

**INTERLOCAL AGREEMENT BETWEEN SMITH COUNTY, CITY OF TYLER, TYLER
INDEPENDENT SCHOOL DISTRICT, WHITEHOUSE INDEPENDENT SCHOOL
DISTRICT AND CHAPEL HILL INDEPENDENT SCHOOL DISTRICT FOR CONDUCTING
ELECTIONS**

STATE OF TEXAS §

COUNTY OF SMITH §

This Agreement is entered into this 13th day of February, 2017, by and between Smith County, Texas, a political subdivision of the State of Texas, with the authorization of its governing body (hereinafter referred to as COUNTY), The City of Tyler, Tyler Independent School District, Whitehouse Independent School District and Chapel Hill Independent School District with the authorization of their respective governing bodies (hereinafter referred to as **VOTING UNITS**). The **VOTING UNITS** enter into this Interlocal Agreement with COUNTY by authority of the Interlocal Cooperation Act, Texas Government Code Chapter 791.

W I T N E S S E T H

WHEREAS, VOTING UNITS are authorized to conduct a joint election under Texas Election Code Chapter 271, if such action is authorized by each entity participating in the joint election; and

WHEREAS, COUNTY has the experience and resources to conduct elections throughout all of, or portions of, Smith County; and

WHEREAS, COUNTY may hire additional elections administration personnel as necessary to carry out this agreement; and

WHEREAS, VOTING UNITS and **COUNTY** have determined that it is in the public interest of their inhabitants that the following agreement be made and entered into for the purpose of having **COUNTY** furnish certain special election services and equipment needed by **VOTING UNITS** in connection with **VOTING UNITS'** elections;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, as well as other good and valuable consideration stated herein below, **COUNTY** and **VOTING UNITS** agree as follows:

PURPOSE

It is the purpose of this Interlocal Agreement to set forth the purpose, terms, rights and duties of the contracting parties whereby **COUNTY** is to provide certain governmental functions and services limited to the undertaking of a trustee/city council election and any special election herein described for **VOTING UNITS**.

TERMS, RIGHTS AND DUTIES

I. COUNTY'S DUTIES

COUNTY shall perform the following duties in connection with conducting **VOTING UNITS'** elections:

1. Appoint Early Voting Ballot Board and notify same;
2. Appoint Election Judges and Alternate Judges and notify same;
3. Conduct Early Voting both by personal appearance and by mail for **VOTING UNITS**;
4. Print ballots in accordance with the election laws and wording furnished by **VOTING UNITS** pursuant to Section II (2) under the Terms, Rights and Duties set forth in this agreement;
5. Order and maintain all supplies, materials and ballots in such quantities necessary to conduct such elections;
6. Furnish **VOTING UNITS** with sample ballots for their elections;
7. Provide for electronic voting process including preparation of, programming, testing of tabulation equipment and publication of notice of such tests and notification to **VOTING UNITS** of time and place of such tests;
8. Establish Central Counting Station;
9. Deliver supplies and voting equipment to and from polling places;
10. Assume Election Day responsibilities, including late voting for illness, disability, etc., as required by law, and be available to voters and election officials;
11. Provide for retention and storage of election records as provided by law;
12. Furnish **VOTING UNITS** with a copy of all vote tabulations and election returns;
13. Count ballots, process election returns, and prepare unofficial tabulation of votes;
14. Process election returns and prepare tabulation of unofficial returns and provide to **VOTING UNITS** no later than 8:30 a.m. on the eighth (8th) day following the election for official canvassing by **VOTING UNITS**;
15. Elections Administrator shall review with and recommend arrangements for polling places to **VOTING UNITS**; such recommendation of polling places selections should be approved by **VOTING UNITS** and Elections Administrator shall notify in writing to **VOTING UNITS** of final selection of polling places. Elections Administrator shall notify, review and obtain approval of any change of polling places with **VOTING UNITS**. **VOTING UNITS** specifically agree to use a common polling location in the territory of the joint election and share election officials for the conduct of the joint election under Texas Election Code Chapter 271.

In the event that the approved polling places become unavailable for use, the Elections Administrator shall notify the **VOTING UNITS** of the cancellation of such polling place(s)

within forty-eight (48) hours of receiving notice of unavailability. The Elections Administrator shall notify **VOTING UNITS** of the location of alternate polling places(s) selected to replace cancelled sites no later than seven (7) days prior to the election, or as promptly as possible if cancellation occurs within seven (7) days of the election.

