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Joint Elections and Contracting

TEXAS SECRETARY OF STATE

Election Contracts, Joint Election Agreements & Leases For Equipment

17th Biennial Election Law Seminar for County Chairs

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Three Ways to Have an Election

- You may have your primary election in one of three ways:
  - By contracting for election services with the county (Ch. 31);
  - By holding a joint primary election (Ch. 271);
  - By leasing an electronic voting system (Ch. 123).

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Practical Considerations

- Decide whether you have the time, manpower and expertise to conduct your own election.
  - **Consider:** Equipment (obtaining, programming, testing); ordering ballots; hiring and training workers (election day, early voting ballot board, central counting); publishing notice of election; tabulating results and canvassing election; etc.

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Practical Considerations

- Deadline for entering into agreements?
  - There is no statutory deadline.
  - We suggest the county chairs meet with the county election officer to discuss establishment of early voting ballot board, delivery of materials to the early voting ballot board, acceptance of mail ballots, and manual counting, if any, of early voting ballots by November 5, 2015.
    - Notice of this meeting must be posted 72 hours prior to the meeting.

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Contract for Election Services

- A ***contract for election services*** is a contract between the county executive committee of a political party holding a primary in the county and the county election officer for specific election services that the county election officer would perform in a countywide election (equipment, ballot programming, etc.).

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Joint Primary Agreement

- A ***joint election agreement*** is when two political parties, who are holding primary elections, jointly hold the election in common precincts. The joint election agreement must be by written joint resolution and approved by majority vote of full commissioner's court and unanimously approved by county elections officer and county chairs of participating parties.

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Lease for Equipment

- A county executive committee for a political party may ***lease election equipment*** from the county or any other source.

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Contracting vs. Joint Election

	Contract for Services	Joint Primary Election Agreement
Parties	County, Party	County and Both Parties
Approval	• County election officer **and** county executive committee.	• Majority of full commissioner's court and unanimous approval of county elections officer and participating county chairs
Duty of County to Contract	• **Yes**, if elections administrator.	• No duty to have a joint primary election

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Three Types of Agreements

- So, we'll discuss three types of agreements:
  - Contract for Election Services
  - Joint Primary Election Agreement
  - Lease of Election Equipment

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What We'll Discuss

- For each type of agreement:
  - **Parties** to the contract;
  - Whether there is a **duty to contract**;
  - How to get **approval** for the agreement;
  - **Contents** of the agreement; *and*
  - How the agreement should handle **compensation**.

Contract for Election Services

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Parties to the Contract
Contract for Election Services

- The **county election officer**:
  - County Elections Administrator
  - County Tax Assessor-Collector (or deputy)
  - County Clerk (or deputy)
- The county executive committee of a **political party** located in the county.

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Duty to Contract
Contract for Election Services

- If the county election officer is:
  - **County Clerk**
  - **County Tax Assessor-Collector**
- Then there is ***no duty to contract*** in the Code.

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Duty to Contract
Contract for Election Services

- If it's the **County Elections Administrator:**
  - They **must** contract to 'furnish services requested.'
  - Except:
    - They are not required to provide for the training of election judges and clerks.

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Duty to Contract
Contract for Election Services

- What if the county elections administrator and the party cannot agree on contract terms?
  - The Election Code does not address this issue.

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Approval of Contract
Contract for Election Services

- Does **not** need to be submitted to the commissioners court for approval.
- The parties will need to check their own laws/rules regarding contract approval.
- If contracting with one political party for election services, the county election official must offer same contract terms to other parties in the county holding primary elections.

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Contents of Contract
Contract for Election Services

- The contract may provide for the county election officer to perform or to supervise the performance of **any or all** of the duties that the officer performs in a countywide election ordered by the commissioners court. This may include testing and programming of election equipment as well as reporting results to SOS.
  - Please refer to our sample primary election services contract in the seminar manual

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Contents of Contract
Contract for Election Services

- The contract may **not** change:
  - The filing authority for candidate applications;
  - The filing authority for Title 15 documents;
  - Or, the custodian of voted ballots or election records.

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Compensation in Contract
Contract for Election Services

- The contract must include an itemized list of estimated election expenses.
- The county may only use funds for expenses **directly attributable** to the contract.
- Any advance funds over the actual expenses must be **refunded** to the chair.

