

MEMORANDUM OF AGREEMENT
RECEIPT AND USE OF HAVA FUNDS
FOR FEDERAL ELECTION ADMINISTRATION ACTIVITIES

This agreement is between the State of Florida, Department of State, Division of Elections ("Department"), R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, and The Honorable Ion V. Sancho, Supervisor of Elections ("Supervisor") on behalf of Leon County, 315 South Calhoun Street, Tallahassee, Florida 32301-1837. This agreement is effective as of the date fully executed by the parties.

I. Governing Law

The Department is authorized pursuant to specific appropriation 3062 of the 2009-2010 General Appropriations Act (see section 6, chapter 2009-081, Laws of Florida), to disburse a total of \$2,000,000 from the Grants and Donations Trust Fund to the county supervisors of elections for the fiscal year 2009-2010 ("FY 2009-10 funds"). This appropriation is made available through section 251 of the Help America Vote Act of 2002 (HAVA) and the Catalog of Federal Domestic Assistance (CFDA) 90.401, Help America Vote Act Requirements Payments (**Attachment A**) for improving the administration of federal elections.

II. Scope of Use and Restrictions

The FY 2009-10 funds are to be used for federal election administration activities as also further specified in **Attachment A**. The Supervisor must comply with all terms herein.

- The FY 2009-10 funds shall be used only as set forth in paragraph 1 of **Attachment A** and in a manner consistent with the provisions of HAVA. These funds shall be used to support election activities related only to federal elections (that is, elections in which a federal candidate is on the ballot). If any of these funds are used for an election in which a federal candidate is not on the ballot, the cost must be pro-rated for the portion of the expenditure that is allocable to a federal election. These funds shall not be used to support state or federal lobbying activities but this does not affect the right, or that of any other organization to petition Congress, or any other level of Government, through the use of other resources.
- Prior to receiving FY 2009-10 funds, the Supervisor must first submit in accordance with paragraph 2 of **Attachment A**: 1) A detailed plan for use of the funds, 2) Certification from the county governing body to provide matching funds, and 3) Certification form regarding debarment, suspension, ineligibility and voluntary exclusion lower tier covered transactions. Any change, modification or deviation from the activities or expenses set forth initially in the plan for use of the funds must be reviewed and approved by the Department prior to expenditure.

- The FY 2009-10 funds shall be placed in a separate interest bearing account and in accordance with accounting requirements as set forth in paragraphs 3 and 4 of **Attachment A**.
- The Supervisor shall report and account for expenditures in accordance with this agreement including paragraphs 5 and 6 of **Attachment A**.

III. Disbursement

The Department shall distribute to each eligible county supervisor of elections an amount equal to the funding level per voter multiplied by the number of active registered voters in the county for the 2008 General Election. The Department shall determine the funding level per voter in the state based on that information. The Supervisor shall receive a sum certain as outlined in **Attachment B**, incorporated by reference.

IV. Monitoring, Reporting, and Audits

The administration of resources awarded to the Supervisor is subject to monitoring, reporting and audits as described herein.

A. Monitoring and Reporting

In addition to reviews of audits conducted in accordance with OMB Circular A-133 (as revised) and the Florida Single Audit Act (section 215.97, Florida Statutes), the Department may provide additional monitoring including on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133 (as revised), and/or other procedures permitted under federal and state law. The Supervisor shall comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department.

The Department shall closely monitor the Supervisors' annual expenditure reports required by paragraph 5 of **Attachment A** to ensure that the Supervisors expend HAVA funds in accordance with approved plans and will require reimbursement for all expenditures not approved or otherwise authorized. Also, the Department shall ensure that Supervisors report the expenditures made with HAVA funds separately from expenditures made with county funds.

B. Audits

~~Part I: Federal Funds--This part is applicable if the Supervisor is a State or local government or a non-profit organization as defined in OMB Circular A-133 (as revised).~~

1. If the Supervisor expends \$500,000 (\$300,000 for fiscal years ending before December 31, 2003) or more in federal awards in its fiscal year, a single or program-

specific audit must be conducted in accordance with the provisions of OMB Circular A-133 (as revised). This may be satisfied by an audit of the Supervisor of Elections conducted by the Auditor General in accordance with OMB Circular A-133 (as revised). In determining the federal awards expended in its fiscal year, the Supervisor shall consider all sources of federal awards. **Attachment A** indicates federal resources are being awarded under this Agreement. The determination of amounts of federal awards expended shall be in accordance with the guidelines established by OMB Circular A-133 (as revised). In connection with an audit under paragraph 1, the Supervisor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133 (as revised).

