



## Travis County Commissioners Court Agenda Request

**Meeting Date:** April 10, 2012

**Prepared By/Phone Number:** Gail Fisher 854-9193

**Elected/Appointed Official/Dept. Head:** Dana DeBeauvoir

**Commissioners Court Sponsor:** Judge Biscoe

### **AGENDA LANGUAGE:**

Consider and take appropriate action regarding the Memoranda of Understanding, the Primary Elections Services Contracts, and the Joint Resolution with the Democratic and Republican Parties for the May 29, 2012, Joint Primary Election and the July 31, 2012, Joint Primary Runoff Election.

### **BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:**

Contracts signed by both parties will be delivered prior to the court date.

### **STAFF RECOMMENDATIONS:**

### **ISSUES AND OPPORTUNITIES:**

### **FISCAL IMPACT AND SOURCE OF FUNDING:**

### **REQUIRED AUTHORIZATIONS:**

County Attorney: Daniel Bradford, 854-3718

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

## MEMORANDUM OF UNDERSTANDING

TO: Executive Committee of the Travis County Democratic Party, and the Executive Committee of the Travis County Republican Party

FROM: Travis County Commissioners Court

DATE: April , 2012

This Memorandum of Understanding covers the conduct of the May 29, 2012 Joint Primary Election for the Travis County Democratic Party and the Travis County Republican Party (individually, the “Party,” and together, the “Parties”). The Travis County Democratic Party and the Travis County Republican Party hereby expressly acknowledge and understand that the conduct of the Joint Primary Election is subject to the terms, conditions, and provisions set forth in their respective 2012 Primary Election Services Contract with the Travis County Elections Officer (the “Contract”), which are attached here as Exhibit A and incorporated by reference for all purposes, as well as the terms, conditions, and provisions of this Memorandum of Understanding, Texas Election Code Chapter 173 and section 172.126, all other applicable provisions of the Texas Election Code, and all applicable rules promulgated by the Texas Secretary of State’s Office regarding the conduct of the May 29, 2012 Joint Primary Election, and the July 31, 2012 Joint Primary Runoff Election, if held.

A. Applicable Law.

The Contract and this Memorandum of Understanding will be governed and interpreted under Texas law and the laws of the United States of America including, but not limited to, the provisions of the Texas Election Code.

B. Duties, Responsibilities, and Functions of County Clerk on the Specified Election Dates.

In addition to the duties, responsibilities, and functions specified in Texas Election Code Section 172.126, the Travis County Clerk, the Honorable Dana DeBeauvoir, will perform the following duties, responsibilities, and functions:

1. The County Clerk will distribute all necessary election supplies, including:
  - i. Election kits;
  - ii. Election materials and precinct boxes; and
  - iii. Voting booths.
2. The County Clerk will assemble election kits for the election judges, will transport such kits to the election supply pick-up site, and will coordinate election supply pick-up.

3. The County Clerk will be responsible for preparation, transportation, and delivery of voting booths to the polling place locations.
4. The County Clerk will be responsible for training election judges and clerks in the conduct of the Joint Primary Election. The County Clerk and the Parties will work together to arrange dates and locations of election school classes. The County Clerk will notify election judges and clerks of the dates, times, and locations of the election school classes and will arrange for a facility at which to hold such classes.
5. The County Clerk will set up polling place locations and will provide necessary telephones and computers for such locations.
6. The County Clerk will conduct election day close-out, pick-up, and records management. The County Clerk will also pick up and store all election supplies, including election materials and other election-related supplies.
7. The County Clerk will locate suitable receiving substations and will organize and manage the operation of these receiving substations. The County Clerk will recruit and train necessary personnel for such receiving substations, subject to applicable rules promulgated by the Texas Secretary of State's Office.
8. The County Clerk will locate a suitable central counting station and will manage the operation of the central counting station. In connection with the operation of the central counting station, the County Clerk will:
  - i. Train central counting station personnel;
  - ii. Arrange for site support personnel and tabulating equipment needed at the central counting station;
  - iii. Assist in the preparation of programs and test materials for the tabulation of results;
  - iv. Arrange for transportation and security of mobile ballot boxes (Pcmcia cards) to the central counting station and conduct orientation meetings for transportation and security personnel; and
  - v. Determine the physical layout of the central counting station.
9. The County Clerk will provide unofficial election returns and will prepare the final election returns prior to official canvass. Each Party will be responsible for the official canvass of its primary election.
10. On Election Day and election night, the County Clerk will operate a telephone program to answer questions from election officials and from members of the public relevant to the conduct of the Joint Primary Election.

