

RESOLUTION NO. 2103

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR OF THE CITY OF SALISBURY TO SIGN A LICENSE AGREEMENT WITH SALISBURY UNIVERSITY FOR THE INSTALLATION OF THE SALISBURY UNIVERSITY LOGO ON THE SOUTHSIDE ELEVATED STORAGE TANK

WHEREAS, the City of Salisbury is in the process of awarding the contract for the Southside Elevated Water Storage Tank to be constructed on a City owned parcel located between Milford Street and Power Street near South Division;

WHEREAS, the City of Salisbury permitted the Delmarva Shorebirds to place their logo on one elevated storage tank;

WHEREAS, Salisbury University has requested permission to place its logo on the Southside Elevated Water Storage Tank;

WHEREAS, the City of Salisbury recognizes the contributions that Salisbury University makes to improve the community;

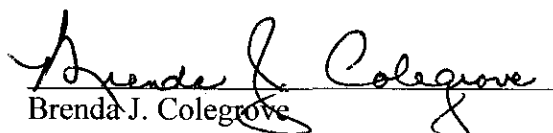
WHEREAS, the Department of Public Works supports this request; and

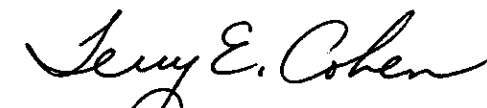
WHEREAS, Salisbury University agrees to pay for the logo installation and maintenance in accordance with the agreement;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND authorizes the Mayor of the City of Salisbury to sign a License Agreement to permit Salisbury University to place and maintain the Salisbury University logo on the Southside Elevated Water Storage Tank.

THIS RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on September 26, 2011 and is to become effective immediately upon adoption.

ATTEST:

  
Brenda J. Colegrove  
CITY CLERK

  
Terry E. Cohen  
PRESIDENT, City Council

APPROVED BY ME THIS

27<sup>th</sup> day of September, 2011

James Iteon, Jr.  
MAYOR, City of Salisbury

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is made as of the 16<sup>th</sup> day of August, 2011, by and between the City of Salisbury, Maryland, whose address is 125 North Division Street, Room 202, Salisbury, Maryland 21801 hereinafter referred to as ("Owner"), and Salisbury University, a constituent institution of the University System of Maryland and agency of the State of Maryland, whose address is 1101 Camden Avenue, Salisbury, Maryland 21801 (the "Licensee").

### RECITALS

A. Licensee desires to use a portion of Owner's property described below for the application of and the display of its institution logo on a 160 foot to 200 foot water tower, to be constructed by the Owner on Power Street in Salisbury, Maryland beginning in the fall of 2011, and which will be commonly known as the Southside Tank (the "Southside Tank"). The Southside Tank will be situated in Salisbury, Maryland, at the real property described on Exhibit A (the "Property"). The one area on the Southside Tank to be used for signage is illustrated on Exhibit B ("Signage Area").

B. Owner desires to permit Licensee to access the Property and use the Signage Area for the application and display of its "Salisbury University" logo ("Licensee Logo") in one location on the Southside Tank, as illustrated on Exhibit B, upon the terms set forth in this License.

NOW, THEREFORE, Owner and Licensee, in consideration of the mutual covenants, promises, conditions, and terms to be kept and performed, do hereby agree as follows:

Section 1. Owner hereby grants permission to Licensee to apply and maintain its Licensee Logo on the Signage Area, as illustrated on Exhibit B, and pursuant to the terms set forth herein. Licensee shall have the right to make the necessary changes to the Signage Area for the application of and maintenance of the Licensee Logo, and the Signage Area will only be used by the Licensee for lawful activity in connection with the application and display of the Licensee Logo, as described on Exhibit B and herein. The application of the Licensee Logo to the Signage Area may take place as soon as the construction phase of the Southside Tank is complete. The Owner anticipates that the Southside Tank construction phase will be completed in or around January, 2013.

Section 2. The License granted herein and any Licensee responsibilities in connection with the License herein shall continue for the useful life of the Southside Tank (the "Term"). This License is not revocable except in the event of the destruction of the Southside Tank, and except as otherwise expressly provided in sections 13 and 15.10.

