Travis County Commissioners Court Agenda Request

Meeting Date: November 4, 2014
Prepared By/Phone Number: Michael Winn, 854-4728
Elected/Appointed Official/Dept. Head: Dana DeBeauvoir, County Clerk
Commissioners Court Sponsor: Judge Biscoe

AGENDA LANGUAGE: CONSIDER AND TAKE APPROPRIATE ACTION REGARDING NEW CONTRACT FOR ELECTION SERVICES TO CONDUCT ELECTIONS FOR TRAVIS COUNTY ENTITIES

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:
CONTRACT FOR ELECTION SERVICES FOR:
Onion Creek Metro Park District

STAFF RECOMMENDATIONS:

ISSUES AND OPPORTUNITIES:

FISCAL IMPACT AND SOURCE OF FUNDING:

REQUIRED AUTHORIZATIONS:
Susan Bell, Chief Deputy Clerk, 854-9587
Michael Winn, Director of Elections, 854-4728/632-5927
Michelle Parker, Assistant Director of Elections, 854-9193/914-6575

Related Departments Elizabeth Winn, County Attorney's Office 854-9415

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 **by Tuesdays at 5:00 p.m.** for the next week's meeting.

ELECTION AGREEMENT BETWEEN TRAVIS COUNTY AND ONION CREEK METRO PARK DISTRICT

Pursuant to Chapter 31, Subchapter D, Chapter 123, and Chapter 271 of the Texas Election Code ("Code") and Chapter 791 of the Texas Government Code, Travis County and Onion Creek Metro Park District ("Participating Entity") enter into this agreement for the Travis County Clerk, as the County's Election Officer, to conduct the Participating Entity's elections, including runoffs, and for the Participating Entity's use of the County's current or future-acquired election equipment for any voting system that the County adopts, as authorized under Title 8 of the Election Code, for all Participating Entity elections. The purpose of this agreement is to maintain consistency and accessibility in voting practices, polling places, and election procedures in order to best assist the voters of the Participating Entity.

I. GENERAL PROVISIONS

(A) Except as otherwise provided in this agreement, the term "election" refers to any Participating Entity election, occurring on any uniform election date prescribed by the Texas Election Code or a primary election date and a resulting runoff, if necessary within all Participating Entity territory located in Travis County. If a runoff is necessary, the Participating Entity shall work with the Election Officer to determine a mutually acceptable run-off date; in the event that the Participating Entity and any other entity for which the County is providing election services or for which the County is conducting a joint election, do not agree on a run-off date, the Participating Entity agrees to whichever run-off date is selected by the Election Officer.

(B) If the Participating Entity determines it is necessary to conduct an election during a time other than that specified in I.(A), the Election Officer and a representative designated by the Participating Entity will meet as soon as possible to determine the feasibility of the Election Officer conducting such an election. If both parties agree that the Election Officer will administer this election, the new election will be based on all other applicable provisions of this agreement, except provisions that are inconsistent and cannot be feasibly applied.

(C) Except as otherwise provided in this agreement, the term "Election Officer" refers to the Travis County Clerk.

(D) Except as otherwise provided in this agreement, the term "precinct" means all precincts in the territory of the Participating Entity located within Travis County.

(E) Except as otherwise provided in this agreement, the term "election services" refers to services used to perform or supervise any or all of the duties and functions that an election officer determines necessary for the conduct of an election. Except as otherwise provided in this agreement, the term "cost for election services" includes the costs for personnel, supplies, materials, or services needed for providing these services as permitted by the Texas Election Code. The term does not refer to costs relating to the use of the voting equipment.

(F) Except as otherwise provided in this agreement, the cost for "use of voting equipment" is the amount the Participating Entity agrees to pay the County for use of the County's direct electronic recording equipment or any other voting equipment in use at the time of the election (hereinafter referred to as DRE).

(G) The Participating Entity agrees to commit the funds necessary to pay for election-related expenses for Participating Entity elections.

