

**2018 PRIMARY ELECTION SERVICES CONTRACT
WITH THE COUNTY ELECTIONS OFFICER
STATE OF TEXAS, COUNTY OF _____**

THIS CONTRACT is made and entered into this _____ day of _____, 20____, by and between the _____ County _____ Party, acting by and through the Chair of its County Executive Committee, _____ (*name*), hereinafter referred to as “Party,” and _____ (*name*), County Election Officer of _____ County, Texas, hereinafter referred to as the “Contracting Officer,” under the authority of Section 31.092(b), Texas Election Code and relating to the conduct and supervision of the _____ County _____ Party’s Primary Election on _____, 2018 (hereinafter referred to as the “election”), and the _____ County _____ Party’s Runoff Primary Election, if necessary, on _____, 2018 (hereinafter referred to as the “runoff election”).

THIS CONTRACT is entered into for and in consideration of the mutual covenants and promises hereinafter set out, and for the purpose of ensuring that the Contracting Officer and the Party understand the tasks each is to perform in connection with the election and the runoff election:

1. Duties and Services of the Contracting Officer. The Contracting Officer shall be responsible for performing the following duties and furnishing the following services and equipment (*strike out any not being performed by the C.O.*) in connection with the election and the runoff election. Pursuant to Chapter 173 of the Texas Election Code, election services, equipment, and materials ordered from a Texas-certified voting system vendor shall be reported to the Office of the Secretary of State (“SOS”) by the vendor and the SOS shall pay the vendor directly. Election services, equipment, and materials described in this contract provided by the contracting officer shall be reported to the SOS via the SOS-prescribed primary finance system by the contracting officer and the SOS shall pay the contracting officer directly. Any statutory duties required of the contracting officer shall be a cost born by the county. Costs not payable with state-appropriated primary funds, including candidate filing fees, shall be paid from non-state funded sources.

1.1 Promptly after being advised by the Party of the designated polling places, contact the owners or custodians of the designated polling places and arrange for their use in the election and runoff election.

- 1.2 Conduct one or more election schools, and notify the election judges of the date(s), time(s), and place(s) of such schools. (This does not imply that election judges or clerks will be paid for attending such schools. See 1 T.A.C. §§ 81.120(a) & 81.121(c).)
 - 1.3 Program, or arrange to have programmed, the ballot.
 - 1.4 Arrange to have published the legal notice of the first test of the electronic tabulating equipment as provided in Section 127.096, Texas Election Code, and/or the legal notice of the logic and accuracy test of the direct recording electronic ("DRE") voting machines as provided in Section 129.023(b), Texas Election Code, as applicable, and conduct all required tests of the electronic tabulating equipment under Sections 127.096-127.098, Texas Election Code, the voting system that uses DRE voting machines under 129.021-129.023, Texas Election Code, or the voting system that uses other electronic voting systems in accordance with advisories issued by the Texas Secretary of State (hereinafter referred to as "SOS"), respectively.
 - 1.5 In accordance with Section 172.1112, Texas Election Code, post a notice of the election (and of any runoff election) and a notice of any consolidated precincts, if applicable, on the party's Internet website. If the party does not maintain a website, the notice must be posted on the bulletin board used for posting notices of meetings of commissioners court. The notice must contain the information set forth in Section 4.004, Texas Election Code and be posted within the time frame set forth in Section 4.003(b), Texas Election Code.
- NOTE:** HB 1735 (2017) now requires that county election official to post a notice of the election and a notice of consolidated precincts, if applicable, on the party's website or, if the party does not maintain a website, the bulletin board used for posting notices of meetings of the commissioners court.
- 1.6 Procure and distribute all necessary election supplies, including without limitation, ballots, election kits, office supplies such as paperclips, pens, etc., ballot boxes, and voting booths.
 - 1.7 Procure all necessary voting machines and equipment, prepare them for use at the early voting locations and at the election day polling places, and transport them (or arrange to have them transported) to and from the early voting locations and at the election day polling places.
 - 1.8 Arrange for the use of a central counting/central accumulation station and for the central counting station manager and tabulating personnel and equipment needed at the counting/accumulation station and assist in the preparation of programs and the test materials for the tabulation of ballots to be used with electronic voting equipment.
 - 1.9 Obtain voter registration lists from the voter registrar to be used during early voting and on election day.

- 1.10 As requested by the Party, assist in the general overall supervision of the election and the runoff election and provide advisory services in connection with the decisions to be made and the actions to be taken by the officers of the Party who are responsible for holding the election and the runoff election.
- 1.11 Prepare the unofficial tabulation of precinct results on election night in accordance with Section 172.113, Texas Election Code.