Section 3. Licensee shall be responsible for all costs associated with the application of the Licensee Logo to the Signage Area. Thereafter, Licensee shall remain responsible for maintaining the Licensee Logo in good condition and shall be responsible for any maintenance costs required due to normal wear and/or deterioration of the Licensee Logo. At all times during

this License, the Licensee Logo must be readable. Should the Owner and the Licensee determine that the Licensee Logo requires re-application or re-painting at any point during this License, Licensee shall bear the cost of the same. Licensee shall have the sole discretion to select any contractor to perform any Licensee Logo application, maintenance and/or re-application work, subject to Owner approval which shall not be unreasonably withheld. Should Licensee and Owner agree to use a contractor hired by Owner to perform any Signage Area work, provided that the Licensee and Owner agree on the price and terms for such work in advance of the performance of the work, Licensee shall reimburse Owner for the Licensee pre-approved costs of such work paid by Owner after the Owner properly invoices Licensee for the same. Owner and Licensee shall require any contractor working on the Southside Tank and Signage Area to perform work under this License Agreement to maintain adequate insurance protecting the Owner and Licensee against property damage or claims of liability arising out of the acts of the contractor or its subcontractors and their respective employees, but not less than the insurance listed on Exhibit C.

Section 4. During the Term hereof, the Owner, upon 72 hours notice shall provide the Licensee and its authorized representatives with reasonable access to the Signage Area and the Southside Tank for the purpose of installation/application, normal and routine maintenance, and re-application of the Licensee Logo during normal operating hours consistent with the Owner's security policies and procedures. The Licensee and its contractors and agents shall be permitted to access the Property via the 25 foot utility easement area described on Exhibit A. The Licensee shall send written notice to the Owner specifying its authorized representatives which the Licensee wishes, at the Licensee's sole cost and expense, to be granted such access to the Southside Tank and the Signage Area. The Licensee, or Licensee Agents, shall notify the Owner at the address set forth above prior to accessing the Southside Tank and Signage Area for the purposes hereunder, and the Owner will have the right, but not the obligation, to accompany the Licensee or a Licensee Agent while it performs any application or any maintenance or repair with regard to the Signage Area. The Owner shall provide the Licensee with the name of a person to be contacted in the event of an after hour emergency in order to gain access to the Southside Tank and Signage Area. Licensee shall pay any costs and expenses incurred by Owner in connection with providing access to the Southside Tank during non-business hours.

The Owner shall use reasonable efforts to provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles reasonably necessary during the Licensee Logo application and any maintenance.

The Licensee and its authorized representatives shall not disturb the Owner while performing any work on or accessing the Signage Area.

Section 5. The Licensee Logo shall be applied to the location on the Southside Tank and Signage Area, as set forth on Exhibit B, and using the paint colors and other specifications as set forth on Exhibit B. Specifically, the Signage Area will be, at a minimum, 20 feet high. The burgundy color of the Licensee Logo will be PMS 188. Owner agrees to maintain the base color of the Southside Tank as white, light gray or tan at all times during this License. The paint and/or finish used to apply the Licensee Logo to the Signage Area shall be graffiti resistant and fade resistant to help maintain the integrity and readability of the Licensee Logo.

Section 6. The parties agree that Licensee's obligations to maintain the Licensee Logo, which prominently "advertises" the word "Salisbury" is sufficient consideration for this License and that no separate license fee shall be due. The Licensee is an agency of the State of Maryland and a constituent institution of the University System of Maryland that is located in the City of Salisbury, Maryland. The Owner, the City of Salisbury, Maryland, is a local government entity that often cooperates with Licensee to promote both City and State interests and cooperative efforts relating to Salisbury University and the City of Salisbury within which the University resides. The Licensee, its employees, students and agents will be the primary consumers and users of the Southside Tank water supply. The Licensee Logo on the Southside Tank will assist to further promote the name "Salisbury" and thus benefit the Owner and Licensee.

Section 7. The Owner and Licensee shall at all times during the term of the License, conduct their operations with regard to the Southside Tank and the Signage Area in full compliance with all applicable Federal, State and local laws, ordinances, rules and regulations now or hereafter in force, including governmental regulations and standards as to health and safety as prescribed by all governmental entities having jurisdiction over the Owner and/or Licensee ("Applicable Law"), and in accordance with all required permits. In their respective use of the Southside Tank and Signage Area, the Licensee and Owner will not perform (nor permit to be performed) any illegal acts. The Licensee shall not do or permit to be done anything which will invalidate any insurance policy or warranty covering the Southside Tank or any Owner property associated with the same.

