



Wendy Sartory Link

Palm Beach County Supervisor of Elections

**2021 MUNICIPAL ELECTION
VOTE PROCESSING EQUIPMENT USE
AND ELECTIONS SERVICES AGREEMENT**

This Vote Processing Equipment Use and Elections Services Agreement (hereinafter referred to as the “Agreement”) is hereby entered into by and between the **Palm Beach County Supervisor of Elections Office** (hereinafter referred to as “SOE”) and the **City of Lake Worth Beach, Florida** (hereinafter referred to as “MUNICIPALITY”).

WITNESSETH:

WHEREAS, pursuant to Section 101.34, Florida Statutes, SOE is the legal custodian of certified vote processing equipment owned by Palm Beach County, Florida, and is hereby charged with the responsibility for custody and maintenance of said equipment; and,

WHEREAS, MUNICIPALITY desires, or is otherwise statutorily obligated, to conduct an election that requires the use of vote processing equipment to count ballots; and,

WHEREAS, all vote processing equipment requires specially trained and knowledgeable individuals to program, operate and maintain said equipment; and,

WHEREAS, the Palm Beach County Board of County Commissioners has authorized SOE to provide any necessary terms and conditions for the use of such voting equipment; and,

WHEREAS, SOE can provide the necessary personnel to program, operate and maintain said equipment; and,

WHEREAS, MUNICIPALITY hereby acknowledges full responsibility for all applicable requirements under the Florida Election Code and any provision of the City Charter or municipal ordinances which may not be addressed or included in this Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual promises, terms and conditions stated herein, SOE and MUNICIPALITY agree as follows:

ARTICLE 1 – RECITALS

The above recitals are true and correct and incorporated herein.

ARTICLE 2 – AGREEMENT

SOE shall provide MUNICIPALITY such necessary vote processing equipment and election services according to the terms and conditions stated in this Agreement, for the purposes of conducting a Municipal Election to be held on **March 9, 2021**, and a Run-Off Election, if necessary, along with the necessary vote processing equipment and election services to facilitate any early voting sites, polling locations and polling places as may be necessary and agreed upon by the parties.

ARTICLE 3 – OPERATION AND PROGRAMMING SERVICES

3.1 Municipal Services. For each election, MUNICIPALITY shall pay SOE for election operations.

3.2 Vote-By-Mail Ballots.

MUNICIPALITY shall pay SOE for vote-by-mail operations and materials.

3.3 Repairs. For any election, all maintenance, repairs or other troubleshooting services for vote processing equipment, including any tabulators, check-in devices, and other voting equipment, will be performed exclusively by SOE and such services are included in all stated charges. However, SOE does reserve the right to seek reimbursement from MUNICIPALITY for any repairs or maintenance caused by any negligent acts or omissions or unauthorized access by any employee of MUNICIPALITY which directly or indirectly causes damage to the SOE's voting equipment.

ARTICLE 4 – OTHER ELECTION CHARGES

4.1 Precinct Services. For each election, MUNICIPALITY shall pay SOE for precinct preparation and poll worker training.

4.2 Other. For each election and upon proper notice to MUNICIPALITY, MUNICIPALITY shall pay SOE for any other election services not contemplated herein which may be needed to conduct an orderly election.

ARTICLE 5 – TERM

For each election, the terms of this Agreement begin with ballot layout and conclude when ballots have been processed, election results have been certified, all vote processing equipment has been returned to the SOE's warehouse and an audit, if applicable, has been completed. In the event of an election contest or challenge, SOE agrees to cooperate in providing any public records which the SOE maintains or otherwise controls.

ARTICLE 6 – APPLICABLE REQUIREMENTS OF FLORIDA'S ELECTION CODE

MUNICIPALITY shall properly call the election in accordance with any Florida Statutes, applicable charter provisions or city ordinances. MUNICIPALITY agrees that the Municipal Clerk is responsible for the conduct of the MUNICIPALITY's elections and for ensuring compliance with all applicable Florida Statutes, including the Florida Election Code and any municipal charter provisions and ordinances. Any obligations or duties not set forth in this Agreement shall be the sole responsibility of MUNICIPALITY.

