

**MEMORANDUM OF AGREEMENT
BETWEEN THE COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS
AND THE COUNTY OF FAYETTE**

WHEREAS, both parties desire that all citizens of the Commonwealth have access to the polls in order to cast their vote on Election Day for candidates for public office and on public questions;

WHEREAS, both parties seek to increase and improve the voting equipment of the Commonwealth in order to provide better access to the citizens;

WHEREAS, the Help America Vote Act (HAVA) of 2002, codified at 42 U.S.C. 15301 *et seq.*, placed requirements upon the states to meet federal voting systems standards by January 1, 2006;

WHEREAS, Section 251 of HAVA allows states and local governments to use HAVA funds to improve the administration of elections for Federal office when the State certifies that one of two conditions is met: (1) the state has met the requirements of Title II; or (2) the state notifies the Election Assistance Commission (EAC) of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose;

WHEREAS, on February 2, 2006, the Commonwealth of Kentucky certified to the United States Department of Justice that the state had met the requirements of Title II of HAVA;

WHEREAS, on January 16, 2007, the Commonwealth of Kentucky certified to the EAC that the State had implemented the requirements of Title III by the first Federal election and that

the State intends to use the remainder of the Title II requirements payments to carry out other activities to improve the administration of elections for Federal office under Section 251(b)(2);

WHEREAS, the counties must continue to meet the requirements of HAVA and continue to use one accessible unit per precinct at each election pursuant to Section 301 of HAVA; and

WHEREAS, the Commonwealth of Kentucky chooses to use a portion of the remaining HAVA funds to further improve the administration of elections by reimbursing the counties for purchasing additional voting equipment:

The Commonwealth of Kentucky State Board of Elections and the County of Fayette do hereby agree as follows:

A. OBJECTIVES AND FUNDING FOR THIS AGREEMENT

ADDITIONAL VOTING EQUIPMENT PURCHASES

Purchase additional voting equipment, to be used in conjunction with the accessible voting systems purchased under the FY 2005 Memorandum of Agreement, maximum amount of reimbursement will be equal to the number of precincts in existence in the county as of the 2006 General Election, multiplied by \$4,500.00 per precinct, for a total of \$1,125,000.00 for the County. Fayette County has been reimbursed \$0.00 for additional voting equipment prior to the effective date of this Agreement and has a remaining balance of \$1,125,000.00.

NOTE: Counties may not use the funds provided under this Agreement to replace the accessible voting systems purchased under the FY 2005 Memorandum of Agreement.

B. PURCHASE OF VOTING MACHINES AND UPGRADES

1. Any voting systems purchased must be on the state certified list approved by the State Board of Elections and meet the 2002 Federal Voting System Standards or the 2005 Voluntary Voting System Guidelines.

2. All purchases must be in accordance with local procurement procedures set forth in state law and adopted by the County.

3. The County must follow all the procedures for purchasing voting equipment outlined in KRS 117.105, 117.115, 117.125, and 117.135.

C. REIMBURSEMENT

1. Upon receipt from the County of documentation verifying the purchase of additional voting equipment, the State Board of Elections shall, within 30 (thirty) days, reimburse the County the actual cost of the voting equipment or the maximum amount, as specified in Section A, whichever amount is lower.

2. The documentation of the purchase of voting equipment shall contain the serial number, type, make, cost and manufacturer of the voting equipment purchased, a copy of the invoice from the manufacturer containing the serial numbers and the actual purchase price, and a copy of one or more of the following: (A) the contract with the voting equipment manufacturer, (B) a copy of the fiscal court resolution authorizing the purchase, or (C) a copy of the official fiscal court minutes documenting the request to purchase.

3. Reimbursement under this agreement shall not exceed actual costs.

4. Reimbursement pursuant to this Agreement shall not be authorized for purchases made after Government Contract Review Committee disapproval unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head if the agency has been granted delegation authority by the Secretary.

D. SOURCE OF FUNDS

It is understood by the parties that the funds disbursed under this Agreement are Federal funds granted to the State under HAVA Title II and funds provided by the State to meet the 5% state match requirements of Section 253(b)(5) of HAVA.

E. AUDITS

The parties agree that the expenditure of funds under this Agreement is subject to the audit requirements under Section 902(b) Title IX of the Help America Vote Act of 2002.

F. RECORDKEEPING & INVENTORY MAINTENANCE

1. The County shall retain all records related to the purchase of voting equipment for a period of three (3) years following the last purchase date of voting equipment or until all audit findings have been resolved.

2. The County shall keep such records with respect to payment under this Agreement as are consistent with sound accounting principles, including records which fully disclose the amount and disposition of funds, the total cost of the purchases made under this Agreement for which the funds are used, and such other records as will facilitate an effective audit.

3. The County shall conduct an annual inventory of the voting equipment purchased with Federal funds and certify to the State Board of Elections by March 1st of each year the serial number, type, make, and manufacturer of the voting equipment in the inventory of the County and make and provide documentation of any discrepancies in the inventory.

G. ACCESS TO RECORDS

1. The parties agree that duly authorized representatives of the Federal and state governments shall have access for the purpose of audit and examination to any books, documents, papers, and records of the County that, in the opinion of the duly authorized representative, may be related or pertinent to the funds or payments under this Agreement.

2. The County agrees that the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence,

which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service.

H. DISPOSITION OF PROPERTY

The County shall report and document any theft, loss, destruction, sale, or other disposition of any voting equipment purchased with funds under this Agreement, pursuant to KRS 117.377. The report shall be submitted in writing to the State Board of Elections as soon as practicable after the occurrence.

I. OWNERSHIP

The County shall own the voting equipment purchased under this Agreement and per KRS 117.105 and 117.135.

J. TERMINATION

Either party shall have the right to terminate this Agreement for convenience at any time upon thirty (30) days written notice served upon the other party by certified or registered mail with return receipt requested. In addition, either party may terminate the Agreement immediately for cause upon written notice served upon the other party by registered or certified mail with return receipt requested. Termination of this Agreement shall not diminish or in any

other manner affect any other remedy that may be available to the parties for any breach of the Agreement that occurs prior to termination.

K. DURATION OF AGREEMENT

Subject to the necessary appropriations of the General Assembly, this Agreement shall be effective upon signature of the parties and through June 30, 2016.

L. LIMITATIONS ON FUNDING

Funding for this Agreement is limited to the amount of Federal funds available and appropriated by the General Assembly.

M. FUNDING OUT PROVISION

The State Board of Elections may terminate this contract if funds are not appropriated to make payment to the County or are not otherwise available for making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The State Board of Elections shall provide the County thirty (30) calendar days written notice of termination of the contract.

N. CHOICE OF LAW AND FORUM PROVISION

All questions as to the execution, validity, interpretation, and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action, which is brought based on this Agreement, shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

O. EXTENSION/AMENDMENTS

The terms and conditions of this Agreement may be extended or amended at any time by mutual agreement of the parties in writing subject to the approval of the Secretary of Finance and Administration Cabinet (if required).

P. TITLE VI COMPLIANCE

It is the policy of the County not to discriminate on the basis of race, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Memorandum of Agreement, the County certifies and warrants it will comply with this policy.

IN WITNESS WHEREOF, the parties have hereunto set out the signatures of their authorized representatives.

COUNTY OF FAYETTE

BY: _____ **DATE:** _____
JIM GRAY, MAYOR
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

KENTUCKY CHIEF ELECTION OFFICIAL

BY: _____ **DATE:** _____
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE and
CHAIR, STATE BOARD OF ELECTIONS