

ELECTION AGREEMENT BETWEEN TRAVIS COUNTY AND THE CITY OF AUSTIN

Pursuant to Chapter 31, Subchapter D, Chapter 123, and Chapter 271 of the Texas Election Code (“Code”) and Chapter 791 of the Texas Government Code, Travis County and the City of Austin enter into this agreement for the Travis County Clerk, as the County’s Election Officer, to conduct the City’s elections, including runoffs, and for the City’s use of the County’s current or future-acquired election equipment for any voting system that the County adopts, as authorized under Title 8 of the Election Code, for all City elections. The purpose of this agreement is to maintain consistency and accessibility in voting practices, polling places, and election procedures in order to best assist the voters of the City.

I. GENERAL PROVISIONS

- (A) Except as otherwise provided in this agreement, the term “election” refers to any City election, occurring on the second Saturday in May and a resulting runoff, if necessary, and the first Tuesday after the first Monday in November and a resulting runoff, if necessary within all City territory located in Travis County, Williamson County and Hays County. If a runoff is necessary, the City shall work with the Election Officer to determine a mutually acceptable run-off date; in the event that the City and any other entity for which the County is providing election services or for which the County is conducting a joint election, do not agree on a run-off date, the City agrees to whichever run-off date is selected by the Election Officer.
- (B) If the City determines it is necessary to conduct an election during a time other than that specified in I. (A), the Election Officer and a representative designated by the City will meet as soon as possible to determine the feasibility of the Election Officer conducting such an election. If both parties agree that the Election Officer will administer this election, the new election will be based on all other applicable provisions of this agreement.
- (C) Except as otherwise provided in this agreement, the term “Election Officer” refers to the Travis County Clerk.
- (D) Except as otherwise provided in this agreement, the term “precinct” means all precincts in the territory of the City within Travis County.
- (E) Except as otherwise provided in this agreement, the term “fiscal year” refers to a time period that begins on October 1 and closes on September 30 of each year.
- (F) Except as otherwise provided in this agreement, the term “election services” refers to services used to perform or supervise any or all of the duties and functions that an election officer determines necessary for the conduct of an election. Except as otherwise provided in this agreement, the term “cost for election services” includes the costs for personnel, supplies, materials, or services needed for providing these services as permitted by the

Texas Election Code. The term does not refer to costs relating to the use of the voting equipment.

- (G) Except as otherwise provided in this agreement, the cost for “use of voting equipment” is the amount the City agrees to pay the County for use of the County’s DRE equipment.
- (H) The City agrees to commit the funds necessary to pay for election-related expenses for City elections.
- (I) The Election Officer has the right to enter into agreements with other entities at any time, including during the dates listed in I. (A).
- (J) As a condition for providing election services and equipment usage, the Election Officer may require authorities of political subdivisions holding elections on the same day in all or part of the same territory to enter into a joint election agreement as authorized in Chapter 271 of the Texas Election Code. The City agrees to enter into any joint election agreement required by the County. Any required joint election agreement must be consistent with this Travis County/City of Austin election agreement.

II. CITY’S USE OF VOTING EQUIPMENT

- (A) The County shall make available to the City their current and future-acquired voting system as authorized under Title 8 of the Election Code, subject to reasonable restrictions and conditions imposed by the Election Officer to ensure availability of the equipment for County-ordered elections, primary elections, and subsequent runoff elections. The Election Officer may impose reasonable restrictions and conditions to protect the equipment from misuse or damage.

III. APPOINTMENT OF ELECTION OFFICER

- (A) The Travis County Election Officer (“Election Officer”) is appointed to serve as the City’s Election Officer and Early Voting Clerk to conduct the City’s elections described in Section I.
- (B) As the City’s Election Officer and Early Voting Clerk, the Election Officer shall coordinate, supervise, and conduct all aspects of administering voting in City elections in compliance with all applicable law. The Election Officer will provide City election results for City’s precincts in Williamson County.
- (C) The City shall continue to perform those election duties listed in (1) through (8) below and any other election duties that may not be delegated to another governmental entity:
 - (1) preparing, adopting, and publishing all required election orders, resolutions, notices and other documents, including bilingual materials, evidencing action by the governing authority of the City necessary to the conduct of an election, provided that the Election Officer shall publish a single notice for all large entities (City of Austin,

