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# MEMO

APPROVED  
04/12/2021



DATE: April 7, 2021

FROM: Megan L. Blackford  
Assistant Procurement Director

A handwritten signature in black ink that reads "Megan L. Blackford". The signature is written in a cursive style and is positioned to the right of the printed name and title.

TO: Board of County Commissioners

SUBJECT: Agreement – Tenex Software Solutions, Inc.

Submitted for your approval and execution is the attached Agreement between the Board of County Commissioners on behalf of Tulsa County Election Board and Tenex Software Solutions, Inc. for software designed for the staffing and scheduling requirements for election offices as further described in the attached.

Respectfully submitted for your approval and execution.

MLB / jdf

SUBMITTED FOR: The April 12, 2021 BOCC meeting agenda.

CMF# 20210680

**Tenex Software Solutions, Inc.****Poll Worker Management SaaS Contract****APPROVED**  
04/12/2021**Tenex Software Solutions, Inc.****ELECTION FORCE SaaS CONTRACT**

This contract ("Agreement") is entered into on this 12th day of April, 2021 (the "Effective Date") by and between Tenex Software Solutions, Inc., a Florida corporation, having its principal place of business at 5021 W. Laurel St., Tampa, Florida 33607 ("Tenex" "Vendor" or "Company"), and Board of County Commissioners of the County Tulsa on behalf of the Tulsa County Election Board ("Customer"), and governs the provision of the Election Force (the "Solution" as defined herein) by Tenex to Customer, and the use of the System(s) (as defined below) by Customer, together with related services provided by Tenex to Customer, all in accordance with its terms. For convenience, Tenex and Customer are sometimes referred to in the Contract Documents as "Parties".

**1.0 DEFINITIONS**

The following definitions will apply:

- a. **System(s).** "System(s)" means the individual modules or products that make up the system. The overall systems are known as "Election Force"
- b. **Customer Data.** "Customer Data" means any of the customer's information, documents, or electronic files that are provided to Tenex including election, training, and/or poll worker data.
- c. **Service.** "Service" means Tenex's work product necessary for providing poll worker management, online learning platform and election related support.
- d. **Support.** "Support" means the ongoing services by Tenex to support & maintain the System as defined below.
- e. **Solution(s).** "Solution(s)" means the Election Force Solution provided by Tenex, under the Agreement, inclusive of all software and services required to make the Election Force system fully functional
- f. **Contract Documents.** "Contract Documents" means this Agreement, including all exhibits and attachments
- g. **Agreement.** "Agreement" shall mean this software purchase agreement document, including all exhibits and attachments hereto.
- h. **Deliverables.** "Deliverables" shall mean any products furnished or services provided by or through Tenex under the Contract Documents.
- i. **CAS.** "CAS" or "Custom Application Software" means custom software components of the Solution(s) developed by Tenex and required to fulfill the specifications in the Contract Documents including, but not limited to, parametric instructions, program source statements, and customization of standard software components. CAS does not include software developed by other or third parties ("TPS").
- j. **TPS.** "TPS" means the software components of the Solution(s) other than CAS, including computer program, documentation, updates and related material. Software developed by entities other than Tenex.
- k. **Software.** "Software" means A collection of computer programs, codes or data used to direct the operation of a computer or iPad device, including any documentation giving instructions on how to use them, including CAS and TPS.
- m. **Acceptance.** "Acceptance" means written acceptance of Deliverable(s) provided by Tenex under the Agreement following successful completion of acceptance testing of the Solution(s) by Customer. Payment, progress payments, or partial use of the Solution(s) by the Customer shall not constitute acceptance of Deliverables not furnished, implemented or operating in accordance with the requirements of the Contract Documents.
- o. **Contract Price.** "Contract Price" means the maximum price to be paid by Customer for all Deliverables to be rendered by or through Tenex under the Agreement for all Deliverables, including a fully implemented and fully functioning Solution(s) as described in the Contract Documents, together with the cost of the Warranty Period following Acceptance.
- p. **Purchased Product(s).** "Purchased Product(s)" means the complete solution(s) being licensed to County by Tenex on a yearly basis.
- q. **Warranty Period.** "Warranty Period" means the 12-month period after Acceptance of the Solution(s) by Customer during which period Tenex will correct any material deficiencies in the Solution(s) or Deliverables at Tenex's expense.
- r. **Prime Time Hours.** "Prime Time Hours" means any time during the 30 days prior to election day, election day, and 21 days after election day.
- s. **Major Downtime.** "Major Downtime" means problem(s) with Precinct Central or its components which significantly interfere with the functionality or reliability of its operations or intended purpose.

