

RESOLUTION NO. 1475

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALISBURY
TO APPROVE ELECTION SUPPORT SERVICES AGREEMENTS BETWEEN
THE CITY OF SALISBURY AND DIEBOLD ELECTION SYSTEMS, INC.
FOR THE CITY'S 2007 PRIMARY AND GENERAL ELECTIONS.

WHEREAS, the City of Salisbury desires to use certain election support services from Diebold Election Systems, Inc. for the City's 2007 primary and general elections to be held on February 27, 2007 and April 3, 2007, respectively;

NOW, THEREFORE, be it enacted and ordained by the City Council of the City of Salisbury, in regular session, that the Election Support Services Agreements between the City of Salisbury and Diebold Election Systems, Inc. for the City's 2007 primary and general elections, a copy of which is attached hereto as Attachment 1 and Attachment 2, be approved.

THIS RESOLUTON was introduced and duly passed at a meeting of the City Council of the City of Salisbury held on the _____ day of January, 2007 and is to become effective immediately upon adoption.

ATTEST:

Brenda J. Colegrove
City Clerk

Michael P. Dunn
Council President

APPROVED BY ME THIS

_____ day of _____, 2007

Barrie P. Tilghman
Mayor

ELECTION SUPPORT SERVICES AGREEMENT

This Election Support Services Agreement is made on January 22, 2006 (the "Effective Date") by the City of Salisbury, Maryland ("Salisbury") and Diebold Election Systems, Inc., a Delaware corporation ("DESI").

- 1. Election Support Services.** DESI shall provide to Salisbury the election support services ("Services") described in the service order attached hereto as Exhibit A ("Service Order") for the City of Salisbury Primary Election on Tuesday, February 27, 2007. Salisbury shall appoint a representative, who will serve as a first point of contact with DESI, be authorized to make day-to-day decisions relating to this Agreement and have access to Salisbury's authorized officials for other decisions. Salisbury shall provide information and access to personnel reasonably required for DESI to perform its obligations.
- 2. Payment.** Salisbury shall pay DESI the amounts specified in the Service Order within 30 days after receipt of invoice. Any Services performed on a time-and-materials will be invoiced monthly and paid within 30 days after receipt of invoice. Salisbury is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or Services provided under this Agreement. If Salisbury is exempt from such taxes or duties, Salisbury shall provide DESI with a tax exemption certificate.
- 3. Term and Termination.**

 - 3.1. Term. This Agreement is effective as of the Effective Date and, unless earlier terminated under Section 3.2, expires on February 28, 2007 (the "Term").
 - 3.2. Termination. If either party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching party, the non-breaching party may terminate this Agreement as of a termination date specified in that notice or a subsequent notice delivered within such 30-day period. If the breach cannot be completely cured within the 30-day period, no default shall occur if the party receiving the notice begins curative action within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable.
 - 3.3. Survival. Sections 5 through 8 will survive any expiration or termination of this Agreement in accordance with their respective terms.
- 4. Warranty.** DESI warrants that the Services will be performed in a professional and workmanlike manner by qualified personnel. DESI will promptly correct any material Service deficiencies of which it is given notice during the Term.

5. **Force Majeure.** A party's obligations hereunder will be suspended so long as compliance is impeded or prevented by causes beyond such party's reasonable control, which may include acts of God, embargoes, acts of war (including terrorist attacks), labor disturbances and acts or regulations of governmental entities.
6. **Confidential Information.** Neither party will use or disclose the other party's Confidential Information without the other party's prior written consent. "Confidential Information" means, as to either party, any information designated as confidential by the party when or before it is disclosed. This paragraph does not apply to information (a) after it becomes publicly known through no fault of the receiving party, (b) already rightfully in the receiving party's possession when received, (c) developed by the receiving party without the use of the other party's Confidential Information or (d) required to be disclosed by law so long as the other party is given immediate notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure. Each party acknowledges that its breach of this Section may cause the other party substantial and irreparable harm for which the other party would be entitled to equitable relief in addition to any available legal remedies. Each party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief.
7. **Liability.** Except the warranty expressly set forth herein, DESI disclaims all representations or warranties, whether written, oral, express, implied or statutory, including warranties of merchantability or fitness for a particular purpose and any warranties based on a course of dealing, course of performance or usage of trade. Neither party will be liable under this Agreement for (1) consequential, special, punitive or incidental damages or (2) compensatory damages in excess of the total of all amounts payable under this Agreement during the 12-month period preceding the event or events giving rise to liability.
8. **Miscellaneous**
 - 8.1. Assignment. Neither party may assign any rights or delegate any obligations under in this Agreement without the prior written consent of the other party. Any attempted assignment in violation of this Section will be null and void. Notwithstanding the forgoing, DESI may subcontract Services to third-party providers so long as DESI remains liable to Salisbury for the performance of such Services.
 - 8.2. No Intellectual Property Assignments. Neither party's entering into nor performing this Agreement will be deemed to assign, license or otherwise transfer, expressly or by implication, any intellectual property rights the party may hold under the laws of any jurisdiction.
 - 8.3. Severability. If any term of this Agreement is held to be unenforceable, the other terms of this Agreement shall be enforced to the fullest extent permitted by law.

