

**RESOLUTION NO. 13-09**

**A RESOLUTION RELATING TO ENTERING INTO INTERLOCAL AGREEMENT WITH THE CITY OF COMMERCE, COMMERCE INDEPENDENT SCHOOL DISTRICT, NORTH HUNT WATER SUPPLY, HUNT MEMORIAL HOSPITAL DISTRICT AND HUNT COUNTY ELCTIONS OFFICE; GRANTING AUTHORITY TO THE MAYOR TO EXECUTE SAID RESOLUTION, AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO SAID RESOLUTION; GRANTING AUTHORITY TO CITY MANAGER TO EXECUTE ANY AND ALL OTHER INSTRUMENTS REQUISITE TO IMPLEMENTING SAID RESOLUTION, AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE TO ANY AND ALL OTHER INSTRUMENTS REQUISITE TO IMPLEMENTING SAID RESOLUTION.**

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall on the 19<sup>th</sup> day of February 2013, at 6:00 p.m.; a majority of Council Members being present and constituting a quorum, the following resolution was adopted;

**WHEREAS**, the City Council has heretofore deemed it to be in the best interest of the City of Commerce to enter into a interlocal agreement with Commerce Independent School District, North Hunt Water Supply Corporation, Hunt Memorial Hospital District and the Hunt County Elections Office for joint elections to be held beginning in 2013; a copy of which is attached hereto and marked Exhibit "A" and made a part hereof as if copied herein verbatim; and

**WHEREAS**, after careful consideration and review of said Agreement, the City Council of the City of Commerce deems it in the best interest and general welfare of the City of Commerce to enter into such agreement.

**BE IT RESOLVED**, that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute on behalf of the City of Commerce said resolution, and

**BE IT FURTHER RESOLVED**, that the City Secretary be authorized and she is hereby authorized to attest to the signature of the Mayor to said resolution, and said agreement, and

**BE IT FURTHER RESOLVED**, that the City Manager be authorized and he is hereby authorized to execute on behalf of the City of Commerce any and all other instruments requisite to implementing said resolution, and

**BE IT FURTHER RESOLVED**, that the City Secretary be authorized and she is hereby authorized to attest to the signature of the City Manager to any and all other instruments requisite to implementing said resolution.

**PASSED BY THE GOVERNING BODY** of the City of Commerce, Texas, at a regular meeting of the City Council of the City of Commerce, Texas, on the 19<sup>th</sup> day of February 2013.

ATTEST:

Marty Cunningham

Marty Cunningham

City Secretary

(seal)

CITY OF COMMERCE, TEXAS

John Ballotti

John Ballotti

Mayor

APPROVED AS TO FORM:

Jim McLeroy

Jim McLeroy

City Attorney

I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a resolution, and that the same has not been repealed and is in full force and effect.

(seal)

Marty Cunningham

City Secretary

City of Commerce, Texas

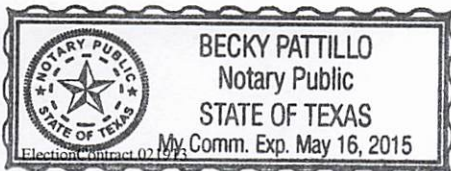
Sworn to and subscribed before me, on this the 27th day of February, 2013, to certify which witness my hand and seal of office.

(seal)

Becky Pattillo

Notary Public

State of Texas



THE STATE OF TEXAS

COUNTY OF HUNT

**CONTRACT FOR ELECTION SERVICES BETWEEN  
THE HUNT COUNTY ELECTIONS ADMINISTRATOR OFFICE AND  
THE CITY OF COMMERCE, COMMERCE ISD, NORTH HUNT SUD & HUNT  
MEMORIAL HOSPITAL DISTRICT**

THIS CONTRACT made by and between Hunt County, Texas, acting by and through Almina Cook, Hunt County Elections Administrator, hereinafter referred to as "The Elections Administrator" and THE CITY OF COMMERCE, COMMERCE ISD, NORTH HUNT SUD & HUNT MEMORIAL HOSPITAL DISTRICT, a governmental entity organized under the laws of the State of Texas, hereinafter referred to as the "Entity" and by the authority of Section 31.092(a) of the Texas Election Code for the conduct and supervision of the Entity's **May 11<sup>th</sup>, 2013 General Election** for the election of its officers.

