

## CONTRACT

This agreement, entered into on the 8<sup>th</sup> day of December 2004, by and between Kosciusko County, Indiana

(hereinafter "County") and MICROVOTE GENERAL CORP. (hereinafter "Company"), is

executed due to consideration of the following mutual covenants, terms, conditions and promises:

### A. EQUIPMENT AND PRODUCTS

#### 1. SALE OR LEASE TERMS

Company agrees to provide computer equipment, hardware, peripheral equipment and other products (hereinafter "equipment and products") as identified (with a price schedule per unit) in Response to Bid Specifications, and the County agrees, subject to the terms of this contract, to accept equipment and products identified in Response to Bid Specifications under the following procurement terms:

Sale of Equipment. Company agrees to sell and the County to buy the equipment and products of Company specified in Response to Bid Specifications, for a total purchase price of \$772,819. (See Addendum 'D')

#### 2. MAINTENANCE AND INSPECTION

The Company shall supply all parts necessary to maintain the Equipment and Products in good working condition, free of charge, for a period of 18 months after the receipt and inspection by County, of respective Equipment and Products. All parts supplied by the Company shall be new standard parts and shall be substituted and exchanged for the old parts which shall become the property of the Company. Support services shall be provided by the Company free of charge for the warranty described in Addendum "A". These services are highlighted below:

#### 3. RESPONSIBILITIES OF THE COMPANY

(a) Manuals. The Company agrees to prepare and to furnish to the County, at no

additional cost, manuals describing the design, operation and required maintenance of the equipment and products. The manuals shall be written so as to be understandable to a layman. The number of manuals needed will be determined by the County.

(b) Training of Personnel. The Company shall train those persons selected by the County in the following areas: (Such training shall be limited to instruction in the mechanics of the functions listed in this section and shall not include any legal or policy advice relating to the conduct of elections).

(c) Support Services. The Company, only at the specific request of the County, may render the following support services, at each election, in exchange for the following fees (Addendum "B"). These fees shall apply after the 18 month warranty period. The Company shall provide such training on-site in Kosciusko County and, at the County's option, at the Company's headquarters, operator support and manufacturing facility. The Company shall also provide all necessary on-site precinct official training for election day operations for the 18 month warranty period, including training manuals for all precinct officials. During this period, the Company shall supervise the following support services at each election during the warranty period:

1. Preparation of all ballot information.
2. Programming all voting devices.
3. Preparation of Absentee Ballots.
4. All Precinct Training Seminars.

The Company shall inform and advise County of all changes, upgrades and modifications available in the Equipment and Products as soon as possible.

(d) Special Election Day Services. For each election to be held during the warranty period in which the Products and/or Equipment are to be utilized by the County, the Company agrees to provide on Election Day, sufficient staff to perform any emergency

repair or support services that may be necessary.

## **B. SOFTWARE**

### **1. TERMS**

The Company hereby grants the County a nontransferable and nonexclusive license to:

- (a) Use, load, execute, store or display the computer programs (hereinafter "Licensed Programs") and each copy, update or modification of any or all Licensed Programs.
- (b) Use all "Support Documentation" designated as any diagrams, manuals, instructions, and other similar materials, and any copies of any of the foregoing, related to the Licensed Programs and delivered to the County in accordance with the provisions of this License.
- (c) Have one (1) back-up copy of the Licensed Programs, which shall be supplied by the Company to the County.

### **2. NO MODIFICATION OR MERGING.**

The County shall not translate, update or modify the Licensed Programs, or merge the Licensed Programs into other software, except as may be necessary to incorporate Updates delivered to the County by the Company, unless by written express consent of the Company.

### **3. TITLE.**

The County acknowledges that title to all-intellectual property rights, including patent, trademark, copyright and trade secret rights, and title to all ownership rights in all copies of media bearing the Licensed Programs and Support Documentation, shall be retained by the Company.

### **4. DELIVERY:**

Subject to conditions beyond its reasonable control, the Company shall deliver one (1) copies of the Licensed Programs in machine-readable object code and related Support Documentation to the County within thirty (30) days after execution by the Company and the County of this Agreement. The Company shall bear the cost of such delivery.