16. Elections Administrator shall appoint deputy early voting clerks;
17. Elections Administrator shall serve as Early Voting Clerk for elections;
18. Conduct early voting at a location(s) to be determined by the Elections Administrator;
19. Pay any claims for election expenses pursuant to Texas Election Code Section 31.098(a) (See also Section III. **CONSIDERATION**, set forth in the Terms, Rights and Duties of this agreement for **VOTING UNITS'** responsibility for costs);
20. Review with **VOTING UNITS** the election process prior to election;
21. **COUNTY** shall pay claims of third parties attributable to the election which **COUNTY** conducts on behalf of **VOTING UNITS** if said claims become due prior to the **COUNTY'S** submission of an itemized bill of costs to **VOTING UNITS**;
22. Said claims shall be paid from funds deposited by the **VOTING UNITS** with the County Treasurer, pursuant to Texas Election Code Section 31.100(a) and funds paid after the election is held and **VOTING UNITS** pay **COUNTY** pursuant to Section III., **CONSIDERATION**, set forth in the Terms, Rights and Duties of this agreement;
23. **COUNTY** shall pay salaries and wages of persons employed temporarily to perform duties under this agreement from funds deposited by **VOTING UNITS** with the County Treasurer pursuant to Texas Election Code Section 31.100(a) and (b);
24. **COUNTY** shall perform any and all other items necessary or required by law to conduct the election;
25. **COUNTY** will provide County owned Help America Vote Act (HAVA) Direct Recording Electronic (DRE) voting machines as required by law. In the event alternative voting equipment is being considered each **VOTING UNIT** will be notified and given an opportunity to participate in decision;
26. **COUNTY** shall deliver a report of the precinct results as contained in the election register to the Secretary of State pursuant to Texas Election Code Section 67.017(a) and (b);
27. Prepare and submit recommendations for any voting changes related to assigned duties under this Interlocal Agreement to **VOTING UNITS** for approval by **VOTING UNITS**;
28. Translate wording of English language ballot for **VOTING UNITS'** election into Spanish by any licensed interpreter or translator. Prepare and submit recommendations of Spanish language ballot to **VOTING UNITS** for approval. Upon approval of **VOTING UNITS**, give final approval of **VOTING UNITS'** Spanish ballot in writing; and
29. Elections Administrator shall ensure that prior to the election the Company/Vendor that has been hired to program, test, or perform maintenance on the voting equipment provides documentation to the Elections Administrator certifying that a criminal background check has been performed

on all employees, including temporary employees, that may program, test, perform maintenance, transport equipment, or perform technical support on the voting system equipment for Smith County, and that there are no findings that would prevent any Vendor employee from performing their assigned duties.

II. VOTING UNITS' DUTIES

VOTING UNITS shall be required to perform the following duties in connection with the terms and conditions of this agreement:

1. Furnish wording of ballot for **VOTING UNITS'** election in English, and give final approval of **VOTING UNITS'** ballot in writing; the necessary wording must be provided within a reasonable amount of time sufficient for preparation. A notice of all ballot election information (e.g. single member districts, special elections, etc), with the exception of candidates' names and ballot order, will be provided to the Elections Administrator by the 88th day before the election. Names of candidates and ballot order shall be provided to the Elections Administrator no later than the 52nd day before the election;
2. **VOTING UNITS** agree to use reasonable efforts to submit election notices to **COUNTY'S** Elections Administrator prior to publication and the Elections Administrator shall review the election notice, proof and respond with regard to any necessary corrections as soon as possible with a goal of responding within 24 hours of notice-submission. If the Election Administrator's response is not received by the **VOTING UNIT** within 48 hours of submission to the Election Administrator, the **VOTING UNIT** may proceed with publication of the notice. It is understood and agreed that **VOTING UNIT** is not in violation of this Agreement if applicable time deadlines under Texas or federal law for such publication prohibit the **VOTING UNIT** from complying with this provision.
3. Receive and process official tabulation in accordance with the Texas Election Code, including but not limited to canvassing the vote in accordance with Texas Election Code Section 65.001 et seq.;
4. Perform those duties and functions which by law **VOTING UNITS** remain required to perform;
5. Timely notify **COUNTY** of exact boundaries of **VOTING UNITS'** district boundaries;
6. Give notice of election as required by all applicable laws, including Texas Election Code Chapter 4; and
7. Make payment as required under Article III.

