

**RESOLUTION NO. 2015-10-15A**

**INTERLOCAL AGREEMENT**

**STATE OF TEXAS** §  
**COUNTY OF SMITH** §

This Agreement is entered into this 15<sup>th</sup> day of October, 2015, 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 Overton, with the authorization of its respective governing bodies (hereinafter referred to as VOTING UNITS).

**WITNESSETH**

**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'** election;

**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 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'** election:

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 election;
6. Furnish **VOTING UNITS** with sample ballots for their election;
7. Provide for electronic voting process including preparation of ballot boxes, 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, ballot boxes and voting equipment to and from polling places;
10. Assume Election Day responsibilities, including late voting for illness disability, etc., 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 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 for official canvassing by **VOTING UNITS**;
15. ELECTIONS ADMINISTRATOR shall make arrangements for polling places;
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 to be determined by the Smith ELECTIONS ADMINISTRATOR;
19. Pay any claims for election expenses pursuant to Section 31.098(a) of the Texas Election Code (See 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**. Said claims shall be paid from funds deposited by the **VOTING UNITS** with the County Treasurer, pursuant to Section 31.100(a) of the Texas Election Code and funds paid after the election is held and **VOTING UNITS** pays **COUNTY** pursuant to Section III. **CONSIDERATION**, set forth in the Terms, Rights and Duties of this agreement;

22. **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 Section 31.100(a) and (b) of the Texas Election Code; and
23. **COUNTY** shall perform any and all other items necessary or required to conduct the election.

## 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 Spanish, and give final approval of **VOTING UNITS'** ballot in writing;
2. Prepare and submit any voting changes to United States Department of Justice as required by Federal Voting Rights Act of 1965, as amended, for **VOTING UNIT'S** election;
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 § 65.001 et seq.;
4. Perform those duties and functions which by law **VOTING UNITS** remains required to perform;
5. Notify **COUNTY** of exact boundaries of Voting Unit's district Boundaries by March 10, 2015; and
6. Give notice of election as required by all applicable laws, including Chapter 4 of the Texas Election Code.

## III. CONSIDERATION

As consideration for performing the duties herein described in relation to **VOTING UNITS'** election to be held November 3, 2015, **COUNTY** shall charge its actual costs plus an administrative fee of ten percent (10%) of the total amount of the actual costs of holding **VOTING UNITS'** trustee election by contract pursuant to Texas Election Code Section 31.100(d). **COUNTY** and **VOTING UNITS** agree that the estimated total cost of the trustee election, as reflected in Exhibit "A," attached hereto and incorporated herein for all purposes, sets forth the estimated compensation to be paid to **COUNTY**, such compensation to be an amount that "fairly compensates" **COUNTY** for the services and functions performed under this agreement as required pursuant to Section 31.100 (c) of the Texas Election Code.

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 trustee election and the ten percent (10%) administrative fee described above;
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 election. **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 costs as set forth in Exhibit "A," **VOTING UNITS** hereby expressly agrees 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 election so that **COUNTY** is fairly compensated as agreed; and
3. **VOTING UNITS** expressly represents that it is able to pay for said election from current revenues as is required pursuant to Section 791.011 (d)(3) of the Texas Local Government Code.

#### IV. TERM

This agreement shall be effective as of the date of its execution by both parties and shall remain in effect for **VOTING UNITS'** November 3, 2015, election until such time as all consideration owed to **COUNTY** for services and equipment provided hereunder is paid.

#### V. INDEMNIFICATION

**COUNTY**, disclaims responsibility for any and all injuries or accidents which may occur on or about the premises of any and all voting locations, including early voting and voting on election day. To the extent allowed by Texas law, **VOTING UNITS** agree to indemnify and hold **COUNTY** harmless from any and all claims, damages, lawsuits, or otherwise relating to persons or property whether or not the cause or causes are associated with the services performed or equipment provided by **COUNTY**, its officials, agents, employees, or representatives in connection with this agreement.

#### 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.

**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 either party to the other 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**

c/o Karen Nelson  
Elections Administrator  
200 E. Ferguson St. Suite 500  
Tyler, TX 75702

**CITY OF OVERTON**

Rachél Gafford, City Secretary  
City of Overton Elections Administrator  
P.O. Drawer D  
Overton, TX 75684

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 either VOTING UNITS' elections are canceled, the remaining voting unit 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

APPROVED IN SMITH COUNTY'S COMMISSIONERS COURT MEETING on the 13 day of October, 2015, and executed by **JOEL BAKER**, County Judge, as the authorized representative of **SMITH COUNTY**.

**SMITH COUNTY**

  
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JOEL BAKER, COUNTY JUDGE

**RECOMMENDED**

  
\_\_\_\_\_  
KAREN NELSON, ELECTIONS ADMIN.

APPROVED:

  
\_\_\_\_\_  
PHILLIP SMITH, ASSISTANT D.A.

**APPROVED BY THE CITY OF OVERTON IN A MEETING** on the 15<sup>th</sup> day of October, 2015, and executed by C. R. Evans Jr., Mayor, as the authorized representative of the **City of Overton**.

**CITY OF OVERTON**



BY: C. R. Evans Jr.  
C. R. EVANS JR., MAYOR

ATTEST:

BY: Rachel Gafford  
RACHÉL GAFFORD, CITY SECRETARY

APPROVED:

BY: Blake Thompson  
BLAKE THOMPSON, CITY ATTORNEY