Section 8. Owner and Licensee acknowledge that the Licensee Logo is or will soon be a registered trademark of the Licensee and that this trademark has been or will soon be registered through the United States Patent & Trademark Office. Licensee shall retain all rights that it currently holds or, in the future, acquires with regard to its Licensee Logo. Owner agrees that it will not interfere with Licensee's rights in the trademark of its Licensee Logo, including challenging Licensee's use, registration of, or application to register such trademark, alone or in combination with other words, anywhere in the world. Owner shall not harm, misuse, or bring into disrepute any Licensee trademark. Licensee's use of the Licensee Logo on Owner's property does not act to transfer to Owner any rights to the Licensee Logo, all of which are reserved to Licensee.

Section 9. The Licensee shall not interfere with the Owner's or other's use of the Southside Tank. No other advertising, sign or logo display privileges will be granted during the Term relating to the Signage Area and the Southside Tank. Licensee understands and agrees that Owner, its agents, assigns, or third parties may place antennas and related electronic equipment on the Southside Tank and this equipment may partially block the view of the Signage Area.

Section 10. In the use of this License, Licensee will abide by the applicable directives of authorized public officials and obey all laws, including, but not limited to, zoning resolutions of local government regarding construction and development, including all applicable permit requirements.

Section 11. Owner will maintain the Southside Tank and the Owner property on which the Southside Tank resides in a neat and clean manner, removing trash and litter therefrom and trimming vegetation and ground cover as necessary, and Owner will not maintain or create any nuisances affecting the Signage Area. Owner shall maintain the Southside Tank in good order and repair and free from rust stains or peeling paint and shall restore and re-paint the non-Signage Area as needed to ensure an attractive backdrop for the Licensee Logo. Owner will take care to protect the Signage Area and the integrity of the Licensee Logo when cleaning and maintaining the Southside Tank. Owner will be responsible for any costs or repairs due to damage to the Signage Area or Licensee Logo caused by Owner or its agents.

Section 12. Licensee will not assign or transfer this License except with the written permission of Owner. Said permission will not be unreasonably withheld or delayed.

Section 13. Default.

13.1. Definition. It shall be an event of default (“**Event of Default**”) if the Licensee or Owner fails to perform any obligation under the provisions of this License.

13.2. Notice; Grace Period. Anything contained in the provisions of this Section to the contrary notwithstanding, on the occurrence of an Event of Default, a party shall not exercise any right or remedy on account thereof which they hold under any provision of this License or applicable law unless and until

13.2.1. the party has given written notice thereof to other party, and

13.2.2. the party in default has failed, (a) if such Event of Default consists of a failure to pay money, within ten (10) days after the party gives such written notice to pay all of such money, or (b) if such Event of Default consists of something other than a failure to pay money, within thirty (30) days after the party gives such written notice to cure such Event of Default (or, if such Event of Default is not reasonably curable within such period of thirty (30) days, to begin to cure such Event of Default within such thirty (30) day period and to diligently pursue such cure thereafter until it is fully cured).

13.2.3. Notwithstanding the foregoing, no such notice of default shall be required to be given, and (even if the party gives such notice) the party in default shall be entitled to no such notice and grace period, (i) in any emergency situation in which, in the party’s reasonable judgment, it is necessary for the party to act to cure such Event of Default without giving such notice, (ii) more than twice during any twelve (12) month period (regardless of whether the current Event of Default is the same as any previous Event of Default for which a notice was given).

13.3. Parties’ Rights on Event of Default.

13.3.1. On the occurrence of any Event of Default, a party may (subject to the operation and effect of the provisions of subsection 13.2.);

(a) terminate this License by giving written notice of such termination to the other party, which termination shall be effective as of the date of such notice or any later date therefor specified by the party therein and, if applicable, upon such termination repossess the Signage Area in accordance with the requirements of applicable law; and/or

(b) cure such Event of Default in any other manner; and/or

(c) pursue any combination of such remedies and/or any other right of remedy available to the party claiming default on account of such Event of Default under this License and/or at law or in equity.

Nothing herein contained shall limit or prejudice any party's other rights, by reason of such termination.