*RECITALS*

The Entity is holding an election for the purpose of selection of certain elected officers of the Entity and any propositions noted (at the expense of the Entity) on **May 11<sup>th</sup>, 2013**.

The election precincts of the Entity, which lie within the jurisdictional limits of Hunt County (the "County"), have been established and may be re-established by the Entity as its election precincts pursuant to Section 42.061 of the Texas Election Code.

The County owns a direct recording electronic voting system which has been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122 as amended, and the Entity desires to use the County's electronic voting system in its election and to compensate the County for such use.

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

**I. ADMINISTRATION**

The Hunt County Elections Administrator shall assist, coordinate, supervise, and handle all aspects of administering the election as provided in this Contract in a manner consistent with all relevant law, codes, rules and regulations, including, without limitations, those functions set forth in Exhibit A1. The Entity agrees to pay Hunt County Elections Administrator for equipment, supplies, services, and administrative costs as provided in this Contract. The Hunt County Elections Administrator shall serve as the administrator for the election; however, the Entity shall remain responsible for the lawful conduct of its election including, without limitation, those functions reserved to the Entity and set forth in Exhibit A2 and any functions which cannot be lawfully delegated to the Hunt County Elections Administrator. The Elections Administrator shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of the Entity; however it shall be the responsibility of the Entity to obtain whatever legal opinions it deems necessary, from the Entity's chosen legal counsel and at the Entity's sole cost and expense. The Hunt County Elections Administrator will not provide legal advice to the Entity.

## **II. LEGAL DOCUMENTS**

The Entity 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 and/or its governing bodies.

Preparation of the necessary bilingual materials for notices and the language of the official ballot shall also be the responsibility of the Entity. The Entity shall provide a copy of its election order and notice to the Hunt County Elections Administrator not later than sixty (60) days before the election, as provided for by Section 4.008 of the Texas Election Code.

The Entity shall be responsible for making the submission, if any, as required or desired, to the United States Department of Justice, pursuant to the Voting Rights Act of 1965, as amended.

## **III. VOTING LOCATIONS**

It is agreed that Election Day voting shall be held at the locations shown in the Election Order and Notice duly adopted by the Entity. In the event that any of these voting locations are not available, the Elections Administrator will arrange for use of an alternate location with the approval of the Entity and at the Entity's expense.

This Contract shall be deemed an agreement for a joint election with other governmental units in Hunt County holding an election on the same day in all or part of the same territory and whose governing bodies have authorized said joint election by order, resolution or other official action.

## **IV. ELECTION JUDGES, CLERKS AND OTHER ELECTION PERSONNEL**

Hunt County shall be responsible for the initial selection of the presiding election judges and alternate election judges for the Entity's election. The Elections Administrator shall provide to the Entity a list of presiding judges and alternate judges for its election who shall be appointed by the Entity as required by law.

The Jurisdiction 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 Entities election are eligible to serve.

The Jurisdiction shall arrange for the training and compensation of all election judges and clerks for early voting.

The Elections Administrator shall arrange for the training and compensation of all election judges and clerks for Election Day. The Elections Administrator shall arrange for the date, time, and place for presiding election judges to pick up their election supplies. Each presiding election judge will be sent a letter (not later than the 15<sup>th</sup> day before election day, as required by Section 4.007 of the Texas Election Code) by the Elections Administrator notifying him of his appointment, the time and location of distribution of election supplies, and the number of election clerks that the presiding judge may appoint, including the required number of bilingual clerks.

Each Presiding Election Judge and Election Clerk will receive **\$9.00** per hour for a maximum of 15 hours. The Presiding Election Judge or Election Clerk will receive an additional **\$25.00** as flat-rate compensation for delivering election returns and supplies to the Hunt County Elections Administrator's Office after the polls close. Election judges and alternate judges will receive **\$9.00** per hour for attending the election school.

It is agreed by the Entity that at all times and for all purposes hereunder, all election judges, clerks, and all other employees involved in this election are independent contractors and are not employees or agents of Hunt County or the Entity. No statement contained in this Contract shall be construed so as to find any judge, clerk, or other election personnel, an employee or agent of the County or the Entity, and all election personnel shall be entitled to none of the rights, privileges, or benefits of County employees or Entity employees except as otherwise may be stated herein, nor shall any election personnel hold himself out as an employee or agent of the County or the Entity, unless considered a County or Entity employee as determined by the policies of Hunt County or the Entity.