## 5. RISK OF LOSS.

The Company will relieve the County of responsibility for all risk of loss or damage to the Licensed Programs and Support Documentation occurring during shipment. If the Licensed Programs or Support Documentation are lost or damaged after delivery to the County, the Company will replace the Licensed Programs or Support Documentation at the Company's then applicable charges for such replacement.

## 6. INSTALLATION AND TRAINING

- (a) The Company shall assist the County in installing the Licensed Programs on designated machines and shall train the County's employees in the use of the Licensed Programs for the warranty period.
- (b) The County shall prepare the designated sites in such a manner as to permit proper installation of the Licensed Programs, particularly with respect to electric power and ambient conditions. The County shall be responsible for the compatibility of the designated machine supplied to the Company by the County.

## 7. MODIFICATIONS AND UPDATES

- (a) In the event the Company makes any updates to the Licensed Programs during the term of this License, the Company agrees to offer such updates to the County, along with related Support Documentation, as long as the Annual Software Maintenance Agreement has been signed and paid in full as described in Addendum "C".
- (b) In the event the Company makes any enhancements to the Licensed Programs during the term of this License, the Company agrees to offer such enhancements to the County if such offer would not violate any agreement with any other customers of the Company. Additional license fees for each such enhancement will be negotiated with the County at the time the enhancement is so offered.
- (c) The County agrees to use the updated Licensed Programs delivered to the County by the Company. If new copies of the Licensed Programs with updates or enhancements are delivered to the County by the Company, the County shall return all old copies of the Licensed Programs to the Company Within ten (10) days of such delivery.

## 8. RESTRICTIONS ON DISSEMINATION

- (a) The County acknowledges that the Licensed Programs and Support Documentation are Confidential information that is the property and trade secret of the Company. The

County will take all reasonable steps to maintain the confidentiality of this information.

- (b) The County shall not, without the Company's prior written permissions, disclose, provide, or make available any of the Licensed Programs or Support Documentation, in any form to any person, except to employees or consultants of the County whose access is necessary to enable the County to exercise its rights under this agreement.
- (c) The County shall require any employee or consultant having such access to agree to maintain the confidentiality of the Licensed Programs and Support Documentation.

#### 9. COPYRIGHT AND COPYING

- (a) Except as authorized in advance by the Company, the County shall not copy all or any part of the Licensed Programs and Support Documentation.
- (b) The County shall not permit any other person or organization to copy any of the Licensed Programs or Support Documentation.
- (c) All Authorized Copies delivered to the County shall include the following legend:

Copyright by MicroVote General Corp. as an unpublished work created in 1999 and first licensed in 1999. THIS COMPUTER PROGRAM AND/OR DOCUMENTATION IS CONFIDENTIAL, PROPRIETARY INFORMATION AND A TRADE SECRET WHICH IS THE PROPERTY OF "THE COMPANY." ALL USE, DISCLOSURE AND/OR REPRODUCTION NOT EXPRESSLY AUTHORIZED BY MICROVOTE GENERAL CORP. IS PROHIBITED. THIS COMPUTER PROGRAM AND/OR DOCUMENTATION MAY ALSO BE PROTECTED UNDER THE COPYRIGHT AND TRADE SECRET LAWS OF NON-U.S. COUNTRIES. ALL RIGHTS RESERVED.

- (d) The County shall not remove this legend from any Licensed Programs or Support Documentation.
- (e) The County shall maintain a log of the number and location of all originals and copies of the Licensed Programs and Support Documentation shall be kept only at a specified site designated by the County, unless the Company provides written approval, at the Company's discretion, to the County to maintain such copies at a location other than the designated site.

#### C. TERMS AND CONDITIONS APPLICABLE UNDER SECTIONS A AND B

##### 1. RESPONSIBILITIES OF COUNTY

- (a) The County shall provide the Company full access during reasonable business hours to the equipment and products to perform any maintenance services required during the term of this Agreement.
- (b) If maintenance is performed at the County's facilities, the County shall provide the

Company with adequate working space including, but not limited to, heat, light, ventilation, electric current and outlets, and adequate storage space, if required by the Company, for spare parts for equipment and products. Such working space and storage space shall be within a reasonable distance from the equipment and products, and shall be provided to the Company by the County at no charge.