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Compensation in Contract
Contract for Election Services

- The **county election officer** cannot:
  - Charge for duties that must be performed by law.
  - Be personally paid for services under contract.
- The **county election officer** can:
  - Charge up to 10% of the total amount of the contract for general supervision of the election.

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Joint Election Agreement

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Parties to the Contract and Approval of Contract

Joint Election Agreement

- The decision to conduct a joint primary election must be made by written, joint resolution of a majority vote of the full membership of the commissioners court and with the unanimous approval of the county clerk and the county chair of each political party required to nominate candidates by primary election.
  - **There is a sample joint primary resolution in your seminar materials**

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Contents of Contract
Joint Election Agreement

- **Polling places:**
  - Regular county polling places for general election for state and county officers.
  - Precincts may be consolidated, but county clerk shall position polling places to accommodate precinct conventions of all parties.
- **Election officers:**
  - One set of election officers conduct the joint primary at each polling location. Parties provide lists of judges/clerks to the county clerk no later than the 2nd Monday in December. Judges from all parties in the primary serve as co-judges.

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Contents of Contract
Joint Election Agreement

- **Ballots:**
  - The county clerk determines the ballot format and voting system for each precinct and provides the supplies/equipment.
  - Separate ballot boxes for each party must be maintained, except a joint ballot box may be used if voters are depositing ballots directly into automatic tabulating equipment.
- **Form and records:**
  - The list of registered voters and voter registration certificates should be stamped to show the affiliation of each voter and a separate list of registered voters shall be used for each party's primary.

Compensation in Contract
Joint Election Agreement

- The joint primary resolution must include an itemized list of estimated election expenses.
- The county may only use funds for expenses **directly attributable** to the contract.
  - Counties with a population of 100,000 or more may request to SOS that primary expenses incurred be paid directly to the county elections officer rather than the county chair.
- Any advance funds over the actual expenses must be **refunded** to the chair.

Leasing of Election Equipment

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Parties to the Contract
Acquisition of Election Equipment

- The **county executive committee of a political party** may lease equipment from the **county** in which it is located.
- If the county doesn't have the **desired equipment**, the party may acquire it by **any other means** from **any other source**.

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Duty to Contract
Acquisition of Election Equipment

- If a political party wishes to lease election equipment owned by the county, the county **must** lease the equipment under the terms agreed to by both parties to the leasing agreement.

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Duty to Contract
Acquisition of Election Equipment

- However, county may impose **reasonable restrictions** for:
  - Ensuring the **availability** of the equipment for an election for which the county adopted it.
  - **Protecting** the equipment from misuse or damage.
- The county is **not** required to provide equipment to a party for use in an election precinct in which fewer than 100 votes were cast in the party's most recent primary or runoff primary.

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Compensation in Contract
Acquisition of Election Equipment

- The county may charge the political party a **fee for leasing** the equipment.
- The maximum amount that may be charged to a county executive committee leasing equipment is $5 for each unit of electronic voting system equipment installed at a polling place and $5 for each unit of other equipment.

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Practical Considerations

- All three types of agreements discussed today must be **in writing**.
  - Clear inference: §§ 31.099, 123.033, 172.126.
- There's **no standard** form or document for any of these agreements.
  - We do have sample contracts for primary election services and joint primary elections in your seminar materials

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Questions & Answers

2016 PRIMARY ELECTION SERVICES CONTRACT WITH THE COUNTY ELECTIONS OFFICER STATE OF TEXAS, COUNTY OF_____

THIS CONTRACT is made and entered into this _____ day of _____, 20__, by and between the _____ County _____ Party, acting by and through the Chair of its County Executive Committee, _____ (***name***), hereinafter referred to as "Party," and _____ (***name***), County Election Officer of _____ County, Texas, hereinafter referred to as the "Contracting Officer," under the authority of Section 31.092(b), Texas Election Code and relating to the conduct and supervision of the _____ County _____ Party's Primary Election on _____, 2016 (hereinafter referred to as the "election"), and the _____ County _____ Party's Runoff Primary Election, if necessary, on _____, 2016 (hereinafter referred to as the "runoff election").

