

## CONTRACT FOR ELECTION SERVICES

**THIS CONTRACT FOR ELECTION SERVICES** (this “**Contract**”) is made and entered into by and between ELECTIONS ADMINISTRATOR OF HAYS COUNTY, TEXAS (“**Contracting Officer**”), and CITY OF AUSTIN FULL AND LIMITED PURPOSE (the “**District**”), pursuant to the authority under §31.092(a) of the Texas Election Code.

### RECITALS

**WHEREAS**, the District expects to call an election to be held on November 2, 2010 (the “**Election**”);

**WHEREAS**, the District desires that certain election 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 District desire to enter into a contract setting out the respective responsibilities of the parties;

**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 District. For purposes of this Contract, the term “**Election**” will include any resulting recount, or election contest. If a run-off is necessary, the District will work with the Contracting Officer to determine a mutually acceptable run-off date.

**B.** The Contracting Officer is hereby appointed to serve as the District’s Election Officer and Early Voting Clerk to conduct the Election for those areas of the District located in Hays County. As District’s Election Officer and Early Voting Clerk, 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. RESPONSIBILITIES 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. *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 Subchapter C of Chapter 32 of the Texas Election Code.

**B. *Notification to District.*** Contracting Officer will provide District 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. District acknowledges that the information provided may not be final or complete.

**C. *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 October 13, 2010, 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.

**D. *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 District.

**E. *Election School(s).*** The Contracting Officer shall be responsible for conducting one or more, in his or her 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 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 District's territory.

**F. *Election Supplies.*** The Contracting Officer shall procure, prepare, and distribute to the presiding judges for use at the polling locations on election day (and to the early voting clerks during early voting) the following election supplies: election kits (including the appropriate envelopes, sample ballots, lists, forms, name tags, posters, and signage described in Chapters 51, 61, and 62, and Subchapter B of Chapter 66 of the Texas Election Code), pens, pencils, tape, markers, paper clips, ballot box seals, sample ballots, tacks, and all consumable-type office supplies necessary to hold an election.

**G. *Registered Voter List.*** The Contracting Officer shall provide all lists of registered voters required for use on election day and for the early voting period required by law. The election day list of registered voters shall be arranged in alphabetical order by each precinct.

**H. *DREs.*** The Contracting Officer shall provide, at each polling location, at least one voting station with a voting system that: (i) fully complies with applicable law relating to accessible voting systems which make voting accessible for disabled voters; and (ii) provides a practical and effective means for voters with physical disabilities to cast a secret ballot.

**I. *Election Equipment.*** Contracting Officer will procure, prepare, and distribute election equipment.

**J. *Ballots.*** The Contracting Officer shall be responsible for the preparation, printing, programming, and distribution of ballots and sample ballots, provided that the District will prepare the text of such ballots as set forth in Section III.C. below. Without limiting the foregoing, the Contracting Officer will be responsible for the programming of the direct recording electronic voting devices (referred to as DREs) and the printing of ballots requested by mail. The

Contracting Officer shall be responsible for distributing the DREs along with the election supplies. In addition, the Contracting Officer will prepare the paper, optical, and auditory ballots for the election. The ballots shall be in English with the Spanish translation included.

**K. *Early Voting.*** In accordance with §§31.096 and 31.097(b) of the Texas Election Code, the Contracting Officer will serve as Early Voting Clerk for the election.

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 District. All applications for mail ballots shall be processed in accordance with Title 7 of the Texas Election Code by the Contracting Officer or his/her deputies at 401-C Broadway St. San Marcos, TX 78666-7751. Applications for mail ballots erroneously mailed to the District 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 401-C Broadway St. San Marcos, TX 78666-7751 and in accordance with Chapter 87 of the Texas Election Code. The Early Voting Ballot Board shall meet at 401-C Broadway St. San Marcos, TX 78666-7751 on October 31, 2010.

**L. *Election Day Polling Locations.*** The election day polling locations are determined by the Contracting Officer. 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 District 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).

**M. *Ballot Tabulation.*** The Early Voting Ballot Board shall be responsible for handling ballot tabulation in accordance with statutory requirements and county policies, under the auspices of the Contracting Officer, and will, thereafter, transport all election records to the Contracting Officer.

**N. *Manual Counting.*** The Contracting Officer shall conduct a manual count as prescribed by §127.201 of the Texas Election Code and submit a written report to the District in a timely manner. The Secretary of State may waive this requirement. If applicable, a written report shall be submitted to the Secretary of State as required by §127.201(E) of the aforementioned code.

**O. *Election Reports.*** The Contracting Officer shall prepare the unofficial and official tabulation of precinct results under §66.056(a) of the Texas Election Code and shall provide a copy of the tabulation to the Travis County Central Counting Station as soon as possible after the Contracting Officer has received the precinct returns on election day night.

