

# JOINT CONTRACT FOR ELECTION SERVICES

THIS CONTRACT (this "Agreement") is made effective as of the Effective Date (as defined below), by and between CITY OF LIVINGSTON, TEXAS, acting by and through its governing body, hereinafter referred to as "Political Subdivision," and County Clerk of Polk County, Texas, hereinafter referred to as "County," and by authority of Section 31.092(a), Texas Election Code, and Chapter 791, Texas Local Government Code, for the conduct and supervision of the Political Subdivision's election to be held on November 5, 2024. Political Subdivision and County may be referred to individually as a "Party" and collectively as "the Parties."

The purpose of this contract is for the performance of election services as authorized by statute. This contract shall serve as the general contract for each election for which the Political Subdivision requests the assistance of the County Clerk. Provisions specific to each particular election will be included as an attachment to the original contract. Political Subdivision and County Clerk may be referred to individually as "Party" or collectively as "Parties."

## RECITALS

The County Clerk has care, custody, and control over the electronic voting system, the Hart InterCivic Verity Duo Voting System (Version 2.5.1), which has been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122, as amended, and is compliant with the accessibility requirements set forth by Texas Election Code Section 61.012. Political Subdivision desires to use the electronic voting system and to compensate the County Clerk for such use and to share in certain other expenses connected with joint election in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Election Code.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the parties, IT IS AGREED as follows:

### I. ADMINISTRATION

The Parties agree to hold a "Joint Election" in accordance with Chapter 271 of the Texas Election Code and this Agreement. The County Clerk shall coordinate, supervise, and handle all aspects of administering the Joint Election as provided in this Agreement. Political Subdivision agrees to pay County Clerk for equipment, supplies, services and administrative costs as provided in this Agreement. The County Clerk shall serve as the administrator for the Joint Election; however, the Political Subdivision shall remain responsible for the decisions and actions of its officers necessary for the lawful conduct of its election. The County Clerk shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of the Political Subdivision.

It is understood that other political subdivisions may wish to participate in the use of the electronic voting system and polling places, and it is agreed that the County Clerk may enter into other joint election agreements and contracts for election services for those purposes on terms and conditions set forth in the Texas Election Code. Political Subdivision agrees that County Clerk may enter into joint election agreements with other political subdivisions that may have territory located partially or wholly within the boundaries of Political Subdivision, and, in such case, all parties sharing common territory shall share a joint ballot on the electronic voting system at the applicable polling places. In such cases, total costs shall be divided among the participants.

At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap.

## II. LEGAL DOCUMENTS

Political Subdivision shall be responsible for the preparation, adoption, and publication of all required election orders, resolutions, notices, and any other pertinent documents required by the Texas Election Code or Political Subdivision's governing body, charter, or ordinances. With reference to publications, the County Clerk will publish the "Notice of Test of Automatic Tabulating Equipment" and the "Notice of Election". If a Political Subdivision is holding any type of Special Election, the Political Subdivision may have to publish their own "Notice of Election" in order to meet additional requirements. Please advise the County Clerk if the Political Subdivision must publish a separate notice so the Political Subdivision's notice is not included in the Notice published by the County Clerk.

Preparation of the necessary materials for notices and the official ballot shall be the responsibility of each participating authority, including translation to languages other than English. Each participating authority shall provide a copy of their respective election orders and notices to the County Clerk.

## III. STATUTORY COMPLIANCE

Political subdivisions shall follow all applicable State and Federal laws related to elections, including, but not limited to, Section 52.072 of the Texas Election Code, which states in part, "A proposition shall be printed on the ballot in the form of a single statement..." **Failure to do so may prohibit the political subdivision's participation in a Joint Election.**

## IV. VOTING LOCATIONS

The County Clerk shall select and arrange for the use of and payment for all Election Day voting locations. In the event a voting location is not available, the County Clerk will arrange for use of an alternate location with the approval of the Political Subdivision.

If polling places for the joint election are different from the polling place(s) used by Political Subdivision in its most recent election, Political Subdivision agrees to post a notice no later than the date of the election, at the entrance to any previous polling places in the jurisdiction, stating that the polling location has changed, and stating the political subdivision's polling place name(s) and address(s) in effect for the election. Any changes in voting location from those that were used in the most recent COUNTYWIDE JOINT election will be posed by the County Clerk's Election Office.