#### **V. SUPPLIES AND PRINTING**

The Elections Administrator shall arrange for the use of the direct recording electronic voting machines and supporting supplies and equipment and all other election supplies and related printing including, but not limited to, official ballots, sample ballots, ballot boxes, voter registration lists, and all forms, signs, maps and other materials used by the election workers at the Election Day voting locations.

The Entity shall furnish to the Elections Administrator a list of candidates and/or propositions showing the order and the exact manner in which the names or proposition(s) are to appear on the official ballot (including bilingual titles and text). This list shall be delivered to the Elections Administrator as soon as possible after the Entity has determined ballot positions. The Entity shall be responsible for proofreading and approving the official ballot before printing as well as approving the ballot screen prompts and audio recordings for the Direct Recording Electronic voting devices in both English and Spanish.

#### **VI. EARLY VOTING**

The Entity shall serve as the Early Voting Clerk in accordance with Section 31.097 of the Texas Election Code and agrees to designate the main Early Voting polling location.

It is agreed that Early Voting by personal appearance will be held at the locations, times and days as determined by the Entity.

As Early Voting Clerk, the Entity shall receive applications for early voting ballots to be voted by mail in accordance with Chapters 31 and 86 of the Texas Election Code.

**If a run-off election is required by any contracting Entity that election will be held on June 15<sup>th</sup>, 2013.**

#### **VII. CENTRAL COUNTING STATION AND ELECTION RETURNS**

##### **VIII. CENTRAL COUNTING STATION AND ELECTION RETURNS**

The Elections Administrator 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 Contract.

The Entity hereby appoints the following central counting station officials in accordance with Sections 127.002 and 127.005 of the Texas Election Code:

|                           |                                      |
|---------------------------|--------------------------------------|
| Counting Station Manager: | Almina Cook, Elections Administrator |
| Tabulation Supervisor:    | Brenda Weston                        |
| Presiding Judge:          | Larry Mayo                           |

The Elections Administrator or her representative shall deliver timely cumulative reports of the election results as precincts report to the central counting station and are tabulated. The Election Administrator shall be responsible for providing cumulative totals and precinct returns from the election to the Entity, prior to releasing the information to the candidates, press, or general public, by distribution of hard copies at the Central Counting Station or electronic transmittals by facsimile (when so requested.)

## **VIII. ELECTION RESULTS**

The Elections Administrator will prepare the unofficial canvass reports after all ballots have been counted and will deliver a copy of the unofficial canvass to the Entity as soon as possible after all returns have been tabulated, but in no event later than 5:00 p.m. of the seventh day following the election date. The Entity shall be responsible for the official canvass of its election.

The Elections Administrator 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 the Entity and the Secretary of State's Office.

## **IX. ELECTION EXPENSE AND ALLOCATION OF COSTS**

The Entity agrees to reimburse Hunt County for the actual costs of administering its election including, but not limited to, the actual costs of supplies, printing, programming, and personnel. The Entity agrees to reimburse Hunt County for over-time wages and benefits paid to the permanent employees of The Elections Administrator for contractual duties performed outside the normal business hours of Hunt County in accordance with Section 31.100(e) of the Texas Election Code. The Entity further agrees to pay Hunt County an administrative fee equal to ten percent (10%) of its total billable costs in accordance with Section 31.100(d) of the Texas Election Code. The fee may not be less than \$75.00.

## **X. TERMINATION**

The Elections Administrator's Office and each contracting Entity each have the right to terminate this agreement at any time upon written notice to the other party with payment of all outstanding bills for election services incurred prior to the date of the notice. In no case will a contract be terminated less than sixty (60) days prior to an election or after receipt of the below mentioned partial payment as discussed in paragraph XVII.

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

The Entity may withdraw from this Contract should it cancel its election in accordance with Sections 2.051 - 2.053 of the Texas Election Code.

## **XII. RECORDS OF THE ELECTION**

The Elections Administrator is hereby appointed general custodian of the voted ballots and all records of the election as authorized by Section 31.096 of the Texas Election Code.