**P. *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 District, if requested.

**Q. *Schedule for Performance of Services.*** The Contracting Officer will perform all election services in accordance and compliance with the time requirements set out in the Texas Election Code.

**R. *Compensation of Election Workers.*** The Contracting Officer will compensate all election workers, including election day and early voting judges and clerks and judges for election night and early voting returns, in accordance with the Contracting Officer's established compensation policies.

**S. *Pre-Clearance.*** Each of the Participating Entities shall be individually responsible for obtaining appropriate preclearance, if necessary, from the United States Department of Justice. The Contracting Officer will provide the District with information on changes affecting the District'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. RESPONSIBILITIES OF THE DISTRICT.** The District shall assume the following responsibilities:

**A. *Applications for Mail Ballots.*** The District 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 District shall deliver or send by mail the original mail ballot applications to the Contracting Officer.

**B. *Election Orders, Election Notices, Canvass.*** The District 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 District necessary to the conduct of the Election. The District will be responsible for conducting the official canvass of the Election.

**C. *Ballot Text.*** The District will be responsible for preparing the text for the District's official ballot in English and Spanish, or other languages as required by law. The District 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 District 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 Contracting Officer will serve as the custodian of voted ballots as set forth in Section II.P. above. The District will be responsible for having a District representative serve as the custodian of all other election records.

**E. *Annual Voting Report.*** The District 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.

**IV. PAYMENT**

**A. *Charges.*** In consideration for the joint election services provided by the Contracting Officer, District will be charged a programming fee and for the equipment lease as follows:

Electronic voting system programming and testing	<b>\$ 375.00</b>
Rental of voting equipment (Election Day & Early Voting)	

Number of DREs/eSlate systems <u>1</u> x rental rate of \$100.00 =	\$ 100.00
Number of DAUs/Disable Access Units <u>1</u> x rental rate of \$100.00 =	\$ 100.00
Number of JBCs/ Judges Booth Comptroller 1 x rental rate of \$100.00 =	\$ 100.00
<u>Election and Early Voting Clerks</u>	<u>\$ .00</u>
Total =	\$ 675.00

**B. *Payment.*** Payment shall be made by check payable to HAYS COUNTY within 15 days after the election and mailed to:

Joyce Cowan, Hays County Election Administrator  
401-C Broadway St.  
San Marcos, TX 78666-7751

If the District disputes any portion of the invoice, the District shall pay the undisputed portion of the invoice, and the parties will discuss in good faith a resolution of the disputed portion.

**C. *Funding.*** Payments made by the District in meeting its obligations under this Contract shall be made from current revenue funds available to the governing body of the District.

## **V. TERM AND TERMINATION**

**A. *Term.*** The term of this Contract shall commence upon the last party's execution hereof and shall continue thereafter in full force and effect until terminated by either party in accordance with the terms hereof.

**B. *Termination for Convenience.*** Either party may terminate this Contract for convenience and without cause or further liability upon thirty (30) business 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 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.

**C. *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.

## **VI. GENERAL PROVISIONS**

**A. *Nontransferable Functions.*** In accordance with §31.096 of the Texas Election Code, nothing in this Contract shall be construed as changing:

1. the authority with whom applications of candidates for a place on the ballot are filed;

2. the authority with whom documents relating to political funds and campaigns under Title 15 of the Texas Election Code are filed; or

3. the authority to serve as custodian of election records, except that the Contracting Officer, will serve as the custodian of voted ballots as set forth in §II.P above.

**B. *Cancellation of Election.*** If the District 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 District 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 District authorizes such major costs in writing.

**C. *Contract Copies to Treasurer and Auditor.*** In accordance with §31.099 of the Texas Election Code, the Contracting Officer agrees to file copies of this Contract with the County Treasurer of Hays County, Texas and the County Auditor of Hays County, Texas.

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

**For the District:**

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

**For the Contracting Officer:**

Joyce Cowan  
Elections Administrator  
Hays County  
401-C Broadway St.  
San Marcos, TX 78666-7751  
Tel: (512) 393-7310

**E. *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 Hays County has any authority to modify this Contract except pursuant to such expressed authorization as may be granted by the Commissioners Court of Hays County, Texas. No official, representative, agent, or employee of the District has any authority to modify this Contract except pursuant to such expressed authorization as may be granted by the governing body of the District. Both the Contracting Officer and the District 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 District or its authorized agent, respectfully.

**F. *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.

**G. *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.

**H. *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.

**I. *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.

\* \* \*

WITNESS BY MY HAND THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2010.

**CONTRACTING OFFICER:**  
HAYS COUNTY

\_\_\_\_\_  
Joyce Cowan, Election Administrator  
Hays County, Texas

WITNESS BY MY HAND THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2010.

**THE DISTRICT:**  
CITY OF AUSTIN

\_\_\_\_\_  
Shirley Gentry, City Clerk  
City of Austin, Texas

ATTEST:

\_\_\_\_\_