



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Konnech, Inc.
4211 Okemos Rd. Suite 3
Okemos, MI 48864

MAY 19 2016

Attention: Eugene Yu, President, Konnech, Inc.

Reference: Contract 4400006717, PollChief® Platform Management System

Dear Mr. Yu:

Acceptance Agreement

Contract Number: 4400006717

This acceptance agreement signifies a contract award to Konnech, Inc., to provide the PollChief® Platform Management System software and services. The period of the contract shall be from Date of award through December 31, 2018 with two (2) one-year renewal options available.

The contract award shall be in accordance with:

- 1) This Acceptance Agreement;
- 2) Attached Contract 4400006717.

Please note that this is not an order to proceed. A Purchase Order constituting your notice to proceed will be issued to your firm. Please provide your Insurance Certificate according to Section 17 of the contract within ten (10) days after receipt of this letter. All questions in regards to this contract shall be directed to the Contract Specialist, Penny Crawley, at (703)324-3884 or via e-mail at penny.crawley@fairfaxcounty.gov.

Sincerely,


Cathy A. Muse, CPPO
Director/County Purchasing Agent

Department of Purchasing & Supply Management

12000 Government Center Parkway, Suite 427

Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/dpsm

Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228

THE PARTIES TO THIS CONTRACT, Fairfax County ("Fairfax County" or "the County") AND KONNECH, INC. ® ("CONTRACTOR"), MUTUALLY AGREE THAT:

1. SCOPE OF CONTRACT:

- 1.1. FAIRFAX COUNTY engages the CONTRACTOR to provide delivery and implementation of the Konnech PollChief® Platform Management System (PPMS) - related software and services from the Contractor for use by Fairfax County Office of Elections, as described herein, inclusive of all attached exhibits and subsequent contract amendments, if applicable.
- 1.2. Exhibits. Attached and made part hereto for all purposes are the following Exhibits:
Exhibit A: Implementation and Payment Schedule
Exhibit B: Hosting Services
Exhibit C. Accessible Website Illustration

2. PERIOD OF CONTRACT:

- 2.1. The period of this contract shall be from the date of award through December 31, 2018. This contract may be renewed for two one-year periods, as mutually agreed upon.

3. SYSTEM LICENSE:

- 3.1.1 Subject to the terms and conditions of this Agreement, Contractor hereby grants to the County a nonexclusive, nontransferable, perpetual license for the County and its employees, designated election workers, third party contractors and other authorized representatives to use the software and all related operating instructions, user manuals and training materials supplied by Contractor, for so long as the Annual fee is paid. Contractor shall provide annual software maintenance and support which shall include any and all application updates and enhancements required by County, such as making it accommodate popular new operating systems and/or web browsers that are used by the County.

4. TERM OF LICENSE:

- 4.1. This License shall be in effect throughout the Period of Contract (as defined in Section 2 above), 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 49 below.

5. COMPENSATION:

- 5.1. The County agrees to pay the Contractor for the PollChief® Platform Management System (PPMS) related software and services provided, as described in Exhibit A in detail. As the Contractor is not a bonafide County employee the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the contractor.

6. AUTHORITY:

- 6.1. The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every contract and purchase order (except for capital construction projects) issued by Fairfax County. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned contract administrators. Specifically delegated employees are authorized to order supplies or services, and obligate the government of Fairfax County for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall

be of no effect and void and shall not be binding on the County.

- 6.2. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

7. DEFINITIONS:

- 7.1. Except as otherwise specifically defined, all terms used in this contract are defined in the Fairfax County Purchasing Resolution, Article 1, Section 6 and shall be used in accordance with such definitions.

8. INTERPRETATION OF CONTRACT:

- 8.1. Any questions pertaining to this contract shall be directed to:

Penny Crawley, Contract Specialist
Department of Purchasing & Supply Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0014
Telephone Number: (703) 324-3884
E-mail: penny.crawley@fairfaxcounty.gov

9. METHOD OF ORDERING:

- 9.1. As requirements arise, authorized individuals will place orders for specific quantities of items covered herein. Regardless of the method of ordering used, the contract and any subsequent modifications determine performance time and dates. Performance under this contract is not to begin until receipt of the purchase order or another official notification to proceed by the County Purchasing Agent and/or County agency representative to proceed.
- 9.2. The County will place orders against the contract by issuing Purchase Orders (PO).
- 9.3. A Purchase Order may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become a part of the resulting contract.

