

## INTERLOCAL CONTRACT FOR ELECTION SERVICES

**THIS CONTRACT FOR ELECTION SERVICES** (“Contract”) is made and entered into by and between the ELECTIONS ADMINISTRATOR OF WILLIAMSON COUNTY, TEXAS (“Contracting Officer”), and the CITY OF AUSTIN (“City”), pursuant to the authority under §31.092(a) of the Texas Election Code and the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

### RECITALS

**WHEREAS**, per the Interlocal Cooperation Act, each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter; and

**WHEREAS**, the City expects to call an Election during the term of this Contract and during any renewal term of this Contract; and

**WHEREAS**, the City desires that certain Election-related governmental functions and services for the Election be provided by the Contracting Officer pursuant to Chapter 31, Subchapter D of the Texas Election Code; and

**WHEREAS**, the Contracting Officer and the City desire to enter into a contract stating the contract’s purpose and terms, and the parties’ rights and duties;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises hereinafter set forth, the parties to this Contract agree as follows with respect to the coordination, supervision, and running of the Election:

#### **I. PURPOSE; SCOPE; APPOINTMENT.**

**A.** The purpose of this Contract is to maintain consistency and accessibility in voting practices, polling places, and election procedures in order to best assist the voters of the City. For purposes of this Contract, the term “**Election**” refers to any City general or special election and a resulting runoff, if necessary, within all City territory located in Williamson County. In the event that the City and any other entity for which the Contracting Officer is providing election services, or for which the Contracting Officer is conducting a joint election, do not agree on a run-off date, the Contracting Officer will determine a run-off date, subject to City Council approval.

**B.** The Contracting Officer is hereby appointed to serve as the City’s Election Officer and designee for carrying out Early Voting Clerk duties to conduct the Election for those areas of the City located in Williamson County. As City’s Election Officer and designee for carrying out Early Voting Clerk duties, the Contracting Officer will coordinate, supervise, and conduct all aspects of administering voting in connection with the Election in compliance with all applicable law, except as otherwise provided in this Contract.

**II. DUTIES OF CONTRACTING OFFICER.** The Contracting Officer shall be responsible for performing the following services and furnishing the following materials and equipment in connection with the Election:

**A. *All Election Services Required By State Law.*** As stated in I. (B.) and as partially listed in this Article II, the Contracting Officer will perform all Election services required by State law and not listed in Article III as Duties of City.

**B. *Nomination of Presiding Judges and Alternate Judges.*** Contracting Officer will recruit and appoint all election workers. Such proposed presiding judges and alternate judges shall meet the eligibility requirements in Chapter 32, Subchapter C of the Texas Election Code.

**C. *Notification to City.*** Contracting Officer will provide the City with the most up-to-date list of early voting polling places, election day polling places, and presiding and alternate judges three weeks before the statutory deadline to order the election and again three weeks before election day. The City acknowledges that the information provided may not be final or complete.

**D. *Notification to Presiding and Alternate Judges; Appointment of Clerks.***

1. The Contracting Officer shall notify each presiding judge and alternate judge of his or her appointment. The notification will also include the assigned polling location, the date of the election school(s), the date and time of the election, the rate of compensation, the number of election clerks the presiding judge may appoint, the eligibility requirements for election workers, and the name of the presiding or alternate judge, as appropriate. The Contracting Officer shall notify each of the election judges and alternates of their appointment and to the selection of election day clerks. Included in this notification will be the number of clerks that each precinct can appoint in addition to the election judge and alternate judge. The election judge is responsible for recruiting and supervising their clerks. Notification to the election judges and alternates shall be made no later than 20 days from the date of the election unless the Contracting Officer appoints a judge after this date.

2. The Contracting Officer shall ensure that the presiding judges make the appropriate election clerk appointments and notify the clerks of such appointments. The presiding election judge of each polling place, however, will use his or her discretion to determine when additional manpower is needed during peak voting hours. The Contracting Officer will determine the number of clerks to work on the Balloting Board.

**E. *Contracting with Third Parties.*** In accordance with §31.098 of the Texas Election Code, the Contracting Officer is authorized to contract with third persons for election services and supplies. The actual cost of such third-person services and supplies will be paid by the Contracting Officer and reimbursed by the City.

**F. *Election School(s).*** The Contracting Officer shall be responsible for conducting one or more, in his discretion, election schools to train the presiding judges and alternate judges in the conduct of elections, including qualifying voters, provisional voting, and the counting of ballots. The Contracting Officer shall determine the date, time, and place for such school(s) and notify the presiding judges and alternate judges of such. The election workers must agree to attend training sessions as determined by the Contracting Officer. The Contracting Officer may hold the election school(s) on a Saturday in order to increase its availability to election workers who are employed during the regular work week. If at all possible, such election schools shall be conducted within the City's territory.