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

1. Duties and Services of the Contracting Officer. The Contracting Officer shall be responsible for performing the following duties and furnishing the following services and equipment ***(strike out any not being performed by the C.O.)*** in connection with the election and the runoff election:

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

1.2 Conduct one or more election schools, and notify the election judges of the date(s), time(s), and place(s) of such schools. (This does not imply that election judges or clerks will be paid for attending such schools. See 1 T.A.C. §§ 81.120(a) & 81.121(c).)

1.3 Program, or arrange to have programmed, the ballot.

1.4 Arrange to have published the legal notice of the first test of the electronic tabulating equipment as provided in Section 127.096, Texas Election Code, and/or the legal notice of the logic and accuracy test of the direct recording electronic ("DRE") voting machines as provided in Section 129.023(b), Texas Election Code, as applicable, and conduct all required tests of the electronic tabulating equipment under Sections 127.096-127.098,

Texas Election Code, the voting system that uses DRE voting machines under 129.021-129.023, Texas Election Code, or the voting system that uses other electronic voting systems in accordance with advisories issued by the Texas Secretary of State (hereinafter referred to as "SOS"), respectively.

1.5 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 central counting station manager and tabulating personnel and equipment needed at the counting/accumulation station and assist in the preparation of programs and the test materials for the tabulation of ballots to be used with electronic voting equipment.

1.8 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 (hereinafter referred to as "SOS") in the form requested by the SOS in accordance with Chapter 68, Texas Election Code.

1.12 If requested by the Party, prepare and submit to the SOS an electronic report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the offices of President and Vice-President of the United States, U.S. Representative, state senator, or state representative, in accordance with Sections 67.017 and 172.124, Texas Election Code.

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

2.1 As soon as possible after December 9, 2013, in accordance with Sections 42.002(a)(3), 42.009 and 43.003, Texas Election Code, determine whether there will be a consolidation of county voting precincts for the election and the runoff election, designate the polling

place for each voting precinct for the election and runoff election, and advise the Contracting Officer of any such consolidations and the names and addresses of the polling places and the contact persons for them.

2.2 Appoint a presiding and an alternate judge for each election day polling place, a presiding and an alternate judge for the central counting station, and a presiding judge for the early voting ballot board and promptly provide the names and contact information to the Contracting Officer. (It is the responsibility of the presiding judges to appoint the appropriate number of election clerks.)

2.3 Appoint in accordance with Sections 127.002, 127.003, and 127.004, Texas Election Code, the counting station manager, tabulation supervisor, and assistants to the tabulation supervisor that usually perform these functions in the county for elections ordered by the governor, the county judge or commissioners court.

2.4 Notify the election judges of the election and the runoff election in accordance with Section 4.007, Texas Election Code.

2.5 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 the final candidate filing deadline (or in the case of a runoff election, after the canvass of the election) to allow sufficient time to prepare the ballot and to conduct any necessary logic and accuracy testing so that ballots going overseas may be mailed no later than 45 days before the election dates for the election and the runoff election, certify in writing to the Contracting Officer (i) the candidates' names (as they are to appear on the ballot) and offices, and (ii) any referenda under Section 172.087, Texas Election Code (in English, Spanish, and any other required languages) that are to appear on the ballot.

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.

2.8 Prepare the unofficial tabulation of precinct results on election night in accordance with Section 172.113, Texas Election Code.

2.9 Prepare and submit to the SOS an electronic report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the offices of President and Vice-President of the United States, U.S. representative, state senator, or state representative, in accordance with Sections 67.017 and 172.124, Texas Election Code.

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 shall pay the Contracting Officer for the actual expenses he/she incurs in accordance with Section 31.100, Texas Election Code and the leasing fees allowed under Section 123.033 (e) and (f), Texas Election Code, including without limitation, the costs and expenses of election supplies; newspaper publication of the testing notice only; use of voting machines and equipment; wages and salaries of the precinct election judges, alternate judges, and election clerks, members of the early voting ballot board, and central counting station personnel; programming the ballot; logic and accuracy testing, and voting machines and equipment transportation. Provided, that nothing herein shall be construed as permitting the Contracting Officer to be paid for costs or expenses for which reimbursement is not allowed under Section 31.100 or other sections of the Texas Election Code or under the SOS administrative rules or advisories relating to primary funds.

