

**AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
BROWARD COUNTY SUPERVISOR OF ELECTIONS FOR THE PROVISION OF WORKERS'
COMPENSATION COVERAGE FOR QUALIFYING BROWARD COUNTY SUPERVISOR OF
ELECTIONS EMPLOYEES**

This is an amended and restated Interlocal Agreement ("Agreement"), made and entered into as of the ___ day of _____, 2020 by and between Broward County, a political subdivision of the State of Florida ("County"), and Broward County Supervisor of Elections ("Supervisor of Elections") (individually a "Party" and collectively the "Parties").

RECITALS

A. The Parties previously entered into an Interlocal Agreement for the provision of Workers' Compensation coverage by Broward County for Qualifying Supervisor of Elections employees, which agreement has been modified from time to time (collectively the "Original Agreement").

B. The Parties desire to replace the Original Agreement with this Agreement, as further specified below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Board** means the Board of County Commissioners of Broward County, Florida.

1.2. **Supervisor of Elections' Employees** means all persons employed by or who volunteer for the Supervisor of Elections, who are eligible to receive Workers' Compensation coverage from County.

1.3. **Contract Administrator** means the representative of the Supervisor of Elections, or such other person designated by same in writing, authorized to administer this Agreement.

1.4. **County Administrator** means the administrative head of County appointed by the Board.

1.5. **Workers' Compensation** means mandatory insurance coverage required by Chapter 440, Florida Statutes, that provides benefits to injured employees for medical expenses, disability, or death.

ARTICLE 2. WORKERS' COMPENSATION INSURANCE

2.1. Coverage. County will provide the Supervisor of Elections Employees with Workers' Compensation coverage in a like manner and at the same cost as such coverage is provided to County employees, as such cost and coverage are determined by County's Risk Management Division and other appropriate personnel. To access County's Workers' Compensation coverage, the Supervisor of Elections' Employees must participate in County's Workers' Compensation insurance program, including excess and employer liability coverage, on the same basis, and upon the same terms, conditions, benefits, and duties, as County employees.

2.2. Outside Coverage. If County procures Workers' Compensation coverage outside the scope of Chapter 440, Florida Statutes (as amended from time to time), the Supervisor of Elections' Employees must participate in this coverage, including any applicable excess Workers' Compensation coverage and employer's liability coverage, upon the same terms, conditions, benefits, and duties as County employees.

2.3. Premium Payments. No less than ninety (90) days before the close of County's fiscal year, County must notify the Supervisor of Elections in writing of the Workers' Compensation Premium Rate (or "Premium Rate" as defined in Section 2.4 below) that will apply for the upcoming fiscal year. The Supervisor of Elections shall pay the total amount of the premium attributable to coverage of the Supervisor of Elections Employees to County in four (4) equal quarterly installment payments. The Supervisor of Elections must pay each quarterly installment within thirty (30) days after the Supervisor of Elections' receipt of an invoice from County. The Supervisor of Elections payment shall be made payable to the "Broward County Board of Commissioners" and forwarded to the County's Risk Management Division, Attn: Accountant at 115 S. Andrews Avenue, Suite 210, Fort Lauderdale, Florida 33301-1869. If the effective date of this Agreement falls within ninety (90) days before the close of County's fiscal year, County will notify the Supervisor of Elections of the Premium Rate within fourteen (14) days after the effective date.

Failure to timely pay a quarterly installment constitutes a material breach of this Agreement. County will notify the Supervisor of Elections if payment is not timely received in accordance with this section. If the Supervisor of Elections fails to timely pay a quarterly installment within ten (10) days after receiving said notice from County, County may suspend coverage until such time as the Supervisor of Elections becomes current on all past due payments, or County may immediately terminate this Agreement by written notice of termination from the County Administrator.

2.4. Premium Calculation. Each fiscal year, County shall determine the annual Workers' Compensation Premium Rate for the Supervisor of Elections Employees (the "Workers' Compensation Premium Rate") based on an average of the Supervisor of Elections employee salaries, number of claims, and the cost of the claims during the preceding five (5) year period, unless a different calculation thereof is required under state law.

2.5. Authorization and Delegation. The Contract Administrator and the Supervisor of Elections designee, as authorized in writing, may execute documents previously approved by the Broward County Attorney's Office and take any other measures necessary to implement this Agreement.

