



City of Livingston, Texas

A Texas Main Street City Since 2005 VOL 56 PAGE 701

200 West Church Street, Livingston, Texas 77351-3281
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February 10, 2010

Hon. John P. Thompson
 Polk County Judge
 Polk County Courthouse
 101 West Church Street
 Livingston, Texas 77351

Re: Interlocal Agreement Between the City of Livingston, Texas and the County of Polk (Election for Mayor and Two (2) Aldermen, Called for May 8, 2010)

Dear Judge Thompson:

Pursuant to Paragraph 5 (Term) of the Interlocal Agreement executed on February 12, 2007, and as approved by the City Council of the City of Livingston in a duly called public meeting held on February 9, 2010, the City of Livingston proposes renewal of the Agreement for purposes of conducting the City Election now called for May 8, 2010.

As reviewed with the Polk County Clerk, the requirements of Section 129.051(g) of the Texas Election Code and recommendations of the Texas Secretary of State have been included in the attached Interlocal Agreement. Paragraph "E" of Section 3 (Services to be Provided by Polk County) now includes the requirement of criminal background check on those employees who program, test, maintain, transport or provide technical support on the voting system equipment.

As renewed, the terms of the Agreement provide that reservation of equipment, designation of supplies, request for personnel, designation of ballots and services described to be provided by the Polk County Clerk shall be made no later than forty-five days prior to the earliest day on which voting may be conducted in the Election, or by March 12, 2010. The City requests that the date be extended to March 18, 2009.

Thank you for your kind consideration.

Sincerely,

CITY OF LIVINGSTON, TEXAS


 Clarke Evans, Mayor

APPROVED ON BEHALF OF POLK COUNTY

By: 
 JOHN P. THOMPSON, County Judge

Date: 2/23/2010

Clarke Evans, Mayor

Marilyn Sutton, City Manager

Ellie Monteaux, City Secretary

Council Members: E. Ray Hill, Judy Cochran, Raymond Luna, Billy S. Wiggins, Elgin Davis

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF LIVINGSTON, TEXAS
AND
THE COUNTY OF POLK**

WHEREAS, the County of Polk ("the County"), in compliance with the requirements of the Texas Election Code and regulations promulgated by the Secretary of State of the State of Texas ("Secretary of State") has appropriated and maintains equipment required to conduct elections; and

WHEREAS, the County, through the Polk County Clerk ("County Clerk"), has procedures for staffing personnel to conduct elections, tabulate votes, and the facilities for the training of election personnel; and

WHEREAS, the City of Livingston, Texas ("Local Entity") desires to acquire the use of certain items of equipment and the services of the County Clerk in its scheduled elections; and

WHEREAS, a joint agreement between the County and the Local Entity would benefit the voters in the said elections, thereby serving a valid governmental purpose by the provision of such equipment and services; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code §791.001, et seq., authorizes the County and the Local Entity to enter into this Agreement for the purpose of achieving the governmental functions and providing the services represented herein;

NOW THEREFORE, the County and the Local Entity hereby enter into this Interlocal Agreement ("Agreement") and mutually promise and agree to the terms and conditions described herein.

1. INCORPORATION OF PREAMBLES, DEFINITIONS.

- A. The preambles to this Agreement are incorporated in this Agreement and are found and determined to be true and correct.
- B. Where found in this Agreement, the following terms shall be defined: the term, "election period", shall mean the date scheduled for election, together with the time prescribed by the Secretary of State of the State of Texas for Early Voting, for Run-off Elections and for Recount of ballots as may be required incident thereto.

2. EQUIPMENT AND SUPPLIES TO BE PROVIDED BY POLK COUNTY.

For its next election, scheduled for Saturday, May 8, 2010, ("Election"), including the election period incident thereto as defined in Section (1)(B), the County will provide the following equipment for the exclusive use of the Local Entity:

- A. As many Election Booths as shall be determined jointly by the County and the Local Entity at such time as the equipment is reserved;
- B. As many Ballot Cans as shall be determined jointly by the County and the Local Entity at such time as the equipment is reserved;
- C. As many Palm Size Computers (together with keyboards, programmed with Voter Registration lists current and suitable to qualify prospective voters) as shall be determined jointly by the County and the Local Entity at such time the equipment is to be reserved; and

- D. As many iVotronic Touch Screen Voting System units (or similar equipment then in use by the County and qualified by the Secretary of State, which provide such ADA compliant features as may be required by law to support voters who may be physically impaired, and voters who require wheelchair access) together with sufficient personal electronic ballots sufficient for use in the said units, as shall be determined jointly by the County and the Local Entity at such time the equipment is reserved; and
- E. Such other supplies as shall be mutually agreed between the County Clerk and the Local Entity to be provided.

Reservation of equipment and designation of supplies described in this Section to be provided by the County Clerk shall be made no later than forty-five days prior to the earliest day on which voting may be conducted in the Election.