**G. *Early Voting.*** In accordance with §§31.096, 31.097(b), and 83.005 of the Texas Election Code, the City is the Early Voting Clerk for the election and hereby delegates all Early Voting Clerk duties to the Contracting Officer.

1. The Contracting Officer shall supervise and conduct early voting by mail and personal appearance and shall secure personnel to serve as Early Voting Deputies.

2. Early voting by personal appearance for the election shall be conducted during the hours and time period and at the locations as determined by the Contracting Officer.

3. The Contracting Officer shall receive mail ballot applications on behalf of the City. All applications for mail ballots shall be processed in accordance with Title 7 of the Texas Election Code by the Contracting Officer or his deputies at 301 SE Inner Loop, Ste 104, PO Box 209, Georgetown, Texas 78627-0209. Applications for mail ballots erroneously mailed to the City shall be faxed as promptly as possible to the Contracting Officer for timely processing. The original application shall then be forwarded to the Contracting Officer for proper retention.

4. Early voting ballots cast by personal appearance shall be secured and maintained at 301 SE Inner Loop, Georgetown, TX and in accordance with Chapter 87 of the Texas Election Code. The Early Voting Ballot Board shall meet at 301 SE Inner Loop, Ste 104, Georgetown, TX on the day after early voting ends during each term of this Contract.

**H. Election Day Polling Locations.** The election day polling locations are determined by the Contracting Officer, subject to City Council approval. The Contracting Officer shall arrange for the use of all election day polling places and shall arrange for the setting up of all polling locations for election day, including ensuring that each polling location has the necessary tables, chairs, and voting booths. The City understands that the cost of services to be rendered by the Contracting Officer includes a pro rata share of any fees charged by the entity providing the poll site and the cost of all employee services required to provide access, security, or custodial services for the polling location(s).

**I. Custodian of Voted Ballots.** The Contracting Officer is hereby appointed the custodian of voted ballots and shall preserve them in accordance with Chapter 66 of the Texas Election Code and other applicable law. After complying with the retention period, the Contracting Officer shall forward election material, including voted ballots, to the City, if requested.

**J. Pre-Clearance.** The Contracting Officer will provide the City with information on changes affecting the City's election, such as polling place changes and changes in voting equipment, when such changes are confirmed, verified, or otherwise become known to him or his office.

### **III. DUTIES OF CITY.** The City shall assume the following responsibilities:

**A. Applications for Mail Ballots.** The City shall date stamp and then as promptly as possible fax to the Contracting Officer all applications for mail ballots that it receives. Promptly thereafter, the City shall deliver or send by mail the original mail ballot applications to the Contracting Officer.

**B. Election Orders, Election Notices, Canvass.** The City will be responsible for preparing, adopting, publishing, and posting 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 the Election. The City will be responsible for conducting the official canvass of the Election.

**C. Ballot Text.** The City will be responsible for preparing the text for the City's official ballot in English and Spanish, or other languages as required by law. The City will provide the Contracting Officer with a list of propositions showing the order and the exact manner in which the candidates' names and the propositions are to appear on the official ballot. The City shall also provide approval once the Contracting Officer submits it for review by e-mail or by signature in person.

**D. Custodian of Records.** The City will be responsible for having a City representative serve as the custodian of all election records other than those mentioned in II. (I.).

**E. Annual Voting Report.** The City will be responsible for filing its annual voting system report to the Secretary of State as required under Chapter 123 *et seq.* of the Texas Election Code.

**F. Pre-Clearance.** The City shall be individually responsible for obtaining appropriate preclearance, if necessary, from the United States Department of Justice.

**G. Applications Authority.** In accordance with §31.096 of the Texas Election Code, the City will continue to serve as the authority with whom the applications for a place on the ballot are filed.

**H. Filing Authority.** In accordance with §31.096 of the Texas Election Code, the City will continue to serve as the authority with whom documents relating to political funds and campaigns under Title 15 of the Texas Election Code are filed.

#### **IV. PAYMENT TERMS.**

**A. Charges.** In consideration for the election services provided hereunder by the Contracting Officer, the City will be charged a share of election costs, an administrative fee, and for the lease of voting equipment.

1. Share of Election Costs. The City's share of election costs will be determined on a pro rata basis using the following method: The number of registered voters for each entity 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 entity for election services will be calculated by multiplying the proportional percentage of each entity by the total cost of the election.

2. Administrative Fee. The Contracting Officer will charge a fee equal to 10% of the City's share of the total costs of each election.

3. Lease of Voting Equipment. Per § 123.032(d) of the Texas Election Code, the Williamson County Commissioners Court has established the following prices for leasing county-owned voting equipment:

- \$309.50 per ADA iVotronic DRE;
- \$250.00 per iVotronic DRE;
- \$85.00 per iVotronic printer;
- \$274.43 per electronic pollbook; and
- \$475.00 per M100 precinct ballot counter (election day only).