10. CANCELLATION OF ORDERS:

- 10.1. Purchases made under this contract are for readily available services and supplies; time is of the essence in furnishing the items ordered. The County reserves the right to cancel the order and/or to refuse delivery if the items ordered are not furnished within the period of time specified in this contract. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

11. INSPECTION AND ACCEPTANCE:

- 11.1. Acceptance Testing shall proceed as set forth in the milestones listed in Exhibit A of the Contract.
- 11.2. The County shall have no duty to accept any services that do not satisfy requirements of the Contract and Acceptance Testing. For determining acceptance of supplies or services for the purpose of eligibility for a prompt payment discount, inspection and acceptance shall be accomplished only after examination (including testing) to determine conformance with the contract requirements. Inspection, as appropriate, shall be accomplished within a reasonable time.
- 11.3. Inspection and acceptance of materials or supplies will be made after delivery at specified destinations unless otherwise stated. The County will bear the expense of inspection except for the value of samples used in case of rejection. Inspection and acceptance or rejection of the materials or supplies will be made in a reasonable time, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

12. INVOICING PROCEDURE:

- 12.1. The contractor shall submit an invoice for each Purchase Order and submit to the BILL TO address shown on the order. The invoice shall contain the applicable Purchase Order number and the name of the department receiving the services.

13. PAYMENT:

- 13.1. Contractor shall prepare and submit invoices, upon the County's submission of written approval for the successful completion of milestones, and Interim or Final System Acceptance Testing, for amounts payable in compliance with Exhibit A. The invoices for completion of milestones will be paid contingent upon satisfactory completion of milestones, and successful completion of Interim or Final System Acceptance Testing, in accordance with the terms of the contract and the milestone payments in Exhibit A. The County shall pay Contractor within in thirty (30) days of its receipt of a properly submitted invoice by Contractor subject to the terms and conditions of the Contract. The County reserves the right to withhold payments or portions of such payments for those goods or services, which Contractor has failed to perform in accordance with the terms of the contract, including failure of goods delivered to satisfactory pass inspection or acceptance testing.

14. AUDIT RECORDS:

- 14.1. The contractor shall maintain adequate copies of books, records, vouchers, and records of treatment in such a manner that they may be audited in progress and upon three years following completion of the contract. The contractor, from the effective date of final payment or termination hereunder, shall preserve and make such records available to Fairfax County for a period of three (3) years thereafter.

15. TAX EXEMPTION:

- 15.1. Fairfax County is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. The Federal Excise Tax Number is 54-74-012K. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling (703) 324-3206.

16. CONTRACT INSURANCE PROVISIONS:

- 16.1. The contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.
- 16.2. The contractor shall, during the continuance of all work under the contract provide the following:
 - a. Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - b. The contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the contractor, its subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with the contracted work.
 - c. Liability insurance may be arranged by General Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 - d. The contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - e. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
 - f. The contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.
 - g. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the County on demand.
 - h. The contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the County. These certified copies will be sent to the County from the contractor's insurance agent or representative.
- 16.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 30 day written notice to the County. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 16.4. Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities provisions of the contract.
- 16.5. Contractual and other liability insurance provided under this contract shall not contain a supervision,

inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.

- 16.6. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The contractor shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
- 16.7. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 16.8. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this contract.
- 16.9. The County, its officers and employees shall be named as an "additional insured" in the General Liability policy and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."

17. INDEMNIFICATION:

- 17.1. The contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the contractor shall, at his or her own expense, satisfy and discharge the same. The contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

18. CONTRACT ALTERATIONS:

- 18.1. No alterations in the terms of the contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent. Should it become proper or necessary in the execution of this contract to make any change in design or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.
- 18.2. No payment shall be made to the contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
- 18.3. The County reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. Fairfax County and the contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

19. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:

- 19.1. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the contractor desires to assign his or her right to payment of the contract, contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

20. TERMINATION BY THE COUNTY FOR CONVENIENCE:

- 20.1. The contract will remain in force for the full period specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
- 20.2. The contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery of a Notice of Termination to the contractor at least five working days prior to the termination date specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

21. TERMINATION OF CONTRACT BY THE COUNTY FOR CAUSE:

- 21.1. If, through any cause, the contractor fails to fulfill in a timely and proper manner his or her obligations under this contract, or if the contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the contractor under the contract shall, at the option of the County, become its property and the contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- 21.2. Notwithstanding the above, the contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the contractor for the purpose of set off until such time as the exact amount of damages due to the County from the contractor is determined.
- 21.3. The Contractor and the County may, by mutual written agreement signed by authorized representatives of Contractor and the County change the terms and conditions of this Agreement, and pricing may change from time to time for Contractor's services not covered by Maintenance and Support (e.g., additional days of training and the like).