- (c) If the Company so requests, the County shall record, in reasonable detail, operating information for equipment and products. Such records shall adequately show the operating history of equipment and products, including any history of malfunctions.

## 2. FORCE MAJEURE.

The Company and/or the County shall be excused from performance hereunder for any period the Company or the County is prevented from performing their respective obligations hereunder in whole or in part as a result of an act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control. In addition, such nonperformance shall not be a ground for termination or default.

## 3. WAIVER.

Any waiver by either part of any provision of this Agreement must be in writing, and shall not imply subsequent waiver of that or any other provision.

## 4. NOTICES.

Except as otherwise noted in this Agreement, any notice, demand, request or other communication required to be given by either party to the other party pursuant to this Agreement shall be in writing and shall be mailed either by first class, registered or certified mail, return receipt requested, or transmitted by hand delivery, telegram or telex, to the appropriate addresses as follows:

\*County:           Kosciusko County Clerk  
                      121 N Lake Street  
                      Warsaw, IN 46580

\*Company: MicroVote General Corporation  
                  6366 Guilford Avenue

Indianapolis, Indiana 46220

or to such other address as either party may hereinafter substitute by written notice given in the manner prescribed in this paragraph. Notice shall be deemed given three (3) days after mailed, or at such time as it is actually delivered to the addressee or such attempted delivery is refused by the addressee.

5. ASSIGNMENT.

Neither party may, without prior written consent of the other party, assign or otherwise transfer this Agreement, or any of the rights or obligations under this Agreement, to a third party.

6. GOVERNING LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.

7. ATTORNEY'S FEES.

Should any litigation be commenced between the parties hereto concerning the terms of this Agreement, the equipment, products, services, software or obligations described herein, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorney's fees in such litigation which shall be determined by the Court in the underlying litigation or in a separate action brought for that purpose.

8. INDEMNITY.

The Company shall indemnify and hold harmless the County from any and all damages, judgments, liens, penalties and costs arising from a breach of the terms contained in this Agreement or negligence on the part of the Company in fulfilling the terms herein.

9. WARRANTIES.

The Company warrants that the Equipment, Products and Software shall be merchantable on the date of execution of this Agreement and on the respective dates of delivery. The Annual Software Maintenance Agreement will cover both Election Management Software(EMS)and Infinity® Firmware upgrades and enhancements during this period.

10. COMPLETE AGREEMENT.

The complete Agreement between MicroVote General Corp. and Kosciusko County, Indiana will consist of the following:

- (a) the Request for Proposal issued by Kosciusko County and all addenda;
- (b) MicroVote General Corporations' response to the Request for Proposal and all attachments; and
- (c) this Contract and its attachments. This Agreement cannot be modified except by written agreement signed by all parties hereto.

**MICROVOTE GENERAL CORP.**

**DATED:** \_\_\_\_\_

\_\_\_\_\_

**James Ries, PRESIDENT, M.G.C.**

**(CORPORATE SEAL)**

**KOSCIUSKO COUNTY**

**DATED:** \_\_\_\_\_

\_\_\_\_\_  
**COUNTY COMMISSIONER**

\_\_\_\_\_  
**COUNTY COMMISSIONER**

\_\_\_\_\_  
**COUNTY COMMISSIONER**

**(COUNTY SEAL)**

### **Addendum "A"**

### **WARRANTIES**

***Limited Warranty***- Company warrants to County that it will deliver the Voting Panels in conformity with the plans and specifications furnished to County and the DRE Standards except as may be modified by (i) any State Standard, and (ii) any customized plans and specifications provided by County and agreed to by Company. Company further warrants that the Voting Panels shall be free from defects in material and workmanship for eighteen (18) months from the date of delivery.

THIS LIMITED WARRANTY IS EXPRESSLY MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

If a Voting Panel shall fail to perform under normal operation by properly trained County personnel, Company shall repair or replace all of the defective parts returned to Company, freight prepaid; PROVIDED, HOWEVER, THAT COMPANY'S LIABILITY FOR DEFECTIVE PARTS IN THE VOTING PANELS SHALL BE LIMITED SOLELY TO REPAIR OR REPLACEMENT OF SUCH PARTS.