## V. ELECTION JUDGES, CLERKS, AND OTHER ELECTION PERSONNEL

The Polk County Commissioners Court shall be responsible for the appointment of the presiding judge and alternate judge for each polling location in accordance with Chapter 32 of the Texas Election Code. In the event an emergency appointment is necessary, appointment shall be made in accordance with the Texas Election Code §32.007, which authorizes the presiding officer of the Polk County Commissioners Court to make an emergency appointment. Should that officer not be

available, the County Clerk's office shall make emergency appointments of election officials. Upon request by the County Clerk, Political Subdivision agrees to assist in recruiting polling place officials who are bilingual (fluent in both English and Spanish).

The County Clerk shall notify all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to ensure that all election judges appointed for the Joint Election are eligible to serve.

The County Clerk shall arrange for the training and compensation of all election judges and clerks. The County Clerk shall arrange for the date, time, and place for the presiding election judge to pick up their election supplies. Each presiding election judge will be sent a letter from the County Clerk notifying him of his appointment, the time and location of training and distribution of election supplies, and the number of election clerks that the presiding judge may appoint.

Each election judge will receive compensation at an hourly rate of \$10.00. Each election clerk will receive compensation at an hourly rate of \$10.00. The election judge will receive an additional sum of \$25.00 for returning the supplies and equipment to the central counting station after the polls close. All judges and clerks who attend training will be compensated at an hourly rate of \$8.00 as compensation for same.

It is agreed by all Parties that at all times and for all purposes hereunder, all election judges, clerks, and other personnel involved in this election are a temporary part-time employee subject only to those benefits available to such employees.

#### VI. PREPARATION OF SUPPLIES AND VOTING EQUIPMENT

The County Clerk shall arrange for all election supplies and voting equipment including, but not limited to, official ballots, sample ballots, voter registration lists, and all forms, signs and other materials used by the election judges at the voting locations. At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap. The County Clerk shall provide the necessary voter registration information, instructions, and other information needed to enable the election judges in the voting locations that have more than one ballot style to conduct a proper election. If special maps are needed for a particular Political Subdivision, the County Clerk will order the maps and pass that charge on to that particular Political Subdivision.

Political Subdivision shall furnish the County Clerk a list of candidates and/or propositions showing the order and the exact manner in which the candidate names and/or propositions(s) are to appear on the official ballot (including titles and text in each language in which the authority's ballot is to be printed). **THE POLITICAL SUBDIVISION SHALL ALSO PROVIDE A COPY OF EACH CANDIDATE'S APPLICATION TO THE COUNTY CLERK ELECTION OFFICE.** This list shall be delivered to the County Clerk as soon as possible after ballot positions have been determined by each of the participating authorities. Each participating authority shall be responsible for proofreading and approving the ballot insofar as it pertains to that authority's candidates and/or propositions.

#### VII EARLY VOTING

The Parties agree to conduct joint early voting and to appoint the County Clerk as the Early Voting Clerk in accordance with Sections 31.097 and 271.006 of the Texas Election Code. Political Subdivision agrees to appoint the County Clerk's permanent county employees as deputy early voting clerks. The Parties further agree that each Early Voting location will have an "Officer in Charge" who will receive compensation at an hourly rate of \$10.00. The clerks at each location will receive compensation at an hourly rate of \$10.00. Any qualified voter of the Joint Election may vote early by personal appearance at any one of the joint early voting locations.

As Early Voting Clerk, the County Clerk shall receive applications for early voting ballots to be voted by mail in accordance with Chapter 86 of the Texas Election Code. Any requests for early voting ballots to be voted by mail received by the Political Subdivision shall be forwarded immediately by fax, email or courier to the County Clerk for processing.

The County Clerk shall, upon request, provide the Political Subdivision a copy of the early voting report on a daily basis and a cumulative final early voting report following the election. The list will be posted to the Secretary of States website by 11am each day in accordance with the Texas Election Code.

#### VIII. EARLY VOTING BALLOT BOARD

The County Clerk shall appoint an Early Voting Ballot Board (EVBB) to process early voting MAIL BALLOTS from the Joint Election. The Presiding Judge, with the assistance of the County Clerk, shall appoint two or more additional members to constitute the EVBB. The County Clerk shall determine the number of EVBB members required to efficiently process the early voting ballots.

