

County Council of Cuyahoga County, Ohio

Resolution No. R2023-0029

<p>Sponsored by: County Executive Ronayne on behalf of Cuyahoga County Board of Elections</p> <p>Co-sponsored by: Councilmembers Miller, Sweeney, Turner, Simon and Stephens</p>	<p>A Resolution authorizing participation in a sublease-purchase arrangement with the Ohio Secretary of State for the purpose of acquiring and implementing voting machines and equipment and financing certain costs thereof, a sublease-purchase agreement evidencing such arrangement and matters related thereto; authorizing the County Executive to execute said agreement and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, pursuant to Amended Substitute Senate Bill 135 of the 132nd Ohio General Assembly (as the same may be amended, modified, revised, supplemented or superseded from time to time, the “Act”) and the financing program authorized thereunder (the “SoS Financing Program”), the Secretary of State of the State of Ohio (the “Sublessor”) is providing financing to Ohio counties for the acquisition of voting systems, including, but not limited to, voting machines, marking devices, automatic tabulating equipment, and direct record electronic voting machines, as defined in Ohio Revised Code (“ORC”) Section 3506.01, together with associated allowable expenditures, as defined in the Act; and

WHEREAS, in accordance with ORC Section 3506.02, the Cuyahoga County Board of Elections selected the voting system of Clear Ballot Group, Inc. (the “Vendor”) for the citizens of the County of Cuyahoga, Ohio (the “Sublessee”) to use when voting in federal, state and local elections; and

WHEREAS, the Vendor has submitted a draft contract that, together with the order and their respective exhibits, provides for the acquisition of the new voting system (collectively, the “Master Agreement”), and the Sublessor has reviewed and approved the Master Agreement (as it relates to the SoS Financing Program) and the Project Equipment (as hereinafter defined); and

WHEREAS, implementing the new voting system requires the Sublessee to acquire certain voting machines and equipment (the “Project Equipment”) and pay certain costs related to using the system (along with the acquisition of the Project Equipment, the “Project”) and this County Council (the “Legislative Authority”) desires to authorize

execution of the Master Agreement to undertake the Project and finance a portion of the cost by utilizing the provisions of the SoS Financing Program.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. It is hereby determined to be necessary, desirable and expedient, and in the best interests of the Sublessee and its citizens, for the Sublessee to (i) enter into the Master Agreement, (ii) acquire the Project Equipment, and (iii) finance a portion of the costs of the Project Equipment (the “State-Financed Equipment”) and other costs of the Project by participating in the SoS Financing Program.

SECTION 2. The Sublessee’s participation in the SoS Financing Program shall be evidenced by a Sublease-Purchase Agreement between the Sublessor and the Sublessee (together with all exhibits and appendices thereto, the “Sublease”). The Sublessee’s County Executive and the Director of the Cuyahoga County Board of Elections (collectively, the “County Signers”) are hereby jointly authorized to execute and deliver the Master Agreement and Sublease on behalf of the Sublessee in substantially the form presently on file with the Legislative Authority, which is hereby approved, with such changes not substantially adverse to the Sublessee as the County Signers may approve; the approval of such changes and that the same are not substantially adverse to the Sublessee shall be conclusively evidenced by the execution of the Sublease by the County Signers.

SECTION 3. All of the obligations of the Sublessee set forth and covenants made by the Sublessee under the Sublease are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Sublessee within the meaning of ORC Section 2731.01 *et seq.*

SECTION 4. Pursuant to the SoS Financing Program, the Sublessee shall not be required to make any scheduled payments towards the purchase of the State-Financed Equipment to the Sublessor or any other entity. To pay that portion of the cost of the Project not financed through the SoS Financing Program, there is appropriated from the Sublessee’s General Fund the amount of \$79,500.00, and the Director of the Office of Budget and Management is authorized to submit the requisite documentation to financial reporting to journalize the appropriation.

SECTION 5. The County Signers and other appropriate officers of the Sublessee, or any of them, are hereby separately and individually authorized to (i) make the necessary arrangements with the Sublessor to establish the date, location, procedure and conditions for executing the Master Agreement and Sublease, and delivering the Sublease to, the Sublessor, and (ii) give all appropriate notices and execute and deliver, on behalf of the Sublessee, such additional instruments, documents, agreements, certificates, and other papers as may be in their discretion necessary or appropriate in order to carry out, give effect to and consummate the transaction contemplated thereby in such forms as the official executing the same may approve, and to take all other steps

necessary or appropriate to effect the due execution, delivery and performance of the Master Agreement and Sublease pursuant to the provisions of this resolution. The Clerk of the County Council shall furnish to the Sublessor a true transcript of proceedings pertaining to the Sublease containing such information from the records of the Sublessee as is necessary to evidence or determine the regularity and validity of the authorization, execution and delivery of the Sublease. Each of the County Signers is hereby separately and individually designated to act as the authorized representative of the Sublessee for purposes of the Sublease until such time as the Legislative Authority shall designate any other or different authorized representatives for such purpose.

SECTION 6. The Sublease shall constitute a special obligation of the Sublessee. Nothing in the Sublease or any agreements or documents relating thereto shall constitute or be construed or deemed to constitute a debt, bonded indebtedness or a general obligation of the Sublessee. Neither the taxing power nor the full faith and credit of the Sublessee are pledged or shall be pledged for the payment or security of the Sublease, or any other related agreement or document.

SECTION 7. The Legislative Authority acknowledges that the Sublessor has obtained funds for the SoS Financing Program by utilizing a sublease-purchase / certificates of participation arrangement, and that the interest component of the Sublessor's lease payments thereunder is intended to be exempt from federal income taxation under the Internal Revenue Code of 1986, as amended and the regulations prescribed thereunder (the "Code"). The Legislative Authority hereby covenants that it will restrict the use of the State-Financed Equipment in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the Sublease is entered into, so that the interest portion of such lease payments by the Sublessor will not be subject to federal income taxation under the Code. Any County Signer or any other officer having responsibility with respect to the execution and delivery of the Sublease is authorized and directed to give an appropriate certificate on behalf of the Sublessee on the date of delivery of the Sublease, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the State-Financed Equipment and other matters under the Code.

SECTION 8. It is hereby determined that the terms of the Sublease and this resolution are in compliance with all legal requirements. If any section, paragraph, clause or provision of this resolution or the Sublease shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any remaining provisions of this resolution or the Sublease, respectively. Any provisions of any ordinance or resolution inconsistent with this resolution are hereby repealed, but only to the extent of such inconsistency; this provision shall not be construed as reviving any ordinance or resolution or any part thereof.

SECTION 9. It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health or safety in the County; and any additional reasons set forth in the preamble. Provided

that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 10. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.


On a motion by Ms. Conwell, seconded by Mr. Schron, the foregoing Resolution was duly adopted.

Yeas: Miller, Sweeney, Tuma, Gallagher, Schron, Conwell, Turner, Stephens, Simon, Kelly and Jones

Nays: None


County Council President

3/17/23
Date


County Executive

3/22/23
Date


Clerk of Council

3/16/23
Date

First Reading/Referred to Committee: February 14, 2023
Committee(s) Assigned: Committee of the Whole

Additional Sponsorship Requested on the Floor: March 14, 2023

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