22. GENERAL GUARANTY:

22.1. Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the contractor.

23. SERVICE CONTRACT GUARANTY:

23.1. Contractor agrees to:

- a. Furnish services described in the contract at the times and places and in the manner and subject to conditions set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the contractor for infraction. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

24. OFFICIALS NOT TO BENEFIT:

- 24.1. Upon acceptance of this contract, the contractor certifies that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract in accordance with the Fairfax County Purchasing Resolution Article 2, Section 4.A.3.

25. **LICENSE REQUIREMENT:**

- 25.1. All firms doing business in Fairfax County shall obtain a license as required by Chapter 4, Article 7.2, of The Code of the Fairfax County, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm.

26. **REGISTERING OF CORPORATIONS:**

- 26.1. In accordance with Virginia Code Section 13.1-758, any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, as amended, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209.

27. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:**

- 27.1. 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 above that enters into a contract with Fairfax County pursuant to the Fairfax County Purchasing Resolution 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, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

The Contractor shall complete the attached Virginia State Corporation Commission Registration Information form.

28. **COVENANT AGAINST CONTINGENT FEES:**

- 28.1. The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

29. **SMALL AND MINORITY BUSINESS UTILIZATION:**

- 29.1. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax and its employees undertake every effort to increase opportunity for the utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible. **PLEASE COMPLETE THE ATTACHED BUSINESS CLASSIFICATION SCHEDULE.**
- 29.2. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
- 29.3. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget, CFR(Code of Federal Regulations), Part 200, Uniform Administrative Requirements, Cost

Principles and Audit Requirements for Federal Awards, as they pertain to small and minority business utilization.

30. INELIGIBILITY:

- 30.1. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent, in accordance with Article 4, Section 1 of the Fairfax County Purchasing Resolution.

31. ORDER OF PRECEDENCE:

- 31.1. In the event of conflict, the provisions of this contract shall take precedence over any other contract document.

32. DELAYS AND SUSPENSIONS:

- 32.1. The County may direct the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the contractor.
- 32.2. If the County does not direct the contractor, in writing, to suspend, delay, or interrupt the contract, the contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the contractor.
- 32.3. The contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

33. CONTRACTUAL DISPUTES:

- 33.1. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within ninety (90) days, in accordance with Article 4, Section 5 of the Fairfax County Purchasing Resolution, as amended.

34. COMPLIANCE WITH FEDERAL, STATE, AND COUNTY LAWS:

- 34.1. The contractor will comply with all applicable federal and state laws and with all County ordinances and requirements.

35. NON-DISCRIMINATION:

- 35.1. During the performance of this contract, the contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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, in accordance with Article 2, Section 4.C of the Fairfax County Purchasing Resolution, as amended.

36. DRUG FREE WORKPLACE:

- 36.1. During the performance of this contract, the contractor agrees to provide a drug-free workplace for the contractor's employees in accordance with Article 2, Section 4, B.6 of the Fairfax County Purchasing Resolution, as amended.

37. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 37.1. Fairfax County Government is fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Acceptance of this contract by the contractor acknowledges the contractor's commitment and compliance with ADA.

38. VENUE:

- 38.1. This contract and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this contract or any performance hereunder, shall be brought in the state courts of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.

39. IMMIGRATION REFORM AND CONTROL ACT:

- 39.1. Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

40. FORCE MAJEURE:

- 40.1. 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.

41. WARRANTY:

- 41.1. During the Term of this Agreement, Contractor warrants that the System will perform in the manner described in the Documentation supplied by Contractor provided the County has not made any

changes to the System. Contractor 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 Contractor by fax or email. Whatever additional materials that Contractor shall request relating to the defects or problems (such as information described in Paragraph 49 below) shall be promptly provided by the County on the appropriate medium. Upon such notification, Contractor 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 Contractor 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 Contractor within forty-five (45) days of Contractor's invoice for: (a) the time spent by Contractor personnel in evaluating the stated defects, at Contractor's then current rates for such services; and (b) the reasonable and actual travel expenses of Contractor'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 Contractor's Maintenance and Support program as described in Paragraph 49 below.

42. EXCLUSIONS OF ALL OTHER WARRANTIES:

- 42.1. The sole liability of contractor 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. Nothin herein is meant to alter or limit the potentially liability of contractor pursuant to its indemnification obligations set forth in this Contract.

43. LIMITATIONS OF ACTIONS AND LIABILITY:

- 43.1. The liability of contractor to the county for performance of the system is limited to the above warranty on the software system.