11. On Election Day and election night, the County Clerk will operate a system of runners to deliver materials and supplies to polling place locations, receiving substations, and the central counting station.
12. The County Clerk will make preparations and arrangements at the supply operation center, 5501 Airport Boulevard, Austin, Texas 78751 for document storage. Such election records will be held by the County Clerk as the custodian of election records for the Joint Primary Election.
13. The County Clerk, as the general custodian of the election records, will be responsible for the manual count of three (3) precincts, as ordered by the Secretary of State, under Texas Election Code section 127.201. The Parties will pay for the temporary personnel needed for the manual count.
14. The County Clerk will be responsible for the inspection and testing of all electronic election equipment in accordance with applicable provisions of the Texas Election Code. The Travis County Clerk will publish legal notice of the date, time, and place of the test of the electronic tabulating equipment and will conduct such tests.
15. The County Clerk will organize and manage all early voting ballot board activities; provided, however, the presiding judge and other members of the board will be appointed under Texas Election Code Section 172.126 (c) and rules promulgated by the Texas Secretary of State regarding such appointments.
16. The Parties are responsible for all legal notices required for the Joint Primary Election, except as otherwise specifically provided in Paragraph 14 of Section B.
17. The County Clerk will be responsible for handling the payroll for both Parties, and the Parties will reimburse the County Clerk for said payroll expenses.

C. Duties, Responsibilities, and Functions of each Political Party for the Specified Election Dates.

The Travis County Democratic Party and the Travis County Republican Party, respectively, will perform the following duties, responsibilities, and functions:

1. Each Party will be responsible for the official canvass of its primary election.
2. Each Party will prepare for its run-off primary election, if such election is held, to enable or to assist the County Clerk in the conduct of her duties, responsibilities, and functions as set forth in this Memorandum of Understanding, Texas Election Code Chapter 173 and section 172.126, all other applicable provisions in the Election Code, and all applicable rules promulgated by the Texas Secretary of State's Office regarding the conduct of the May 29, 2012 Joint Primary Election and/or the conduct of the July 31, 2012 Joint Primary Runoff Election, if held.

3. Each Party will be responsible for the payment of all election costs and expenses for the conduct of the May 29, 2012 Joint Primary Election and will reimburse the County Clerk for such expenses; provided, however, the Parties will not be responsible for expenses incurred in connection with the conduct of early voting in the Joint Primary Election other than expenses relating to the printing of early voting ballots and the costs of the early voting ballot board as authorized by Texas Election Code section 173.003 Texas Administrative Code Title 1, section 81.132. Costs incurred by each Party for the conduct of the May 29, 2012 Joint Primary Election include the costs of early voting ballots, the costs of the early voting ballot board payable from each Party's primary fund, and each Party's share of the costs of conducting the May 29, 2012 Joint Primary Election on election day, election night and after the election. The Parties will share such costs on a 50/50 basis. However, the Parties will not be responsible for the costs of training election workers, or of providing materials published by the Texas Secretary of State's Office. The regular salaries of personnel regularly employed by the County may not be paid from or reimbursed to the County from the primary fund. However, such personnel will be paid from the primary fund for contractual duties performed outside normal business hours. Salaries paid to temporary election workers will be paid from the primary fund. The County Clerk may not be compensated for the performance of duties or services that she is required by statute to perform.
4. Each Party will handle all aspects of its precinct convention process and will cover all costs incurred in connection with its precinct convention.
5. Each Party will be responsible for performing the duties, responsibilities, and functions as specified in Texas Election Code chapter 173 and section 172.126, all other applicable provisions of the Texas Election Code, and all applicable rules promulgated by the Texas Secretary of State's Office regarding the conduct of the May 29, 2012 Joint Primary Election and the July 31, 2012 Joint Primary Runoff Election, if held.