2. If the Supervisor expends less than \$500,000 (*\$300,000 for fiscal years ending before December 31, 2003*) in federal awards in its fiscal year, an audit pursuant to OMB Circular A-133 (as revised), is optional. If the Supervisor elects to have an audit conducted in accordance with the provisions of OMB Circular A-133 (as revised), the cost of the audit must be paid from resources obtained from other than federal entities).
3. *For additional guidance to state and federal monitoring and auditing requirements, refer to: <http://election.dos.state.fl.us/hava/index.shtml> and <http://www.eac.gov>.*

Part II - State Funds - This part is applicable if the Supervisor is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the Supervisor expends a \$500,000 or more of state financial assistance in any fiscal year (for fiscal years ending September 30, 2004 or thereafter), a state single or project-specific audit for such fiscal year must be conducted in accordance with the Florida Single Audit Act (Section 215.97, Florida Statutes; specifically as set forth in subsection (8)); applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and by the aforementioned Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Supervisor shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements. ***As indicated in Attachment A, no state funds are being awarded under this agreement.***
2. If the Supervisor expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in

accordance with the provisions of Section 215.97, Florida Statutes, is optional. If the Supervisor elects to have an audit conducted, the cost of the audit must be paid from resources other than from State entities.

Part III: Other Audits

Federal funds. The Department may conduct a *limited scope audit of federal funds* as defined by OMB Circular A-133 (as revised) or other financial analysis or review of federal funds as permitted by federal law. In the event the Department determines that a limited scope audit or other type of audit of the Supervisor is appropriate, the Supervisor agrees to comply with any additional instructions provided by Department staff to the Supervisor regarding such audit. If the Department determines that federal funds received under this Agreement were used for any unauthorized purpose or that the Supervisor did not comply with this agreement or state or federal requirements for receipt, expenditure, or accounting, the Supervisor must return or repay these federal funds in an amount sufficient to ensure or obtain compliance, including expenses for any corrective or remedial action. Additionally, the Department may withhold funds, otherwise due, in an amount sufficient to cover any costs associated with the limited scope audit or financial review to determine or ensure compliance.

State funds. Pursuant to Section 215.97(8), Florida Statutes, the Department may conduct or arrange for audits of state funds that are in addition to audits conducted in accordance with the Florida Single Audit Act. In such an event, the Department must arrange for funding the full cost of such additional audits. *As indicated in Attachment A, no state funds are being awarded under this agreement.*

Federal or state funds. The Supervisor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General of federal or state funds.

Part IV: Report Submission

1. Copies of financial reporting packages for audits conducted by or on behalf of the Supervisor pursuant to PART I (Section IV.B of this agreement) and as required by section .320(d), OMB Circular A-133 (as revised), shall be submitted directly to each of the following:

*Department of State
Division of Elections
R.A. Gray Building
500 S. Bronough Street, Ste 316
Tallahassee, Florida 32399-0250*

*Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, Indiana 47132*

Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133 (as revised).

2. Copies of reporting packages as described in section .320(c), OMB Circular A-133 (as revised) and any management letter issued by the auditor, shall be submitted to:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

3. Copies of financial reporting packages for audits conducted by or on behalf of the Supervisor pursuant to PART II (Section IV.B. of this agreement) shall be submitted directly to each of the following:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

*Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450*

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the Supervisor directly to:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

5. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133 (as revised), the Florida Single Audit Act, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable. When submitting financial reporting packages to the Department for audits conducted in accordance with the aforementioned circular or Rules of the Auditor General, the Supervisor shall include within the accompanying correspondence the date the reporting package was delivered to the Supervisor.

V. Record Retention

The Supervisor shall keep and maintain accurate records (e.g., invoices, receipts, audiovisual clips and recordings, actual or reproduction of products or services produced or obtained, graphic templates and other documentation) sufficient to identify whether expenditures are authorized, to support financial reporting, and to conduct audits as may be required or requested. All expenditures must be supported by accurate and detailed documentation sufficient to determine how and whether the FY

2009-10 funds were used solely for purposes authorized under this agreement. For example, expenditures for publications, radio promotions or televised announcements should include detailed invoices, receipts, itemized statements, actual publication or audio or audiovisual clip, recordings or transcripts. Expenditures for training materials, voter guide, or sample ballots or any other authorized product or service must be documented with detailed invoices, receipts, itemized statements and an actual or copy of the template for and the actual product or service provided or produced.

The Supervisor shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date an audit report is issued, and shall allow the Department or its designee, CFO, or Auditor General access to such records upon request. The Supervisor shall ensure that audit working papers are made available to the Department or its designee, CFO, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

Failure to provide adequate documentation shall result in a request to return to the Department FY 2009-10 funds as pertains to those expenses.