III. CONSIDERATION

As consideration for performing the duties herein described in relation to **VOTING UNITS'** election to be held May 6, 2017, **COUNTY** shall charge its actual costs including rental of DRE voting equipment plus an administrative fee of ten percent (10%) of the total amount of the actual costs of holding **VOTING UNITS'** election by contract pursuant to Texas Election Code Section 31.100(d). **COUNTY** shall provide an Exhibit "A" to this Agreement, which shall contain an accurate as possible estimate of expenses for the services and functions to be performed under this agreement, to **VOTING UNITS** at least thirty (30) days prior to submission of this Agreement to each **VOTING UNITS'**

governing body for approval. **COUNTY** and **VOTING UNITS** agree that Exhibit "A" to this Agreement, reflecting the estimated expenses of the trustee/city council election, attached hereto and incorporated herein for all purposes, sets forth the estimated expenses to be paid to **COUNTY**, such expenses that "fairly compensates" **COUNTY** for the services and functions performed under this agreement as required pursuant to Texas Election Code Section 31.100 (c).

In this regard the parties expressly agree to the following terms with respect to the compensation **VOTING UNITS** shall pay **COUNTY** for the services and equipment provided hereunder:

1. **VOTING UNITS** shall be responsible for paying the actual costs of early voting, the actual costs of the elections and the ten percent (10%) administrative fee described above, provided however that the City of Tyler's payment shall be capped at that amount that equals the actual costs and administrative fee for two (2) polling locations per City Council District participating in the election;
2. **COUNTY** shall submit an itemized bill of actual costs for the services and equipment provided hereunder, plus an administrative fee of ten percent (10%) of the total amount of the actual costs of the elections. **VOTING UNITS** shall pay the total amount billed within thirty (30) days of receipt of said itemized bill. Should the actual costs for the services and equipment provided hereunder exceed the estimated expenses as set forth in Exhibit "A," **VOTING UNITS** hereby expressly agree to pay **COUNTY** for all such actual costs, plus an administrative fee of ten percent (10%) of the total amount of the actual costs of the elections so that **COUNTY** is fairly compensated as agreed; and
3. **VOTING UNITS** expressly represent that they are able to pay for said election from current revenues as is required pursuant to Texas Government Section 791.011 (d)(3).

IV. TERM

This agreement shall be effective as of the date of its execution by all parties and shall remain in effect for **VOTING UNITS'** May 6, 2017, election until such time as all consideration owed to **COUNTY** for services and equipment provided hereunder is paid.

V. INDEMNIFICATION

Each individual **VOTING UNIT** agrees, to the extent permitted by law, to indemnify and hold harmless **COUNTY** for any claims, lawsuits, or damages alleging personal injuries at a voting location during early voting or on Election Day to the extent that the alleged injuries arise out of that individual **VOTING UNIT'S** own negligence.

VI. FORCE MAJEURE

In the event that the performance by **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 person or persons not a part or in privity hereof, 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.

VII. VENUE AND CHOICE OF LAW

The obligations and undertakings of each of the parties to this agreement shall be performable in Smith County, Texas, and this agreement shall be governed by and construed in accordance with the laws of the State of Texas.

VIII. MODIFICATION

This agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. 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 signed by the party to be charged and expressly authorized by the governing body of such party. No official, representative, employee or agent of **COUNTY** has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court of **COUNTY**.

In the event that **COUNTY** subsequently contracts with other voting entities that are not parties to this agreement to perform election services in connection with their May 6, 2017 elections, and if the **COUNTY** requests the **VOTING UNITS** to participate in a joint election with said other voting entities, the **VOTING UNITS** agree to participate in such joint election provided however that **COUNTY'S** and **VOTING UNITS'** participation in such joint election does not in any way prevent, hinder, or relieve either Party from complying with all of the terms and conditions of this agreement and provided that a subsequent modification in writing is signed by all parties of this agreement. It is understood and agreed that any such subsequent modification will not expand, add to, modify, or change the **VOTING UNITS'** duties or rights under this Agreement.

IX. NON-ASSIGNMENT OF RIGHTS

No assignment of this agreement or of any right accruing hereunder shall be made in whole or in part by **VOTING UNITS** without the prior written consent of **COUNTY** by and through an order of its Commissioners Court.

X. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the successors in office and assigns of the respective parties hereto.

XI. NOTICES

Any notice to be given hereunder by any party to the others shall be in writing and may be effected by personal delivery in writing or certified mail, return receipt requested, when mailed to the proper party, at the following addresses:

SMITH COUNTY	T.I.S.D.	CITY OF TYLER	Whitehouse ISD	Chapel Hill ISD
c/o Nathaniel Moran, County Judge 200 E. Ferguson St. 1 st floor Tyler, TX 75702	c/o Marty L. Crawford P. O. Box 2035 Tyler, TX 75710	c/o Deborah Pullum, City Attorney P. O. Box 2039 Tyler, TX 75710	c/o Christopher Moran 106 Wildcat Drive Whitehouse, TX 75791	c/o Jan Pate 11134 CR 2249 Tyler, TX 75707

Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

XII. CANCELLATIONS

In the event that any of **VOTING UNITS'** elections are canceled, the remaining **VOTING UNITS** shall pay all costs plus an administrative fee of ten percent (10%) of the total amount of the actual costs of the election incurred for their respective election and the canceling **VOTING UNIT** shall pay all costs incurred up to the date of cancellation that is prorated to that unit's election costs. Such costs shall be determined by the Elections Administrator.