UNDER NO CIRCUMSTANCES SHALL Company BE LIABLE FOR COUNTY'S OTHER DAMAGES, LOSSES OR EXPENSES. County shall be responsible for paying all costs of returning defective parts to Company for repair or replacement.

**Addendum "B"****MICROVOTE PRODUCT PRICE LIST**

Effective January 2003

**INFINITY VOTING PANEL PRODUCTS**

<b>Order Number</b>	<b>Model Number</b>	<b>Description</b>	<b>Price</b>
100000	ED1173	VP-1 VOTING PANEL	3,350.00
100010	MV/INFBTH	VP-1 VOTING BOOTH	200.00
100050	MV/WRTSHLF	WRITING SHELF	12.50
100100		BLACK CORDURA BAG FOR INFINITY PRINTER & ACCESS	58.00
101240	EMS DL CABLE	EMS DOWNLOAD CABLE	16.00
102010	FW3012-760	VP-1 POWER SUPPLY WITH POWER CORD	30.00
103000	DPU-414-30B	SEIKO 414 PRINTER	450.00
103010	PW4007-U1	SEIKO 414 POWER SUPPLY	36.00
103020	BP 4005	SEIKO 414 BATTERY PACK	48.50
103030	SS112-25A	SEIKO PAPER ROLL	2.12
103050	DPU-414 PR CBL	PRINTER CABLE SEIKO DPU-414	16.00
104000	GCR410	VP-1 410 CARD READER	95.00
104010	MPEMV16k #95769	VP-1 START CARD	7.00
104020	MPEMV16k #95768	VP-1 VOTE CARD	7.00
104030	MPEMV128 #95767	VP-1 TALLY CARD	15.00
104040	MPEMV128 #95770	VP-1 ACCUM CARD	15.00
104050	MPCOS-EMV	VP-1 VOTEN CARD	7.00
104100	Double Talk	ADA SPEECH SYNTHESIZER (with headphones)	312.00
105000	MV/INFPCT	INFINITY PRECINCT ENVELOPES	0.30
105010	MV/INF TAL	INFINITY TALLY ENVELOPES	0.30
105020	MV/INF POS	INFINITY WALL POSTER	2.50
105030	MV/TM/INF	INFINITY TECHNICAL MANUAL	25.00
105040	MV/INF/EMS	EMS PROGRAM MANUAL	25.00
105050	MV/INF/PW	INFINITY POLL WORKERS MANUAL	25.00

**ABSENTEE CARD READER SYSTEMS**

<b>Order Number</b>	<b>Model Number</b>	<b>Description</b>	<b>Price</b>
409192	MV/ABC/192	192 ABSENTEE BALLOT CARD	0.17
409256	MV/ABC/256	256 ABSENTEE BALLOT CARD	0.17
409312	MV/ABC/312	312 ABSENTEE BALLOT CARD	0.17
409370	MV/ABC/370	370 ABSENTEE BALLOT CARD	0.17
409402	MV/ABC/402	402 ABSENTEE BALLOT CARD	0.17
409512	MV/ABC/512	512 ABSENTEE BALLOT CARD	0.17
409600	MV/ASE	ABSENTEE SECRECY ENVELOPE	0.28
420100	OMR-9002	MANUAL FEED ABSENTEE CARD READER	2,400.00

**BALLOT PRINTING PRODUCTS**

<b>Order Number</b>	<b>Model Number</b>	<b>Description</b>	<b>Price</b>
410000	MV/2400CFLP	2400 CONTINUOUS FEED LASER PRINTER	7,900.00
410100	MV/LPTK/24	2400 LASER PRINTER TONER KIT	200.00
410120	MV/LPTK/16	1600 LASER PRINTER TONER KIT	150.00
410130	MV/1600DK	1600 LASER PRINTER DEVELOPER KIT	495.00
410135	MV/2400DK	2400 LASER PRINTER DEVELOPER KIT	495.00
410140	MV/OPC	LASER PRINTER OPC KIT for 1600 or 2400	375.00