(H) The Election Officer has the right to enter into agreements with other entities at any time, including during the dates listed in I.(A).

(I) As a condition for providing election services and equipment usage, the Election Officer may require authorities of political subdivisions holding elections on the same day in all or part of the same territory to enter into a joint election agreement as authorized in Chapter 271 of the Texas Election Code. The Participating Entity agrees to enter into any joint election agreement required by the County.

II. PARTICIPATING ENTITY'S USE OF VOTING EQUIPMENT

The County shall make available to the Participating Entity their current and future-acquired voting system as authorized under Title 8 of the Election Code, subject to reasonable restrictions and conditions imposed by the Election Officer to ensure availability of the equipment for County-ordered elections, primary elections, and subsequent runoff elections, if applicable. The Election Officer may impose reasonable restrictions and conditions to protect the equipment from misuse or damage.

III. APPOINTMENT OF ELECTION OFFICER

(A) The Travis County Election Officer ("Election Officer") is appointed to serve as the Participating Entity's Election Officer and Early Voting Clerk to conduct the Participating Entity's elections described in Section I.

(B) As the Participating Entity's Election Officer and Early Voting Clerk, the Election Officer shall coordinate, supervise, and conduct all aspects of administering voting in Participating Entity elections in compliance with all applicable laws, subject to Section III, (C) below.

(C) The Participating Entity shall continue to perform those election duties listed in (1) through (8) below and any other election duties that may not be delegated to another governmental entity such as receipt of candidate applications:

(1) preparing, adopting, and publishing all required election orders, resolutions, notices and other documents, including bilingual materials, evidencing action by the governing authority of the Participating Entity necessary to the conduct of an election. This includes required newspaper notices unless the Election Officer has

agreed in writing, along with the costs to be assessed, to provide this service on behalf of the Participating Entity and in any debt obligation elections, post the notice required by and in accordance with Section 4.003(f), Texas Election Code in each election day and early voting polling place;

(2) preparing the federal Voting Rights Act election preclearance submissions, if any, to the U.S. Department of Justice, other than changes in a joint election conducted under this agreement that directly affect the County;

(3) preparing the text for the Participating Entity's official ballot in English and Spanish, and any other languages as required by law;

(4) providing the Election Officer with a list of candidates or propositions showing the order and the exact manner in which the candidates' names and the propositions are to appear on the official ballot;

(5) conducting the official canvass of a Participating Entity election;

(6) administering the Participating Entity's duties under state and local campaign finance laws;

(7) having a Participating Entity representative serve as the custodian of its election records; and

(8) filing the Participating Entity's annual voting system report to the Secretary of State as required under Chapter 123 et seq. of the Texas Election Code.

(D) The Participating Entity shall also be responsible for proofing and attesting to the accuracy of all ballot language and format information programmed by the County. This includes any information programmed for use with the audio or tactile button features of the equipment. The Participating Entity will also monitor and review all logic and accuracy testing and mandatory tabulations. The Participating Entity will complete its duties within timeframes as prescribed by the County. If the Participating Entity finds any discrepancies or concerns, it will immediately report them to the Election Officer and work with her to resolve any issues so that final approval can be reached. The Participating Entity shall be responsible for any and all actual costs associated with correcting the ballot and ballot programming if the error is discovered after the Participating Entity has signed off on its final proof containing the error.

(E) Robyn German will assist the County whenever possible when the conduct of the election requires assistance from Participating Entity departments and staff. Robyn German, Election Coordinator will serve as the Regular Early Voting Clerk for the Participating Entity to receive requests for applications for early voting ballots and forward these applications to the Joint Early Voting Clerk. Robyn German, Election Coordinator will serve as the Custodian of Records for the Participating Entity to complete those tasks in the Election Code that the Election Officer will not perform.