IN WITNESS WHEREOF, Smith County, The City of Tyler, Tyler Independent School District, Whitehouse Independent School District, and Chapel Hill Independent School District have caused this agreement to be effective as of the 13th day of February, 2017.

APPROVED IN SMITH COUNTY'S COMMISSIONERS COURT MEETING on the 21st
day of February, 2017, and executed by **NATHANIEL MORAN**, County Judge, as the
authorized representative of **SMITH COUNTY**.

SMITH COUNTY

/s/ Nathaniel Moran
NATHANIEL MORAN, COUNTY JUDGE

ATTEST:

RECOMMENDED

/s/ Karen Nelson
KAREN NELSON, ELECTION ADMIN.

APPROVED:

BY: /s/ Philip Smith
PHILLIP SMITH, ASSISTANT D. A.

APPROVED BY THE TYLER CITY COUNCIL IN A MEETING on the 8th day of February, 2017, and executed by **EDWARD BROUSSARD**, City Manager, as the authorized representative of the **City of Tyler**.

CITY OF TYLER

BY: /s/ Edward Broussard
EDWARD BROUSSARD, CITY MANAGER

ATTEST:

BY: /s/ Cassandra Brager
CASSANDRA BRAGER, CITY CLERK

APPROVED:

BY: /s/ Deborah G. Pullum
DEBORAH G PULLUM, CITY ATTORNEY

APPROVED IN TYLER INDEPENDENT SCHOOL DISTRICT'S BOARD MEETING
on the 13th day of February 2017, and executed by **MARTY CRAWFORD**, Superintendent, and **J. A. BERGFELD**, Board President, as the authorized representatives of **T.I.S.D.**

**TYLER INDEPENDENT
SCHOOL DISTRICT**

BY: /s/ J.A. Bergfeld
J. A. BERGFELD, BOARD PRESIDENT

BY: /s/ Marty Crawford
MARTY CRAWFORD, SUPERINTENDENT

ATTEST:

APPROVED:

BY: /s/ Gina Orr
GINA ORR, BOARD SECRETARY

BY: /s/ John Hardy
JOHN HARDY, ATTORNEY FOR T.I.S.D.

APPROVED IN WHITEHOUSE INDEPENDENT SCHOOL DISTRICT'S BOARD MEETING
on the 13th day of February 2017, and executed by **CHRISTOPHER MORAN**, Superintendent, as the authorized representative of **W.I.S.D.**

**WHITEHOUSE INDEPENDENT
SCHOOL DISTRICT**

BY: /s/ Christopher Moran
CHRISTOPHER MORAN, SUPERINTENDENT

APPROVED:

BY: /s/ Randy Cook
RANDY COOK, ATTORNEY FOR W.I.S.D.

APPROVED IN CHAPEL HILL INDEPENDENT SCHOOL DISTRICT'S BOARD MEETING
on the 20th day of February 2017, and executed by **DONNI COOK**,
Superintendent, as the authorized representative of **CH.I.S.D.**

**CHAPEL HILL INDEPENDENT
SCHOOL DISTRICT**

BY: /s/ Donni Cook
DONNI COOK, ED. D., SUPERINTENDENT

APPROVED:

BY: /s/ Glen Elliott
PRESIDENT, BOARD OF TRUSTEES

ATTEST:

BY: /s/ Jan Pate
JAN PATE, BOARD SECRETARY

ATTACHMENT A

DRAFT ESTIMATED EXPENSES FOR VOTING UNIT
City of Tyler Cost Estimate for the May 6, 2017 Election

Election Judges & Clerks (Including Related Costs)	\$2500.00
Programming Charges	\$2000.00
Technical Support	\$600.00
Rental of Voting Machines @ \$150.00 each	\$1900.00
Election Kits/Supplies:	\$315.00
Mail out ballots	\$1403.50
Delivery Mileage and Fees	\$500.00
Subtotal:	\$9218.50
Administrative Fee (10%)	\$921.85
Total Due	\$10,140.35

NOTE: Exhibit A is only an estimate and in no way reflects the actual cost of conducting each election (City of Tyler, TISD, WHISD & CHISD).