RESOLUTION NO. 2018-11

A RESOLUTION OF THE TOWN OF JUPITER INLET COLONY, FLORIDA, APPROVING AN AGREEMENT WITH PALM BEACH COUNTY SUPERVISOR OF ELECTIONS (SOE) FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES AND GRANTING AUTHORIZATION FOR MAYOR AND TOWN CLERK TO EXECUTE THE SAME; REQUESTING THE SOE TO CONDUCT THE TOWN'S MARCH 12, 2019 GENERAL ELECTION AND MARCH 26, 2019 RUN-OFF ELECTION, IF NECESSARY; DESIGNATING MEMBERS OF THE CANVASSING BOARD FOR TOWN OF JUPITER INLET COLONY FOR SAID ELECTIONS; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, in 2009, the Palm Beach County League of Cities, Inc., formed an Ad Hoc Committee on Municipal Elections to work with the Palm Beach County Supervisor of Elections (SOE) to set forth terms and conditions under which services will be provided by the SOE to the municipalities for municipal elections and to set for the responsibilities of the SOE and the municipalities; and

WHEREAS, the Ad Hoc Committee revisited a newly proposed Agreement submitted by the SOE and after negotiations both parties came to agreement on the proposed Agreement with minor modifications; and

WHEREAS, the Town desires the SOE to conduct the Town's election scheduled for March 12, 2019 and Run-Off election on March 26, 2019, if necessary; and

WHEREAS, the Town desires to name the members of the Town's Canvassing Board for said election and deeming all serves a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Jupiter Inlet Colony, Florida, as follows:

SECTION 1. The Town Commission hereby grants approval to enter into the Agreement with the Palm Beach County Supervisor of Elections (SOE) for Vote Processing Equipment Use and Election Services, which is attached and made part of this Resolution, and grants authorization for the Mayor and Town Clerk to execute the same.

SECTION 2. The Town Council requests the SOE to conduct the Town's municipal election scheduled for March 12, 2019 and Run-Off election on March 26, 2019, if necessary.

SECTION 3. The Town Commission hereby designates the Town Clerk, or designee, the unopposed Town Commissioners, or designees, and the SOE, or designee, to serve as the Canvassing Board for said election(s).

SECTION 4. All resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

SECTION 5. Should any section or provision of this Resolution or portion hereof, any

paragraph, sentence or word by declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remainder of this Resolution.

SECTION 6. This Resolution shall become effective upon its adoption.

PASSED AND ADOPTED this 9th day of October, 2018.

TOWN OF JUPITER INLET COLONY, FLORIDA

_____
MAYOR DANIEL J. COMERFORD, III

_____
VICE-MAYOR MILTON J. BLOCK

_____
COMMISSIONER JEROME A. LEGERTON

_____
COMMISSIONER SAEED A. KHAN

_____
COMMISSIONER RICHARD D. BUSTO

ATTEST:

_____
TOWN CLERK JUDE M. GOUDREAU

AGREEMENT FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES BY AND BETWEEN THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS AND THE TOWN OF JUPITER INLET COLONY

THIS AGREEMENT, is made and entered into this ____ day _____ 2018, effective January 1, 2019, by and between the Palm Beach County Supervisor of Elections, an elected county officer pursuant to Article VIII, Sec.1(d) of the *Florida Constitution*, hereinafter referred to as the "SOE", and the Town of Jupiter Inlet Colony, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Chapters 97 to 106, *Florida Statutes*, constitute the Florida Election Code (the "Code") which applies to municipalities where expressly so stated; and

WHEREAS, Sec 100.3605, *Florida Statutes*, states that "[T]he Florida Election Code, chapters 97-106 shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision"; and

WHEREAS, the Municipality and the SOE desire to work together to provide for municipal elections and to allocate certain responsibilities and expenses between the two parties to ensure that the provisions of the Code are followed during municipal elections; and

WHEREAS, the SOE and the Municipality wish to enter into this Agreement to set out the terms of this coordinated program.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the Municipality, its constituents and the SOE, it is agreed as follows:

1. **PURPOSE:**

The purpose of this Agreement is to set forth the terms and conditions under which services will be provided by the SOE and staff to the Municipality for municipal elections and to set forth the responsibilities of both parties so that there is a clear understanding of the rights and responsibilities of all parties. Such rights and responsibilities shall apply to the General, Run-Off, and Recount elections as necessary as well as the Post-Election Audit, unless otherwise stated herein below.