- 8.4. Governing Law. This Agreement will be construed under the laws of the State of Maryland, and the State and Federal courts within Maryland have non-exclusive jurisdiction for all actions to enforce this Agreement.
- 8.5. Waiver. No waiver or failure of a party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.
- 8.6. Notices. All notices under this Agreement shall be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown below or such other address as may be specified by either party to the other party in compliance with this Section. Notices shall be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier and four days after such mailing by U.S. mail.

If to DESI:

Diebold Election Systems, Inc
 1253 Allen Station Parkway
 Allen, TX 75002
 Attn: Corporate Counsel

If to City of Salisbury:

City of Salisbury
 125 North Division Street
 Salisbury, MD 21801
 Attn: Brenda Colegrove

With a copy to:

Diebold, Incorporated
 5995 Mayfair Road
 North Canton, OH 44270
 Attn: Vice President and General Counsel

With a copy to:

Wicomico County Board of Elections
 123 Bateman Street
 Salisbury, MD 21804
 Attn: Anthony Gutierrez

- 8.7. Independent Contractors, No Third-Party Beneficiaries. The parties to this Agreement are independent contractors. Neither party will be liable to the other party or the other party's employees for any rights nor benefits such party provides or is required to provide to its own employees. This Agreement is for the sole benefit of the parties hereto and will not be enforceable by any third-party, whether as a third-party beneficiary or otherwise.
- 8.8. Interpretation. This Agreement, including the Service Order attached hereto (which is incorporated herein by this reference), is the complete and final expression of the parties' agreement regarding its subject matter and supersedes all prior or contemporaneous communications or agreements, written or oral, by the parties regarding such subject matter. In the event of any conflict or ambiguity between the terms set forth in the body of this Agreement (i.e., Section 1 through this Section 8.8) and those set forth in the Service Order, the terms set forth in the body of this Agreement will prevail. No amendment or supplement to this Agreement is effective unless in writing and signed by both parties' authorized

representatives. The word “include” (or any of its derivatives) is deemed to be followed in all contexts by the words “without limitation.” Headings are included for convenience and will be ignored in interpreting this Agreement.

The parties have caused their duly authorized representatives to sign this Agreement as of the Effective Date.

DIEBOLD ELECTION SYSTEMS, INC.

CITY of SALISBURY, MARYLAND

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

EXHIBIT A
SERVICE ORDER

Service	Description	Primary Election February 27, 2007
Specimen Ballots	Produce Screen Shots for Specimen Ballot (\$175.00 per hour)	\$175.00
Absentee Ballots	Print 225 Absentee Ballots. (35¢ each)	\$78.75
Delivery	Delivery/Return of Voting Equipment (2 precincts @ \$250)	\$250.00
	Totals	\$503.75

Specimen Ballot Screen Shots

DESI will provide an electronic copy of the Accu-Vote TS ballot page for Specimen Ballot preparation.

Absentee Ballot Production

The City of Salisbury will count Absentee Ballots using the AccuVote-Optical Scan equipment. DESI will print a Master Absentee Ballot for City of Salisbury proofing. After Salisbury approval of the Ballot, DESI will print an Optical Scan Test Deck and the Absentee Ballots.

ATTACHMENT 2

ELECTION SUPPORT SERVICES AGREEMENT

This Election Support Services Agreement is made on January 22, 2006 (the "Effective Date") by the City of Salisbury, Maryland ("Salisbury") and Diebold Election Systems, Inc., a Delaware corporation ("DESI").

- 1. Election Support Services.** DESI shall provide to Salisbury the election support services ("Services") described in the service order attached hereto as Exhibit A ("Service Order") for the City of Salisbury General Election on Tuesday, April 3, 2007. Salisbury shall appoint a representative, who will serve as a first point of contact with DESI, be authorized to make day-to-day decisions relating to this Agreement and have access to Salisbury's authorized officials for other decisions. Salisbury shall provide information and access to personnel reasonably required for DESI to perform its obligations.
- 2. Payment.** Salisbury shall pay DESI the amounts specified in the Service Order within 30 days after receipt of invoice. Any Services performed on a time-and-materials will be invoiced monthly and paid within 30 days after receipt of invoice. Salisbury is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or Services provided under this Agreement. If Salisbury is exempt from such taxes or duties, Salisbury shall provide DESI with a tax exemption certificate.
- 3. Term and Termination.**

 - 3.1. Term. This Agreement is effective as of the Effective Date and, unless earlier terminated under Section 3.2, expires on April 4, 2007 (the "Term").
 - 3.2. Termination. If either party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching party, the non-breaching party may terminate this Agreement as of a termination date specified in that notice or a subsequent notice delivered within such 30-day period. If the breach cannot be completely cured within the 30-day period, no default shall occur if the party receiving the notice begins curative action within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable.
 - 3.3. Survival. Sections 5 through 8 will survive any expiration or termination of this Agreement in accordance with their respective terms.
- 4. Warranty.** DESI warrants that the Services will be performed in a professional and workmanlike manner by qualified personnel. DESI will promptly correct any material Service deficiencies of which it is given notice during the Term.

