

AS AMENDED ON NOVEMBER 26, 2012

RESOLUTION NO. 2235

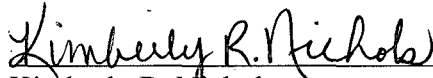
A RESOLUTION OF THE CITY OF SALISBURY TO APPROVE A SERVICE AND EQUIPMENT LEASE AGREEMENT BETWEEN THE CITY OF SALISBURY AND THE WICOMICO COUNTY BOARD OF ELECTIONS

WHEREAS, the City of Salisbury, Maryland believes it is in the best interest of the citizens of the City of Salisbury to delegate authority to the Wicomico County Board of Elections to conduct City elections.

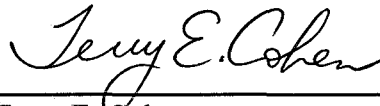
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury, hereby approves a two-year Service and Equipment Lease Agreement between the City of Salisbury and the Wicomico County Board of Elections, a copy of which is attached hereto as Exhibit A, and authorizes Mayor Ireton and Council President Cohen to execute this Agreement on behalf of the City of Salisbury.

THIS RESOLUTION was introduced and duly passed at a meeting of the City Council of the City of Salisbury held on the 26<sup>th</sup> day of November, 2012, and is to become effective immediately upon adoption.

ATTEST:



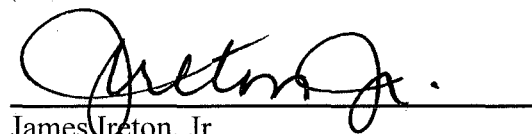
Kimberly R. Nichols  
City Clerk



Terry E. Cohen  
Council President

APPROVED BY ME THIS

20<sup>th</sup> day of November 2012



James Ireton, Jr.  
Mayor

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**INTER**

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**OFFICE**

# MEMO

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*Office of the City Clerk*  
410-548-3140

**To:** City Council

**From:** Kimberly R. Nichols, CMC *KN*  
City Clerk

**Subject:** Contract with Wicomico County Board of Elections

**Date:** November 20, 2012

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Attached is a Resolution approving a two-year Service and Equipment Lease Agreement between the City of Salisbury and the Wicomico County Board of Elections.

This Resolution is being placed on the November 26, 2012 legislative session agenda for Council's consideration.

**WICOMICO COUNTY BOARD OF ELECTIONS  
SERVICE AND EQUIPMENT LEASE AGREEMENT  
WITH THE CITY OF SALISBURY**

**THIS SERVICE AND EQUIPMENT LEASE AGREEMENT** is made as of the 05 day of Dec, 2012, by and between the Wicomico County Board of Elections hereinafter referred to as the **Board** and the City of Salisbury, a Municipal Government hereinafter referred to as **Lessee**.

**RECITALS**

**WHEREAS**, Lessee desires to lease Direct Recording Electronic (DRE) voting units and other equipment and services from the Board for the Lessee's municipal elections which are scheduled as follows:

**City of Salisbury – Primary Election – February 26, 2013  
City of Salisbury – General Election – April 2, 2013**

**WHEREAS**, the Board has been permitted by the State of Maryland, through the Maryland State Board of Elections (SBE), to lease the DRE voting units to Maryland Municipal Governments for the purposes of municipal elections; and

**WHEREAS**, the parties desire to enter into this Service and Equipment Lease Agreement which defines their respective rights, duties, and liabilities relating to the DRE voting units.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Board and Lessee hereby agrees as follows:

**ELECTIONS**

The Board shall perform the duties delegated to it by Article VI, Elections, of the City Charter and, Title I, Chapter 1.08 of the Salisbury Municipal Code, for each General, Primary and Special Election held in the City during the time period covered by this Service and Lease Agreement as described herein, and that the "Petitions" described in the City Charter and the Salisbury Municipal Code shall be processed according to the paragraph entitled Petitions under Section 1.3 of this agreement. The obligations of the Board and Lessee are as follows:

**1. OBLIGATIONS OF THE BOARD**

- 1.1 The Board agrees to lease to and the Lessee agrees to lease from the Board thirty (30) DRE voting units. The DRE voting units will be utilized as follows:

**District One (one polling location)**

10 DRE units at Fire Station #16, 325 Cypress Street, Salisbury MD

**District Two (two polling locations)**

10 DRE units at Harvest Baptist Church, 119 South Blvd, Salisbury MD

10 DRE units at Wicomico Presbyterian Church, 129 Broad St, Salisbury MD

- 1.2 The Board will provide the materials necessary for the proper use of the DRE voting units to conduct the Election, including but not limited to Electronic Pollbooks, Voter Access Cards, Supervisor Cards, connector cords, encoders, lanyards, and miscellaneous supplies.

- 1.3 The Board agrees to provide the following additional services to the Lessee:

**Street File Verification**

Prior to any Primary Election, the City Clerk and a staff member from the Board shall verify the street file listing by street name, as well as numerical low, high address range, from the Statewide voter registration system.