Austin Independent School District, Austin Community College, and Capital Metro) participating in a particular election;

- (2) preparing federal Voting Rights Act election pre-clearance submissions to the Department of Justice, other than changes in a joint election conducted under this agreement that directly affect the County;
 - (3) preparing the text for the City's official ballot in English and Spanish, or other languages as required by law;
 - (4) providing the Election Officer with a list of candidates or propositions showing the order and the exact manner in which the candidates' names and the propositions are to appear on the official ballot;
 - (5) conducting the official canvass of a City election;
 - (6) administering the City's duties under state and local campaign finance laws;
 - (7) having a City representative serve as the custodian of its election records; and
 - (8) filing the City's annual voting system report to the Secretary of State as required under Chapter 123 et seq. of the Texas Election Code.
- (D) The City shall also be responsible for proofing and attesting to the accuracy of all ballot language and format information programmed by the County. This includes any information programmed for use with the audio or tactile button features of the equipment. The City will also monitor and review all logic and accuracy testing and mandatory recounts held prior to and after the election. The City will complete its duties within timeframes as prescribed by the County. If the City finds any discrepancies or concerns, it will immediately report them to the Election Officer and work with her to resolve any issues so that final approval can be reached.
- (E) The City Clerk of the City of Austin ("City Clerk") will assist the County whenever possible when the conduct of the election requires assistance from City departments and staff. The City Clerk will serve as Regular Early Voting Clerk for the City to receive requests for applications for early voting ballots, and forward these applications to the Joint Early Voting Clerk. The City Clerk will serve as the Custodian of Records for the City to complete those tasks in the Election Code that the Election Officer will not perform.

IV. ELECTION WORKERS AND POLLING PLACES

- (A) The County shall timely provide a list for presentation to the governing body of the City, containing a list of places, times, and dates of early voting suitable for consideration and adoption by the governing body in accordance with Texas Election Code Chapter 85. The Election Officer will designate and confirm all Election Day polling place locations, judges, and alternates.

- (B) The Election Officer will assume the responsibility for recruiting election personnel; however, if by the 5th day before the Election, the Election Officer reports vacancies in positions for election judges, alternate judges, election day clerks, early voting ballot board, receiving substation clerks, or any other key election personnel, the City shall provide emergency personnel in these positions.
- (C) The Election Officer shall notify each of the election judges and alternates of their appointment and the eligibility requirements that pertain to them and to the selection of election day clerks. Included in this notification will be the number of clerks that each precinct should have in addition to the election judge and alternate judge. The election judges and/or the alternates are responsible for recruiting and supervising their clerks.
- (D) All election workers must agree to attend training sessions as determined by the Election Officer. Costs for these training sessions and compensation for attendees will be included as part of the election service costs.
- (E) During any election and any subsequent runoff election that involve entities in addition to the City, the Election Officer will work with all parties to find a plan that can be agreed upon regarding polling places. If agreement cannot be reached, the Election Officer will resolve the differences. In all cases, emergency polling place changes will be made by the Election Officer.
- (F) In order for the County to conduct a City election held in November, it is necessary for the City to adopt polling places that are not inconsistent with the polling places adopted by the County Commissioners Court. During a May election and any subsequent runoff election that involve entities in addition to the City of Austin, the Election Officer will work with all parties to find a plan that can be agreed upon. If agreement cannot be reached, the Election Officer will resolve the differences. In all cases, emergency polling place changes will be made by the Election Officer.

V. BUDGET INFORMATION

- (A) Not later than February 15 of each year, the City shall provide to the Election Officer a forecast of City elections for the next two fiscal years.
- (B) Not later than March 15 of each year, Travis County shall provide to the City, based on the confirmed forecasts of each jurisdiction for which the County performs election services or with which the County participates in joint elections, a projection of the City's election costs per year for each of the next two fiscal years. The forecast shall include:
 - (1) a forecast of elections for all jurisdictions for which the County performs election services or with which the County participates in joint elections.