2. **DATE OF GENERAL MUNICIPAL ELECTION:**

The date of the Town of Jupiter Inlet Colony's General Municipal election is March 12, 2019. It is hereby acknowledged and agreed that if the date listed is the same as most other municipalities in March or November, there will be a cost sharing among municipalities for costs incurred by the SOE. Such costs shall be allocated on a pro-rata share basis; otherwise, it is hereby acknowledged and agreed upon by the municipality that it is responsible for all costs of the election, incurred by the office of the SOE.

3. **FEES AND CHARGES TO BE PAID BY THE MUNICIPALITY:**

The SOE hereby agrees not to charge Municipalities for taxpayer purchased equipment and supplies; (i.e. voting machines, tables, chairs, etc.) and associated maintenance and contract fees related to such equipment in return for which the Municipality hereby agrees not to charge the SOE for polling places or poll worker training facilities and allow their use for any training, within its dominion and control. Examples of municipal elections charges related to certain services performed by the SOE to be passed through to the Municipality on a shared pro rata basis for all municipalities holding elections on a general election day (i.e. 2nd Tuesday in March or November) are attached hereto as Exhibit A. All items to be paid or reimbursed to the SOE will be paid by the Municipality within thirty (30) days of receipt of an invoice from the SOE with documentation verifying the charges. Examples of total costs to small, medium and large municipalities are attached hereto as Exhibit B.

4. **RESPONSIBILITIES OF BOTH THE MUNICIPALITY AND THE SOE FOR MUNICIPAL ELECTIONS:**

A. **Notice and Advertisement**

(1) **Municipality**

(a) Properly call and advertise the election according to statutes and charter at its own expense.

(b) Issue a resolution or ordinance to the SOE requesting that the Supervisor of Elections conduct the municipality's election, provide ballot language for any ballot questions within the resolution if applicable and appoint at least 3 members of the Municipality's Canvassing Board, which may or may not include the SOE, at the SOE's discretion.

(c) certify that the registered voter information provided by the SOE to the municipality reflects the proper boundaries of the city and notify the SOE of any changes.

(2) SOE

(a) Publish legal notices for Logic & Accuracy testing, absentee ballot canvass, Post-Election Audit and news releases on book closing.

B. **Qualifying Candidates and Petition Initiatives**

(1) **Municipality**

(a) Provide qualifying packets to candidates and accept and process all qualifying papers and fees.

(b) Collect Name and Pronunciation Guides from the candidates at the time of qualifying and submit to SOE.

(c) Respond to all candidate inquiries and questions.

(d) Respond to all legal inquiries and questions.

(e) Respond to all media inquiries.

(f) Provide all necessary information and materials for petition initiative process

(2) **SOE**

(a) Verify signatures on any qualifying petitions submitted by candidates or for petition initiatives and notify the municipality of such results upon the close of the candidate qualifying or petition initiative deadlines as applicable.

C. **Ballots**

(1) **Municipality**

(a) Review, amend (if necessary) and approve ballot proof prepared by SOE.
(b) Place an order with the SOE for a sufficient quantity of ballots as applicable.
(c) Pay ballot design costs to the SOE as incurred.
(d) Pay the ballot printer directly for the cost of said ballots.
(e) Reimburse the SOE for costs incurred for translation and audio recording of ballot.
(f) Reimburse SOE for preparation of Absentee Ballot, Edge layout and Sample Ballot.

(2) **SOE**

(a) Layout, check, proof and deliver ballot layout to the printer.
(b) Receive, securely store and account for all ballots until disbursed to polling places.
(c) Contract to have audio recorded for Touch Screen ballot.
(d) Control all access to un-voted ballots while in the possession of the SOE.

D. **Equipment Testing**

(1) **Municipality**

(a) Provide that a representative will be present during the Logic and Accuracy testing as noticed by SOE.