**Petitions**

The Wicomico County Board of Elections is not required by law or by this agreement to verify any petition filed with a Municipality. The parties hereto acknowledge that the City of Salisbury assumed the responsibility of petition verification for their municipality effective August 2, 2003. Upon receipt of a written request, the Board will permit the City Clerk and one City staff person to utilize our Statewide Voter Registration System module for the verification of their petitions on a case by case basis in the office of the Wicomico County Board of Elections.

- 1.4 For services rendered, the City agrees to be responsible to pay unto the herein after referred entity or individual(s), as follows:

The Board will receive, directly from the City, the hourly rate applicable to the employee(s) providing the services. Said hourly rate will be calculated to include the value of all benefits for all time expended during normal working hours of said employee.

Staff members of the Board will receive, directly from the City, their hourly rate in accordance with the State of Maryland Standard Salary Schedule for any and all work performed on their personal time. (Personal time is all time expended by an employee in excess of the regular 40 hours per week. Personal time shall be paid at the rate of 1.5 times the standard hourly rate per COMAR 17.04.02.08.) The Election Director shall attempt to use county time (the regular 40 hour work week) whenever possible in lieu of personal time; however, it is understood and agreed by the parties to this agreement that the Election Director's decision concerning duties during the standard 40-hour work week shall be final.

**Adjustments to COLA Increases**

All parties to this agreement agree that any COLA increases or step increases authorized by the State of Maryland shall be applied to and incorporated in this agreement and the hourly rate shall be adjusted to reflect any authorized increases made by the State of Maryland.

- 1.5 Should the Lessee elect to obtain services for the pre-election, election day or post-election support from any other source other than the Board, that source must be approved in advance by the SBE and the Board.

**2. OBLIGATIONS OF THE LESSEE**

- 2.1 Lessee agrees to secure and control all items provided under this Equipment Lease Agreement in accordance with guidance and direction issued by the Maryland State Board of Elections (SBE) and/or the Board.
- 2.2 Lessee agrees for the Board to conduct the election in accordance with the Salisbury Municipal Code.

- 2.3 Lessee agrees to secure acceptable polling place locations thru Rental Agreements which will meet the requirements for the proper operation of the DRE voting units.
- 2.4 Lessee agrees to pay Election Systems & Software, Inc. (ES&S) the cost of transporting the DRE voting units from the Board's storage facility at 123 Bateman Street, Salisbury, Maryland, to the polling locations in Section 1.1, as designated before the Election, and returning them to the Board's storage facility after the Election, at a cost charged by the contracted hauler. ES&S shall bill the Lessee for such transportation directly to the Lessee and Lessee agrees to pay such bill promptly upon receipt.
- 2.5 Lessee agrees that the DRE units and other equipment provided under the Lease shall be used only for election purposes.
- 2.6 Lessee agrees that the DRE voting units and other equipment provided under this Lease shall be located at the polling places specified in Section 1.1 and may be inspected at those locations by SBE and/or the Board between the hours of 7 AM and 7 PM, on Election Day. Otherwise, DRE voting units will be available for inspection at 123 Bateman Street, Salisbury, Maryland from 8:00 AM to 4:30 PM.
- 2.7 Lessee agrees that when the Election is being conducted, the DRE voting units and other equipment provided under this Lease shall be under the visual supervision of a Chief Election Judge and/or municipal liaison. At all other times, the DRE voting units and the other equipment provided under this Lease shall be closed and sealed, and stored in an access controlled area whereby only authorized personnel have access.
- 2.8 Lessee agrees that it shall not sub-lease or otherwise make available to any other person or entity the DRE voting units and/or the other equipment provided under this Lease.
- 2.9 The Election Officials shall keep a record of and report to the Board the protective counter settings on all equipment. Said records shall be taken when the DRE voting units are unsealed before use as well as after the DRE voting units have been used before being resealed.
- 2.10 Lessee designates **Kimberly Nichols, City Clerk**, as Lessee's single point of contact for purposes of this Lease and the use of any DRE voting units or other equipment or services provided under this Lease.

### **3. CONDUCT OF ELECTION**

- 3.1 All aspects of the Election will continue to be conducted by the Board. Nothing in this Agreement may be construed to make the State of Maryland (the State), the SBE, and/or the Board responsible for the Election. Neither the State, nor SBE is responsible for the administration or supervision of, nor any costs associated with conducting this Election.
- 3.2 Lessee agrees to indemnify the Board, SBE, and the State of Maryland against any and all liability for any suits, actions, or claims of any character arising from or relating to the Lease or use by Lessee of any equipment provided under this Lease. Should litigation be promulgated by any party involving a Municipal

election, referendum or other contest involving a Municipal election, and the Election Director and/or the Board be named in said litigation, the Lessee agrees to bear costs to defend said litigation, including the costs for the legal representation of the Election Director, the Board and all charges generated by the Attorney for the Board, who acted at the direction of the Board concerning said litigation.

