Yellow balloons are overstaffed.

[illegible]

Workers can be assigned by carrying over from their previous assignments, or by clicking from drop-down menus or from a map.

With the map assignment technique, PWMS displays poll workers' homes in relation to the nearby polling sites so a poll worker can be assigned to a nearby location.

[illegible]

Poll Worker Readiness Preparation Training is a critical component of elections preparation. PWMS identifies training needs, issues class invitations, takes attendance with barcodes, and accumulates training hours throughout the worker's career. Dropdown menus makes it quick and easy to set up new training classes, and the mass communications makes it quick and easy to notify all the trainees with letters, emails, and phone calls.

New Training [Manage]

Class Type: Intro/Introduction

Jct. Title: Classroom

Instructor: John Doe

Training Location: FOR-EDGE SECURITY

Address: 1234567890

Training Materials: Add, Remove

Pre-generated Quiz: []

Class Size: 50

Training Date Time: 10/23/2015 09:00 AM

	Training Class (1)	(20)
	LERK Cld Assistant Cler	28 4JTR-K 6/7 2012 1 00 11
	Add Section	Delete Communications Export Training Bar Code

Communications

PWMS contacts all the poll workers by mass email, mass telephony, and of course, mass mail, records their replies, and builds statistics of the communication results, which are linked to each poll worker's record.

Send Message

Email
Phone Message
Letter or Postcard

Delivery Results

Email
Phone Message
Letter or Postcard

Other Options

Templates
Drafts
Statistics

Dear PEACHES AA

You have been assigned to the following training class:
TUTORIAL 1 TUTORIAL 1 Optical Scan Machine
FRI, Sep. 20, 2013 6:00 PM - 8:00 PM

Will you attend?

[Click here to respond Yes.](#)

OR

[Click here to respond No.](#)

Your basic poll worker training class has been re-scheduled from 6:00 pm Tuesday May 9th to 6:00 pm Wednesday May 10th. Will you attend the rescheduled class? Press 4 for yes, 6 for no.



Total Sent 7
Responded Yes 2
Responded No 2
Did Not Respond 3

Email Survey Report - All

Zumwalt, Bailey	Yes
Zumwalt, Haddis	No
Zumwalt, Kirby	No
Zumwalt, Laura	Yes

Scanned Attendance

PWMS scans in attendance at training classes and at work assignments.

Payroll Audit and Process

Elections administrators normally check and edit poll workers' records before exporting to finance or cutting paychecks. PWMS edits and logs poll workers' reimbursement information. It exports the attendance and pay records and generates IRS Form 1099. This speeds payroll, alleviating the irritation of delayed paychecks and averting many calls to the department from the poll workers.

<< Drain Commissioner 10-8		>> Main Election			
Payroll (8)	Check List (13)	48 Poll Workers	Event (1)		
Name	Selection	ID	Job Title	Work Days	Payment
AA RANTES		000000007	R - Rover	3	\$138.00
AA FREEMAN		000002	C - Clerk	\$109	\$162.5
AA H-DELT		AA000124	D - Deputy	\$2130	\$142.5
AA BULLER		000000001	R - Rover	1	\$50.00

Poll Worker Training Access Portal (PTAP)

The worker access portal trains online and enables poll workers to manage themselves.

It eliminates hundreds of interruptions to deal with worker details and prevents a multitude of poll worker errors