- (2) the precincts to be used for each election and each jurisdiction described in Subsection 1.
- (3) for each election, the City's projected share of election costs determined by this contract and relative to other jurisdictions for which the County performs election services or with which the County participates in joint elections. In the case of a joint election, the City's projected share of election costs will be determined on a pro rata basis using the following method. The number of precincts each City has involved in an election will be added together. The proportional percentage of that sum for each entity will be calculated. The proportional cost for each City for election services will be calculated by multiplying the proportional percentage of each City by the total cost of the election, less all flat rate payments charged to participating entities. The product of these numbers is the pro rata cost for each entity. For Participating Entities with fewer than 50 precincts, a not-to-exceed flat rate will be determined in accordance with Exhibit A, which is attached hereto and incorporated herein for all purposes. After each election the formula that produces the lowest figure will be used for final billing purposes.
- (4) If a flat fee is not used in calculating the City's projected share of election costs relative to other jurisdictions for which the County performs election services in addition to the projected itemized election costs, Travis County shall include a fee to be charged by the Election Officer equal to 10% of the City's projected share of the total costs of each election, as described in Section VI., excluding the costs of voting equipment, which are described in Section VII.

VI. PAYMENTS FOR ELECTION SERVICES

- (A) Payments for the use of voting equipment are addressed separately in Section VII of this agreement.
- (B) Not later than the 15th day after an election, the City will make a payment equal to 75% of the total of the City's projected share of election costs according to the most recent calculation presented by the Election Officer under Section (V)(B)(3) of this agreement. If there is a runoff election, the City will make a payment 15 days after the regular election and 15 days after the runoff election based on the projected costs for each election. The projected share of election costs will include the 10% fee for election services as discussed in VI. (E).
- (C) Except as otherwise provided in this agreement, the City will make payments for goods and services based on reports from established systems (i.e., payroll and accounts payable) and normal intergovernmental documentation.
- (D) The City may make an exception to this provision only in the event of significant "upfront" costs for essential supplies for which documentation is provided to the City with sufficient notice to enable the City Clerk to obtain approval from the City's Purchasing Office or if necessary, from City Council.

- (E) The Election Officer will charge a fee for election services, as described in Section VI, equal to 10% of the total costs of each election excluding the costs of voting equipment. Costs for use of voting equipment are described in Section VII. In the event of a joint election, this 10% fee will be divided on a pro rata basis among all entities involved in the election in the same method as described in Section V.(B)(3). If the flat fee calculated in accordance with Exhibit A is found to be the lesser of the two amounts, the 10% fee is included in that flat fee charge.
- (F) For elections that do not have a runoff election, the County will send the City a final invoice of election expenses not later than the 90th day after an election. For elections that do have a runoff, the County may send the City a final invoice of election expenses not later than the 90th day after the runoff election. This invoice may include expenses for both elections. The total amount due according to these invoices shall be offset by any payments made for “upfront” costs or made in accordance with Subsection (B) of this section. The County shall prepare the invoice to include:
- (1) an itemized list of each election expense incurred;
 - (2) the corresponding budget estimate for each item listed;
 - (3) for each final invoice item, the City’s pro rata share of costs will be expressed as a percentage of the total cost of the item for all jurisdictions for which Travis County performs election services;
 - (4) an itemization of any adjustments or credits to the first post-election invoice; and
 - (5) the total payment due from the City for any portion of the City’s costs not included in the City’s payment under Subsection V.(B) or not included as payment for an “upfront” cost.
- (G) The City shall promptly review an election invoice and supporting documentation when received from the County. The City may audit, during normal business hours, relevant County election or accounting records upon reasonable notice to the County. The City shall pay the entire final invoice or the undisputed portion of the final invoice not later than the 30th day after receiving the invoice.
- (H) The City may file a written request that the Election Officer adjust the final invoice not later than the 30th day after the City receives an invoice under Subsection (C). The request must include a justification for the request.
- (I) After receiving an adjustment request under Subsection (H), the City and County will endeavor to resolve adjustment issues not later than the 14th day after the City has filed the adjustment request. After the resolution of any adjustment issues, the City shall pay the final remaining adjusted balance due to the County, or if a final adjustment results in an amount due to the City, the County shall make payment to the City. The payment will not be made

later than the 21st day after the final adjustment. A payment resulting from the final dispute/adjustment process described in this subsection is due no later than September 29 of the fiscal year.