D. Payment of Election Expenses.

1. The Parties will pay the County Clerk for actual expenses and charges incurred in the conduct of the May 29, 2012 Joint Primary Election as set forth in the itemized bill, which will be submitted to the Parties by the Travis County Clerk.
2. The County Clerk will provide the Parties documentation of the actual expenses and charges incurred in the conduct of the May 29, 2012 Joint Primary Election.
3. Each Party will pay the County Clerk its share of the actual expenses and charges incurred in the conduct of the July 31, 2012 Joint Primary Runoff Election, if held for that Party, as set forth in the itemized bill submitted by the County Clerk for the conduct of such election. If a Party does not hold a primary runoff election, that Party will not be expected to pay expenses incurred in the conduct of a primary runoff election. The County Clerk will provide the Parties documentation of the

actual expenses and charges incurred in the conduct of the Joint Primary Runoff Election.

4. Within thirty (30) days after receipt of the bill submitted by the County Clerk for the conduct of the May 29, 2012 Joint Primary Runoff Election, each Party will pay the County Clerk in one lump sum the total amount the Party owes the County Clerk, as specified in the bill submitted by the County Clerk, for the conduct of the Joint Primary Runoff Election; provided, however, a Party is not expected to pay for the conduct of a Joint Primary Runoff Election if such election does not involve that Party.
5. The Joint Primary Election and any Joint Primary Runoff Election will be subject to the financing provisions of Texas Election Code Chapter 173 and section 31.100 to the extent such provisions are not in conflict with the election code's Chapter 173 or applicable rules promulgated by the Texas Secretary of State's Office regarding the financing and payment for Joint Primary Elections.
6. If either Party fails to pay its share of the actual expenses and charges incurred in the conduct of the May 29, 2012 Joint Primary Election or for the July 31, 2012 Joint Primary Runoff Election, if held, as set forth in the bill(s) submitted by the County Clerk for the Joint Primary Election, or for the Joint Primary Runoff Election, if held, such failure will constitute a breach of this Agreement; and, in the event of such breach, the County and/or the County Clerk will be entitled to pursue any and all rights and remedies allowed under federal or Texas law (statutory law, case law, rules, or regulations).
7. The County Clerk is hereby authorized on behalf of both Parties to contract with third persons to obtain election services and supplies needed for the County Clerk to perform her duties, responsibilities, and functions in a Joint Primary Election and in a Joint Primary Runoff Election, if held. The County Clerk is the agent of both Parties only for purposes of contracting with third persons for election services and supplies and the resulting expenses incurred in connection therewith, such as third party claims, where such election services and supplies are needed for the County Clerk to perform her duties, responsibilities, and functions in the conduct of the Joint Primary Election and the Joint Primary Runoff Election, if held. Each Party will be responsible for paying that Party's share of all third party claims for election services and supplies obtained for the conduct of the Joint Primary Election and the Joint Primary Runoff Election, if held, regardless of whether the election services and supplies in question are obtained directly from a third person by the County Clerk or directly from a third person by a representative of the Party. Because the Parties are responsible for paying all such third party claims, Travis County and the Travis County Clerk will not be responsible for the payment of such claims and will not be liable for the payment of such claims.
8. Once the Election Officer submits to each Party Chair the Report of Estimated Expenses, which accompanies the attached Contract, each Party will be responsible

for submitting to the Texas Secretary of State all expense reports required by the Secretary of State, in accordance with applicable statutory law and rules promulgated by the Secretary of State's Office.

