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**CITY OF PORT LAVACA**

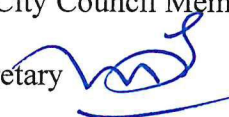
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**CC MEETING:** MARCH 13, 2023

**DATE:** 03/01/23

**TO:** Jody Weaver, Interim City Manager  
**cc:** Honorable Mayor And City Council Members

**FROM:** Mandy Grant, City Secretary 

**SUBJECT:** Lease of Electronic Voting Equipment from Calhoun County for the City's General Officer's Election to be held on uniform date of May 06, 2023

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**BACKGROUND:**

Election Laws require that electronic voting devices be made available to voters.

**FINANCIAL IMPLICATIONS:**

Costs related to these services include expenses related to seven (7) days of early voting and also for voting on Election Day. The sum of \$798.00 is for leasing this equipment for a total of eight (8) days and this amount has been budgeted for this fiscal year.

**IMPACT ON COMMUNITY SUSTAINABILITY:**

Helps improve the accuracy of the election process and offers some degree of confidence to our citizens regarding protection of their right to vote.

**RECOMMENDATION:**

Staff recommends approval of this lease in the sum of \$798.00.

**ATTACHMENTS:**

Lease from Calhoun County for voting equipment.

# VOTING EQUIPMENT LEASE

## BASIC TERMS

DATE: 02/27/23

Lessor: Calhoun County, Texas

Lessor's Address: Calhoun County Courthouse

211 S. Ann, Port Lavaca, Texas 77979

Lessee: City of Port Lavaca

Lessee's Address: 202 N. Virginia St. Port Lavaca, Texas 77979

Equipment

1 (number) voting machine described as ES&S Express Vote BMD

Term (days): 3

Commencement Date: April 24, 2023

Termination Date: May 06, 2023

Rent: Early voting: 1 machine @ \$3,325.00 for 7 days X 3% = \$698.25

Election day 1 machine @ \$3,325.00 for 1 day X 3% = \$99.75

Rent Total: \$798.00

Security Deposit: \$0.00

Permitted Use: Early Voting & Election Day

### Clauses and Covenants

#### A. Lessee agrees to –

1. Lease the Equipment for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the voting equipment in its present condition "AS IS," the equipment being currently suitable for the Permitted Use.
3. Obey (a) all applicable laws relating to the use of the voting equipment and (b) any requirements imposed by the utility companies serving or insurance companies covering the Premises.
4. Take reasonable care not to damage or destroy the equipment.
5. Purchase and provide at the renters' own expense all ballots, software, programming and supplies necessary for the proper use of the voting machines.
6. Repair, replace, and maintain the voting equipment, normal wear excepted.
7. Return the voting machines to the County at the end of the lease term.
8. INDEMNIFY, DEFEND AND HOLD LESSOR AND LIENHOLDER HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEE AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN THE USE OF THESE VOTING MACHINES. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (a) IS INDEPENDENT OF ANY INSURANCE, (b) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES

PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (c) WILL SURVIVE THE END OF THE TERM, AND (d) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF CALHOUN BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR CALHOUN COUNTY.

**B. Lessee agrees not to –**

1. Use the equipment for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Use the equipment in any way that would increase insurance premiums or void insurance on the equipment.
5. Change Lessor's equipment.
6. Alter the equipment.
7. Allow a lien to be placed on the equipment.

**C. Lessor agrees to –**

1. Lease to Lessee the equipment for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Provide the Essential Services and instruction on the use and function of the equipment.
3. Repair, replace, and maintain the equipment as provided by the manufacture warranty on the equipment and to the extent of this warranty only.

**D. Lessor agrees not to –**

1. Interfere with Lessee's possession of the equipment as long as Lessee is not in default.
2. Interfere in any way with the election and the use of the equipment during the election being held by the Lessee.

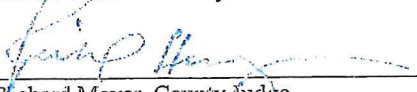
**E. Lessor and Lessee agree to the following:**

1. *Alterations.* Any physical additions or improvements to the equipment made by Lessee will become the property of Lessor. Lessor may require that Lessee, at the of the Term and at Lessee's expense, remove any physical additions and improvements, repair any alternations, and restore the equipment to the condition existing at the Commencement Date, normal wear excepted.
2. *Abatement.* Lessee's covenant to pay Rent and Lessor's covenants are independent. Except as otherwise provided, Lessee will not be entitled to abate Rent for any reason.
3. *Insurance.* Lessee and Lessor will maintain the respective PERSONAL PROPERTY insurance coverage's on equipment owned by them, being used by them or under their protection, possession or control.
4. *Release of Claim/Subrogation.* LESSOR AND LESSEE RELEASE EACH OTHER AND LEINHOLDER FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE EQUIPMENT, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE EQUIPMENT, AND LOSS THAT ARE COVERED BY THE RELEASING INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PERSONAL PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY

INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LESSOR AND LESSEE WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PERSONAL PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN THE WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY.

5. *Alternative Dispute Resolution.* Lessor and Lessee agree to mediate in good faith before filing suit for damages.
6. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.
7. *Venue.* Exclusive venue is in the county in which the Premises are located.
8. *Entire Agreement.* This lease is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this lease or to any expressly mentioned exhibits and riders not incorporated in writing in this lease.
9. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Lessor and Lessee.
10. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.
11. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notices may be changed by written notice delivered as provided herein.

Lessor: Calhoun County Texas

  
Richard Meyer, County Judge

Lessee: City of Port Lavaca

By: \_\_\_\_\_  
Title: \_\_\_\_\_