- 3.3 Delivery and return of the DRE voting units will be scheduled by ES&S and its contracted hauler, with delivery to be completed no later than 2:00 PM on the Monday before the Election and pick-up no later than 2:00 PM on the Wednesday after the Election has been held. Other equipment provided under this Lease Agreement will be delivered and returned by the Chief Judges on election night after the polls close.
- 3.4 Lessee shall be liable for any loss or damage to the DRE voting units and/or any other equipment provided under this Lease at all times that such equipment are within the control of Lessee or its agents. Lessee will not be responsible for loss of or damages to any items while they are in the control of ES&S.
- 3.5 Lessee expressly acknowledges and agrees to respect the intellectual property rights of ES&S in the system components, and will not make any use of those components or documents and materials generated through the use of the components that the State would not be permitted to make under the contract between SBE and ES&S. All documents and materials prepared by a system or by ES&S solely for purposes of the Election shall be the sole property of Lessee and shall be available to Lessee at any time, and Lessee may use such documents and materials without restriction and without compensation, except as provided elsewhere in this Agreement or in separate agreements between Lessee and the Board.
- 3.6 Lessee is insured by the **Local Government Insurance Fund**, in accordance with State Board Municipal Information requirements. The certificate of insurance shall name the SBE and the Board as additional loss payees.
- 3.7 Lessee agrees that all absentee ballots must be printed by ES&S or by a local printer approved and certified by ES&S. ES&S may impose deadlines for the certification of a printer and for steps in the process for producing absentee ballots. Lessee covenants and agrees to be responsible for all costs associated with creation of the absentee ballots and shall pay the vendor directly for production and printing services.
- 3.8 The Lessee agrees for the Board to provide adequate training of election officials and poll workers and the appropriate voter education and instructions for conducting the elections.

#### 4. MISCELLANEOUS

##### Property Tax Map

The City shall provide to the Board a complete copy of the Property Tax Map Book that currently is published for the City Public Works Department. In addition thereto, the City shall provide to the Board all updates to the Property Tax Map Book as soon as they are available, for so long as this agreement is in effect.

- 4.1 This Lease is entered into under the Law of Maryland and shall be construed, applied and performed in accordance with the laws of the State of Maryland, including, but not limited to, the laws, ordinances, and regulations of Wicomico County, Maryland. The Maryland Uniform Computer Information Transactions Act, Commercial Law Article, Title 22, Annotated Code of Maryland, does not apply.
- 4.2 All parties to this Agreement consent to jurisdiction and venue in the court system for Wicomico County, Maryland.
- 4.3 This Agreement, which includes services delineated by the Municipal Election Questionnaire constitutes the entire agreement between the parties with respect to this subject matter, supersedes all previous communications, representations and understandings, whether oral, written, electronic or otherwise, and may be amended only by a written document that is signed by an authorized representative of the Board and Lessee.
- 4.4 If any part of this Agreement is found by a court of competent jurisdiction to be invalid, unenforceable or voidable, such invalidity, enforceability or voidability shall not affect the validity or enforceability of the remainder of the Agreement.
- 4.5 In the event that the Lease of the DRE voting units and/or the other equipment leased pursuant to this Lease conflict with, or limit the use of said equipment by the Board for any election conducted under the Election Law Article, the Board may declare this Lease null and void and of no further effect without liability of any kind. If the Board declares this Lease void, Lessee shall immediately return said equipment to the Board at the direction of the Board.
- 4.6 Duration of Agreement  
The term of this Service and Equipment Lease Agreement shall be for a period of two years beginning July 1, 2012, with a termination date of June 30, 2014, at midnight.

## **5. ADDITIONAL LEASE TERMS**

- 5.1 The Board will conduct the election in accordance with the most current Maryland State Board of Elections guidelines, including adherences to the Municipal Leasing Standards.
- 5.2 This agreement is subject to Maryland law and Title 22, Maryland Uniform Computer Information Transactions Act, of the Commercial Law Article of the Annotated Code of Maryland is inapplicable.
- 5.3 The State of Maryland is not responsible for the administration of or supervising of, or for any costs associated with conducting, an election not governed by the Election Law Article.
- 5.4 The lessee will provide all power necessary for proper operation of those components being leased.
- 5.5 The lessee will provide the schedule for delivery and return of system components to the Board when available from ES&S.

**IN WITNESS WHEREOF**, the said parties have hereunto subscribed their names and affixed their seals the day and year first above written.

Attest:

X *Kimberly Nichols*  
Kimberly Nichols, City Clerk

City of Salisbury

X *James Ifeton, Jr.*  
James Ifeton, Jr., Mayor

Attest:

X *Kimberly Nichols*  
Kimberly Nichols, City Clerk

City of Salisbury

X *Terry E. Cohen*  
Terry E. Cohen, City Council President

Attest:

X *Anthony Gutierrez*  
Anthony Gutierrez, Election Director

Wicomico County Board of Elections

X *Katrina Purnell*  
Katrina A. Purnell, Board President