#### IX. CENTRAL COUNTING STATION AND ELECTION RETURNS

The County shall be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

The participating authorities hereby, in accordance with Section 127.002, 127.003, and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Counting Station Manager:	Sheri Hemphill
Alternate Counting Station Manager:	Melinda Rhame
Tabulation Supervisor:	Austin Dubose
Alternate Tabulation Supervisor:	Gabriel Schmitt
Presiding Judge:	Robin Edmonds
Alternate Presiding Judge	Shelby Morgan

The County Clerk will prepare the unofficial canvass reports after all precincts have been counted, and will deliver a copy of the unofficial canvass to the Political Subdivision as soon as possible after all returns have been tabulated. All participating authorities shall be responsible for the official canvass of their respective elections. Results will be immediately posted on the Polk County Website.

The County Clerk shall be responsible for conducting the post-election manual recount required by Section 127.201 of the Texas Election Code unless a waiver is granted by the Secretary of State. Notification and copies of the recount, if waiver is denied, will be provided to each participating authority and the Secretary of State's Office.

The County Clerk shall submit all precinct by precinct returns to the Texas Secretary of State's Office electronically.

#### X. ELECTION EXPENSES AND ALLOCATION OF COSTS

The Parties agree to share the costs of administering the Joint Election. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared.

It is agreed that the Political Subdivision and County will split the cost of poll workers and paper ballots evenly for the Early Voting and Election Day polling locations. Each Political Subdivision will be responsible for the payment of programming and the audio programming of their Political Subdivision. The County Clerk will attach a copy of the invoice from Hart, Inc. to the final invoice. The County Clerk will pay the programming charges up front from the vendor, and will receive reimbursement from each Political Subdivision.

Costs for Election Day will be calculated by the number of precincts in each Political Subdivision and divided equally among the Political Subdivisions in the respected precincts for costs associated with Election Day.

Political Subdivision contracting for a runoff is not included in this agreement and each Political Subdivision shall be responsible for all associated costs of holding a runoff election.

#### XI. WITHDRAWAL FROM CONTRACT DUE TO CANCELLATION OF ELECTION

Political Subdivision may withdraw from this agreement and the Joint Election should it cancel its election in accordance with Sections 2.051 – 2.053 of the Texas Election Code, or should it be later ruled that the election is not needed. Political Subdivision is fully liable for any expenses incurred by County Clerk on behalf of the Political Subdivision. Any monies deposited with the county by the withdrawing authority shall be refunded, minus the aforementioned expenses.

#### XII. RECORDS OF THE ELECTION

The County Clerk is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

Access to the election records shall be available to each participating authority, as well as to the public, in accordance with applicable provisions of the Texas Elections Code and the Texas Public Information Act. The election records shall be stored at the offices of the County Clerk or at an alternate facility used for storage of county records. The County Clerk shall ensure that the records are maintained in an orderly manner so that the records are clearly identifiable and retrievable.

Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, the County Clerk shall maintain the records until final resolution or until final judgment, whichever is applicable. It is the responsibility of each participating authority to bring to the attention of the County Clerk any notice of pending election contest, investigation, litigation or open records request which may be filed with the participating authority.

### XIII. RECOUNTS

A recount may be obtained as provided by Title 13 of the Texas Election Code. Political Subdivision agrees that any recount shall take place at the offices of the County Clerk and that the County Clerk shall serve as Recount Supervisor and the Political Subdivision's official or employee who performs the duties of a secretary under the Texas Election Code shall serve as Recount Coordinator.

The County Clerk agrees to provide advisory services to the Political Subdivision as necessary to conduct a proper recount and cost of the recount depends on the size of the election and number of precincts to be recounted.