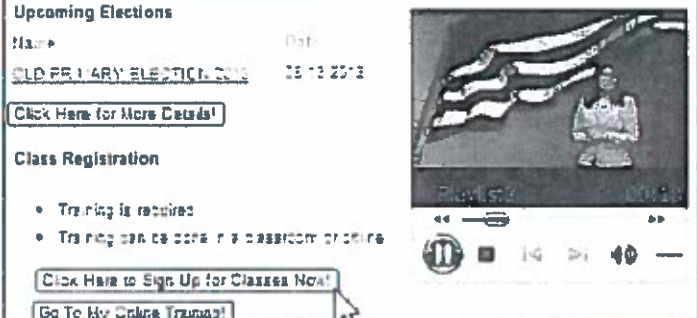
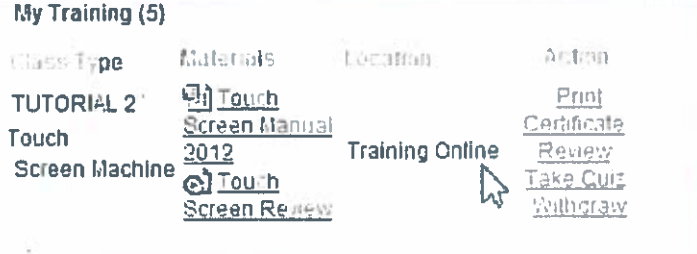
Poll workers can enroll, indicate interest in working a particular election, amend contact information, review their payments and re-check communications on their own. Their updates feed into their personnel files.	
The portal provides online training. The online class can include documents, slide shows, videos, and a quiz. Successful completion sends an email notice to the administrator, populates in the worker's personnel file, and bestows a certificate of completion upon the worker.	
The workers can watch training videos online—not only as part of online training, but also as an election eve refresher. The workers assigned to open and close particularly appreciate this because it helps them to refresh their memories as to the exact procedures the evening before Election Day.	

Exhibit B: Recommended Hardware and Software

All personal computers with internet access (Dell or comparable standard desktops and laptops)

Most current browsers which are compatible with the Microsoft.Net programming technologies
(e.g., Internet Explorer)

Bar code scanners (Symbol Technology Models LS2208 and remote scanners connecting to Smartphone)

Plain paper printers for printing bar code labels (Desktops are HP Laser Jet Pro 400; others are RICOH models: C2525, 4500, C811DN, C7501, etc.)

Exhibit C: Hosting Service

Konnech currently leases a full server cabinet from a telecommunications company with data and T1 PRI service located at the Lansing Metro Datacenter (1800 N. Grand River Ave., Lansing, MI 48906), and also backs up the data at the Server Farm at 4211 Okemos Road, Okemos, MI 48864, which is about a 30-minute driving distance between these two locations.

The Lansing Metro Datacenter offers us direct connection to multiple backbone connections and our traffic will get to its destination quickly and efficiently.

The datacenter is double hulled, essentially a building within a building complete with a redundant roof. A highly secure and controlled environment featuring on site 24-hour, 365 days a year operations and resilient power systems backed by APC UPS's, generator, air conditioning and comprehensive physical security.

Exhibit D: Fee Schedule

Initial Term--Installation of Completed System including design, training, implementation, data conversion, and hosting	\$ 40,000 one-time charge
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Annual Renewal Term Fee—License & Use Fee Renewal, Support, Maintenance, and hosting	\$23,000 per year
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The County recognizes that it is purchasing all necessary Recommended Hardware/Software directly from the manufacturer or its sales agents. Konnech 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 the County shall be provided solely by the manufacturer thereof. Konnech 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. Konnech is not responsible for maintaining the County hardware, maintenance and management of the network, Microsoft Domain security, or data backup.

APPENDIX A – County Internet Website Accessibility Requirements

County Internet Website Accessibility Requirements

Loudoun County Internet Website

Accessibility Requirements

Many people with disabilities use “assistive technology” to enable them to use computers and to access the Internet. People who are visually disabled may use screen readers to access information that appears on a computer monitor. Screen readers are devices and/or software that speak the text that appears on the monitor.

Loudoun County requires that all County Internet website pages be constructed with accessible features that facilitate the use of screen readers. Listed below are the County’s website page design requirements. Each of the requirements is illustrated by reference number on the next page.

1. When navigation links are used, people who use a screen reader must listen to all the links before proceeding. A skip navigation link is required to provide a way to bypass the row of navigation links by jumping to the start of the web page content.
2. All images and graphics need to have an alt tag or long description.
3. Use alt tags for image maps and for graphics associated with the image map so that a person using a screen reader will have access to the links and information.
4. Some photos and images contain content that cannot be described with the limited text of an alt tag. Long description tags are required to provide a way to have as much text as necessary to explain the image so it is accessible to a person using a screen reader but not visible on the web page.
5. Text links do not require any additional information or description if the text clearly indicates what the link is supposed to do. Links such as “click here” may confuse a user.
6. When tables with header and row identifiers are used to display information or data, the header and row information should be associated with each data cell by using HTML so a person using a screen reader can understand the information.
7. A link with contact information provides a way for users to request accessible services or to make suggestions.

Sample Illustration of an Accessible Website Page