CMF# 20210680

## 2.0 DELIVERABLES & DEADLINES

Tenex Software Solutions, Inc. shall perform the Services and provide the software (“Software”) to Customer, according to a Project Schedule to be outlined at the outset of the project. Tenex will implement the Election Force Solution (“Solution”) for the Customer, overviewed below.

Election Force: Staffing and training for elections is indeed a daunting and labor-intensive task. Poll workers must be scheduled for training, scheduled for work, and paid accordingly. While most systems today provide some amount of functionality for managing poll workers, the management requirements do not end at poll workers; there is also the complexity of managing schedules for trainers, early voting staff, roving technicians, and temporary office-staff to name a few. Election Force is an integrated and innovative solution that is designed specifically for the staffing and scheduling requirements for election offices. It also includes a front facing portal that allows workers to apply for work, provide availability, schedule training, and more.

Any delays in Tenex’s performance caused by Customer third parties shall not constitute a breach of this Agreement by Tenex. Any delays in Customer’s performance caused by Tenex Software Solutions, Inc. or third parties shall not constitute a breach of this Agreement by Customer.

### **3.0 SOFTWARE LICENSE AND SERVICE AGREEMENT**

#### **3.1 Use Rights**

During the term and subject to the terms of this Agreement, Tenex hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right to permit Customer's Users to use the Solution(s) and its Components for Customer's business purposes.

#### **3.2 License and Use Restrictions**

Customer shall not, directly, indirectly, alone or with another party, (i) copy, disassemble, reverse engineer, or decompile the System or its Components; (ii) modify, create derivative works based upon, or translate the System(s) or its Components; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System(s) In any form to any other party, (iv) describe, show, tell, or explain any feature or portion of features or capabilities to any party including other vendors of Customer nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. You acknowledge and agree that Tenex shall own all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System(s) and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer.

#### **3.3 Customer Data**

Customer owns all right, title, and interest in the Customer Data. Customer hereby grants to Tenex, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify and display the Customer Data solely for the purposes of the Customer's use of the System(s). Tenex shall not use the Customer Data except to improve the System(s) and as necessary to perform its obligations set forth in this Agreement.

#### **3.4 Security**

Customer is solely responsible for maintaining the security of all usernames and passwords granted to it, for the security of its information systems used to access the System(s), and for its Users compliance with the terms of this Agreement. Tenex will act as though any electronic communications it receives under Customer's usernames have been sent by Customer. Customer will immediately notify Tenex if it becomes aware of any loss or theft or unauthorized use of any Customer's passwords or usernames. Tenex has the right at any time to terminate or suspend access to any Customer if Tenex believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System(s) or Tenex's network.

All performance under this Contract, shall be in accordance with the Customer's security requirements, policies, and procedures. Vendor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to Customer systems accessed in the performance of services in this Contract.

The Customer agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection, and security of proprietary software and other proprietary data.

## **4.0 SUPPORT**

### **4.1 Updates**

Tenex shall deliver Updates to the System(s) that apply to the Customer's current edition at no additional charge. Only those Updates that apply to the Customer's current edition will be delivered automatically to the Customer at no additional charge.

### **4.2 Error Correction**

Tenex shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Tenex's normal business hours. Customer shall provide such access, information, and support as Tenex may reasonably require in the process of resolving any Error.

