2D-3)

MEMORANDUM

TO: Mayor Craig Fletcher and
City Councilmembers

FROM: Tammy K. Vock, MMC Tammy
City Clerk

DATE: January 2, 2013

SUBJECT: Municipal Elections Agreement

Attached is the Indian River County Supervisor of Elections "Municipal Elections Agreement" for the calendar year of 2013. There have been no changes made to the document since the 2012 Municipal Elections Agreement was executed by the City of Vero Beach and the Indian River County Supervisor of Elections. I would recommend Council approval of the agreement.

/tv

Leslie R. Swan
Supervisor of Elections
Indian River County

Your Vote Is Your Voice...Speak Up!

December 14, 2012

RE: Municipal Elections Agreement

Tammy Vock
City Clerk
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960

Dear Mrs. ~~Vock~~ Tammy:

Enclosed please find two copies of the Indian River County Supervisor of Elections "Municipal Elections Agreement" for the calendar year of 2013. Please execute both copies and return one copy to our office and keep one for your files.

There have been no changes made to the document since the 2012 Municipal Elections Agreement executed by the City of Vero Beach and the Indian River County Supervisor of Elections. Should you have any questions or require any additional information please do not hesitate to contact me.

Sincerely,

Leslie Rossway Swan
Supervisor of Elections

Enclosure

4375 43rd Avenue, Vero Beach, FL 32967 • (772) 226-3440 • FAX (772) 770-5367
www.voteindianriver.com

MUNICIPAL ELECTIONS AGREEMENT

THIS AGREEMENT by and between the **INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS** (hereinafter "SOE") whose mailing address is 4375 43rd Avenue, Vero Beach, Florida, 32967, and the **CITY OF** Vero Beach (hereinafter "Municipality") whose mailing address is 1053 20th Place, P.O. Box 1389, Florida, 32961-1389, to conduct the City's Municipal Elections (hereinafter "Election").

RECITALS:

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 "the 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 the 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, Special 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 City of Vero Beach's Special Municipal Election is March 12, 2013.

The date of the City of Vero Beach's General Municipal Election is November 5, 2013.

This agreement covers the General, Run-Off, Special and Recount elections as necessary as well as the Post-Election Audit for the year 2013.

Either party to the Agreement may elect to withdraw from the Agreement upon written notice providing at least four (4) months' notice.

3. **ELECTION FEES FOR MUNICIPAL ELECTIONS:**

Municipal Elections that are held in conjunction with county or state elections: **$0.50** per registered voter limited to regularly scheduled city/town council races. Print area allowed for amendments and /or referendums is limited to 2 ½" wide by 5" length of print area. There will be an additional fee for amendments and/or referendums which exceed print area allowed.

Municipal Elections that are not held in conjunction with county or state elections: **$2.00** per registered voter (based on 1 card ballot). Additional ballot card: **$0.35** per registered voter.

In the event of a Run-Off, Special or Recount election, the above fees shall apply in addition to the General Municipal Election fees.

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, charter, ordinance or resolution, at its own expense.

(b) Request that the Supervisor of Elections conduct the municipality's election.

(c) The municipality's Canvassing Board will be responsible for canvassing the election, when the election is not held in conjunction with county or state elections.

(d) Provide SOE with any municipal boundary changes as soon as possible, but no later than 90 days prior to the municipal election.

(e) The qualifying officer/municipal clerk, at the time of qualifying, may give written notice of the time and location of the public Logic & Accuracy test to each candidate qualifying with the municipality and obtain a signed receipt that the notice has been given according to Sec. 101.5612(2), *Florida Statutes.*

(2) SOE

(a) Publish legal notices for Logic & Accuracy testing, absentee ballot canvass, Post Election Audit and news releases on book closing on the SOE website and in a newspaper of general circulation in the county as required by Florida Statutes.

(b) At least 15 days prior to the commencement of early voting as provided in Sec. 101.657, *Florida Statutes*, send written notice by certified mail to the county party chair of each political party, stating the time and location of the public Logic & Accuracy test of the automatic tabulating equipment.

B. Qualifying Candidates

(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) Verify signatures of electors on any qualifying petitions submitted by candidates.

(2) SOE

(a) Receive from municipality candidate names and ballot order no later than noon on the 57th day prior to the election.

C. Ballots

(1) Municipality

(a) Review, amend (if necessary) and approve ballot proof prepared by SOE within 24 hours after receipt of the proposed ballot from SOE.