ARTICLE 7 – NOTICE AND ADVERTISEMENT OF ELECTIONS

7.1 Uniform Municipal Election. MUNICIPALITY shall prepare and arrange for publication of all legal advertising required by state and federal statutes, city charter and city ordinances. MUNICIPALITY agrees that all advertisements of elections conducted in Palm Beach County shall be published in both English and Spanish and that MUNICIPALITY shall be responsible for the accurate and complete translation of any such notices. SOE shall, if available, provide samples of required advertising upon request.

7.2 Run-Off Election. In the event of a run-off election, MUNICIPALITY shall prepare and arrange for publication of all legal advertising required by state and federal statutes, city charter and city ordinances. MUNICIPALITY agrees that all advertisements of elections conducted in Palm Beach County shall be published in both English and Spanish and that MUNICIPALITY shall be responsible for the accurate and complete translation of any such notices. SOE shall, if available, provide samples of required advertising upon request.

ARTICLE 8 – QUALIFYING OF CANDIDATES

MUNICIPALITY may provide qualifying packets to candidates. MUNICIPALITY shall accept and process all qualifying papers and fees. For audio ballots, MUNICIPALITY shall collect pronunciation guides from candidates at the time of qualifying and shall submit them to SOE at the close of qualifying.

If petitions are part of qualifying process, MUNICIPALITY shall pay SOE Ten Cents (\$.10) per name, or such other amount as determined per Florida Statutes or the Florida Administrative Code, checked to verify any signatures on qualifying petitions. SOE agrees to verify any signatures for any qualifying petitions timely submitted by MUNICIPALITY in the order such petitions are received.

In no event shall SOE issue any recommendations or make any legal determinations as to the qualifications of eligibility of any candidate for municipal office.

ARTICLE 9 – PRINTING OF BALLOTS AND BALLOT SERVICES

9.1 Uniform Municipal Election.

SOE shall place an order for sufficient quantity of Election Day ballots with a third-party printer as selected exclusively by SOE.

MUNICIPALITY shall furnish by no later than December 18, 2020, all ballot information in English, Spanish and Creole, including the name of the candidates as they are to appear on the ballot, the name of the Municipality, the name of the election, the title of office or referendum title, explanation, and questions.

SOE agrees to provide the layout of the ballot(s) based on the information furnished by MUNICIPALITY and deliver ballot layout to the approved printer. Both SOE and MUNICIPALITY must sign off on ballot proof(s).

MUNICIPALITY shall be responsible for providing all necessary translations of ballots, in accordance with Section 203 of the Voting Rights Act, as well as Creole translations for the ExpressVote machine.

Once test ballots are received from the printer, SOE will test all vote processing equipment in accordance with the standards established by the Florida Division of Elections and any applicable Florida Statutes. Upon receipt of the printed ballots from the printer, SOE shall receive, securely store and account for all ballots until disbursed to poll workers. SOE shall also control and limit all access to un-voted ballots while in possession of SOE.

9.2 Run-Off Election.

In the event of a run-off election, MUNICIPALITY will be responsible for providing all information stated in 9.1. MUNICIPALITY will again be responsible for providing any additional translations and must again approve ballot content and layout prior to printing.

MUNICIPALITY will be responsible for reimbursing SOE for any and all costs incurred.

ARTICLE 10 – POLL WORKERS

10.1 Selection and Training of Poll Workers. MUNICIPALITY is responsible for securing sufficient poll workers to appropriately staff each polling location. SOE will provide information regarding poll worker eligibility. SOE will train all poll workers in accordance with the Florida Election Code and other guidelines, procedures or regulations as followed or adopted for the conduct of elections in Palm Beach County. The clerk for MUNICIPALITY, or a representative, shall be in attendance for poll worker training sessions. Poll workers shall undergo job specific training and complete required number of training hours as specified by SOE poll worker department management. All necessary supplies and ballots will be provided by SOE and stored in precinct cabinets or transported in poll worker clerk bags.