The City's share of voting equipment costs will be determined on a pro rata basis. Leasing cost will be calculated once for the early voting period (excluding M100 precinct ballot counters) and once for election day. If the County acquires additional equipment, different voting equipment, or upgrades existing equipment during the term of this Contract, the charge for the use of the equipment may be reset by the Williamson County Commissioners Court.

**B. Partial Upfront Payment.** The City may make a partial payment before election day 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.

**C. Final Payment.** The Contracting Officer will submit an itemized invoice (properly supported by time sheets, invoices, and receipts, as applicable—see Section D below) to the City for the actual expenses directly attributable to the services provided to the City hereunder as soon

as reasonably possible after election day. The Contracting Officer also has the option to immediately submit an itemized invoice (properly supported by time sheets, invoices, and receipts, as applicable—see Section D below) after election day for 75% of actual expenses directly attributable to the services provided to the City and submit an itemized invoice for the remaining 25% of actual expenses as soon as reasonably possible thereafter. In the event the actual election costs exceed the City's partial payment, the difference between the actual costs and the partial payment will be paid by the City within 30 days after receiving an itemized invoice from the Contracting Officer. Payment shall be made by check payable to WILLIAMSON COUNTY and mailed to:

Rick Barron  
Elections Administrator  
PO Box 209  
Georgetown, TX 78627-0209

Any monies remaining after the payment of all costs of election bills shall be the property of the City and returned to it. If the City disputes any portion of the invoice, the City shall pay the undisputed portion of the invoice, and the parties will discuss in good faith a resolution of the disputed portion. Payments for the performance of governmental functions or services made by the City in meeting its obligations under this Contract shall be made from current revenue funds available to the governing body of the City.

**D. *Audit.*** The City shall promptly review an election invoice and supporting documentation when received from the Election Officer. The City may audit, during normal business hours, relevant Contracting Officer election or accounting records upon reasonable notice to the Contracting Officer. 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.

**E. *Adjustment.*** 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. The request must include a justification for the request.

**F. *Resolution.*** After receiving an adjustment request under Section E, the City and Contracting Officer 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 21<sup>st</sup> day after the final adjustment. A payment resulting from the final dispute/adjustment process described in this Section is due no later than September 29 of the fiscal year.

**G. *Fair Compensation.*** Per the Interlocal Cooperation Act, each party represents and warrants that the compensation to be made to the performing party contemplated in this Agreement are in amounts that fairly compensate the performing party for the services or functions described in this Agreement.

**H. *Appropriation.*** Per the Interlocal Cooperation Act, it is the intent and understanding of the Parties that the obligations of each party under this Agreement shall remain effective only so long as and provided that each party has fully appropriated funds for performing such obligations for the party's current fiscal year. If for any fiscal year of any party funds are not appropriated for such party's performance of its obligations under this Agreement, this Agreement shall become void and such party shall promptly give notice to the other parties of the nonappropriation of funds.

## **V. TERM AND TERMINATION.**

**A. Initial Term.** The initial term of this Contract shall commence upon the last party's execution hereof and shall continue thereafter in full force and effect for one year, subject to the termination rights set forth herein.

**B. Renewal.** Subject to the termination rights set forth herein, this Contract shall automatically renew for ten additional one-year terms.

**C. Termination for Convenience.** Either party may terminate this Contract for convenience and without cause or further liability upon one hundred and eighty (180) day's written notice to the other party. In the event of termination, it is understood and agreed that only the amounts due to Contracting Officer for services provided and expenses incurred up to and including the date of termination, will be due and payable. No penalty will be assessed for either party's termination of this Contract for convenience.

**D. Termination for Cause.** If either party commits an event of breach (a breach of any of the covenants, terms, and/or conditions of this Contract), the non-breaching party shall deliver written notice of such event of breach to the breaching party. Such notice must specify the nature of the event of breach and inform the breaching party that unless the event of breach is cured within three (3) business days of receipt of the notice, additional steps may be taken to terminate this Contract. If the breaching party begins a good faith attempt to cure the event of breach within three (3) business days, then and in that instance, the three (3) business day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the event of breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within three (3) business days or otherwise fails to make any diligent attempt to correct the event of breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies available hereunder and under the law, terminate this Contract with one hundred and eighty (180) day's notice.

## **VI. COMMUNICATIONS.**

**A. Primary Contact.** The City and the Contracting Officer shall each designate a member of their staff to serve as the primary contact for the respective offices under this Contract and provide the name and contact information for that individual to each entity.