(2) SOE

(a) Layout, check, proof and deliver ballot layout to the printer.

(b) Black printing only on ballots, color ballots incur an additional charge to the Municipality.

(c) Receive, securely store and account for all ballots until disbursed to polling places.

(d) Record audio for Touch Screen ballot.

(e) Control all access to unvoted ballots while in the possession of the SOE.

(f) SOE will print one sample ballot advertisement, inclusive of all municipalities, in a newspaper of general circulation in the county or mail a sample ballot to each household of a registered voter.

(g) SOE will post precinct specific ballots on the SOE website.

D. Equipment Testing

(1) Municipality

(a) Canvassing Board to be present during the Logic and Accuracy testing as noticed by SOE. For the test, the Canvassing Board may designate one member to represent it per Sec. 101.55612(2), *Florida Statutes*.

(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_ The SOE is not required to conduct early voting for Municipal Elections that are not held in conjunction with state and federal elections.

(1) Municipality (Any municipality opting for early voting, must allow any eligible voter to participate in early voting at their designated site(s).

(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) Reimburse SOE for poll worker pay to staff Early Voting site(s).

(d) Reimburse SOE for transportation personnel to deliver voted ballots to SOE office daily and deliver supplies in morning if necessary.

(e) Designate Early Voting sites sixty (60) days prior to each Election and notify SOE in writing of locations. The Municipality may designate as many sites as necessary and shall conduct its activities in accordance with the provision of paragraphs Sec. 101.657(a) – (c), *Florida Statutes*.

(f) Reimburse the SOE for the shared cost of Early Voting advertising.

(g) Provide analog phone line for exclusive use during voting/operational hours and pay the monthly service charge during the month the election occurs.

(2) SOE

(a) Prepare and provide all supplies needed for each Early Voting site.

(b) Provide poll workers to staff Early Voting site(s).

(c) Train poll workers.

(d) Provide staffing to accept voted ballots daily at the SOE office.

(e) It is at the SOE discretion to offer Early Voting at the SOE office at no charge to the municipality.

(f) If the SOE opts to provide early voting, the SOE will provide voting history for each voter who voted during Early Voting.

F. Absentee Voting

(1) Municipality

(a) 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, online or in person.

(c) Prepare and mail Absentee Ballots. Per Florida Statute 101.62(4)(a) no later than 45 days before each election, the SOE shall send an absentee ballot as provided in subparagraph (b)(2) to each absent uniformed services voter and to each overseas voter who has requested an absentee ballot.

(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 voter of the disposition of their rejected Absentee Ballot due to signature variation after determination by 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

None

(2) SOE

(a) Arrange for use of polling places.

(b) Confirm polling place accessibility and ADA compliance.

(c) Notify voters, as required by law, if their regular polling place is to be temporarily relocated.

(d) Notify voters and the Municipality of permanent polling place change(s).

(e) Provide polling place supplies, i.e. signs, etc.

H. Precinct Supplies

(1) Municipality

None

(2) SOE

(a) Provide precinct supplies.

(b) Provide Precinct Registers for each polling place location.

(c) Contract moving company to have voting equipment delivered and picked up from polling place.

(d) Prepare equipment, cabinets and routing of voting equipment delivery.

(e) Provide poll worker Clerks with cell phones.

I. Poll Workers

(1) Municipality

None

(2) SOE

(a) Contact, contract with, and pay poll workers.

(b) Schedule and notify poll workers of training classes.

(c) Train poll workers.

(d) Provide printed training material for poll workers.

J. Poll Watchers

(1) Municipality

None

(2) SOE

Designations for poll watchers must be submitted to the SOE office by noon of the second Tuesday prior to the election. If designations are submitted, the poll watchers must be approved by the SOE on or before the Tuesday prior to the election. Designations for early voting areas shall be submitted in writing to the supervisor of elections at least 14 days before early voting begins. The poll watchers for early voting areas shall be approved by the supervisor of elections no later than 7 days before early voting begins per Sec. 101.131(2), Florida *Statutes*.

K. Election Day Support

(1) Municipality

None

(2) SOE

(a) Find 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.

L. Ballot Tabulation/Counting of Election Results

(1) Municipality

(a) Canvassing Board present.

(2) SOE

(a) Deliver all voted ballots and other necessary election related items to SOE office after the polling places have closed on Election Day.