### **4.3 Support Exclusions**

Tenex is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence, or willful misconduct of the Customer, including any unauthorized modifications of the System(s) or its operating environment; (ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Tenex's firewall).

## **5.0 OWNERSHIP OF PURCHASED PRODUCTS**

### **5.1 Warranties**

Tenex warrants and represents that it is, and on the date of the delivery of the Product(s) shall be, the sole owner and copyright holder of the Purchased Product(s); that it has, and on the date of the delivery of the Purchased Product(s) shall have, the full right and authority to grant this license; and that neither this license nor performance under this Agreement does or shall conflict with any other agreement or obligation to which Company is a party or by which it is bound.

### **5.2 Deliverables**

Title to all other Deliverables, such as training documentation, to be provided to Customer by or through Tenex as a part of this Agreement shall remain sole property of Tenex and should not be distributed, shared or shown to any other party without written explicit permission from an authorized Tenex employee.

## 6.0 FEES, EXPENSES & PAYMENT

### 6.1 Project Fees

Subject to Customer's governing body making sufficient annual fiscal appropriations for the Project Fees. SHI (Software House International) will be paying the following fees on behalf of the Customer for use of the Election Force Solution.

- **\$39,000.00** to be billed first year, (April 1<sup>st</sup>, 2021 – March 31st, 2022).
- **\$39,000.00** to be billed on the 1<sup>st</sup> year anniversary of the contract.
- **\$39,000.00** to be billed on the 2<sup>nd</sup> year anniversary of the contract.
- **\$39,000.00** to be billed on the 3<sup>rd</sup> year anniversary of the contract.

### 6.2 Expenses

Unless an expense is approved in advance by Customer, Tenex Software Solutions, Inc. shall be responsible for all expenses incurred while performing services under this Agreement.

### 6.3 Payment Terms

Customer will pay Tenex Software Solutions, Inc. as follows:

- Tenex Software Solutions, Inc. will submit an invoice to SHI, (Software House International) and send this agreement to the customer. SHI will pay for the full amount of year 1 software within 30 days.
- Tenex Software Solutions, Inc. will submit an invoice annually at the beginning of the contract year. Payment will be due from Customer on receipt of invoice subject to Customer's governing body making sufficient annual fiscal appropriations.
- Tenex Software Solutions, Inc. will have the right to terminate service in the event of non-payment by SHI.

## 7.0 INTELLECTUAL PROPERTY

### 7.1 Intellectual Property Ownership

Tenex Software Solutions, Inc. owns the entire copyright, title and interest in the following content ("Content"):

- All information regarding Election Force software, scripts used to create reports, data transformation utilities and monitoring modules used to keep track of the health of the system(s).
- All training materials and documentation provided to the customer.

Customer will secure all necessary rights to copyright, trademark or other intellectual property to any materials it submits to Tenex Software Solutions, Inc. for use in the Services.

Nothing in this section will affect ownership of intellectual property created and owned by any entities not a party to this Agreement and not pursuant to an agreement with Tenex. Prior agreements for other products will not be affected by this agreement.

### 7.2 Warranty

Tenex Software Solutions, Inc. warrants that it has the rights and authority to grant all assignments and licenses granted by Tenex Software Solutions, Inc. in this Agreement.

## **8.0 TERM & TERMINATION**

### **8.1 Term**

The term of this Agreement shall commence on the April 1, 2021. The first term shall be 12 months and will may be renewed as agreed in writing for one-year terms (12 months), subject to review, for up to four years. This contract will automatically terminate after the end of the first term if not renewed annually in writing. Tenex has fulfilled their software as a service subscription agreement obligation, and payment of all Project Fees and Expenses as specified in this Agreement has been completed, unless otherwise extended by mutual written agreement or terminated in accordance with this Agreement.