3.2 For the performance of duties and services and the providing of equipment and supplies under Paragraph 1 above, the Party shall pay the Contracting Officer a fee of 10% of the total amount of the Contract (but not less than $75) in accordance with Section 31.100(d), Texas Election Code.

3.3 Notwithstanding anything to the contrary in this Contract, the Contracting Officer may require that money be paid in advance to conduct the election and the runoff election from the Party, which must be paid into a separate county fund in accordance with Section 31.100(a), Texas Election Code, from which the Contracting Officer may make expenditures for the election and runoff election.

3.4 Notwithstanding anything to the contrary in this Contract, the Contracting Officer in a county with a population of 100,000 or more may seek direct payment of actual expenses incurred by the Contracting Officer in connection with the election or runoff election and in accordance with this Contract from the SOS in accordance with rules and procedures established by the SOS and Section 173.0832, Texas Election Code.

3.5 Notwithstanding anything to the contrary in this Contract, the Contracting Officer may request the Party to pay directly to the precinct election and alternate judges and election clerks, members of the early voting ballot board, and the presiding and alternate judges and clerks of the central counting station the wages and salaries earned by them in connection with the election and runoff election.

3.6 A cost estimate for the services, equipment, and supplies provided by the Contracting Officer for the election and the runoff election is attached to and made a part of this Contract as Exhibit A. The cost estimate should express costs in the categories set forth in the Party's Primary Cost Estimate and the Party's Primary Runoff Cost Estimate. The Party and the Contracting Officer acknowledge that the cost of the election and the runoff election is paid for from the county primary fund described in Section 173.031, Texas

Election Code, with the county paying for the cost of early voting in accordance with Section 173.003, Texas Election Code. The Contracting Officer and the Party also acknowledge their responsibility to comply with the administrative rules issued by the SOS relative to primary financing, 1 T.A.C. §§ 81.101-81.157.

3.7 As soon as reasonably possible after the election or the runoff election, the Contracting Officer will submit an itemized invoice to the Party (i) for the actual expenses he/she incurred as described in Paragraph 3.1 above and (ii) for the Contracting Officer's fee as described in Paragraph 3.2 above. The invoice shall reflect any advance monies paid under Paragraph 3.3 and any direct payments made under Paragraph 3.4. The Contracting Officer will use his/her best efforts to submit the invoice within 30 days after the election or within 10 days after the runoff election.

3.8 The Contracting Officer's invoice shall 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 disputes any portion of the invoice, the Party shall 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.

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

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

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

*7. **General Provisions.***

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

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

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

7.4 Only the actual expenses directly attributable to the Contract may be charged 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 SOS under Chapter 173, Texas Election Code. Both parties acknowledge that the Party should not request the Contracting Officer to incur expenses in connection with the election and runoff election that are not reimbursable with primary funds under the SOS administrative rules or Texas Statutes and that the Contracting Officer should not incur expenses in connection with the election and runoff election that are not reimbursable with primary funds under the SOS administrative rules or Texas Statutes.

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

For the Contracting Officer:
*Name*_____
*Mailing Address*_____
_____
*Tel.:*_____
*Fax:*_____
*Email:*_____

For the Party:
*Name*_____
*Mailing Address*_____
_____
*Tel.:*_____
*Fax:*_____
*Email:*_____

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

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

The Contracting Officer

By_____

Title_____ (Seal)

Date_____

The Party

By_____

Title_____

Date_____

2016 JOINT PRIMARY ELECTION SERVICES CONTRACT WITH THE COUNTY ELECTIONS OFFICER STATE OF TEXAS, COUNTY OF_____

THIS CONTRACT is made and entered into this _____ day of _____, 20__, by and between the _____ County _____ Party, acting by and through the Chair of its County Executive Committee, _____ (***name***), hereinafter referred to as "Party," and _____ (***name***), County Election Officer of _____ County, Texas, hereinafter referred to as the "Contracting Officer," under the authority of Section 31.092(b), Texas Election Code and relating to the conduct and supervision of the _____ County Joint Primary Election on _____, 2016 (hereinafter referred to as the "election"), and the _____ County Joint Runoff Primary Election, if necessary, on _____, 2016 (hereinafter referred to as the "runoff election"), such Joint Primary Election and Joint Runoff Election having been approved in accordance with Section 172.126(a), Texas Election Code, by _____ County Commissioners Court on _____, 20__, _____County Clerk/Elections Administrator/Tax Assessor-Collector, and the County Chairs of the _____ County Republican Party and _____ County Democratic Party, respectively.