### XIV. MISCELLANEOUS PROVISIONS

1. It is understood that to the extent space is available, that other districts and political subdivisions may wish to participate in the use of the election equipment and voting places; it is agreed that the County Clerk may contract with such other districts or political subdivisions for such purposes, and that in such event, there may be an adjustment of the pro-rata share to be paid to the County by the participating authorities.
2. The County Clerk shall file copies of this document with the County Treasurer and the County Auditor in accordance with Section 31.099 of the Texas Election Code.
3. In the event that legal action is filed contesting the Political Subdivision's election under Title 14 of the Texas Election Code, Political Subdivision shall choose and provide, at its own expense, legal counsel for the County, the County Clerk, and additional election personnel as necessary.
4. Nothing in this contract prevents any party from taking appropriate legal action against any other party and/or other election personnel for a breach of this contract or a violation of the Texas Election Code; however, any action taken is subject to any immunity provided by statute or common law to governmental entities. For purposes of this contract, the County Clerk's office is acting as a governmental entity covered by any immunity available to Polk County.
5. The parties agree that under the Constitution and laws of the State of Texas, neither Polk County nor Political Subdivision can enter into an agreement whereby either party agrees to indemnify or hold harmless another party; therefore, all references of any kind, if any, to indemnifying or holding or saving harmless for any reason are hereby deleted.
6. This agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Polk County, Texas.
7. In the event of one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
8. All parties shall comply with all applicable laws, ordinances, and codes of the State of Texas, all local governments, and any other entities with local jurisdiction.
9. The waiver by any party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.
10. Any amendments of this agreement shall be of no effect unless in writing and signed by all parties hereto.

11. **Authorization of Agreement.** This Agreement has been approved and authorized by the governing body of the Political Subdivision.
12. **Purpose, Terms, Rights and Duties of the Parties.** The purpose, terms, rights, and duties of the Parties shall be as set forth in this agreement.
13. **Payments from Current Revenues.** Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to that paying Party.
14. **Fair Compensation.** The Parties acknowledge and agree that each of the payments contemplated by this Agreement fairly compensate the performing Party.
15. **Termination.** At any time and for any reason, either Party may terminate this Agreement by providing thirty (30) days' written notice of termination to the other Party.
16. **Funding.** The Parties understand and acknowledge that the funding of this Agreement is contained in each Party's annual budget and is subject to the approval of each Party in each fiscal year. The Parties further agree that should the governing body of any Party fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the governing body of any Party fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall automatically terminate as to that Party and that Party shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by a Party to discharge its obligations under this Agreement are expended, the other Party's ***sole and exclusive remedy*** shall be to terminate this Agreement.
17. **No Joint Enterprise.** The Agreement is not intended to, and shall not be construed to, create any joint enterprise between or among the Parties.
18. **Public Information.** This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code Chapter 552, et seq., as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.
19. **No Third-Party Beneficiaries.** This Agreement is entered solely by and between, and may be enforced only by and among the Parties. Except as set forth herein, this Agreement shall not be deemed to create any rights in, or obligations to, any third parties.
20. **No Person Liability.** Nothing in this Agreement shall be construed as creating any personal liability on the part of any employee, officer, or agent of any Party to this Agreement.
21. Nothing in this Agreement requires that either the Political Subdivision or County incur debt, assess or collect funds, or create a sinking fund.
22. **Sovereign Immunity Acknowledged and Retained.** **THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITY FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY AND THE COUNTY RETAIN ALL GOVERNMENTAL IMMUNITIES.**

#### XV. COST ESTIMATES AND DEPOSIT OF FUNDS

It is estimated that the Political Subdivision's obligation under the terms of this agreement shall be DETERMINED AFTER THE ELECTION. The exact amount of the Political Subdivision's obligation under the terms of this Agreement shall be calculated after the November 5, 2024 election; is due within thirty (30) days after receipt of the final invoice from the County Clerk.

IN TESTIMONY HEREOF, this agreement, its multiple originals all of equal force, has been executed on behalf of the parties.

(1) On the 25th day of June, 2024 been executed on behalf of the County Clerk by the County Clerk pursuant to the Texas Election Code;

(2) On the \_\_\_\_\_ day of \_\_\_\_\_, 2024 been executed on behalf of the Political Subdivision by its Mayor, Chairman of the Board, or authorized representative, pursuant to an action of the Political Subdivision.



ATTEST:

\_\_\_\_\_

\_\_\_\_\_

DATE

POLK COUNTY, COUNTY CLERK by

*Schelana Hock*

\_\_\_\_\_  
Schelana Hock, County Clerk

CITY OF LIVINGSTON, TEXAS

By \_\_\_\_\_  
Mayor, Chairman of Board or Authorized  
Representative for CITY OF LIVINGSTON, TEXAS

By *Sydney Murphy*  
\_\_\_\_\_  
Polk County Judge, Sydney Murphy

June 25, 2024

DATE