9. The Parties will be responsible for filing with the Texas Secretary of State's Office all of their statements, forms, and documents necessary to obtain reimbursement from the Secretary of State's Office for the Joint Primary Election and the Joint Primary Runoff Election, if held.
10. Payment to the County Clerk for conduct of the Joint Primary Election, and for conduct of the Joint Primary Runoff Election, if held, will be made by certified check to the County Clerk at the following address: The Honorable Dana DeBeauvoir, Travis County Clerk, Travis County Clerk's Office, 5501 Airport Boulevard, Austin, Texas 78751. Payment may be hand-delivered or sent by registered or certified mail in accordance with the notice provisions of this Agreement.

E. Non-Liability.

1. The performance by the County of any duties, responsibilities, functions, or obligations undertaken by the County, by and through any County officers, (elected or appointed), including but not limited to the County Clerk, or any County departments, agents, employees, invitees, or licensees in the conduct of the May 29, 2012 Joint Primary Election or in the conduct of the July 31, 2012 Joint Primary Runoff Election, if held, is expressly conditioned upon the performance by the Parties and their respective officers, agents, employees, invitees, or licensees of the duties, responsibilities, functions, and obligations undertaken by the Parties under the attached Election Services Contract, this Memorandum of Understanding, Texas Election Code chapter 173 and section 172.126, any other applicable provisions of the Election Code, or any applicable rules promulgated by the Texas Secretary of State's Office.
2. The County, its officers (elected or appointed), including but not limited to the County Clerk, its departments, agents, employees, invitees, and licensees will not be liable for failure to perform any duty, responsibility, function, or obligation undertaken by the County pursuant to the attached Election Services Contracts, this Memorandum of Understanding, Texas Election Code chapter 173 or sections 172.126 and 31.100, any other applicable provisions of the Election Code, or under any applicable rules promulgated by the Texas Secretary of State's Office, where such failure arises directly or indirectly from either Party's failure to perform the Party's duties, responsibilities, functions, or obligations pursuant to the attached Election Services Contract, this Memorandum of Understanding, Texas Election Code Chapter 173 or sections 172.126 and 31.100, any other applicable provisions in the Texas Election Code, or any applicable rules promulgated by the Texas Secretary of State's Office.

F. General Provisions.

1. Effective Date. This Memorandum of Understanding will commence on the date it is approved by the Travis County Commissioners Court. This Memorandum of Understanding will continue in full force and effect until the election expenses and charges set forth in the bill(s) submitted by the County Clerk to the Parties for the conduct of the Joint Primary Election are paid in full by the Parties and until all other payment obligations set forth in this Memorandum of Understanding have been met. Each Party's obligations under this Memorandum of Understanding will not end until that Party's share of said expenses and charges is paid in accordance with the terms, conditions, and provisions of this Memorandum of Understanding, and until all other payment obligations set forth in this Memorandum of Understanding are fully met. For purposes of this paragraph, this Memorandum of Understanding hereby incorporates by reference all the terms, conditions, and provisions set forth in Texas Election Code Chapter 173 and sections 172.126 and 31.100, all other applicable provisions of the Election Code, and all applicable rules promulgated by the Texas Secretary of State's Office regarding the conduct of the Joint Primary Election. As used in this Memorandum of Understanding, the term "Joint Primary Election" refers to both the May 29, 2012 Joint Primary Election and the July 31, 2012 Joint Primary Runoff Election, if held.
2. Amendment/Modification. The Parties to this Memorandum of Understanding may amend or modify this Memorandum of Understanding by executing a supplemental written agreement setting forth the amendment or modification. The amendment or modification will not be effective unless such amendment or modification is in writing, signed by the Parties and the County, and dated subsequent to the date of this Memorandum of Understanding.
3. Notice.
  - i. All notices sent pursuant to this Agreement will be in writing and may be hand-delivered or sent by registered or certified mail, postage pre-paid, return receipt required and delivered or mailed to the proper address as set forth below.
  - ii. Notices to the County will be given to:

Honorable Dana DeBeauvoir  
Travis County Clerk  
Travis County Clerk's Office  
5501 Airport Boulevard  
Austin, Texas 78751.

with a copy to:

Honorable David Escamilla  
Travis County Attorney  
314 West 11th Street, Suite 300



Austin, Texas 78701  
Attention: Elections - File No. 64.595

Notice to the Travis County Republican Party will be sent to:

Dr. Rosemary Edwards, County Chair or  
Ms. Michele Samuelson, Executive Director  
7901 Cameron Rd., Suite 3-202  
Austin, Texas 78754  
Phone No. (512) 617-4168

Notice to the Travis County Democratic Party will be sent to:

Mr. Andy Brown, County Chair or  
Ms. Laura Hernandez, Executive Director  
P. O. Box 684263  
Austin, Texas 78768  
Phone No. (512) 477-7500

- iii. Written notice hand-delivered will be deemed effective immediately, provided such notice is given as prescribed in this paragraph iii. Written notice sent by registered or certified mail will be deemed effective three (3) days after deposit in a U.S. Mail Box or at a U.S. Post Office, provided such notice is given as prescribed in this paragraph iii.
- iv. The parties to this Memorandum of Understanding may change their respective addresses for giving notice, by giving notice as prescribed herein.

4. Venue.

All obligations and undertakings pursuant to this Memorandum of Understanding, including the Election Services Contracts are fully performable in Travis County, Texas. Venue for any dispute between the County, including any of its officers (elected or appointed), including but not limited to the County Clerk, and the Parties regarding any matter relating to the conduct of the May 29, 2012 Joint Primary Election, or the conduct of the July 31, 2012 Joint Primary Runoff Election, if held, will lie in the appropriate courts of Travis County, Texas.

5. Entire Agreement.

5.1 The Agreement between the County, the County Clerk, the Travis County Republican Party, and the Travis County Democratic Party regarding the conduct of the May 29, 2012 Joint Primary Election and the conduct of the July 31, 2012 Joint Primary Runoff Election, if held, consists of the following:

- i. This Memorandum of Understanding; and
- ii. The attached Election Services Contracts

5.2 The items set forth in Section 5.1, parts i-ii, constitute the entire Agreement between the Parties hereto regarding the conduct of the May 29, 2012 Joint Primary Election and the conduct of the July 31, 2012 Joint Primary Runoff Election, if held, and supersede all prior negotiations, agreements, representations, and understandings, if any, either written or oral, between the parties hereto regarding the conduct of the Joint Primary Election and the Joint Primary Runoff Election, if held.

6. Breach.

6.1 Failure by the Parties to pay the County Clerk the sums of money owed under this Agreement, or the failure by the Parties to perform any of their other respective duties, responsibilities, functions, or obligations under this Agreement will constitute a breach of this Agreement; and, in the event of such breach, the County and/or the County Clerk will be entitled to pursue any and all rights and remedies allowed under federal and/or Texas statutory law, case law, regulations, or rules in order to remedy such breach.

6.2 Failure by the County or the County Clerk to perform any of their respective duties, responsibilities, functions, or obligations as set forth in this Agreement will constitute a breach of this Agreement; and, in the event of such breach, the Parties will be entitled to pursue any and all rights and remedies allowed under federal and/or Texas statutory law, case law, regulations, or rules in order to remedy such breach. This Paragraph 6.2 will not be construed to waive the County's sovereign immunity, and the County hereby retains all of its affirmative defenses.