Section 14. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder shall be given to the parties at the following addresses: Owner, City of Salisbury, 125 N. Division St. Rm 202, Salisbury, MD, 21801 Attention: Teresa Gardner; Licensee, Salisbury University, 1101 Camden Avenue, Salisbury, MD 21801, Attention: Betty P. Crockett, Vice President of Administration & Finance. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be (a) given in writing, and (b) deemed to have been given (i) forty-eight (48) hours after being sent by certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (ii) upon its hand or other delivery to such party or (iii) on delivery by overnight courier with receipt to the respective addresses listed above or to such other address in the United States of America, as such party may designate from time to time by notice to the other complying with the requirements of this section.

Section 15. General Provisions.

15.1. Effectiveness. This License shall become effective upon and only upon its execution and delivery by each party hereto, and, if required, upon receipt of approval by the Board of Regents of the University System of Maryland and/or the State of Maryland Board of Public Works.

15.2. Complete Understanding. This License represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this License, except those specifically set forth in the provisions of this License. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this License, which is not set forth herein.

15.3. Amendment. This License may be amended by and only by an instrument executed and delivered by each party hereto.

15.4. Applicable Law. The provisions of this License shall be governed by the laws of the State of Maryland and the parties hereto expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies, if any, have been exhausted.

15.5. Waiver. Licensee and Owner shall not be deemed to have waived the exercise of any right, which they hold hereunder unless such waiver is made expressly and in writing (and no delay or omission by Licensee or Owner in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

15.6. Severability. No determination by any court, governmental body or otherwise that any provision of this License or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

15.7. Non Discrimination. The Owner and Licensee agree not to discriminate against any employee or applicant for employment because of sex, race, age, creed, color, religious affiliation, national origin, ancestry or marital status, sexual orientation or, mental or physical disability unless the same would preclude performance of the position (each a "**Prohibited Basis**"). The Owner and Licensee further agree to post, in conspicuous places available to employees and applicants for employment, notices setting forth the above agreement not to discriminate. The Owner and Licensee will not discriminate in the conduct and operation of their business against any person or group of persons because of a Prohibited Basis.

15.8. Recordation. This License shall not be recorded.

15.9. No Contingent Fees. The Owner and Licensee warrant that they have not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Owner or Licensee, to solicit or secure this License Agreement, and that they have not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this License Agreement.

15.10. Termination for Convenience. This License may be terminated by the Licensee in accordance with this clause, in whole, or from time to time in part, whenever Licensee shall determine that such termination is in the best interest of the Licensee. Should Licensee terminate in accordance with this clause, Licensee shall take necessary steps to remove the Licensee Logo from the Signage Area.

15.11. Effect of Termination or Expiration. The effect of the termination or expiration of the License shall be to discharge the Owner and the Licensee from future performance of this License, but not from their rights and obligations existing on the date of termination or expiration



of the License, and the obligations, representations, warranties, covenants, conditions and agreements contained in this License which, by the terms of this License are incapable of being performed prior to the date of termination or expiration, or by their nature, are to be performed or observed, in whole or in part, after the date of termination or expiration, all of which shall survive such termination or expiration. In addition, all obligations, representations, warranties, covenants, conditions and agreements contained in this License which are expressed as surviving the expiration or termination of the License, shall survive the expiration or termination of this License.

15.12. Counterparts. This License may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

[signatures continue on next page]

IN WITNESS WHEREOF, each party hereto has executed and sealed this License or caused it to be executed on its behalf by its duly authorized representatives, the day and year first above written.

**Owner – The City of Salisbury**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**Licensee – Salisbury University**

By: Betty Crockett - VP - Admin. & Finance  
Print Name: Betty Crockett

Approved for form and legal sufficiency:

Jay L. Jelenic      8/4/11  
Assistant Attorney General      Date

EXHIBIT A

Location of Southside Tank

The tank shall be located on that parcel of land ("Parcel") consisting of .578 acres more or less shown on a Plat entitled Subdivision for Richard M. Allen and recorded with the Plat records of Wicomico County Maryland in Plat cabinet 7 slot 61 page 244, (the "Plat") and as further described in a deed to the City of Salisbury dated January 17<sup>th</sup>, 1984, and recorded in the land records of Wicomico County at Liber 1005 folio 708 ("Deed").

Description of Easement Area

Licensee shall also be entitled to use the area shown on the Plat and described in the Deed as "25' Wide Utility Easement" for access to and from the Parcel.