(2) **SOE**

(a) Develop a unique test script and manually mark ballots to be used in public Logic & Accuracy test.
(b) Conduct public Logic & Accuracy test.

E. **Early Voting – Optional**

(1) **Municipality**

(a) Reimburse the SOE for staff overtime hours due to weekend and/or evening hours for Early Voting.
(b) Pay SOE for Early Voting supplies.
(c) Contract with, schedule and pay poll workers directly.
(d) Deliver voted ballots to SOE daily at a location designated by SOE.
(e) Designate Early Voting sites 120 days prior to each Election and notify SOE in writing of the locations.

(2) **SOE**

(a) Prepare and provide all supplies needed for each Early Voting site.
(b) Provide the Municipality with a list of poll workers.
(c) Train poll workers.
(d) Provide staffing to accept voted ballots daily at a location designated by SOE.

F. **Absentee Voting**

(1) **Municipality**

(a) Reimburse SOE for all postage costs incurred at the current postal rate.
(b) Pay SOE for materials and handling of each absentee ballot.
(c) Pay SOE $.10 per absentee ballot for verifying signatures on returned voted ballot certificates.
(d) Refer all requests for absentee ballots to SOE.

(2) **SOE**

(a) Determine eligibility and compile Absentee Ballot file.
(b) Accept all requests for Absentee Ballots by telephone, mail or in person.
(c) Prepare and mail Absentee Ballots.
(d) Deliver Absentee Ballots to the Post Office.
(e) Receive voted Absentee Ballots.
(f) Verify signatures on returned voted Absentee Ballot certificates.
(g) Prepare and open Absentee Ballots for tabulation.
(h) Account for all Absentee Ballots.
(i) Notify Absentee Ballot voter and provisional voters of the disposition of the Canvassing Board as required by law.
(j) Record Absentee Ballot returns to voter history.
(k) Conduct public testing of Logic and Accuracy for Absentee Ballot tabulating equipment.
(l) Provide qualified staff to operate tabulation equipment to count Absentee Ballots.

G. **Polling Places**

(1) **Municipality**

(a) Arrange for the use of an adequate number of polling places.
(b) Confirm polling place accessibility and ADA compliance.
(c) Notify SOE in writing thirty (30) days prior to election of the need for tables and chairs if necessary.
(d) Notify SOE of polling locations to be used no later than noon the Friday after the municipal candidate qualifying deadline.
(e) Notify the SOE not less than 30 days prior to the election that a polling place will be moved to another site.
(f) Notify voters, as required by law, if their regular polling place is to be temporarily relocated.

(2) **SOE**

(a) Provide the Municipality with a list of polling places and SOE contract.
(b) Provide tables and chairs upon written notice from the Municipality when required.
(c) Provide polling place supplies, i.e. signs, cones, etc.
(d) Notify voters and the Municipality of permanent polling place change(s).

H. **Precinct Supplies**

(1) **Municipality**

(a) Pay SOE for precinct supplies provided.
(b) Provide a secure place for precinct clerks to return supplies and voted ballots on election night.
(c) Pay SOE for the production of Precinct Registers or for programming electronic poll books and related communication fees.
(d) Pay directly to the SOE's contracted moving company to have voting equipment delivered and picked up from polling place no later than the day before the election and returned after the election.

(2) **SOE**

(a) Provide Precinct Registers or electronic poll books for each polling place location.
(b) Provide Master CD compilation of registered voters for precinct advisors or provide up to date electronic poll books.
(c) Provide certification of registered voters after book closing.
(d) Prepare equipment, cabinets and routing of voting equipment delivery.
(e) Provide laptop computer at each polling place or electronic poll books.
(f) Provide CD of voter file database for each polling place or up to date electronic poll books.
(g) Provide poll worker Clerks with cell phones.
(h) Provide Provisional Ballot envelopes and affidavit forms for each polling place.
(i) Provide secrecy sleeves in a number and amount appropriate for each polling place.