6.3 In the event either Party breaches its duties or obligations as set forth in this Memorandum of Understanding, the attached Contract, Texas Election Code Chapter 173 or section 172.126, any other applicable provision of the Election Code, or in any rule promulgated by the Texas Secretary of State's Office affecting payment to the County Clerk under this Agreement or affecting the performance by the political Party of any of its other duties, responsibilities, functions, or obligations under this Agreement, the County and/or the County Clerk will be entitled to pursue any and all rights and remedies allowed under federal and/or Texas statutory law, case law, regulations, or rules in order to remedy such breach; and failure by the County and/or the County Clerk to pursue any rights or remedies to which it may be entitled or the partial exercise by the County or the County Clerk of any rights or remedies to which it may be entitled will not constitute a waiver by the County or the County Clerk of such breach or of any subsequent breach of this Agreement; and no action, inaction, or

representation, either written or oral, by any official, agent, representative, employee, or election worker of the County and/or the County Clerk will be considered a waiver by the County or the County Clerk of such breach or of any subsequent breach of this Agreement.

6.4 In the event the County or the County Clerk breach any of their respective duties, responsibilities, functions, or obligations set forth in this Memorandum of Understanding, the attached Contract, Texas Election Code Chapter 173 or section 172.126, any other applicable provisions of the Election Code, or any applicable rule promulgated by the Texas Secretary of State's Office regarding conduct of the May 29, 2012 Joint Primary Election or conduct of the July 31, 2012 Joint Primary Runoff Election, the political Party affected will be entitled to pursue any and all rights and remedies allowed under federal and/or Texas statutory law, case law, regulations, or rules in order to remedy such breach; and, failure by either Party to pursue any rights or remedies to which that Party may be entitled, or that Party's partial exercise of any rights or remedies to which it may be entitled will not constitute a waiver by that Party of such breach or of any subsequent breach of this Agreement; and, no action, inaction, or representation, either written or oral, by any official, agent, representative, employee, or election worker of the Party will be considered a waiver by that Party of such breach or of any subsequent breach of this Agreement. This Paragraph 6.4 will not be construed to waive County's sovereign immunity; and County hereby retains all of its affirmative defenses.

6.5 As used in this Memorandum of Understanding, the term "Agreement" refers to this Memorandum of Understanding, the Election Services Contracts attached hereto, the provisions of Texas Election Code Chapter 173 and sections 172.126 and 31.100, all other applicable provisions of the Election Code, and all applicable rules promulgated by the Texas Secretary of State's Office regarding the conduct of the May 29, 2012 Joint Primary Election and the conduct of the July 31, 2012 Joint Primary Runoff Election, if held.

7. Force Majeure.

In the event the performance by the County or the County Clerk of any of its duties, responsibilities, functions, or obligations as set forth in this Agreement, is delayed by an occurrence, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct by a jurisdiction other than the County, or an act or conduct of any person or persons not privy to this Agreement or not under the control of the County, then the County and the County Clerk will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects of such occurrence on the performance of the obligation(s) in question.

8. Gender and Number.

As used in this Memorandum of Understanding, a masculine, feminine, or neuter gender, and a singular, or plural number will each be deemed to include the others, unless the context indicates otherwise.

9. Other Instruments.

The County, the County Clerk, the Travis County Democratic Party, and the Travis County Republican Party agree that they will execute all other instruments and any documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement, as set forth in this Memorandum of Understanding, the attached Election Services Contracts, Texas Election Code Chapter 173 and sections 172.126 and 31.100, all other applicable provisions of the Election Code, and all applicable rules promulgated by the Texas Secretary of State's Office.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**TRAVIS COUNTY**

By: \_\_\_\_\_  
Honorable Samuel T. Biscoe  
Travis County Judge

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Honorable Dana DeBeauvoir  
Travis County Clerk

Date: \_\_\_\_\_

**TRAVIS COUNTY DEMOCRATIC PARTY**

By: \_\_\_\_\_  
Andy Brown, County Chair

Date: \_\_\_\_\_

**TRAVIS COUNTY REPUBLICAN PARTY**

By: \_\_\_\_\_  
Dr. Rosemary Edwards, County Chair

Date: \_\_\_\_\_

**2012 PRIMARY ELECTION SERVICES CONTRACT  
WITH THE COUNTY ELECTIONS OFFICER  
STATE OF TEXAS, COUNTY OF TRAVIS**

**THIS CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Travis County \_\_\_\_\_ Party, acting by and through the Chair of its County Executive Committee, \_\_\_\_\_, (“Party”) and Dana DeBeauvoir, County Election Officer of Travis County, Texas (“Contracting Officer”) under the authority of Section 31.092(b), Texas Election Code, and relating to the conduct and supervision of the Travis County \_\_\_\_\_ Party’s Primary Election on May 29, 2012( the “election”), and the Travis County \_\_\_\_\_ Party’s Runoff Primary Election, if necessary, on July 31, 2012 (the “runoff election”).