44. TITLE TO THE SYSTEM/PROTECTIVE COVENANTS:

- 44.1. 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 Contractor; that the System and Documentation and all parts and components thereof constitute valuable assets and trade secrets, and give proprietary rights to Contractor; 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 that has been properly designated in accordance with Va. Code Ann. § 2.2-4342(F) is strictly confidential and will be maintained in

confidence by the County, 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.

45. COPYING OF SYSTEM DOCUMENTATION:

- 45.1. 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 Contractor, 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.

46. USE RESTRICTIONS:

- 46.1. 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.

47. ASSIGNMENT; BINDING EFFECT:

- 47.1. Neither party hereto may assign its right or obligations under this Agreement without the prior written consent of the other party, except that Contractor 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 Contractor, 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 Contractor, or anyone who might develop systems similar to the System, or who might use Contractor'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.

48. PROGRESS REPORTS/MEETINGS:

- 48.1. Contractor and the County shall conduct meetings to review progress on a regular basis, as outlined in Exhibit A.

49. MAINTENANCE AND SUPPORT:

- 49.1 Coverage During the Term of this Agreement, subject to renewal or termination as otherwise provided herein, Contractor agrees to:
- a. 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).
 - b. Provide additional support hours before and on each election date, which will be defined

between the County and Contractor.

- c. 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 Contractor for use in conjunction with the System and sold separately).
- d. Correct or replace the System and/or provide services necessary to remedy any programming error that is both attributable to Contractor 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 Contractor of any such error in writing via facsimile or email. At its expense, the County agrees to provide Contractor, subject to any applicable County confidentiality or security requirements, 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 Contractor, 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 Contractor's standard time and material rates.

49.2. 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 a properly completed 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. Contractor 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, Contractor shall provide written notice to the County not later than April 1st of each calendar year, of the amount of the annual Use/Maintenance/Support fee for the next Renewal Term.

49.3. LATE CHARGES; TERMINATION FOR NON-PAYMENT:

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 Contractor's invoice as provided in Subparagraph 49(b) above. Subject to the provisions of Paragraph 50 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 Contractor, or as of the year-end of the then-current year's Maintenance and Support services for which payment is due.

49.4. ENHANCEMENTS AND CORRECTIONS:

Any enhancements, corrections, or alterations to, or new versions of, the System or Documentation delivered to the County by Contractor 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 in Paragraph 49d above.

49.5. TRAVEL EXPENSES:

The County shall reimburse Contractor for any reasonable and actual travel expenses incurred by

Contractor 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.

50. **BREACH/DEFAULT GENERALLY:**

- 50.2. 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, Contractor 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, Contractor 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 Contractor the System and all System backups, Documentation, and other materials delivered by Contractor to the County. Contractor 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.

51. **PATENT AND COPYRIGHT INDEMNIFICATION.**

- 51.2. Contractor 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 or system provided by Contractor pursuant to this Contract or tools employed in the development of its software or system 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 the County is not in default under any of the provisions of this Agreement. This indemnification is supplemental to the indemnification provided in paragraph 17 above.

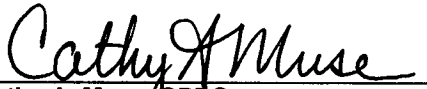
ACCEPTED BY:



Konnech Inc

4/27/2016

Date



Cathy A. Muse, CPPO
Director/County Purchasing Agent

5/19/16

Date

BUSINESS CLASSIFICATION SCHEDULE

DEFINITIONS

Small Business/Organization – is an independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

Minority Business – is a business concern that is at least **51%** owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least **51%** of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native America, Eskimo or Aleut.

Woman-Owned Business – A business concern that is at least **51%** owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least **51%** of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING ONE (1) OF THE SIX (6) BOXES IN THE CHART BELOW. This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.

Examples:

A small business, Asian woman owned, would mark box C on line 2.

A large business, African-American owned, would mark box V on line 3.

A small non-profit would mark box B on line 1.

A large business, publicly traded on NYSE or NASDAQ, would mark box Y on line 1.