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

1. Duties and Services of the Contracting Officer. The Contracting Officer shall be responsible for performing the following duties and furnishing the following services and equipment ***(strike out any not being performed by the C.O., except those required by Section 172.126, Texas Election Code)*** in connection with the election and the runoff election:

1.1 In accordance with Section 172.126(b), Texas Election Code, determine whether to consolidate election precincts under Section 42.009, Texas Election Code, and designate the location of the polling place in a consolidated precinct. In the event that the county is approved to use countywide polling places in accordance with Section 43.007(a)(4), Texas Election Code, and if the county chairs of both political parties agree in writing to

the use of such countywide polling places, the Contracting Officer shall use the county methodology described in Section 43.007(f), Texas Election Code, to determine the countywide polling places for the election and runoff election.

1.2 In accordance with Section 172.126(c), Texas Election Code, and rules prescribed by the Texas Secretary of State (hereinafter referred to as "SOS"), appoint one set of election judges and election clerks (not to exceed the maximum number set by the SOS) for each voting precinct from the names submitted by the parties. The presiding judge of each party for each election day precinct shall serve as a co-judge. There will be one early voting ballot board and one set of central counting station judges and clerks, the members of whom will be chosen from the names submitted by the parties. The Contracting Officer must ensure party balance among the polling place election workers, early voting ballot board members, and central counting station judges and clerks.

1.3 Notify the election judges of the election and the runoff election in accordance with Section 4.007, Texas Election Code.

1.4 Contact the owners or custodians of the designated polling places and arrange for their use in the election and runoff election.

1.5 Conduct one or more election schools, and notify the election judges of the date(s), time(s), and place(s) of such schools. (This does not imply that election judges or clerks will be paid for attending such schools. See 1 T.A.C. §§ 81.120(a) & 81.121(c).)

1.6 In accordance with Section 172.126(f), Texas Election Code, determine the ballot format and voting system for each election precinct.

1.7 Program, or arrange to have programmed, the ballot.

1.8 Arrange to have published the legal notice of the first test of the electronic tabulating equipment as provided in Section 127.096, Texas Election Code, and/or the legal notice of the logic and accuracy test of the direct recording electronic ("DRE") voting machines as provided in Section 129.023(b), Texas Election Code, as applicable, and conduct all required tests of the electronic tabulating equipment under Sections 127.096-127.098, Texas Election Code, the voting system that uses DRE voting machines under 129.021-129.023, Texas Election Code, or the voting system that uses other electronic voting systems in accordance with advisories issued by the SOS, respectively.

1.9 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.

1.10 Procure all necessary voting machines and equipment, prepare them for use at the early voting and election day polling places, and transport them (or arrange to have them transported) to and from the early voting and election day polling places.

1.11 Arrange for the use of a central counting/central accumulation station and for the central counting station manager and tabulating personnel and equipment needed at the counting/accumulation station and assist in the preparation of programs and the test materials for the tabulation of ballots to be used with electronic voting equipment.

1.12 Obtain voter registration lists from the voter registrar to be used during early voting and on election day.

1.13 In accordance with Section 172.126(a), Texas Election Code, supervise the overall conduct of the joint primary election.

1.14 If requested by the Party, prepare the unofficial tabulation of precinct results on election night in accordance with Section 172.113, Texas Election Code. Separate election returns must be prepared for each party's primary election.

1.15 Submit Election Night Returns ("ENR") electronically to the SOS in the form requested by the SOS in accordance with Chapter 68, Texas Election Code.

1.16 If requested by the Party, prepare and submit to the SOS an electronic report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the offices of President and Vice-President of the United States, U.S. Representative, state senator, or state representative, in accordance with Sections 67.017 and 172.124, Texas Election Code.