(b) Deliver all voting machines cartridges to SOE office after the polling places have closed on Election Day.

(c) Provide technical staff and required equipment to administer tabulation and election results.

(d) Post election results on SOE website and provide the same to local municipal television (if available).

(e) Provide the Municipal Clerk with unofficial election results upon conclusion of tabulation and canvassing of ballots cast on Election Day.

M. Post-Election Day

(1) Municipality

None

(2) SOE

(a) Provide the municipal clerk/qualifying officer with an official certification of election results.

(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 voter of the disposition of their rejected Absentee Ballot due to signature variation or rejected 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.

N. Audit

(1) Municipality

(a) Provide that the Municipal Clerk will be responsible for the administration of the audit with the support and guidance from the SOE.

(b) Provide staff to assist with manual audit.

(c) Reimburse SOE for any staff overtime or other related expenses as may result from conducting the manual audit.

(d) Each municipality must perform a Post-Election Manual Audit per Florida Statute 101.591 and Rule 1S-5.026.

(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 website.

O. Recount

(1) Municipality (Applies only when the election is not held in conjunction with county or state elections.)

(a) Provide that the Municipal Clerk will be responsible for the administration of the Recount, with support and guidance from the SOE.

(b) Notify the candidates of the time and date of the Recount.

(c) Post public notice(s) of the Recount with the time and location.

(d) Cause to have the Recount recorded and minutes kept and approved by the Canvassing Board.

(e) 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 Choice on a Ballot.

(f) Reimburse the SOE for all staff salaries/overtime and other expenses required to conduct the Recount.

(2) SOE

(a) Post public notice(s) of the Recount with the time and location at the SOE office.

(b) Test tabulating equipment as required by Sec. 101.5612, *Florida Statutes.*

(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.

P. **Cancellation of Election**

(1) Municipality

If a scheduled election is cancelled prior to Election Day, the municipality is responsible for any SOE costs stipulated in this Agreement, through the date the SOE is notified in writing of the election cancellation.

(2) SOE

Provide municipality with an itemized accounting of costs incurred by SOE through the date of notification of election cancellation and request for reimburse.

5. **HOLD HARMLESS COVENANT:**

To the extent allowed by law, each party shall indemnify and hold the other harmless from all claims brought during the term of this Agreement by third parties, including reasonable attorneys' fees, court costs and expenses, which may arise out of or be attributed to the negligence of the indemnitor's employees in the performance of any of the covenants, agreements, terms, or conditions to be performed or complied with under this Agreement. Neither party's liability to the other shall include punitive damages or interest for the period before judgment. Nothing contained herein shall be construed as a waiver of any immunity from, or limitation of, liability either party has under the Doctrine of Sovereign Immunity of Section 768.28 Florida Statutes. Additionally, neither party shall be liable pursuant to this indemnity to pay a claim or a judgment by any one person or any claim or judgment, or portions thereof, which when totaled with all other claims or judgments paid arising out of the same incident or occurrence, which exceeds the limits of liability as set forth in Section 768.28(5) Florida Statutes, provided, that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s)covered by this indemnification. This indemnity specifically excludes any requirement for one party to indemnify the other party for the other party's negligence or to assume any liability for the other party's negligence as provided in Section 768.28 (19) Florida Statutes.

6. **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.

7. **NOTICES:**

For mail notices affecting the provisions of this Agreement may be delivered in person or be sent by certified 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 instruction to contract another individual.

For the SOE:	For the Municipality:
Supervisor of Elections 4375 43rd Avenue Vero Beach, Florida 32967 Attention: Leslie Swan	City of Vero Beach 1053 – 20th Place – P.O. Box 1389 Vero Beach, FL 32961-1389 Attention: James O'Connor

8. **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.

9. **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.

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

This is the complete and final agreement between the parties. No representation 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, and their duly authorized representatives.

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.

As to the SOE:

WITNESSES:

Steph Sowers

Kathy M. Crockett

SUPERVISOR OF ELECTIONS
INDIAN RIVER COUNTY

Leslie Rossway Swan

Leslie Rossway Swan, Supervisor of Elections

Date: 12/14/2012

As to the MUNICIPALITY:

ATTEST:

_____

_____, Municipal Clerk

(Affix Municipal Seal)

INSERT NAME OF MUNICIPALITY

_____

_____, Mayor

Date: _____