Access to the election records shall be available to the Entity as well as to the public in accordance with applicable provisions of the Texas Election Code and the Texas Public Information Act. The election records shall be stored at the offices of the Elections Administrator, who 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 Elections Administrator shall maintain the records until final resolution or until final judgment, whichever is applicable. **It is the responsibility of the Entity to bring to the attention of the Elections Administrator any notice of pending election contest, investigation, litigation or open records request which may be filed with the Entity.**

The Elections Administrator shall notify the Entity of the planned destruction of any records of the election prior to the record's destruction.

### **XIII. SPECIAL ELECTIONS**

The Entity understands and agrees that the cost estimates provided within this contract are for the Entity's general election and that any special election(s) called may increase the cost of the election.

### **XIII. RECOUNTS**

A recount may be obtained as provided by Title 13 of the Texas Election Code. The Entity agrees that any recount shall take place at the offices of the Elections Administrator, and that the Elections Administrator shall serve as Recount Supervisor and the official of the Entity performing the duties of a secretary under the Texas Election Code, or its lawful designee, shall serve as Recount Coordinator.

The Elections Administrator agrees to provide advisory services to the Entity as necessary to conduct a proper recount.

### **XV. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

The Elections Administrator will assist the Entity in securing adequate polling places, rent free if available; however, it is the responsibility of the Entity to ensure that the polling places comply with current accessibility standards as set forth in the Americans With Disabilities Act and any state or local laws or ordinances. Accessibility compliance shall be at the Entity's expense. In the event that compliance cannot be achieved, the Entity agrees to indemnify the Elections Administrator and Hunt County, Texas from any resulting liability, whether civil or criminal.

### **XVI. MISCELLANEOUS PROVISIONS**

(37030) It is understood that to the extent space is available, that other political subdivisions may wish to participate in the use of the County's election equipment, and it is agreed that the Elections Administrator may contract with such other 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.

(37031) The Elections Administrator shall file copies of this document with the Hunt County Treasurer and the Hunt County Auditor in accordance with Section 31.099 of the Texas Elections Code.

(37032) In the event that legal action is filed challenging the Entity's election, each party hereto shall defend its own actions, officials and employees. If it is determined that the actions of the Entity resulted in legal action against Hunt County or the Hunt County Elections Administrator or any additional election personnel, then the Entity shall provide, at its own expense, legal representation for the County, the Elections Administrator, and additional election personnel as necessary save and except in any instance whereby an unlawful or otherwise improper act or omission of the County, the Election Administrator or another Entity participating in the election has precipitated such legal action.

(37033) The County and the Entity agree that under the Constitution and laws of the State of Texas, neither the County nor the Entity 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.

(37034) This Contract 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 Hunt County, Texas.

(37035) In the event one or more of the provisions contained in this Contract 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 Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(37036) 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.

(37037) The waiver by any party of a breach of any provision of this Contract shall not operate as or be construed as a waiver of any subsequent breach.

(37038) Any amendment of this Contract shall be of no effect unless in writing and signed by all parties hereto.

## **XVII. COST ESTIMATES AND DEPOSIT OF FUNDS**

The estimated cost for such services will be computed by the Elections Administrator and delivered to each contracting Entity within sixty (60) days prior to the election. Each contracting Entity shall pay the Elections Administrator twenty-five (25) percent of the total cost within ten (10) days after ordering the election, and no more than forty-five (45) days prior to the election, as partial payment for contract election services. After the date of the election and completion of all duties required by the Elections Administrator, the Elections Administrator shall then compute the final statement for all services rendered, together with administrative fees, less any partial payments and bill each contracting Entity, as applicable, such sum. Each contracting Entity shall be responsible for paying this amount within thirty (30) days from the date of billing. **It is understood by the Entity that the actual expenses for this election may exceed the estimate. It is further understood by the Entity that this estimate is based on the participation of other Entities in this election. If one or more of these other Entities chooses not to participate, or if they cancel their election as allowed by law, their share of the total election expenses will be distributed among the other participating Entities.** In the event that the Entity disputes any portion of the charges, fees or costs payable under this Contract, the Entity agrees to promptly pay the undisputed amounts when due. (Again, will this remain the same even though we are not contracting services for Early Voting?)

## **XVIII. MODIFICATION OF ESTIMATED COSTS FOR ELECTION**

The Estimated Costs of Election attached to this agreement may be modified once a year, upon agreement of both the Elections Office and each contracting Entity. Signatures of the Elections Office Administrator and the Entity Official on the modified costs shall evidence such modification.