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

2.1 In accordance with Section 172.126(c), Texas Election Code, not later than the second Monday in December preceding the election, deliver to the Contracting Officer a list of the election judges and clerks for the Party, including judges and clerks for the early voting ballot board and the central counting station.

2.2 Appoint in accordance with Sections 127.002, 127.003, and 127.004, Texas Election Code, the counting station manager, tabulation supervisor, and assistants to the tabulation supervisor that usually perform these functions in the county for elections ordered by the governor, the county judge or commissioners court.

2.3 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.

2.4 As soon as possible after the final candidate filing deadline (or in the case of a runoff election, after the canvass of the 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, to allow sufficient time to prepare the ballot and to conduct any necessary logic and accuracy testing.

2.5 Prepare the unofficial tabulation of precinct results on election night in accordance with Section 172.113, Texas Election Code.

2.6 Prepare and submit to the SOS an electronic report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the offices of President and Vice-President of the United States, U.S. representative, state senator, or state representative, in accordance with Sections 67.017 and 172.124, Texas Election Code.

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 shall pay the Contracting Officer for the actual expenses he/she incurs in accordance with Section 31.100, Texas Election Code and the leasing fees allowed under Section 123.033 (e) and (f), Texas Election Code, including without limitation, the costs and expenses of election supplies; newspaper publication of the testing notice only; use of voting machines and equipment; wages and salaries of the precinct election judges, alternate judges, and election clerks, members of the early voting ballot board, and central counting station personnel; programming the ballot; logic and accuracy testing, and voting machines and equipment transportation. Provided, that nothing herein shall be construed as permitting the Contracting Officer to be paid for costs or expenses for which reimbursement is not allowed under Section 31.100 or other sections of the Texas Election Code or under the SOS administrative rules or advisories relating to primary funds.

3.2 For the performance of duties and services and the providing of equipment and supplies under Paragraph 1 above, the Party shall pay the Contracting Officer a fee of 10% of the total amount of the Contract (but not less than $75) in accordance with Section 31.100(d), Texas Election Code.

3.3 Notwithstanding anything to the contrary in this Contract, the Contracting Officer may require that money be paid in advance to conduct the election and the runoff election from the Party, which must be paid into a separate county fund in accordance with Section 31.100(a), Texas Election Code, from which the Contracting Officer may make expenditures for the election and runoff election.

3.4 Notwithstanding anything to the contrary in this Contract, the Contracting Officer in a county with a population of 100,000 or more may seek direct payment of actual expenses incurred by the Contracting Officer in connection with the election or runoff election and in accordance with this Contract from the SOS in accordance with rules and procedures established by the SOS and Section 173.0832, Texas Election Code.

3.5 Notwithstanding anything to the contrary in this Contract, the Contracting Officer may request the Party to pay directly to the precinct election and alternate judges and election clerks, members of the early voting ballot board, and the presiding and alternate judges and clerks of the central counting station the wages and salaries earned by them in connection with the election and runoff election.

3.6 A cost estimate for the services, equipment, and supplies provided by the Contracting Officer for the election and the runoff election is attached to and made a part of this Contract as Exhibit A. The cost estimate should express costs in the categories set forth in the Party's Primary Cost Estimate and the Party's Primary Runoff Cost Estimate. The Party and the Contracting Officer acknowledge that the cost of the election and the runoff election is paid for from the county primary fund described in Section 173.031, Texas Election Code, with the county paying for the cost of early voting in accordance with Section 173.003, Texas Election Code. The Contracting Officer and the Party also acknowledge their responsibility to comply with the administrative rules issued by the SOS relative to primary financing, 1 T.A.C. §§ 81.101-81.157.

3.7 As soon as reasonably possible after the election or the runoff election, the Contracting Officer will submit an itemized invoice to the Party (i) for the actual expenses he/she incurred as described in Paragraph 3.1 above and (ii) for the Contracting Officer's fee as described in Paragraph 3.2 above. The invoice shall reflect any advance monies paid under Paragraph 3.3 and any direct payments made under Paragraph 3.4. The Contracting Officer will use his/her best efforts to submit the invoice within 30 days after the election or within 10 days after the runoff election.