# City of Salisbury



JAMES IRETON, JR.  
MAYOR

JOHN R. PICK  
CITY ADMINISTRATOR

LORÉ CHAMBERS  
ASSISTANT CITY ADMINISTRATOR

MARYLAND

125 NORTH DIVISION STREET  
SALISBURY, MARYLAND 21801  
Tel: 410-548-3170  
Fax: 410-548-3107

PUBLIC WORKS  
TERESA GARDNER, P.E.  
DIRECTOR

To: John Pick

From: Teresa Gardner *lg*

Date: September 1, 2011

Re: License Agreement for the Salisbury University Logo on the Southside Elevated Water Storage Tank

The construction of the Southside Elevated Water Storage Tank is scheduled to begin this fall on a City owned parcel located between Milford Street and Power Street near South Division. Due to the tank's proximity to Salisbury University (SU), representatives from the institution approached the City requesting permission to install its logo on the tank.

Through discussions with SU, the City Attorney and Public Works personnel, a mutual agreement outlining the terms under which the logo could be installed and maintained was prepared.

The License Agreement provides that Salisbury University is responsible for all costs associated with the installation and maintenance of the logo. Additionally, the City retains the display rights to areas not included in the SU signage area. The City may also place antennas and related electronic equipment on the tank which may partially block the view of the SU logo.

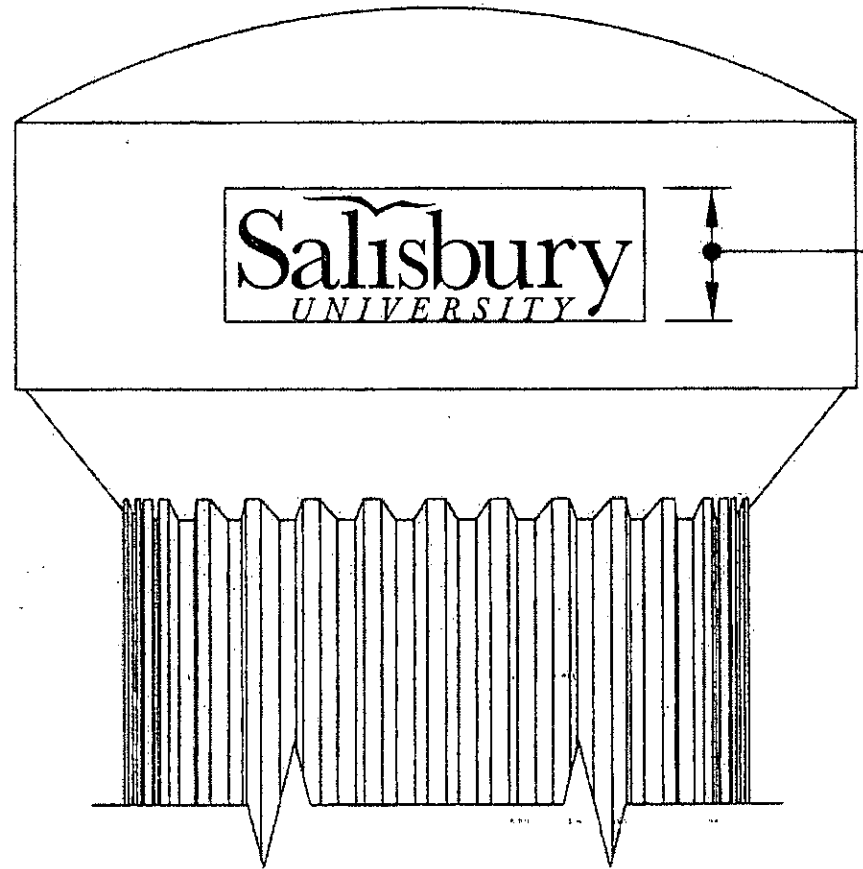
Attached is a Resolution authorizing the Mayor to sign the License Agreement to permit Salisbury University to place and maintain the Salisbury University logo on the Southside Elevated Water Storage Tank.

Unless you or the Mayor has further questions, please forward a copy of this memo to the City Council.

cc: Dale Pusey  
Dallas Baker

EXHIBIT B

Depiction of Signage Area and Licensee Logo  
(see attached)



SIGN LOGO  
HEIGHT 20'  
MINIMUM

TANK LOGO  
NOT-TO-SCALE

EXHIBIT C – Contractor Insurance

- a. Commercial General Liability Insurance including all extensions- for bodily injury with limits of \$2,000,000 each occurrence;  
\$2,000,000 personal injury;  
\$2,000,000 products/completed operations;  
\$2,000,000 general aggregated
- b. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
- c. Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.
- d. If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.