VII. PAYMENTS FOR USE OF VOTING EQUIPMENT

- (A) The Election Officer shall conduct elections using the voting system that the Election Officer administers in the conduct of County elections, as approved by the Secretary of State in accordance with the Texas Election Code unless otherwise agreed upon by both parties.
- (B) The City shall make payments to Travis County as consideration for the use of the County's DRE equipment. The City shall pay \$5 for each unit of electronic voting system equipment installed at a polling place; and \$5 for each unit of other electronic equipment used to conduct the election or provide election services.
- (C) If the City holds an election on a date when the County is holding a general or special November election, the City is not charged any cost for equipment usage. However, if a runoff election is necessary after a November election, the City will pay for equipment usage.
- (D) In the event of a joint election not occurring in November, the cost for equipment usage per entity is determined by taking the cost per election and multiplying it by the proportional cost factor for that entity. If the flat fee is charged in accordance with Exhibit A, the City will pay the lesser of the two amounts.
- (E) If the City holds an election on a date other than as listed in Section I (A), the City will pay \$5 for each unit of electronic voting system equipment installed at a polling place; and \$5 for each unit of other electronic equipment used to conduct the election or provide election services.
- (F) Payment by the City to the County for DRE equipment is due 30 days after receipt of billing as part of the final payment for election costs as discussed in Section VI.(D).
- (G) If the County acquires additional equipment, different voting equipment, or upgrades to existing equipment during the term of this contract, the charge for the use of the equipment may be renegotiated.

VIII. COMMUNICATIONS

- (A) The City Clerk and the Election Officer shall each designate a member of their staff to serve as the primary contact for the respective offices under this agreement and provide the name and contact information for that individual to each entity.
- (B) Throughout the term of this Agreement, the City and the County will engage in ongoing communications issues related to City elections, the use of County's voting equipment, and the delivery of services under this agreement and, when necessary, the County Clerk,

elections division staff members, and other election workers shall meet with the City to discuss and resolve any problems which might arise under this Agreement.

- (C) The Election Officer shall be the main point of media contact for election information related to election administration. The City shall designate a contact to be the main point of contact for matters related to the content of the City's ballot or candidates.

IX. MISCELLANEOUS PROVISIONS

- (A) Amendment/Modification

Except as otherwise provided, this Agreement may not be amended, modified, or changed in any respect whatsoever, except by a further Agreement in writing, duly executed by the parties hereto. No official, representative, agent, or employee of the County has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the Commissioners Court of Travis County, Texas. No official, representative, agent, or employee of the City has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the governing body of the City. Dana DeBeauvoir, Travis County Clerk, may propose necessary amendments or modifications to this Agreement in writing in order to conduct a Joint Election smoothly and efficiently, except that any such proposals must be approved by the Commissioners Court of the County and the governing body of the City.

- (B) Notice

Any notice to be given hereunder by any party to the other shall be in writing and may be effected by personal delivery, by certified mail, or by common carrier. Notice to a party shall be addressed as follows:

CITY
Shirley Gentry
City Clerk
P.O. Box 1088
Austin, Texas 78767-1088

Cc: David Smith
City Attorney
P.O. Box 1088
Austin, Texas 78767-1088

TRAVIS COUNTY
Honorable Dana DeBeauvoir, Travis County Clerk
1000 Guadalupe Street, Room 222
Austin, Texas 78701

Cc: Honorable David Escamilla, Travis County Attorney

314 West 11th Street, Suite 300
Austin, Texas 78701

Notice by hand-delivery is deemed effective immediately, notice by certified mail is deemed effective three days after deposit with a U.S. Postal Office or in a U.S. Mail Box, and notice by a common carrier, is deemed effective upon receipt. Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

(C) Force Majeure

In the event that the performance by the County of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or condition of any persons not a party or in privity thereof, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

(D) Venue and Choice of Law

The City agrees that venue for any dispute arising under this Agreement will lie in the appropriate courts of Austin, Travis County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

(E) Entire Agreement

This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed and supersedes all prior agreements, including prior election services contracts and prior agreements to conduct joint elections. Any prior agreements, promises, negotiations, or representations not expressly contained in this Agreement are of no force and effect. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing as provided herein.