3.8 The Contracting Officer's invoice shall 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 disputes any portion of the invoice, the Party shall 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.

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

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

*6. **Acknowledgement of Shared Election.*** The Party acknowledges that the election is a Joint Primary under Section 172.126, Texas Election Code and that the Contracting Officer, in accordance with Section 31.092(e), Texas Election Code, may enter into a similar Joint 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, the cost of ballot programming, voting equipment, and the common set of election workers with the other political party.

7. ***General Provisions.***

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

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

7.4 Only the actual expenses directly attributable to the Contract may be charged 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 SOS under Chapter 173, Texas Election Code. Both parties acknowledge that the Party should not request the Contracting Officer to incur expenses in connection with the election and runoff election that are not reimbursable with primary funds under the SOS administrative rules or Texas Statutes and that the Contracting Officer should not incur expenses in connection with the election and runoff election that are not reimbursable with primary funds under the SOS administrative rules or Texas Statutes.

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

For the Contracting Officer:
*Name*_____
*Mailing Address*_____
_____
*Tel.:*_____
*Fax:*_____

*Email:*_____

For the Party:
*Name*_____
*Mailing Address*_____
_____
*Tel.:*_____
*Fax:*_____
*Email:*_____

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

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

The Contracting Officer

By_____ (Seal)

Title_____

Date_____

The Party

By_____

Title_____

Date_____

Prescribed by Secretary of State (Form JRC)
Elections PRIM/jresolution.doc
Joint Resolution Contract; Texas Administrative Code rule §81.157
Section 172.126,V.T.C.A., Election Code, 10/2007

JOINT RESOLUTION AND STATISTICAL INFORMATION FOR JOINT PRIMARY

JOINT RESOLUTION

WHEREAS, the Democratic Party of _____ County, Texas, and the Republican Party of _____ County, Texas, desire to enter into a _____ (year) Joint Primary Election Services Contract with the _____ County Election Administrator/ County Clerk, as the County Election Officer.

AND WHEREAS, the Commissioners Court of _____ County, Texas desires to give authorization for said Contract.

NOW THEREFORE BE IT RESOLVED BY THE COMMISSIONERS COURT OF _____, COUNTY, TEXAS, THAT:

Said Commissioners Court authorizes a Joint Contract by and among, _____, Democratic Party Chair, and _____, Republican County Chair, and _____, County Election Officer of _____ County, Texas, for the conduct and supervision of the _____ County Joint Primary Election on _____, _____, and the _____ County Joint Primary Runoff Election, if necessary, on _____, _____.

PASSED AND APPROVED, THIS _____ DAY OF _____, _____.

_____
Signature of County Judge

_____ _____
Signature of Commissioner, Precinct 1 **Signature of Commissioner, Precinct 2**

_____ _____
Signature of Commissioner, Precinct 3 **Signature of Commissioner, Precinct 4**

_____ **County Democratic Party** _____ **County Republican Party**

By: _____**, County Chair** **By:** _____**, County Chair**

County Elections Official

By: _____**, County Election Administrator/County Clerk**

JOINT PRIMARY VS. REGULAR PRIMARY

	JOINT PRIMARY	REGULAR PRIMARY
Primary Required	In most recent general election, if party's gubernatorial candidate received 20%+ of the vote, party's nominees for general election must be chosen by primary election. (Texas Election Code (TEC) § 172.001)	Same.
How to Start	Written joint resolution must be approved by majority vote of full membership of commissioners court and unanimously approved by county election officer & party chairs of parties required to nominate by primary election. (TEC § 172.126(a))	No action necessary, assuming each political party has county chair elected or appointed and ready, willing and able to accept candidate applications and to conduct (along with other members of county executive committee (CEC)) primary and runoff primary election. (TEC §§ 171.022, 171.024, 171.025, 172.022, 172.111, et seq.)
When to Start Planning for Primary	Early November 2015, see Primary Calendar, http://www.sos.state.tx.us/elections/laws/march-primary--election-calendar-2016.shtml	Same.
Mandatory Meeting	Recommended date 11/5/2015 (notice must be delivered by county election officer 72 hours in advance). Between county election officer and county chair (of each political party nominating by primary election) to discuss establishment of early voting ballot board (EVBB), delivery of materials to EVBB, acceptance of mail ballots, and manual counting, if any, of early voting ballots. (TEC § 31.124)	Same.
Contract with County Election Officer	Written contract mandatory, but terms dictated by TEC § 172.126. (TEC §§ 31.092(b), 172.126) Written contract enables Election Funds Management Group of Secretary of State (SOS), as well as the county auditor, to track the proper expenditure of primary and public funds. SOS has available Model Joint Primary Election Services Contract.	Each party may elect in its discretion whether or not to contract with the county election officer for election services. If it does contract, the contract must be in writing. (TEC § 31.092(b)) Written contract enables Election Funds Management Group of Secretary of State (SOS), as well as the county auditor, to track the proper expenditure of primary and public funds. SOS has available Model Primary Election Services Contract. If both parties are to share a joint team of election day workers, ballot programming, or voting