3. SERVICES TO BE PROVIDED BY POLK COUNTY.

- A. Such personnel as may be determined jointly by the County and the Local Entity for conducting the election, and for tabulating of votes entered in the Election, whether by electronic ballot, optical scan ballot or hand counted ballot. Specific designation of the types of ballots shall be mutually agreed between the County Clerk and the Local Entity.
- B. Training of Election Personnel in the use of equipment for the Election. The County Clerk will advise the Local Entity of the date of such training, and the Local Entity may send a representative to observe the training conducted.
- C. Testing of the equipment to be used by the Local Entity in its election to ensure the correct operation of the equipment during the election.
- D. Tabulation of all ballots used in the Election. The County Clerk will then return the ballots to the Local Entity for storage. The County Clerk shall be responsible for the security of the ballots at all times during and after the election until the ballots are returned to the Local Entity for storage.
- E. Performing a criminal background check on all employees, including temporary employees that may program, test, perform maintenance, transport equipment or perform technical support on the voting system equipment to be provided to the Local Entity, and providing such written certification as may be requested by the Local Entity that such criminal background check has been performed with no findings that would prevent the said employees from performing the duties described in this paragraph.

Request for personnel, designation of ballots and services described in this Section to be provided by the County Clerk shall be made no later than forty-five days prior to the earliest day on which voting may be conducted in the Election.

4. OBLIGATIONS OF THE LOCAL ENTITY.

- A. The Local Entity shall notify the County Clerk of the names of candidates and the order in which they are to be listed, and of any propositions to be included on the ballot for the election.
- B. The Local Entity shall be responsible for the following costs:
 - 1. All programming costs for computer accessible voter registration lists and iVotronic Touch Screen System units;

2. \$200.00 for use of each iVotronic Touch Screen Voting System Unit provided by the County;
 3. \$25.00 for each Palm Size Computer (including keyboard and voter registration list) provided by the County; and
 4. Reimbursement of any labor costs for personnel incurred by the County Clerk, together with out of pocket expenses incurred as specified in advance by the County Clerk.
- C. The Local Entity shall deliver its ballots to the County Clerk for tabulation immediately at the conclusion of the election. The Local Entity shall be responsible for the security of the ballots at all times during the election until tabulation on election night.
 - D. The Local Entity shall be responsible for tabulation of all hand counted ballots not specifically agreed under Section C, and shall be responsible for the security of those ballots at all times.
 - E. The Local Entity will transport any equipment provided by the County to the Local Entity's polling place, picking up the equipment from and returning the equipment to the sites designated by the County Clerk.
 - F. The Local Entity is responsible for storage of ballots as required by law following the election.
 - G. The Local Entity shall be obligated for all costs described in this Section at such time as the Local Entity notifies the County Clerk of the candidates and propositions to be listed on its ballots as provided in Paragraph (A) of this Section. If the election for which such information should be provided is cancelled prior to said notification, the Local Entity is responsible for no cost or other expense incurred by the County.

5. TERM.

This agreement shall be effective upon the date signed by both parties. The parties intend that the agreement shall continue on a year to year basis, when ratified by written addendum by each entity, with such additional provisions or deletions as shall be made by mutual agreement subsequent to execution hereof.

6. SEVERABILITY.

In case one or more of the provisions of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

7. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification or alteration of the terms of this Agreement shall be binding on either party unless the same is in writing, dated subsequent to the date hereof, and is duly executed by the parties.

8. FORCE MAJEURE.

Neither party to this Agreement is required to perform any contract obligation under this Agreement so long as performance is delayed or prevented by force majeure, which includes any present or future laws, rules or regulations or ordinances of the United States, the State of Texas, or any rule, regulation or order heretofore or hereafter promulgated by any federal or state governmental body, agency or official, or war, rebellion, insurrection, riot, storm, tornado, flood or other act of God or any other cause not reasonably within the defaulting party's control and that the defaulting party, by exercising due diligence cannot prevent or overcome in whole or in part.

9. NOTICES.

Any notice permitted or required under the terms of this Agreement shall be in writing and delivered in person to the respective party to whom notice is to be given, at the following address:

To the Local Entity:
City Manager, Marilyn Sutton, or her Successors in Office
200 West Church Street
Livingston, Texas 77351

To County:
John P. Thompson, Polk County Judge, or his Successors in Office
Polk County Courthouse
101 West Church Street
Livingston, Texas 77351


Copies of any notice shall also be delivered to:
Schelana Walker, County Clerk, or her Successors in Office
Polk County Courthouse
101 West Church Street
Livingston, Texas 77351

10. GENERAL PROVISIONS.

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the County and the Local Entity created by this Agreement are performable in Polk County, Texas.

This agreement is authorized by the governing bodies of each of the signatories to this Contract, as attest the signatures affixed hereto.

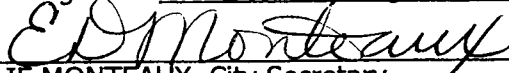
CITY OF LIVINGSTON, TEXAS

By: 
CLARKE EVANS, Mayor

Date: 02-09-10

Attest:

The foregoing Interlocal Agreement was approved by the City Council of the City of Livingston at its duly called public meeting held on the following date: 02-09-10


ELLIE MONTEAUX, City Secretary

POLK COUNTY

By: *John P. Thompson*
JOHN P. THOMPSON, County Judge

Date: 2/23/10

Attest:

The foregoing Interlocal Agreement was approved by the Commissioners Court of Polk County at its duly called public meeting held on the following date: 2/23/10

Schelana Walker
SCHELANA WALKER, County Clerk