(F) Severability

If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement; and, parties to this Agreement shall perform their obligations under this Agreement in accordance with the intent of the parties to this Agreement as expressed in the terms and provisions of this Agreement.

(G) Breach

In the event that City or County breaches any of its obligations under this Agreement, the non-breaching party shall be entitled to pursue any and all rights and remedies allowed by law.

(H) Payments from Current Revenues

Payments made by the City in meeting its obligations under this Agreement shall be made from current revenue funds available to the governing body of the City. Payments made by the County in meeting its obligations under this Agreement shall be made from current revenue funds available to the County.

(I) Other Instruments

The County and the City agree that they will execute other and further instruments or any documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(J) Third Party Beneficiaries

Except as otherwise provided herein, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights or remedies under or by reason of this Agreement.

(K) Other Joint Election Agreements

The County and the City expressly understand and acknowledge that each may enter into other Joint Election Agreements with other jurisdictions, to be held on Election Day and at common polling places covered by this Agreement.

(L) Mediation

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.023 of the Texas Civil Practice and Remedies Code unless both parties agree, in writing, to waive the confidentiality. Notwithstanding the foregoing, the parties intend to fully comply with the Texas Open Meetings Act and the Texas Public Information Act whenever applicable. The term “confidential” as used in this Agreement has the same meanings as defined and construed under the Texas Public Information Act and the Texas Open Meetings Act.

(M) Addresses for Payments

Payments made to the County or the City under this agreement shall be addressed to following respective addresses:

Elections Division
Travis County Clerk
P.O. Box 149325
Austin, Texas 78751

Shirley Gentry
City Clerk
P.O. Box 1088
Austin, Texas 78767-1088

- (N) This agreement is effective upon execution by both parties and expires on July 1, 2011 and renews automatically for two additional three-year terms unless one party notifies the other party in writing that it wants to terminate the agreement.
- (O) Either party may terminate this agreement for any reason upon providing 180 days written notice to the other party.
- (P) The individuals below have been authorized to sign this Agreement.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of _____, 2007.

CITY

Approved as to form:

Assistant City Attorney

BY: _____
Shirley A. Gentry
City Clerk

TRAVIS COUNTY

BY: _____
Samuel T. Biscoe
County Judge

BY: _____
Dana DeBeauvoir
County Clerk

Exhibit A

Pricing Schedule for Entities with fewer than 50 precincts

Note: Each City is responsible for its Department of Justice submission, publishing its notice of election, submitting ballot language in English and Spanish, proofing of its ballot, and canvassing its returns (Travis County supplies the results of the canvass).

Election Day polling location flat rate:

\$1675 each location

(\$1500 for operating costs + \$150 for 10% administration fee + \$25 for equipment usage fee)

This rate is a not-to-exceed rate for each polling location. When determining polling locations, the goal is for all Participating Entities to agree on the polling locations for their common areas. In most cases the larger entities determine the sites and precinct combinations for polling locations. If a City has precincts that are not shared with another entity, the City may choose to combine locations.

Each Election Day location has one judge, one alternate judge, and one or two clerks. If the location is shared with other jurisdictions, this cost is divided according to the number of jurisdictions at that location and the percentage of population for that jurisdiction at that location. Cost includes 10% admin. fee and equipment usage fee.

Election Day polling location proportional rate:

Cost depends upon participation

If a large number of entities participate in an election, and a proportional rate of the actual costs is the less expensive alternative for the City, Travis County will charge the proportional cost instead of the flat rate cost. In other words, Travis County will charge the lesser of the two amounts.

Additional Early Voting Options:

Operation of an Early Voting location as part of the Travis County regular Mobile Voting program:
Per day \$275

All of the City's voters within Travis County have access to all of the Travis County Early Voting sites in each election at no additional cost. If Travis County does not run a permanent or mobile site in a City's area, the City may request a mobile unit for one to five days. This would include Travis County staff setting up and breaking down the equipment daily, trained staffing of the location, and Travis County law enforcement securing the equipment in the Travis County Elections Division's safe at 5501 Airport on a daily basis.