**XIX.** Each contracting Entity agrees to jointly hold an election, if necessary, with another contracting Entity such as City, School, Hospital, etc.

**XX.** Each person signing below acknowledges their signature as acting on behalf of the Entity they represent.

**XXI.** If a contracting Entity certifies their election in accordance with §2.051, 2.052, and 2.053 of the Texas Election Code, they may withdraw from this contract by informing the Elections Office in writing.

#### **EXHIBIT A1**

Functions Delegated to the Hunt County Elections Administrator:

1. Provide training of election workers.
2. Procure, prepare, proof and distribute ballots. (See attached Estimated Costs for Election).
3. Prepare the list of registered voters to be used in conducting the election at no cost.
4. Conduct the testing of the electronic tabulation equipment, if this equipment will be used. (Will this be done for us on Early Voting Machine?)
5. Supervise the handling and disposition of election returns, voted ballots, and tabulate unofficial returns and assist in preparing the tabulation for the official canvass. (See attached Estimated Costs for Election).
6. Provide at no cost for the storage of election records as provided by law.
7. Provide at no cost, copies of all invoices received by the Elections Administrator's Office for payment of services or supplies of which each contracting Jurisdiction, as applicable, is to reimburse the Elections Office for payment.
8. The Elections Office will be responsible for payments to all parties who have provided services, supplies and voting locations for the election. A contracting jurisdiction shall not be liable to any third parties by default of the Elections Office in connection with holding the election, including failure by Hunt County or its Elections Office to pay for services or supplies for this election.
9. The Elections Office will be responsible for tabulating votes.
10. The Elections Office will be responsible for programming ballots.
11. The Elections Office will be responsible for providing phone bank workers on Election Day.
12. The Elections Office will assist with the translations of orders, notices and submissions (entities will be charged actual cost).
13. The Elections Office will be responsible for programming and predefining early voting and Election Day equipment.
14. The Elections Office will be responsible for Logic and Accuracy Testing.
15. The Elections Office will be responsible for Public Testing.
16. The Elections Administrator will prepare the unofficial tabulation report after all precincts have been counted, and will provide a report to each jurisdiction as soon as possible after all returns have been tabulated either by e-mail or by phone, as agreed by each jurisdiction. Each jurisdiction will be responsible for the official canvass of its elections. (See attached Estimated Costs for Election).

## EXHIBIT A2

### Functions Reserved to the Entity:

1. Accept valid applications.
2. Prepare and submit to the U.S. Department of Justice under the Federal Voting Rights Act of 1965, the required submissions on voting changes.
3. Will provide Candidate Names and/or and Measures for ballot.
4. Will provide order of Candidates and/or Measures.
5. Translate ballot unless entity ask for assistance.
6. Will provide an ADA compliant facility.
7. Will publish all legal notices and documents that are required by law in English and Spanish.
8. Preparation of election orders, resolutions, notices and other pertinent documents for adoption or execution by the appropriate office or body.
9. Posting or publication of election notices.
10. Deliver to the Elections Office as soon as possible, but no later than the day after closing of candidate filing deadline, the official wording for the election that is to be printed on the ballot with the exact form, candidate order, wording and spelling that is to be used.
11. Pay any additional costs incurred by the Elections Office if a recount for the election is required, or the election is contested in any manner by a contracting jurisdiction as applicable.
12. Provide services as listed in Sec. 31.096 of the Texas Election Code. (Accept applications from candidates).
13. Provide to the Elections Office a copy of the election notices and orders and any Department of Justice submissions.
14. Provide to the Secretary of State a precinct-by-precinct report of the election returns in an electronic format.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement on the 19 day of February, 2013.

\_\_\_\_\_  
Almina Cook  
Hunt County Elections Administrator

\_\_\_\_\_  
*John Balliett, Jr.*  
Mayor, City of Commerce

\_\_\_\_\_  
Almina Cook  
Hunt County Elections Administrator

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Superintendent, Commerce ISD

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Almina Cook  
Hunt County Elections Administrator

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Board President, North Hunt SUD

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Almina Cook  
Hunt County Elections Administrator

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Board President, Hunt Memorial  
Hospital District

Updated for May 11<sup>th</sup>, 2013 elections