IV. ELECTION WORKERS AND POLLING PLACES

(A) For presentation to the governing body of the Participating Entity, the County shall provide a list containing the locations, times, and dates of early voting polling places suitable for consideration and adoption by the governing body in accordance with Texas Election Code Chapter 85. The Election Officer will designate and confirm all Election Day polling place locations.

(B) The Election Officer will assume the responsibility for recruiting election personnel; however, if by the 5th day before the Election, the Election Officer reports vacancies in positions for election judges, alternate judges, election day clerks, early voting ballot board, receiving substation clerks, or any other key election personnel, the Participating Entity shall provide emergency personnel in these positions.

(C) The Election Officer shall notify each of the election judges and alternates of their appointment and the eligibility requirements that pertain to them and to the selection of election day clerks. Included in this notification will be the number of clerks that each precinct should have in addition to the election judge and alternate judge. The election judges and/or the alternates are responsible for recruiting and supervising their clerks.

(D) All election workers must agree to attend training sessions as determined by the Election Officer. Costs for these training sessions and compensation for attendees, if authorized, will be included as part of the election services costs.

(E) During any election and any subsequent runoff election that involve entities in addition to the Participating Entity, the Election Officer will work with all parties to find a plan that can be agreed upon regarding the designation of polling places. If agreement cannot be reached, the Election Officer will resolve the differences. In all cases, emergency polling place changes will be made by the Election Officer.

V. PAYMENTS FOR ELECTION SERVICES

(A) Payments for the use of voting equipment are addressed separately in Section VI. of this agreement.

(B) At the time a Participating Entity executes this Agreement, its representative must tender $100 towards the costs associated with administering the election including, but not limited to, polling place searches and preparation for poll worker training. If the election is ultimately held by the Election Officer, the $100 fee will be applied towards the Participating Entity's total costs due to the Election Officer. Not later than the 45th day before an election, the Participating Entity will make a payment equal to 75% of the total of the Participating Entity's projected share of election costs according to the most recent calculation presented by the Election Officer.

(C) In case of a cancellation of an election by the Participating Entity, the Participating Entity shall notify the Election Officer on or before 11:59 p.m. on the 60th day before the election whether it expects to be able to cancel its election, and on or before 11:59 p.m. on the 53rd day before the election if that election will or will not be cancelled. If the Participating Entity cancels its election, the $100 fee will not be refunded.

(D) Notwithstanding the provisions in IX. (B), the County and the Participating Entity agree that notice under V. (B) can be provided via e-mail to the County at elections@co.travis.tx.us and cc to michael.winn@co.travis.tx.us. Email notification shall be sent by Robyn German, Election Coordinator. No further costs (except for the $100 fee) will be due if the Election Officer receives final written notice on or before 11:59 p.m. of the 53rd day before the election that an election will be cancelled. Within thirty days after receipt of an election cost schedule or bill setting forth the Election Officer's actual contract expenses and charges incurred in the conduct of the election, the Participating Entity shall pay the Election Officer the remaining balance due. If there is a runoff election, the Participating Entity will make a payment equal to 75% of the projected costs for the runoff election immediately after receiving that projected cost from the Election Officer. The projected share of election costs will include the 10% fee for election services as discussed in V. (C).

(E) The Election Officer will charge a fee for election services, as described in Section V, equal to 10% of the total costs of each election, excluding the costs of voting equipment. Costs for use of voting equipment are described in Section VI. In the event of a joint election, the election costs will be divided on a pro rata basis among all entities involved in the election in the following manner referred to hereafter as the "pro rata methodology": the number of precincts each participating entity has involved in an election will be added together. The proportional cost of each participating entity for election services will be calculated by multiplying the proportional percentage of each participating entity by the total cost of the election. The product of these numbers is the pro rata cost of each participating entity. Additionally, the Participating Entity acknowledges and understands that if any other Participating Entity should cancel its election, each remaining Participating Entity's pro rata cost will result in a proportionate cost increase.