NOTE: HB 1735 (2017) now requires the county election officer to prepare an unofficial tabulation of precinct results for the primary election. Additionally, HB 1735 also requires the authority establishing the central counting station to make periodic announcements of the current state of the tabulation including announcements on the county's website (if available).

- 1.12 Submit Election Night Returns ("ENR") electronically to the Texas Secretary of State (hereinafter referred to as "SOS") in the form requested by the SOS in accordance with Chapter 68, Texas Election Code.
- 1.13 Prepare and submit to the SOS an electronic report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the offices of President and Vice-President of the United States, U.S. Representative, state senator, or state representative, in accordance with Sections 67.017 and 172.124, Texas Election Code.

NOTE: HB 1735 (2017) now requires the county election official to deliver this report to SOS no later than the 30th day after primary election day.

- 1.14 Supervise the overall conduct of the election in the county as set forth in Section 31.092(d), Texas Election Code.

2. *Duties and Services of the Party.* The Party shall be responsible for performing the following duties in connection with the election and the runoff election:

- 2.1 As soon as possible after December 11, 2017, in accordance with Sections 42.002(a)(3), 42.009 and 43.003, Texas Election Code, determine whether there will be a consolidation of county voting precincts for the election and the runoff election, designate the polling place for each voting precinct for the election and runoff election, and advise the Contracting Officer of any such consolidations and the names and addresses of the polling places and the contact persons for them.
- 2.2 Appoint a presiding and an alternate judge for each election day polling place, a presiding and an alternate judge for the central counting station, and a presiding judge for the early voting ballot board and promptly provide the names and contact information to the Contracting Officer. (It is the responsibility of the presiding judges to appoint the

appropriate number of election clerks.)

- 2.3 Appoint in accordance with Sections 127.002, 127.003, and 127.004, Texas Election Code, the counting station manager, tabulation supervisor, and assistants to the tabulation supervisor that usually perform these functions in the county for elections ordered by the governor, the county judge or commissioners court.
- 2.4 Notify the election judges of the election and the runoff election in accordance with Section 4.007, Texas Election Code.
- 2.5 As soon as possible after the final candidate filing deadline (or in the case of a runoff election, after the canvass of the election) to allow sufficient time to prepare the ballot and to conduct any necessary logic and accuracy testing so that ballots going overseas may be mailed no later than 45 days before the election dates for the election and the runoff election, certify in writing to the Contracting Officer (i) the candidates' names (as they are to appear on the ballot) and offices, and (ii) any referenda under Section 172.087, Texas Election Code (in English, Spanish, and any other required languages) that are to appear on the ballot.

3. *Compensation, Billing, and Payment.*

- 3.1 For the performance of duties and services and the providing of equipment and supplies under Paragraph 1 above, the Contracting Officer shall report to the SOS via the SOS-prescribed primary finance system the actual expenses he/she incurs in accordance with Section 31.100, Texas Election Code and the leasing fees allowed under Section 123.033 (e) and (f), Texas Election Code, including without limitation, the costs and expenses of election supplies; newspaper publication of the testing notice only; use of voting machines and equipment; wages and salaries of the precinct election judges, alternate judges, and election clerks, members of the early voting ballot board, and central counting station personnel; programming the ballot; logic and accuracy testing, and voting machines and equipment transportation. Provided, that nothing herein shall be construed as permitting the Contracting Officer to be paid for costs or expenses for which reimbursement is not allowed under Section 31.100 or other sections of the Texas Election Code or under the SOS administrative rules or advisories relating to primary funds.
- 3.2 For the performance of duties and services and the providing of equipment and supplies under Paragraph 1 above, the SOS shall pay the Contracting Officer a fee of 10% of the total amount of the Contract (but not less than \$75) in accordance with Section 31.100(d), Texas Election Code.
- 3.3 Notwithstanding anything to the contrary in this Contract, the Contracting Officer may require that money be paid in advance to conduct the election and the runoff election from the SOS, which must be paid into a separate county fund in accordance with Section 31.100(a), Texas Election Code, from which the Contracting Officer may make

expenditures for the election and runoff election.

- 3.4 Notwithstanding anything to the contrary in this Contract, the Contracting Officer will receive direct payment of actual expenses incurred by the Contracting Officer in connection with the election or runoff election and in accordance with this Contract from the SOS in accordance with rules and procedures established by the SOS and Section 173.0832, Texas Election Code.

NOTE: HB 1735 (2017) now requires SOS to provide payment of primary expenses directly to the officer who incurs the expense rather than to the county chair.