10.2 Uniform Municipal Election. MUNICIPALITY shall pay poll workers directly for their services.

10.3 Run-Off Election. In the event of a run-off election, MUNICIPALITY shall pay poll workers directly for their services.

ARTICLE 11 – SELECTION OF POLLING PLACES

MUNICIPALITY shall provide ADA compliant Polling Places.

ARTICLE 12 – SAMPLE BALLOTS

12.1 Uniform Municipal Election.

MUNICIPALITY shall review the sample ballot(s) and confirm the accuracy of the election date, office, candidate name(s), polling locations, polling places and all other information contained therein. At MUNICIPALITY'S option, SOE shall coordinate the mailing of the sample ballots to all registered voters in the municipality prior to the election.

12.2 Run-Off Election.

In the event of a run-off election, SOE *shall not* create or mail sample ballots.

ARTICLE 13 – VOTE-BY-MAIL BALLOTS

SOE agrees to perform vote-by-mail services. MUNICIPALITY agrees to pay for all costs associated with mailing, collecting, and processing vote-by-mail ballots on behalf of MUNICIPALITY.

ARTICLE 14 – TRANSPORTATION OF ELECTIONS EQUIPMENT AND SUPPLIES

14.1 Uniform Municipal Election.

SOE will be responsible for delivery and pick up of any vote processing equipment. Election equipment will be delivered by SOE, or a third party representative of SOE on an agreed upon date, up to eight (8) days prior to the election. SOE, or a third party representative of SOE, will pick up voting equipment on an agreed upon date. SOE shall have full discretion and authority to hire and employ any outside third parties to assist with or perform delivery and pick up of voting equipment.

14.2 Run-Off Election.

SOE will maintain responsibility for transportation of equipment and supplies as stated in 14.1. MUNICIPALITY shall reimburse SOE for any and all costs incurred for equipment delivery and pickup.

14.3 MUNICIPALITY is not permitted to deliver any election equipment.

ARTICLE 15 – LOCATION AND STORAGE OF VOTING EQUIPMENT

All voting equipment shall be stored, maintained and located in a well-protected, secure, temperature-controlled, indoor room or facility. Once the voting equipment is delivered to a voting site, no equipment shall be relocated without the prior written approval of SOE.

ARTICLE 16 – CANVASSING OF ELECTION RESULTS

16.1 Uniform Municipal Election. MUNICIPALITY shall schedule and coordinate the date on which MUNICIPALITY'S Canvassing Board is to assemble to canvass the results of the election. MUNICIPALITY shall determine if the Supervisor of Elections will be a member of the MUNICIPALITY'S Canvassing Board and if so, shall coordinate such with SOE, according to availability of SOE. If applicable, MUNICIPALITY shall coordinate for the use of SOE facilities to conduct the Canvassing Board activities. MUNICIPALITY shall notice and advertise in both English and Spanish, as needed, the dates of any Canvassing Board meetings. MUNICIPALITY shall convene the Canvassing Board to determine which voted ballots are to be tabulated. MUNICIPALITY shall provide for collection of results from each precinct.

16.2 Run-Off Election. In the event of a run-off election, MUNICIPALITY shall schedule and coordinate the date on which MUNICIPALITY'S Canvassing Board is to assemble to canvass the results of the election. If applicable, MUNICIPALITY shall coordinate for the use of SOE facilities to conduct the Canvassing Board activities. MUNICIPALITY shall notice and advertise in both English and Spanish, as needed, the dates of any Canvassing Board meetings. MUNICIPALITY shall convene the Canvassing Board to determine which voted ballots are to be tabulated. MUNICIPALITY shall provide for collection of results from each precinct.

ARTICLE 17 – AUDITS

MUNICIPALITY agrees to pay SOE for any additional costs as may be necessary, including overtime expenses, for conducting an audit, if necessary.