VI. Entirety of the Agreement

All terms and conditions of this agreement are fully set forth in this document and attachments incorporated by reference and shall be governed by the laws of the State of Florida regardless of any conflict of laws provisions. In any proceeding or action brought under this section, the parties agree that the prevailing party will be entitled to its reasonable attorney's fees from the other party. The parties agree that proper venue will be in Leon County, Florida.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

County Supervisor of Elections:

Department of State, Division of Elections:

By: _____

By: _____

Printed name and title

Printed name and title

Witness

Witness

Date

Date

ATTACHMENT A

Federal Program: Federal Help America Vote Act—Catalog of Federal Domestic Assistance (CFDA) § 90.401: Help America Vote Act Requirements Payments

Compliance requirements applicable to the federal resources awarded under this agreement are as follows:

1. The Supervisor may only use the FY 2009-2010 Funds (amount specified in Attachment B) for one or more of the following federal election administration activities:

- Voter education;
- Poll worker training;
- Revisions to the statewide poll worker curriculum;
- Standardizing election results reporting; or
- Other federal election administration activities, as approved by the Department

These are the acceptable uses for the funds under the categories listed above:

- Mailing or publishing sample ballots **which must include additional information on voting procedures, voting rights or voting technology;**
- Voter information cards **which must include additional voter education information on voting procedures, voting rights or voting technology;**
- Advertising or publications outlining voting procedures, voting rights or voting technology;
- Voting System demonstrations;
- Poll worker **training** stipends;
- Training materials for poll workers; or
- Voter guides **which must include voter education information concerning voting procedures, voting rights, or voting technology but shall not contain elected officials' contact information other than the supervisor's contact information.**

2. Prior to receipt of FY 2009-2010 funds under this Agreement, the Supervisor must submit to the Department:

- *A detailed description of the Supervisor's plan to use the funds for federal election administration activities and include the source of funds (federal, county matching funds and other county funds (local) being used for each federal election activity set forth in the plan.*
- *A written certification from the county governing body (e.g. Board of County Commissioners) that the county will provide matching funds in the amount of 15%. If the county governing body fails to appropriate the matching funds, the Supervisor must return or repay to the State the portion of the funds for which the matching funds applied.*
- *A completed ED Form GCAS-009 (6/88), entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions".*

The form is attached hereto as **Attachment A-1**. [Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, prohibits the disbursement of federal funds to the intended recipient of such funds or to any sub-recipient thereunder unless such recipient and each sub-recipient, if any, certify that they are not excluded or disqualified from receiving federal funds by any federal department or agency.]

3. The Supervisor must establish and maintain the FY 2009-2010 funds in an interest bearing account. The Supervisor must segregate funds for federal election administration activities and required county matching dollars in a separate account established for such funds. Any funds remaining at the end of the fiscal year shall remain in the account to be used for the same purposes for subsequent years or until such funds are expended.

4. The Supervisor shall maintain separate accounting records for each of the funding sources identified under its plan submitted pursuant to paragraph #2.

5. The Supervisor shall submit a written financial report to the Department:

- **On or before December 31, 2009** all actual expenditures from the date of receipt through September 30, 2009. The report must include documentation (such as appropriation statement, committee meeting minutes approving appropriation, or account statement) that the county governing body appropriated matching funds as certified under paragraph 2. Failure to appropriate the matching funds must be reported.
- **On or before each and every December 31** after 2009, all actual expenditures for preceding period of October 1 through September 30, and the amount of FY 2009-2010 funds unspent as of June 30 of the year being reported. Such annual reporting is required until such funds are fully expended.

Each financial report shall include documentation including but not limited to billing or itemized receipts in support of the expenditures for the services or products used to promote voter education, voting rights or voting technology. For example, the report must include a copy of or the actual product or publication and indicate how many individual items were produced or printed. For services, the report must include a copy of or the actual newspaper article, audio recording, or video clip and/or template or transcript thereof, and indicate how many times it was published, aired, or accessed, or include a copy of the graphics template and content layout for a special created webpage.

6. Copies of any reports or other submissions required by paragraphs 2 and 5 of this Attachment shall be submitted by or on behalf of the Supervisor directly to: Department of State, Division of Elections, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250.

State Resources Awarded to the Supervisor Under this Agreement Consist of the Following: N/A

Matching Resources for Federal Programs: N/A

Subject to section 215.97, Florida Statutes (Florida Single Audit Act): N/A

Compliance requirements applicable to state resources awarded pursuant to this Agreement are as follows: N/A

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature Date

INSTRUCTIONS FOR CERTIFICATION

Attachment # 1
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1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone Number).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certificate Regarding Matching Funds

I, _____, Chairman of the Board of County Commissioners of Leon County, Florida, do hereby certify that the Board of County Commissioners will provide matching funds for the Federal Election Activities grant in county FY 2009-2010 to the Supervisor of Elections in an amount equal to at least 15% of the amount to be received from the state, which for Leon County is \$4,655.49. I understand that if the Board fails to appropriate the required matching funds, all funds received from the state for this grant during the 2009-2010 state fiscal year will be required to be returned to the Department of State.

Chairman, Board of County Commissioners

Date