2.6. Qualifying Employees. Employees employed by the State of Florida that work for the Supervisor of Elections do not qualify under and are specifically excluded from Workers' Compensation coverage in this Agreement.

2.7. Handling of Claims. County will have all discretion to process, pay, controvert, deny, and litigate Workers' Compensation claims brought by the Supervisor of Elections Employees in the same manner as County would do regarding Workers' Compensation claims brought by County employees. The Supervisor of Elections Employees shall, as expeditiously as is practicable, provide County with all documents requested by County to enable County to adjust the claims. The Supervisor of Elections shall also provide Human Resource files, on a biweekly basis, in the format and method required and directed by County for import into its Risk Management Information System (RMIS).

ARTICLE 3. TERM AND TERMINATION

3.1. Term. The Original Agreement is terminated and replaced by this Agreement effective October 1, 2020 ("Effective Date"). Unless terminated earlier or extended as provided for in this Agreement, this Agreement will continue for three (3) years, ending 11:59:59 p.m. on September 30, 2023 ("Initial Term").

3.2. Renewal. If this Agreement has not been terminated pursuant to Section 3.4 below, the Agreement may be renewed, at County's sole option, by the County Administrator, for up to two (2) additional one (1) year terms (each an "Extension Term") by sending notice of renewal to the Supervisor of Elections at least thirty (30) days prior to the expiration of the then-current term. The Parties agree that the sending by the County Administrator of the required written notice of the Workers' Compensation Premium Rate for the respective upcoming fiscal year shall serve as the exercise of the option by County to renew this Agreement for the respective upcoming term.

3.3. Renewal Subject to Chapter 129, Florida Statutes. The continuation of this Agreement beyond the end of any fiscal year is subject to the appropriation and availability of funds for each Party in accordance with Chapter 129, Florida Statutes (as amended from time to time). The Parties acknowledge and agree that its respective fiscal year commences on October 1 of each year and ends on September 30 of the following year.

3.4. Termination. Either party may terminate this Agreement, with or without cause, by giving written notice to the other party no later than August 1 in the year of the current term. Termination will be effective at 11:59:59 p.m. on September 30 of the same year that such termination notice is given.

3.4.1. If County provides written notice to the Supervisor of Elections of a change in the Workers' Compensation Premium Rate, either after the applicable renewal term has commenced, or less than sixty (60) days prior to the commencement of any renewal term, then the Supervisor of Elections may terminate this Agreement by giving written notice of termination to County within ten (10) days after receipt of County's written notification. If the Supervisor of Elections fails to give the written notice of termination within such ten (10) day period, then this Agreement shall continue in full force and effect and the Supervisor of Elections must pay the new Workers' Compensation rate for the remainder of the applicable term or for the upcoming renewal term, whichever the case may be.

3.4.2. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

3.4.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement, except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

3.4.4. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies at law or in equity, whether stated in this Agreement or otherwise available.

ARTICLE 4. GOVERNMENTAL IMMUNITY

Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing in this Agreement is intended to serve as a waiver of sovereign immunity by any Party nor shall anything included herein be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement or any other contract. Each Party is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 5. MISCELLANEOUS

5.1. Compliance with Chapter 440, Florida Statutes. The Supervisor of Elections will fully comply with Chapter 440, Florida Statutes, as amended, from time to time. The Supervisor of Elections will make its facilities available for inspection to the County's Risk Management Division and County safety personnel and adopt all safety requirements recommended by the County's Risk Management personnel.

5.2. No Partnership or Other Benefits. Nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. At no time shall the Supervisor of Elections nor its agents act as officers, employees, or agents of County. The Supervisor of Elections shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

5.3. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding the subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

5.4. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement will be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and the Supervisor of Elections.

5.5. Prevailing Benefits. It is understood and agreed between the Parties that County is not conferring any other County benefit, stipend, emolument, privilege, and/or coverage, other than Workers' Compensation coverage identified in this Agreement. Furthermore, the Supervisor of Elections expressly waives any unintended benefit, emolument, privilege, stipend, coverage, and/or coverage conferred from the County.

5.6. Law, Jurisdiction, and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS THE PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

5.7. Safety.

5.7.1. Shared Goals and Interlocal Cooperation. The Parties wish to reduce the frequency of work accidents, control costs, and otherwise mitigate losses. In advancement of that goal, the Supervisor of Elections will implement in a prompt and timely matter, recommendations made by the personnel of County's Risk Management Safety Section.