**THIS CONTRACT** is subject to the written approval of the Texas Secretary of State and is not binding on the parties until such written approval is obtained.

**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 will be responsible for performing the following duties and furnishing the following services and equipment in connection with the election and the runoff election:

- 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.
- 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 conduct all required tests of the electronic tabulating equipment under Sections 127.096-127.098 and 129.021-129.023, Texas Election Code.

- 1.5 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.
- 1.6 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.
- 1.7 Arrange for the use of a central counting/central accumulation station and for the 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.
- 1.8 Obtain voter registration lists from the voter registrar to be used during early voting and on Election Day.
- 1.9 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.
- 1.10 If requested by the Party, prepare the unofficial tabulation of precinct results on Election Night in accordance with Section 172.113, Texas Election Code.
- 1.11 Submit Election Night Returns (ENR) electronically to the Texas Secretary of State in the form requested by the Texas Secretary of State.
- 1.12 If requested by the Party, prepare and submit to the Texas Secretary of State 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 office of U.S. Representative, state senator, or state representative, in accordance with Sections 67.017 and 172.124, Texas Election Code.

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

- 2.1 Prepare and submit all required submissions to the U.S. Department of Justice under the federal Voting Rights Act of 1965 for the election and runoff election.
- 2.2 As soon as possible after January 1, 2012, 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.



- 2.3 Appoint a presiding and an alternate judge for each Election Day polling place, a presiding 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.)
- 2.4 Notify the election judges of the election and the runoff election in accordance with Section 4.007, Texas Election Code.
- 2.5 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 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.
- 2.6 As soon as possible after January 4, 2012 (or in the case of a runoff election, after May 29, 2012) 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.
- 2.7 Supervise the overall conduct of the election in the county, including the tabulation of results as set forth in Section 31.092(d), Texas Election Code.

### **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 Party will pay the Contracting Officer for the actual expenses he/she incurs in accordance with Section 31.100 and Section 123.033 (e) and (f), Texas Election Code, including without limitation, the costs and expenses of election supplies, newspaper notice publication, use of voting machines and equipment, wages and salaries of the central counting station personnel, programming the ballot, logic and accuracy testing, and voting machines and equipment transportation.
- 3.2 For the performance of duties and services and the providing of equipment and supplies under Paragraph 1 above, the Party will 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 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 3.1 above and (ii) for the Contracting Officer's fee as described

in 3.2 above. The Contracting Officer will use his/her best efforts to submit the invoice within 45 days after the runoff election.

3.4 The Contracting Officer's invoice will be due and payable by the Party to the address set forth in the invoice within 30 days after its receipt by the Party. If the Party dispute any portion of the invoice, the Party will notify the Contracting Officer within such 30-day period or the invoice will be deemed to be a true and accurate rendering of the amount that is due.

3.5 A cost estimate for the election and the runoff election is attached to and made a part of this contract as Exhibit A.

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 will not be entitled to reimbursement from the Party for the cost of early voting, except for the cost of the ballots and the DRE voting equipment, as set forth in the administrative rules promulgated by the Texas Secretary of State.

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

6. **Acknowledgement of Shared Election.** The Party acknowledges that the Contracting Officer, in accordance with Section 31.092(d), 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 and the cost of ballot programming with the other political party. It is not the intent of this paragraph to establish a joint primary under Section 172.126, Texas Election Code, but to allow the Party and the other political party in connection with their Primary Elections to share services, facilities, and equipment, and the cost thereof, when it is appropriate, efficient, and economical to do so.