- 3.5 Notwithstanding anything to the contrary in this Contract, the Contracting Officer may request the Party to pay directly to the precinct election and alternate judges and election clerks, members of the early voting ballot board, and the presiding and alternate judges and clerks of the central counting station the wages and salaries earned by them in connection with the election and runoff election. In this instance, the costs will not be considered election services contracted with the Contracting Authority for purposes of calculating the 10% fee described in Paragraph 3.2 above.

- 3.6 A cost estimate for the services, equipment, and supplies provided by the Contracting Officer for the election and the runoff election is attached to and made a part of this Contract as Exhibit A. The cost estimate should express costs in the categories set forth in the Party's Primary Cost Estimate and the Party's Primary Runoff Cost Estimate and shall be reported to the SOS via the SOS-prescribed primary finance system. The Party and the Contracting Officer acknowledge that the cost of the election and the runoff election is paid for from state-appropriated primary funds, including candidate filing fees, with the county paying for the cost of early voting in accordance with Section 173.003, Texas Election Code. The Contracting Officer and the Party also acknowledge their responsibility to comply with the administrative rules issued by the SOS relative to primary financing, 1 T.A.C. §§ 81.101-81.157.

- 3.7 As soon as reasonably possible after the election or the runoff election, the Contracting Officer will submit an itemized invoice to the Party (i) for the actual expenses he/she incurred as described in Paragraph 3.1 above and (ii) for the Contracting Officer's fee as described in Paragraph 3.2 above and shall be reported to the SOS via the SOS-prescribed primary finance system. The invoice shall reflect any advance monies paid under Paragraphs 3.3 and 3.4.

4. Early Voting. In accordance with Section 83.002(2), Texas Election Code, the Contracting Officer is the early voting clerk for the election and the runoff election, both with respect to early voting in person and voting by mail. The county shall not be entitled to reimbursement for the cost of early voting, except for the cost of the ballots and the ballot programming for use of the voting system, as set forth in the administrative rules promulgated by the SOS.

5. Voting System. The voting system to be used in the election and runoff election is

6. Acknowledgement of Shared Polling Places. The Party acknowledges that the Contracting Officer, in accordance with Section 31.092(e), Texas Election Code, may enter into a similar Primary Election Services Contract with any other political party in the same county that nominates its candidates for office by primary election. In such event, the Party agrees to share common polling places with the other political party. The Party acknowledges that if there is not enough county-owned election equipment to satisfy the requests of both political parties, commissioners court shall allocate the equipment among the political parties requesting it, in accordance with Section 51.035, Texas Election Code.

7. General Provisions.

7.1 Nothing contained in this Contract shall authorize or permit a change in the officer with whom or the place at which any document or record relating to the election or to the runoff election is to be filed, the place at which any function is to be carried out, the officers who conduct the official canvass of the election returns, the officer to serve as custodian of the voted ballots or other election records, or any other nontransferable functions specified by Section 31.096, Texas Election Code.

7.2 The Contracting Officer is the agent of the Party for purposes of contracting with third parties with respect to the election expenses within the scope of the Contracting Officer's duties, and the Contracting Officer is not liable for failure to pay a claim.

7.3 The Contracting Officer shall file copies of this Contract with the County Treasurer (County Judge, if there is not a County Treasurer) and the County Auditor of _____ County, Texas.

7.4 Only the actual expenses directly attributable to the Contract may be charged by the Contracting Officer, including administrative fees, Section 31.100, Texas Election Code.

7.5 Except for statutory duties required of the Contracting Officer, such as those described in Sections 1.11, 1.12 and Paragraph 4 above, both parties acknowledge that the Party should not request the Contracting Officer to incur expenses in connection with the election and runoff election that are not reimbursable with primary funds under the SOS administrative rules or Texas Statutes and that the Contracting Officer should not incur expenses in connection with the election and runoff election that are not reimbursable with primary funds under the SOS administrative rules or Texas Statutes.

7.6 For purposes of implementing this Contract, the Contracting Officer and the Party designate the following individuals, and whenever the Contract requires submission of information or notice to the Contracting Officer or the Party, submission or notice shall be made to these individuals:

For the Contracting Officer:

Name _____

Mailing Address _____

Tel.: _____

Fax: _____

Email: _____

For the Party:

Name _____

Mailing Address _____

Tel.: _____

Fax: _____

Email: _____

7.7 By their signatures below, the Contracting Officer and the Chair of the Party's County Executive Committee warrant and represent that they are authorized to enter into this Contract.

WITNESS THE FOLLOWING SIGNATURES AND SEALS ON THE RESPECTIVE DATES SHOWN BELOW:

The Contracting Officer

By _____

Title _____

Date _____

(Seal)

The Party

By _____

Title _____

Date _____