**B. Ongoing Communications.** Throughout the term of this Contract, the City and the Contracting Officer will engage in ongoing communications issues related to City elections, the use of Contracting Officer's voting equipment, and the delivery of services under this Contract and, when necessary, the Contracting Officer, elections staff members, and other election workers shall meet with the City to discuss and resolve any problems which might arise under this Contract.

**C. Media Contact.** The Contracting 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.

**D. Progress Report.** On election night, the designated staff member will contact the Travis County Central Counting Station with a progress report no later than 11:00 p.m.

## **VII. GENERAL PROVISIONS.**

**A. Cancellation of Election.** If the City cancels its election pursuant to §2.053 of the Texas Election Code, the Contracting Officer shall only be entitled to receive the actual expenses incurred before the date of cancellation in connection with the election and a cancellation fee of \$50. The Contracting Officer shall submit an invoice for such expenses (properly supported as

described in Article IV above) as soon as reasonably possible after the cancellation and the City shall make payment therefore in a manner similar to that set forth in Article IV above. The Contracting Officer agrees to use reasonable diligence not to incur major costs in connection with election preparations until it is known that the election will be held, unless the City authorizes such major costs in writing.

**B. *Representatives.*** For purposes of implementing this Contract and coordinating activities hereunder, the City and the Contracting Officer designate the following individuals, and whenever the contract requires submission of information or documents or notice to the City or the Contracting Officer, respectively, submission or notice shall be to these individuals:

**For the City:**

Shirley Gentry  
City Clerk  
City of Austin  
PO Box 1088  
Austin, TX 78767  
Tel: (512) 974-2211

cc: City Attorney  
PO Box 1088  
Austin, TX 78767

**For the Contracting Officer:**

Rick Barron  
Elections Administrator  
Williamson County  
PO Box 209  
Georgetown, TX 78627  
Tel: (512) 943-1622

cc: County Attorney  
PO Box 209  
Georgetown, TX 78627

**C. *Amendment/Modification.*** Except as otherwise provided, this Contract may not be amended, modified, or changed in any respect whatsoever, except in writing, duly executed by the parties hereto. No official, representative, agent, or employee of Williamson County has any authority to modify this Contract except pursuant to such expressed authorization as may be granted by the Commissioners Court of Williamson County, Texas. No official, representative, agent, or employee of the City has any authority to modify this Contract except pursuant to such expressed authorization as may be granted by the governing body of the City. Both the Contracting Officer and the City may propose necessary amendments or modifications to this Contract in writing in order to conduct the Election smoothly and efficiently, except that any such proposals must be approved by the Contracting Officer and the governing body of the City or its authorized agent, respectively.

**D. *Relationship of the Parties.*** Each party to this Contract, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**E. *Other Joint Election Agreements.*** The Contracting Officer and the City expressly understand and acknowledge that each may enter into Joint Election Agreements with other jurisdictions, to be held on election day and at common polling places covered by this Contract.

**F. *Severability.*** If any provision of this Contract 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 Contract; and, parties to this Contract shall perform their obligations under this Contract in accordance with the intent of the parties to this Contract as expressed in the terms and provisions of this Contract.

**G. *Third Party Beneficiaries.*** Except as otherwise provided herein, nothing in this Contract, 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 Contract.

**H. Entire Agreement.** This Contract 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 Contract are of no force and effect. Any oral representations or modifications concerning this Contract shall be of no force or effect, excepting a subsequent modification in writing as provided herein.

**I. Force Majeure.** In the event that the performance by the Contracting Officer 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.

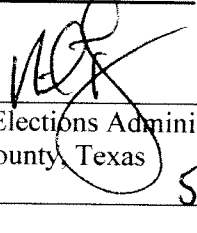
**J. Venue and Choice of Law.** The Contracting Officer agrees that venue for any dispute arising under this Contract will lie in the appropriate courts of Austin, Travis County, Texas. This Contract shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

**K. Mediation.** When mediation is acceptable to both parties in resolving a dispute arising under this Contract, 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 § 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 § 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 Contract has the same meanings as defined and construed under the Texas Public Information Act and the Texas Open Meetings Act.

**L. 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 Contract.

IN TESTIMONY WHEREOF, the parties hereto have executed this Contract in multiple copies, each of equal dignity. This Contract shall commence upon the last party's execution hereof.

**CONTRACTING OFFICER:**

  
\_\_\_\_\_  
Rick Barron, Elections Administrator  
Williamson County, Texas  
Date: \_\_\_\_\_

**THE CITY OF AUSTIN:**

\_\_\_\_\_  
Shirley Gentry  
City Clerk  
Date: \_\_\_\_\_



Approved as to form for the City:

\_\_\_\_\_  
Sabine Romero

Assistant City Attorney, City of Austin

Date: \_\_\_\_\_