### **8.2 Termination**

(a) Either party may terminate this Agreement effective immediately if the other party (i) commits any material breach or default of this Agreement; (ii) becomes the subject of any voluntary or involuntary proceeding under the U.S. Bankruptcy Code or state insolvency proceeding and such proceeding is not terminated within sixty (60) days of its commencement; or (iii) ceases to be actively engaged in business and has not assigned this Agreement.

(b) If this Agreement is terminated other than by reason of a material breach by Tenex, Tenex Software Solutions, Inc. shall be entitled to a pro-rated payment for work in progress based on the percentage of the Services then completed, as reasonably determined by Customer and Tenex.

## **9.0 CONTRACTOR RELATIONSHIP**

Tenex Software Solutions, Inc. is an independent contractor, and neither Tenex Software Solutions, Inc. nor Tenex's employees or contract personnel are, or shall be deemed, Customer's employees. This Agreement does not create a partnership relationship. Neither Tenex Software Solutions, Inc. nor Customer has authority to enter into contracts on the other's behalf.

## **10.0 NON-SOLICITATIONS & CONFIDENTIAL INFORMATION**

### **10.1 Non-solicitation**

During, and for a period of one year after termination of this Agreement, Customer agrees not to solicit or recruit Tenex's employees, contractors, or freelancers of which Customer becomes aware as a result of Tenex's services for Customer.

### **10.2 Confidential Information**

Tenex Software Solutions, Inc. and Customer agree not to use or disclose to any third party, either during or after the term of this Agreement, any proprietary or confidential information of the other party without the other party's consent or as required by law. Tenex Software Solutions, Inc. and Customer shall not be restricted in using any material, which is publicly available, already in their possession, or known to them, or which is rightfully obtained from sources other than the other party.

Proprietary or confidential information includes business plans, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind owned by Tenex Software Solutions, Inc. or by Customer; and any information marked "Proprietary" or "Confidential."

## **11.0 WARRANTIES & REPRESENTATIONS**

Tenex Software Solutions, Inc. warrants that it is able to complete the Services in a professional and timely manner; that any Project Deliverables shall be original or all necessary permissions and releases obtained and paid for; and that any Project Deliverables shall not contain any false, misleading, libelous or unlawful matter.


Customer warrants that any material given by Customer to Tenex Software Solutions, Inc. for use in the Services under this Agreement shall be original or all necessary permissions and releases obtained and paid for; and that any such material shall not contain any false, misleading, libelous or unlawful matter.

## **12.0 LIABILITY**

### **12.1 Total Liability**

In no event shall Tenex's aggregate liability for all cases or controversies arising out of the subject matter of this Agreement, whether in contract, tort or otherwise, exceed the aggregate payments actually received by Tenex Software Solutions, Inc. under this Agreement. In no event will Tenex Software Solutions, Inc. be liable to Customer or any third party for any special, incidental

or consequential damages or lost profits, whether based in breach of contract, tort (including negligence), product liability or otherwise, and whether or not Tenex Software Solutions, Inc. has been advised of the possibility of such damage.

<p><b>Client: Board of County Commissioners of the County of Tulsa on behalf of Tulsa County Election Board</b></p>	<p><b>Contractor: Tenex Software Solutions, Inc.</b></p>
<p>Signature: </p> <p>Name: <u>Stan Sallee</u></p> <p>Title: <u>Chairperson</u></p> <p>Mailing Address: <u>218 W. 6th St., 9th Floor</u>  <u>Tulsa, OK 74119</u></p> <p>Date: <u>04/12/2021</u></p>	<p>Signature: </p> <p>Name: <u>Ravi Kallem</u></p> <p>Title: <u>President</u></p> <p>Mailing Address: <u>5021 W. Laurel Street</u>  <u>Tampa, FL 33607</u></p> <p>Tax ID #: <u>59-3647858</u></p> <p>Date: <u>April 6, 2021</u></p>

Approved as to form:

James G. Rea Digitally signed by James G. Rea  
 Date: 2021.04.06 15:24:04 -05'00'  
 Assistant District Attorney

Attest:    
 Michael Willis, County Clerk