I. **Poll Workers**

(1) **Municipality**

(a) Contact, contract with and pay poll workers directly (using only poll workers who are currently on the SOE list, or individuals who have successfully completed required training).
(b) Schedule and notify poll workers of training classes.
(c) Reimburse SOE for expenses incurred for delivery and pick up of equipment to training locations.
(d) Reimburse SOE for expenses incurred in printing training material.
(e) Reimburse SOE for expenses incurred for trainers to train poll workers.
(f) Reimburse SOE for expenses incurred for contracted training locations.

(2) **SOE**

(a) Provide the Municipality with a list of current poll workers.
(b) Develop poll worker training schedule.
(c) Plan and contract for training classes and locations.
(d) Contract with and pay trainers to train poll workers.
(e) Provide printed training materials for poll workers.

J. **Election Day Support**

(1) **Municipality**

(a) Verify that all polling places are available to poll workers no later than 6:00 a.m. and open for voting promptly at 7:00 a.m. on Election Day.
(b) Ensure that all polling places remain open until 7:00 p.m. or until all voters who are in line to vote at 7:00 p.m. have completed voting.

(c) Reimburse SOE for all phone bank costs.

(2) **SOE**

(a) Provide an additional list of poll worker replacements if needed.
(b) Provide technical support personnel as needed.
(c) Provide phone bank support to respond to poll workers and voters on Election Day.

K. **Ballot Tabulation/Counting of Election Results**

(1) **Municipality**

(a) Deliver all voted ballots and other necessary election related items to a place designated by the SOE after the polling places have closed on Election Day.
(b) Deliver **all** voting machine cartridges to a place designated by the SOE after the polling places have closed on Election Day.
(c) Reimburse the SOE for any staff overtime and other expenses in relation to the tabulation and processing of ballots on Election Day.
(d) Act as member of Canvassing Board.

(2) **SOE**

(a) Provide technical staff and required equipment to administer tabulation and election results.
(b) Assist and act, or appoint a designee to assist and act on the SOE's behalf, as a member of the Municipality's Canvassing Board if desired by the municipality and approved by the SOE or act as a member of the County Canvassing Board if it canvasses the municipality's election, if allowed by law.
(c) Post election results on SOE WEB site and provide the same to Channel 20.
(d) Provide the Municipal Clerk with unofficial election results upon conclusion of tabulation and canvassing of ballots cast on Election Day.

L. **Post Election Day**

(1) **Municipality**

(2) **SOE**

(a) Provide the Municipal Clerk with an official certification of election results if allowed by law.
(b) Store all necessary election records and ballots until the expiration of retention period prescribed by statutes.
(c) Process polling place affirmation forms.
(d) Sort, inventory, pack and store all election materials for retention and disposition.
(e) Notify voters of the disposition of their Absentee or Provisional Ballots after the determination by the Canvassing Board, as required by law.
(f) Respond to public records requests regarding records kept on behalf of the Municipality.
(g) Record voting history for each voter who voted on Election Day.

M. **Audit**

(1) **Municipality**

(a) Provide that the Municipal Clerk will be responsible for the administration of the audit.
(b) Reimburse SOE for any staff time or other related expenses as may result from conducting the manual audit.

(2) **SOE**

(a) Organize precinct information to allow the Municipal Clerk to randomly select the race and precinct(s) that shall be audited.
(b) Organize and prepare ballots for manual audit.
(c) Provide SOE staff to conduct manual audit.
(d) Ascertain and publically post manual audit result to SOE WEB site.

N. **Recount**

(1) **Municipality**

(a) Provide that the Municipal Clerk will be responsible for the administration of the Recount, with support and guidance from the SOE.
(b) Act as a member of the Canvassing Board.
(c) Notify the candidates of the time and date of the Recount.
(d) Post public notice(s) of the Recount with the time and location.
(e) Cause to have the Recount recorded and minutes kept and approved by the Canvassing Board.
(f) Review with the Canvassing Board and the counting teams the statutes and rules of the Division of Elections, specifically Rule 1S-2.031. Recount Procedures; and Rule 1S-2.027. Standards for Determining Voter's Choice on a Ballot.
(g) Reimburse the SOE for all staff salaries/overtime, facility and other expenses required to conduct the Recount.