5.7.2. Compliance with Risk Management Safety Section Protocol. At the request of either the County's Risk Management Division or the Supervisor of Elections, the Risk Management Safety Section shall conduct a safety and loss control analysis of the Supervisor of Elections' facilities, develop a specific, customized loss control service action

plan for the Supervisor of Elections, and/or conduct loss control and risk management training for the Supervisor of Elections.

The Supervisor of Elections shall undertake standard loss prevention measures, including, but not limited to, essential job function testing of newly hired job applicants, maintaining a safe work environment as referenced in 29 CFR 1910 and 29 CFR 1926, and adoption of all recommended safety requirements, practices, and loss control service action plan required by County's Risk Management Safety Section.

5.8. Equal Employment Opportunity Compliance. No Party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement. County and the Supervisor of Elections shall not unlawfully discriminate against any person in its operations and activities in fulfilling its obligations under this Agreement. County and the Supervisor of Elections shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA), including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, County and the Supervisor of Elections shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

5.9. Third-Party Beneficiaries. Neither the Supervisor of Elections nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

5.10. Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR BROWARD:

Deputy Chief Financial Officer/Deputy Director
Finance and Administrative Services Department
115 South Andrews Avenue, Suite 513
Fort Lauderdale, Florida 33301

FOR BROWARD COUNTY SUPERVISOR OF ELECTIONS:

Susanne L. Timmons, SHRM, MPA, Human Resources Coordinator
115 South Andrews Avenue, Suite 102
Fort Lauderdale, Florida 33301

5.11. Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other party. Any purported assignment, transfer, subcontract, or encumbrance in violation of this section will be void. In addition to any other rights and remedies available to County, County shall have the right to terminate this Agreement, effective immediately, if there is an assignment, or attempted assignment, transfer, or encumbrance, of this Agreement or any right or interest herein by the Supervisor of Elections without County's written consent.

5.12. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

5.13. Compliance with Laws. Parties must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

5.14. Audit Rights and Retention of Records. County has the right to audit the books, records, and accounts of the Supervisor of Elections and any of its applicable subcontractors that may be related to this Agreement. The Supervisor of Elections and its subcontractors must keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement and performance thereunder. All books, records, and accounts of the Supervisor of Elections and its subcontractors must be kept in written form, or in a form capable of conversion into written form within a reasonable time; upon request to do so, the Supervisor of Elections or its subcontractor, as applicable, must make same available at no cost to County in written form.

The Supervisor of Elections and any of its applicable subcontractors must preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts must be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts will be a basis for County's disallowance and recovery of any payment upon such entry.

5.15. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

5.16. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

5.17. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

5.18. Payable Interest.

5.18.1. Payment of Interest. County shall not be liable to pay any interest to the Supervisor of Elections for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof the Supervisor of Elections waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

5.18.2. Rate of Interest. In the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

5.19. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have made and executed this Amended and Restated Agreement: Broward County through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2020, and Broward County Supervisor of Elections, signing by and through its officials, duly authorized to execute same.

BROWARD

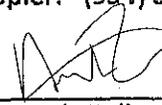
ATTEST:

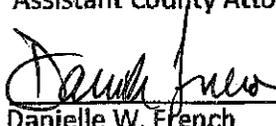
BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
____ day of _____, 2020.

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By:  _____ 5-28-2020
Amanda Tolbert (Date)
Assistant County Attorney

By:  _____ 5/29/2020
Danielle W. French (Date)
Deputy County Attorney

AMT/DWF/dv
Supervisor of Elections Interlocal Agreement
01/21/2020
479564

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COMPENSATION COVERAGE FOR QUALIFYING BROWARD COUNTY SUPERVISOR OF ELECTIONS
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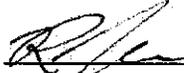
WITNESSES:



Signature

Manisha Pall

Print Name of Witness above



Signature

Barbara Juman

Print Name of Witness above

REPRESENTATIVE FOR BROWARD COUNTY
SUPERVISOR OF ELECTIONS

By: _____

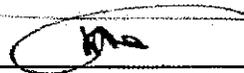
Authorized Signor

Peter Antonacci

Print Name and Title

28 day of April, 2020

ATTEST:



Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