(F) For elections that do not have a runoff election, the County will send the Participating Entity a final invoice of election expenses not later than the 90th day after an election. For elections that do have a runoff, the County may send the Participating Entity a final invoice of election expenses not later than the 90th day after the runoff election. The total amount due according to these invoices shall be offset by payments made for costs made in accordance with Subsection (B) of this section and offset by any payments made otherwise. The County shall prepare the invoice to include the total payment due from the Participating Entity for any portion of the Participating Entity's costs.

(G) The Participating Entity shall promptly review an election invoice and any supporting documentation when received from the County. The Participating Entity may audit, during normal business hours, relevant County election or accounting records upon reasonable notice to the County. The Participating Entity shall pay the entire final

invoice or the undisputed portion of the final invoice not later than the 30th day after receiving the invoice. Failure to timely pay invoice in full may impact Election Officer's participation in future elections with Participating Entity.

VI. PAYMENTS FOR USE OF VOTING EQUIPMENT

(A) The Election Officer shall conduct elections using a voting system certified by the Secretary of State in accordance with the Texas Election Code and that has been approved for use by the Travis County Commissioners Court unless otherwise agreed upon by both parties.

(B) The Participating Entity shall make payments to Travis County as consideration for the use of the County's DRE equipment. The Participating Entity shall pay $5 for each unit of electronic voting system equipment installed at a polling place; and $5 for each unit of other electronic equipment used to conduct the election or provide election services.

(C) If the Participating Entity holds an election on a date when the County is holding its own election, the Participating Entity is not charged any cost for equipment usage. However, if a runoff election is necessary after such an election, the Participating Entity will be responsible for payment of equipment usage.

(D) If the Participating Entity holds an election on a date other than as listed in Section I.(A), the Participating Entity will pay $5 for each unit of electronic voting system equipment installed at a polling place; and $5 for each unit of other electronic equipment used to conduct the election or provide election services.

(E) Payment by the Participating Entity to the County for DRE equipment is due 30 days after receipt of billing as part of the final payment for election costs as discussed in Section V. (D).

(F) If the County acquires additional equipment, different voting equipment, or upgrades to existing equipment during the term of this contract, the charge for the use of the equipment may be renegotiated.

VII. ADDITIONAL EARLY VOTING LOCATIONS

(A) All of the Participating Entity's voters within Travis County will have access to all of the Travis County Early Voting sites in each election at no additional cost. If Travis County does not run a permanent or mobile site in a Participating Entity's area, the Participating Entity may request a mobile unit for one to five days. This would include Travis County staff setting up and breaking down the equipment daily, training staff for each location, and providing Travis County law enforcement to secure the equipment in the Travis County Elections Division's safe at 5501 Airport on a daily basis.

(B) Any Participating Entity requesting additional, early voting sites for service for only their voters shall be responsible for the additional cost of $1,560 per location, with said costs to be included in the overall election costs for that Participating Entity.

VIII. COMMUNICATIONS

(A) The Participating Entity and the Election Officer shall each designate a member of their staff to serve as the primary contact for the respective offices under this agreement and provide the name and contact information for that individual to each entity.

(B) Throughout the term of this Agreement, the Participating Entity and the County will engage in ongoing communications issues related to Participating Entity elections, the use of County's voting equipment, and the delivery of services under this agreement and, when necessary, the County Clerk, elections division staff members, and other election workers shall meet with the Participating Entity to discuss and resolve any problems which might arise under this Agreement.

(C) The Election Officer shall be the main point of media contact for election information related to election administration. The Participating Entity shall designate a contact to be the main point of contact for matters related to the content of the Participating Entity's ballot or candidates.

IX. MISCELLANEOUS PROVISIONS

(A) Amendment/Modification

Except as otherwise provided, this Agreement may not be amended, modified, or changed in any respect whatsoever, except by a further Agreement in writing, duly executed by the parties hereto. No official, representative, agent, or employee of the County has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the Commissioners Court of Travis County, Texas. No official, representative, agent, or employee of the Participating Entity has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the governing body of the Participating Entity. Dana DeBeauvoir, Travis County Clerk, may propose necessary amendments or modifications to this Agreement in writing in order to conduct a Joint Election smoothly and efficiently, except that any such proposals must be approved by the Commissioners Court of the County and the governing body of the Participating Entity.