(2) **SOE**

(a) Post public notice(s) of the Recount with the time and location.
(b) Test tabulating equipment as required by Sec. 101.5612, *Florida Statues*.
(c) Provide counting teams for examining out stacked ballots.
(d) Prepare and organize ballots for Recount processing.
(e) Tabulate ballots and provide professional staff for equipment operations.
(f) Provide official certification as determined by the Canvassing Board.

5. **INDEMNITY:**

Each party to this agreement shall be liable for its own actions and negligence. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless SOE against any actions, claims or damages arising out of the Municipality's negligence in connection with performance under this Agreement; and the SOE shall indemnify, defend and hold harmless the Municipality against any actions, claims or damages arising out of the negligence of SOE in connection with its performance under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth at Sec. 768.28, *Florida Statutes.* In no case shall such limits for the 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. These provisions shall not be construed to constitute

agreement by either party to indemnify the other for such other's negligent, willful or intentional acts or omissions. In the event of litigation, trial or appellate, between the Municipality and the SOE relating to a municipal election governed by this Agreement, or otherwise in connection with the interpretation or application of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Notwithstanding the above, the municipality shall defend legal challenges relating to its municipal election and shall be fully responsible for all legal costs including attorneys' fees for such defense of the Municipality and the SOE. The municipality shall be responsible for damages, if any, assessed by virtue of such lawsuit, up to the monetary limits provided for hereinabove without recourse to the SOE.

6. In the event of a Special Election, the municipality shall enter into a separate contract and receive the approval of the Supervisor of Elections for the actual election date at least 90 days prior to a Special Election. The expense of any Special Election shall include all actual costs incurred by the Supervisor of Elections, including hourly and salaried staff costs and other related election expenses as documented.

7. Any municipal annexations must be submitted to the Supervisor of Elections Office in full on or before January 1, in order to be included within the municipal boundaries for the March elections or at least 90 days prior to any other election.

8. **TERM:**

This Agreement shall begin on the effective date January 1, 2019 and continue for a term of one year in order to cover he municipal election cycle of Municipal Election Day and a run-off election, and may be modified by mutual written agreement of the parties. Any proposed changes to this Agreement shall be provided to the municipalities no later than August 1 of the applicable year, or as soon as practicable. All other requested services to be provided by the Supervisor of Elections Office shall be by separate contract.

9. **CHANGE IN LAW:**

In the event any change in law abrogates or modifies any provisions or applications of this Agreement, the parties hereto agree to enter into good faith negotiations and use their best efforts to reach a mutually acceptable modification of this Agreement.

10. **NOTICES:**

All formal notices affecting the provisions of this Agreement may be delivered in person or be sent by facsimile, registered mail, or by a recognized overnight courier such as FedEx, to the individual designated below, until such time as either party furnishes the other party written instructions to contact another individual.

For the SOE:	For the Municipality:
Supervisor of Elections 240 S. Military Trail West Palm Beach, Florida 33415 Attention: Susan Bucher	Town of Jupiter Inlet Colony 50 Colony Road Jupiter Inlet Colony, Florida Attention: Mayor

11. **SEVERABILITY:**

If any clause, section, or provision of this Agreement shall be declared to be unconstitutional, invalid or unenforceable for any cause or reason, or is abrogated or negated by a change in law, the same shall be eliminated from this Agreement, and the remaining portion of this Agreement shall be in full force and effect and be valid as if such invalid portions thereof had not been

incorporated herein.

12. By signing this contract, you and your municipality approve the contract as a form of legal sufficiency and certify that this contract has met all of the legal requirements of your Municipal Charter and all other related laws.

13. **NO MODIFICATION EXCEPT IN WRITING:**

This is the complete and final agreement between the parties. No representations other than those set forth herein shall be binding upon the parties. No modification of this agreement shall be effective unless submitted in writing and signed by both parties, or their duly authorized representatives.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective January 1, 2019.

As to the SOE:

WITNESSES:

SUPERVISOR OF ELECTIONS
PALM BEACH COUNTY

_____

_____

_____
Susan Bucher

Date: _____

As to the MUNCIPALITY:

ATTEST:

Town of Jupiter Inlet Colony

_____

_____

Jude M. Goudreau, Municipal Clerk

Daniel J. Comerford, III, Mayor

(Affix Municipal Seal)

Date: _____