**SERVICES**

<b>Order Number</b>	<b>Model Number</b>	<b>Description</b>	<b>Price</b>
500100		ELECTION DAY SUPPORT	2000.00 per day
500110		VOTING MACHINE SETUP	75.00 machine
500120		VOTING MACHINE SETUP SUPERVISION	1000.00 per day
600110		VOTING MACHINE TECHNICAL TRAINING	1000.00 per day
600100		EMS SOFTWARE TRAINING	1000.00 per day
600130		MEMS SOFTWARE TRAINING	1000.00 per day
600120		POLLWORKER TRAINING	1000.00 per day
800100		MV-464 PREVENTIVE MAINTENANCE	55.00 machine

ADDENDUM "C"ELECTION MANAGEMENT SYSTEM  
SOFTWARE MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this 1<sup>ST</sup> day of December, 2004, by and between the County of Kosciusko, Indiana, acting by and through the Board of County Commissioners, hereinafter referred to as the "County", and MicroVote General Corporation, an Indiana corporation, hereinafter referred to as "MicroVote".

WITNESSETH:

WHEREAS, the County desires to contract for election management system software maintenance for the MicroVote Election Management System (EMS) software, and

WHEREAS, MicroVote has expressed a willingness to provide those services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. MicroVote agrees to provide the following services:
  - a. Unlimited software upgrades: Upgrades and release notes will be made to conform with state requirements and will be sent once approved by the State Election Commission. These upgrades will also comply with Federal Election Commission standards and any changes with these standards.
  - b. Technical Support: 24 hour technical support will be available to include telephone support for "help desk" level inquiries. In field technical support will be available, if needed, on demand.
  - c. Version Control: MicroVote will control all software versions and will require County to install the most recent upgrade to ensure versions throughout the United States.
2. The parties hereto agree that County shall pay to MicroVote for the work performed under this agreement as set forth above, the sum of Five Thousand Five Hundred Dollars (\$5500.00) per year. MicroVote understands and agrees that this agreement is contingent upon the approval and appropriations of monies by the Kosciusko County Board of Commissioners. County agrees to pay the said fee within sixty (60) days of the date of the invoice.
3. The term of this agreement shall be for a period of one (1) year to commence on the 1st day of January, 2006.

4. No portion of the work under this agreement shall be sublet, assigned, or otherwise disposed of, except with the written consent of County. Consent to sublet, assign or otherwise dispose of any portion of the work under this agreement shall not be construed to relieve MicroVote from any responsibility for the fulfillment of this agreement.

5. MicroVote specifically agrees that in performance of the services herein enumerated that they will comply with any and all state, federal and local statutes, ordinances, and regulations.

6. Nothing under this agreement shall be construed to give any rights or benefits in this agreement to anyone other than MicroVote and County, and all duties and responsibilities pursuant to this agreement will be for the sole and exclusive benefit of MicroVote and County and not for the benefit of any other party.

7. The County, insofar as authorized by law, binds itself and its successors, and MicroVote binds its successors, and assignees to the other party of this agreement with respect to all covenants of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

MICROVOTE  
GENERAL CORPORATION

KOSCIUSKO COUNTY

By Mandy Miller

Mandy Miller, Director of Operations

Chris Hunter

Authorizing Signature for County

ATTEST: (if applicable)

Sue Ann Mitchell

Clerk to the Board

**'ADDENDUM D'**

Through the State of Indiana's HAVA Plan each county has potential for software reimbursement in total of \$50,000. The plan also allows for the county to retain the difference between true cost of software (\$33,000) and reimbursement (\$50,000) for a total of \$17,000 to be used for additional equipment or election needs. If the State grants Kosciusko County the margin of \$17,000 upon first application of reimbursement MicroVote agrees to sell the County an additional six VP-1 Infinity Voting Panels at a cost of \$2,833 per panel for an exact total of \$17,000.

If the State of Indiana denies the margin of software reimbursement then Kosciusko County may purchase 6 fewer machines for a total of 213 VP-1 Infinity Voting Panels and necessary amenities for a total contract price of \$755,819.