ARTICLE 18 – POST-ELECTION RECORDS RETENTION

SOE shall process affirmation forms and sort, inventory, and pack all election materials for pickup by SOE for retention and disposition. SOE shall store or cause to be stored all necessary election records and ballots until expiration of retention period as prescribed by applicable Florida Statutes and Rules.

ARTICLE 19 – VOTER HISTORY

MUNICIPALITY and SOE will make mutually acceptable arrangements for recording and maintaining voter history. MUNICIPALITY is responsible for determining whether voters are eligible electors, pursuant to municipal charters and ordinances.

ARTICLE 20 – OTHER NECESSARY COSTS

Any additional costs or fees that may be incurred by SOE in compliance with the Florida Election Code and as a direct result of a municipal election, that are not specified in this Agreement, shall be paid for by MUNICIPALITY at rates and fees as established by SOE. Examples of such additional costs or reimbursements include, but are not limited to, the following:

- A. **Recounts.** Any expenditure for conducting a recount, including any overtime expenses for reprogramming voting equipment, and other expenses as may be necessary to conduct a recount; and,
- B. **Attorneys' Fees and Costs.** Reasonable attorneys' fees and costs incurred by SOE for research or representation on any election-related matter specific to the MUNICIPALITY shall be invoiced by SOE for reimbursement by MUNICIPALITY.

ARTICLE 21 – HOLD HARMLESS COVENANT

MUNICIPALITY shall at all times hereafter indemnify, hold harmless and, at SOE's option, defend or pay for an attorney selected by SOE to defend SOE, its officers, agents and employees against any and all claims, damages, injuries, losses, liabilities and expenditures of any kind, including reasonable attorneys' fees, court costs and expenses arising out of or resulting from any or all negligent acts or omissions by the MUNICIPALITY, its officers, or employees with respect to any election conducted pursuant to this Agreement. MUNICIPALITY also agrees to indemnify SOE against any administrative challenges, civil suits or other legal challenges or appeals that may arise, including reasonable attorneys' fees and costs, from the contest of the MUNICIPALITY's election results or the validation of any candidate qualifications for the MUNICIPALITY.

The foregoing indemnification shall not constitute a waiver by the MUNICIPALITY of its rights to sovereign immunity including, but not limited to, a waiver beyond the limits set forth at Sec. 768.28, Florida Statutes. In no case shall such limits for SOE or MUNICIPALITY extend beyond \$200,000 for any one person or beyond \$300,000 for any judgment which, when totaled with all other judgments, arises out of the same incident or occurrence. Furthermore, nothing

herein shall be construed as consent by the MUNICIPALITY, as a political subdivision of the state, or the SOE, as a state agency or subdivision of the State of Florida, to be sued by third-parties in any matter arising out of this Agreement or any contract.

These provisions shall not be construed to constitute agreement by either party to indemnify the other party for the negligent, willful or intentional acts or omissions of the other party or of that other party's officers, agents or employees.

ARTICLE 22 – ENTIRETY AND AMENDMENTS

The Agreement embodies this entire agreement between SOE and MUNICIPALITY and supersedes all prior agreements and understandings relating to the conduct of elections. No modification, amendment or alteration to this Agreement shall be effective of binding unless submitted in writing and executed by the duly authorized representatives of both SOE and MUNICIPALITY.

ARTICLE 23 – EFFECTIVE DATE

The effective date of this Agreement shall be the latest date of execution by duly authorized representatives of SOE and MUNICIPALITY as shown on the signature page hereto.

IN WITNESS WHEREOF, we, the undersigned, do hereby state that we have the authority to bind and obligate as promised herein, SOE and MUNICIPALITY for purposes of executing this agreement on the dates set forth below.

SOE:

Wendy Sartory Link,
Palm Beach County Supervisor of Elections

Date: _____

Ashley Houlihan, Esq.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Pam Triolo, Mayor

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Bruce T. Miller, Financial Services Director