		machines, the parties should agree to do a joint primary.
Consolidation of Election Precincts	County election officer to determine whether should be done and how and to designate polling places for such precincts. (TEC §§ 42.009, 172.126(b)) Consolidated precincts may not contain territory from more than one territorial unit described in TEC § 42.005.	Each party's CEC to determine whether should be done and how and to designate polling places for such precincts. (TEC §§ 42.009, 43.003) Consolidated precincts may not contain territory from more than one territorial unit described in TEC § 42.005.
# of Election Day Workers	Determined based on turnout in accordance with Texas Administrative Code (TAC) § 81.149.	Determined for each party based on turnout in accordance with Texas Administrative Code (TAC) §§ 81.117, 81.118.
Appointment of Election Judges	Done by county election officer from lists provided by county chairs. Lists of names must be provided by chairs to officer no later than 12/14/2015. There are two "co-judges," one from each party for each election day precinct or consolidated election day precinct. (TEC § 172.126(c))	Done by each party chair, with approval of CEC. An election judge and alternate judge is appointed by each party for each party's election day precinct or consolidated election day precinct. (TEC § 32.006)
Appointment of Election Clerks	Done by county election officer from lists provided by county chairs. Lists of names must be provided by chairs to officer no later than 12/14/2015. (TEC § 172.126(c)) For number of clerks for each precinct, see "# of Election Day Workers," above.	Done by the election judge for each party in each party's precinct. (TEC §§ 32.031, 32.032) For number of clerks for each precinct, see "# of Election Day Workers," above.
Election Day Worker Compensation	$8.00/hr. (TAC §§ 81.120, 81.146)	Same.
Election Day Worker Training	All workers must be trained and there is no additional compensation for attending training. (TAC § 81.120)	Same.
Ballot Certification	Delivered to county election officer by county chairs/CECs; format determined by county election officer. (TEC § 172.126(e), (f))	Primary committee or county chair for each party determines that party's format for official ballot and candidate names and order. (TEC §§ 172.081, 172.082, 172.083)
Voting System	Determined by county election officer (and almost certainly will be system used by county in elections ordered by county authority or governor). (TEC § 172.126(f)) Primary election is defined by federal law as a federal election, and Help America Vote Act of 2002 (HAVA) requires each polling place to have an	Determined by each party's CEC. (TEC § 123.001(b)(2)) If party does not lease county's voting system, party must obtain advance written approval from SOS to acquire another voting system. (TEC § 123.035) Primary election is defined by federal law as a federal election, and Help

	accessible voting unit.	America Vote Act of 2002 (HAVA) requires each polling place to have an accessible voting unit.
# Voting Units /Polling Place	Depends on turnout. (TAC §§ 81.125, 81.146)	Same, for each party.
# of Ballots	Depends on turnout. (TAC §§ 81.124, 81.146)	Same, for each party.
Ballot Boxes	Separate for each party, except that one set may be used if precinct counters are used in which voter directly puts the ballot into the precinct counter. (TEC § 172.126(g))	Separate ballot boxes for each party.
Voter Registration Lists	Each party has its own two lists. (TEC §§ 18.006, 18.007, 172.126(g))	Same.
Election Returns and Canvass	Separate for each party. (TEC §§ 172.116, 172.119, 172.126(h))	Same.

NOTES