## 7. **General Provisions.**

7.1 Nothing contained in this contract will 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 the Party's failure to pay a claim.

- 7.3 The Contracting Officer will file copies of this contract with the County Treasurer (County Judge, if there is not a County Treasurer) and the County Auditor of Travis County, Texas.
- 7.4 Only the actual expenses directly attributable to the contract may be charged to the Party by the Contracting Officer, including administrative fees, Section 31.100, Texas Election Code.
- 7.5 The Party remains liable to pay the Contracting Officer for the actual expenses directly attributable to the Contract, except as provided in Paragraph 4 above, whether or not the Party receives funds from the Texas Secretary of State under Chapter 173, Texas Election Code.
- 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 will be made to these individuals:

For the Contracting Officer:

*Name: Gail Fisher*

*Mailing Address: PO Box 149325  
Austin, Texas 78714-9325*

*Tel.: (512) 854-9193*

*Fax: (512)854-9175*

*Email: gail.fisher@co.travis.tx.us*

For the Party:

*Name: \_\_\_\_\_*

*Mailing Address: \_\_\_\_\_*

*\_\_\_\_\_*

*Tel.: \_\_\_\_\_*

*Fax: \_\_\_\_\_*

*Email: \_\_\_\_\_*

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

The Contracting Officer

\_\_\_\_\_

Dana DeBeauvoir

Travis County Clerk

Date: \_\_\_\_\_

The Party

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The State of Texas                    §  
County of Travis                    §

Before me, the undersigned authority, on this day personally appeared Dana DeBeauvoir known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
Signature of officer administering oath

\_\_\_\_\_  
Title of officer administering oath

The State of Texas                    §  
County of \_\_\_\_\_                    §

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
Signature of officer administering oath

\_\_\_\_\_  
Title of officer administering oath

APPROVED:

Texas Secretary of State

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**JOINT RESOLUTION FOR JOINT PRIMARY ELECTION**

The Travis County Democratic Party and the Travis County Republican Party desire to enter into a Joint Primary Election Services Contract with the Travis County Clerk, Dana DeBeauvoir, as the Election Officer. The Travis County Commissioners Court desires to authorize this Contract. Furthermore, this resolution’s approval and the conduct of the Joint Primary Election is governed by Texas Election Code Chapter 173 and section 172.126, all other applicable provisions of the Texas Election Code, and all applicable rules promulgated by the Texas Secretary of State.

**NOW, THEREFORE,** be it resolved by the Commissioners Court of Travis County, Texas, that:

The commissioners court authorizes a Joint Primary Election and a Joint Contract by and among Andy Brown, County Chair, Travis County Democratic Party; Dr. Rosemary Edwards, County Chair, Travis County Republican Party; and the Honorable Dana DeBeauvoir, Travis County Clerk and Election Officer of Travis County, Texas, for the conduct and supervision of the Travis County Joint Primary Election on Tuesday, May 29, 2012, and the Travis County Joint Primary Runoff Election, if held, on Tuesday, July 31, 2012.

**PASSED AND APPROVED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_**

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge

\_\_\_\_\_  
Ron Davis, Commissioner  
Precinct 1

\_\_\_\_\_  
Sarah Eckhardt, Commissioner,  
Precinct 2

\_\_\_\_\_  
Karen Huber, Commissioner  
Precinct 3

\_\_\_\_\_  
Margaret Gómez, Commissioner  
Precinct 4

**TRAVIS COUNTY DEMOCRATIC PARTY**

**TRAVIS COUNTY REPUBLICAN PARTY**

By: \_\_\_\_\_  
Andy Brown, County Chair

By: \_\_\_\_\_  
Dr. Rosemary Edwards, County Chair

**COUNTY ELECTION OFFICIAL:**

By: \_\_\_\_\_  
Dana DeBeauvoir, County Clerk