Line	SMALL BUSINESS	LARGE BUSINESS	OWNERSHIP
1.	___ B	___ Y	Regardless of Ownership
2.	___ C	___ A	Women-Owned
3.	___ X	___ V	Minority-Owned

NAME OF FIRM: _____

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

Contractor:

☐ is a corporation or other business entity with the following SCC identification number:
_____ -OR-

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust -OR-

☒ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) -OR-

☐ is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options, but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number at a time after contract award if permitted by the Purchasing Agent: ☐

Exhibit A

**Konnech PollChief® Platform Managemenet System (PPMS)
Implementation and Payment Schedule**

Week	Deliverables	Milestones	Payment
PPMS-1	1st Webinar: Both Konnech and County Project Teams. Introductions, appoint personnel to project roles establish weekly webinar date and time. First Gap study--precincts and buldings. Determine absentee and early voting procedures. Konnech: Secure Servers, set up SharePoint set, secure test, production and back up domains names. Design modifications for precinct profiles and lists, building profiles and lists. Draw up precinct and building screens. County: Submit data sample sets for street indexes, buildings, precincts, and any others that may be identified. Submit data including contact information for buildings.	Servers, Domains, SharePoint	40% \$30,000
PPMS-2	Webinar: Konnech Deputy and Assistant Project Managers and County location and IT Managers. Review design modifications. Konnech: Code location modifications. Migrate data. County: Submit any additional data samples.		
PPMS-3	Webinar: Konnech Deputy and Assistant Project Managers and County location and IT Managers. Mini-training on PPMS. Give County access to PPMS. County: Test PPMS. Konnech:	PPMS Access	10% \$7,500
PWMS-4	Webinar: Konnech Deputy and Assistant Project Managers and County worker (assignment, training, and payroll) and IT managers. PPMS testing feedback. Gap study worker profiles, lists, training and pay. Konnech: Design worker modifications. County: Submit data for all worker data sets. Continue practicing on PPMS.		
PWMS-5	Webinar: Konnech deputy and assistant project managers and County worker and IT managers. Review new Poll Worker Management System (PWMS) designs. Konnech: Code worker modifications. County: Submit data sets.		
PWMS-6	Webinar: Konnech deputy and assistant project managers and County worker and IT managers. Review progress, analyze questions. Attention to training and attendance. Konnech: Design PWMS training modifications.		

Exhibit A

**Konnech PollChief® Platform Managemenet System (PPMS)
Implementation and Payment Schedule**

Webinar: Konnech deputy and assistant project managers and County worker and IT managers. Review progress, analyze questions. Attention to payroll.

PWMS-7	Konnech: Design payroll. Code training.		
	Webinar: Konnech deputy and assistant project managers and County worker and IT managers. Review progress, analyze questions. Attention to communications.		
PWMS-8	Konnech: Code payroll.		
	Webinar: Konnech deputy and assistant project managers and County worker and IT managers. Review progress, analyze questions. Mini-training on PWMS. Give county access to PWMS.	PWMS Access	
	Konnech: Alpha testing and refinements.		10%
PWMS-9	County: Test PWMS.		\$7,500
	Webinar: Konnech deputy and assistant project managers and County worker, training, and IT managers. Portal gap study.		
	Konnech: Design Poll Recruiting Training Link (PRTL) modifications.		
PRTL-10	County: Submit data sets. Submit training materials.		
	Webinar: Konnech deputy and assistant project managers and County worker, training, and IT managers. Review portal designs. Go over county testing of PWMS.		
	Konnech: Code PRTL MODIFICATIONS.		
PRTL-11	County: Continue practicing on PWMS.		
	Webinar: Konnech deputy and assistant project managers and County worker, training, and IT managers. Go over all feedback, any new modifications.		
	Konnech: Testing of communications. Additional modifications as needed in PRTL.		
PRTL-12	County: Continue practicing and testing PPMS and PWMS training and payroll screens.		10% \$7,500
	Webinar: Konnech deputy and assistant project managers and County worker, training, and IT managers. Go over all feedback, any new modifications. Provide county access to PRTL.	PRTL Access	Final Payment 30%
PRTL-13	Go LIVE.	Total	\$22,500 \$75,000

Exhibit A

**Konnech PollChief® Platform Managment System (PPMS)
Implementation and Payment Schedule**

Description	1st Year Initial Set-up Fee*	Annual Suport & Maintenance Fee**
PollChief® Platform, Workers, Portal	\$75,000	\$39,375

Assumes standard PollChief product with only modifications necessary to meet its purpose.

*Initial fee includes design, development, data migration, hosting, share point, training.

** Annual fee includes:

- License
- Hosting
- Remote backup of customer data
- Annual software releases with system upgrade(s)
- Help desk support
- "Bug" fixes
- Add/Change consultation
- 10,000 voice calls/year from Konnech communication server

Extra options: \$100.00 per hour

If on-site visits are necessary, food, transportation, and lodging costs will also be charged.

Exhibit B
HOSTING SERVICES

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 C

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.

Fairfax 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.

Exhibit C
Sample Illustration of an Accessible Website Page