5. **Force Majeure.** A party's obligations hereunder will be suspended so long as compliance is impeded or prevented by causes beyond such party's reasonable control, which may include acts of God, embargoes, acts of war (including terrorist attacks), labor disturbances and acts or regulations of governmental entities.
6. **Confidential Information.** Neither party will use or disclose the other party's Confidential Information without the other party's prior written consent. "Confidential Information" means, as to either party, any information designated as confidential by the party when or before it is disclosed. This paragraph does not apply to information (a) after it becomes publicly known through no fault of the receiving party, (b) already rightfully in the receiving party's possession when received, (c) developed by the receiving party without the use of the other party's Confidential Information or (d) required to be disclosed by law so long as the other party is given immediate notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure. Each party acknowledges that its breach of this Section may cause the other party substantial and irreparable harm for which the other party would be entitled to equitable relief in addition to any available legal remedies. Each party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief.
7. **Liability.** Except the warranty expressly set forth herein, DESI disclaims all representations or warranties, whether written, oral, express, implied or statutory, including warranties of merchantability or fitness for a particular purpose and any warranties based on a course of dealing, course of performance or usage of trade. Neither party will be liable under this Agreement for (1) consequential, special, punitive or incidental damages or (2) compensatory damages in excess of the total of all amounts payable under this Agreement during the 12-month period preceding the event or events giving rise to liability.
8. **Miscellaneous**
 - 8.1. Assignment. Neither party may assign any rights or delegate any obligations under in this Agreement without the prior written consent of the other party. Any attempted assignment in violation of this Section will be null and void. Notwithstanding the forgoing, DESI may subcontract Services to third-party providers so long as DESI remains liable to Salisbury for the performance of such Services.
 - 8.2. No Intellectual Property Assignments. Neither party's entering into nor performing this Agreement will be deemed to assign, license or otherwise transfer, expressly or by implication, any intellectual property rights the party may hold under the laws of any jurisdiction.
 - 8.3. Severability. If any term of this Agreement is held to be unenforceable, the other terms of this Agreement shall be enforced to the fullest extent permitted by law.

- 8.4. Governing Law. This Agreement will be construed under the laws of the State of Maryland, and the State and Federal courts within Maryland have non-exclusive jurisdiction for all actions to enforce this Agreement.
- 8.5. Waiver. No waiver or failure of a party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.
- 8.6. Notices. All notices under this Agreement shall be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown below or such other address as may be specified by either party to the other party in compliance with this Section. Notices shall be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier and four days after such mailing by U.S. mail.

If to DESI:

Diebold Election Systems, Inc
 1253 Allen Station Parkway
 Allen, TX 75002
 Attn: Corporate Counsel

With a copy to:

Diebold, Incorporated
 5995 Mayfair Road
 North Canton, OH 44270
 Attn: Vice President and General
 Counsel

If to City of Salisbury:

City of Salisbury
 125 North Division Street
 Salisbury, MD 21801
 Attn: Brenda Colegrove

With a copy to:

Wicomico County Board of Elections
 123 Bateman Street
 Salisbury, MD 21804
 Attn: Anthony Gutierrez

- 8.7. Independent Contractors, No Third-Party Beneficiaries. The parties to this Agreement are independent contractors. Neither party will be liable to the other party or the other party's employees for any rights nor benefits such party provides or is required to provide to its own employees. This Agreement is for the sole benefit of the parties hereto and will not be enforceable by any third-party, whether as a third-party beneficiary or otherwise.
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representatives. The word “include” (or any of its derivatives) is deemed to be followed in all contexts by the words “without limitation.” Headings are included for convenience and will be ignored in interpreting this Agreement.

The parties have caused their duly authorized representatives to sign this Agreement as of the Effective Date.

DIEBOLD ELECTION SYSTEMS, INC.

CITY of SALISBURY, MARYLAND

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

EXHIBIT A
SERVICE ORDER

Service	Description	General Election April 3, 2007
Specimen Ballots	Produce Screen Shots for Specimen Ballot (\$175.00 per hour)	\$175.00
Absentee Ballots	Print 375 Absentee Ballots. (35¢ each)	\$131.25
Delivery	Delivery/Return of Voting Equipment (2 precincts @ \$250)	\$250.00
	Totals	\$556.25

Specimen Ballot Screen Shots

DESI will provide an electronic copy of the Accu-Vote TS ballot page for Specimen Ballot preparation.

Absentee Ballot Production

The City of Salisbury will count Absentee Ballots using the AccuVote-Optical Scan equipment. DESI will print a Master Absentee Ballot for City of Salisbury proofing. After Salisbury approval of the Ballot, DESI will print an Optical Scan Test Deck and the Absentee Ballots.