(B) Notice

Any notice to be given hereunder by any party to the other shall be in writing and may be effected by personal delivery, by certified mail, or by common carrier. Notice to a party shall be addressed as follows:

Onion Creek Metro Park District
c/o Allen Boone Humphries and Robinson
1108 Lavaca, Suite 510
Austin, Texas 78701
Attention: Michelle Bryan

And a copy also to:

Onion Creek Metro Park District
c/o Allen Boone Humphries and Robinson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attention: Robyn German

TRAVIS COUNTY
Honorable Dana DeBeauvoir, Travis County Clerk
1000 Guadalupe Street, Room 222
Austin, Texas 78701

Cc: Honorable David Escamilla, Travis County Attorney
314 West 11th Street, Suite 300
Austin, Texas 78701

Notice by hand-delivery is deemed effective immediately, notice by certified mail is deemed effective three days after deposit with a U.S. Postal Office or in a U.S. Mail Box, and notice by a common carrier, is deemed effective upon receipt. Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

(C) Force Majeure

In the event that the performance by the 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 persons not a party or in privity thereof, 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.

(D) Venue and Choice of Law

The Participating Entity agrees that venue for any dispute arising under this Agreement will lie in the appropriate courts of Austin, Travis County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

(E) Entire Agreement

This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed and also supersede all prior agreements, including prior election services contracts and prior agreements to conduct joint elections.

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 as provided herein.

(F) Severability

If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement; and, parties to this Agreement shall perform their obligations under this Agreement in accordance with the intent of the parties to this Agreement as expressed in the terms and provisions of this Agreement.

(G) Breach

In the event that Participating Entity or County breaches any of its obligations under this Agreement, the non-breaching party shall be entitled to pursue any and all rights and remedies allowed by law.

(H) Payments from Current Revenues

Payments made by the Participating Entity in meeting its obligations under this Agreement shall be made from current revenue funds available to the governing body of the Participating Entity. Payments made by the County in meeting its obligations under this Agreement shall be made from current revenue funds available to the County.

(I) Other Instruments

The County and the Participating Entity agree that they will execute other and further instruments or any documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(J) Third Party Beneficiaries

Except as otherwise provided herein, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights or remedies under or by reason of this Agreement.

(K) Other Joint Election Agreements

The County and the Participating Entity expressly understand and acknowledge that each may enter into other Joint Election Agreements with other jurisdictions, to be held on Election Day and at common polling places covered by this Agreement.

(L) Mediation

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.023 of the Texas Civil Practice and Remedies Code unless both parties agree, in writing, to waive the confidentiality. Notwithstanding the foregoing, the parties intend to fully comply with the Texas Open Meetings Act and the Texas Public Information Act whenever applicable. The term "confidential" as used in this Agreement has the same meanings as defined and construed under the Texas Public Information Act and the Texas Open Meetings Act.

(M) Addresses for Payments

Payments made to the County or the Participating Entity under this agreement shall be addressed to following respective addresses:

Elections Division
Travis County Clerk
P.O. Box 149325
Austin, Texas 78714-9325

Onion Creek Metro Park District
c/o Allen Boone Humphries and Robinson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attention: Robyn German

(N) This agreement is effective upon execution by both parties and remains in effect until either party terminates this agreement for any reason upon providing 60 days written notice to the other party.

(O) The individuals below have been authorized to sign this Agreement.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of _____, 20____.

PARTICIPATING ENTITY

BY: _____
President, Board of Directors

TRAVIS COUNTY

BY: _____
Samuel T. Biscoe
County Judge

BY: _____
Dana DeBeauvoir
County Clerk