

**INTERLOCAL COOPERATION CONTRACT FOR THE LEASE
OF VOTING MACHINES BETWEEN ELLIS COUNTY, TEXAS AND
CITY OF MANSFIELD**

THIS AGREEMENT is entered into on this 26 day of February 2019, by and between the County of Ellis, a local government as defined by Article 791.003(4) of the Texas Government Code (herein "County") and City of Mansfield, a local government as defined by Article 791.003(4) of the Texas Government Code, hereinafter referred to as Lessee.

RECITALS:

WHEREAS: Article 123.032(b) of the Texas Election Code provides that a political subdivision may lease equipment from a county in which the political subdivision is wholly or partly situated; and

WHEREAS: Article 123.032(c) of the Texas Election Code provides, with some limitations, that if a political subdivision desires to lease equipment owned by a county in which the political subdivision is wholly or partly situated, the county shall lease the equipment to the political subdivision under the terms agreed to by the parties; and

WHEREAS: County is the owner of certain voting machines identified as ExpressVote Ballot Marking Device (BMD); and

WHEREAS: The purpose of Interlocal Agreements is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state; and

WHEREAS: The sharing of voting machines constitutes a "governmental function and service," as defined in Article 791.003(3) (N) of the Texas Government Code, in which the contracting parties are mutually interested; and

WHEREAS: The lease constitutes a contract or agreement described in Article 791.011(c) (2) of the Texas Government Code to provide a governmental function or service that each party to the contract is authorized to perform individually; and

WHEREAS: Lessee has expressed its desire to contract with County for the rental of the herein above described voting machines and certifies under Article 791.011(d) (3) of the Texas Government Code, that sufficient funds from current revenues are available to pay the obligation set out herein, in an amount, as required by Article 791.011(e), that fairly compensates County; and

WHEREAS: County is willing to contract with Lessee to enter into an agreement for the lease of said machines upon the terms and conditions set out hereinafter.

AGREEMENT:

NOW THEREFORE, for value received and in consideration of the covenants, conditions, and premises herein contained, the parties agree as follows;

1. County agrees to lease to Lessee the Voting Machines for a fee of **\$299.25** per machine paid in advance. Said payment is for a period of **April 18, 2019** through **May 6, 2019** and is **due by 2:00 p.m. the tenth day before the lease period begins**. Lessee agrees to pay the contract amount, prior to receiving the equipment, and no later than 10 days before the beginning of the lease period. Check made payable to: "Ellis County Treasurer" with the note "for election lease" included with check documentation.
2. In the event the equipment leased from County to Lessee pursuant to this lease is stolen, lost, damaged, vandalized, destroyed or rendered inoperable, whether intentional or not, Lessee agrees to reimburse County for the full cost of replacement or repair of such equipment. The repair cost shall be determined by the equipment service vendor. The Lessee's payment for repair or replacement costs for damaged or lost equipment, or service cost resulting from same shall be remitted to County by Lessee within thirty (30) days of written notice of loss sent by County to Lessee.
3. County shall supply the Lessee with **ONE (1)** ExpressVote BMD machine.
4. Lessee is responsible for the following actions or functions:
 - A. Contacting Election System and Software, Inc., herein ES&S, for coding of ExpressVote BMD voting machine.
 - B. Ordering Ballots and programmed Flash Drive for the ExpressVote BMD.
 - C. Pick-Up of equipment from the Elections Administrator's Office.
 - D. Return of equipment to Elections Administration Office by 4:00 p.m. on the next business day after the election.
 - E. Reasonable care to prevent theft of or damage to the ExpressVote BMD voting machines.
5. Lessee shall designate individuals at each location to be in charge of operations who will oversee the receipt, care, custody, and control of the machines ("Designated Individuals"). Prior to delivery of the machines, Lessee shall obtain any training necessary for the proper operation and care of the machines for the Designated Individuals.
6. Lessee must designate Individuals for training in the proper operation of the ExpressVote BMD machines. ES&S may periodically provide training in the proper use of the ExpressVote BMD machines. Designated Individuals should attend such training. The Elections Administrator will also provide training to Lessees and its Designated Individuals. The Lessee shall pay any costs of training Designated Individuals, as well as other personnel it may need to

properly and lawfully conduct an election. The Elections Administrator must be satisfied that the Lessee is adequately trained in the operation of the ExpressVote BMD machines prior to Lessee or its agent picking up any machines.

7. Lessee assumes full liability for the safekeeping of the Voting Machine(s) and all associated items such as inventory and supplies furnished by Ellis County. The Ellis County Elections Administrator will notify Lessee in writing of any damaged, missing, and unaccounted for machines or associated items and Lessee shall have up to thirty (30) days to research and rectify any discrepancies before payment is due. The Lessee agrees to pay for any destroyed, damaged, or missing machines or associated items.

8. Lessor is not responsible for the operation or accuracy of the machines or for the failure of the machines to operate in a proper or accurate manner. Lessee shall not be responsible for the failure of Lessee or its employees, its Designated Individual, or other agents or representatives to operate the machines properly. Lessee agrees to defend, indemnify, and hold harmless Ellis County from and against any election contest and from and against any and all claims made by any party regarding the accuracy, operation or use of the voting machines in recording or failing to record votes or for any purpose whatsoever or the training or lack of training in the proper use of the machines.

9. Lessee hereby agrees to indemnify and hold harmless County and its officers, officials, and employees from and against any loss, including claims, demands and causes of action and which loss, claim, demand or cause of action resulted from the performance or non-performance of Lessee or its agents, representatives or employees pursuant to the terms of this agreement.

10. This Agreement is entire as to all of the performance to be rendered under it. Breach of any material obligation to be performed by either party shall constitute a breach of the entire Agreement and shall give either party the right to immediately terminate this Agreement.

11. Lessee agrees to notify County of any change in the Designated Individuals within 14 calendar days of such change and will be responsible to assure the proper training of such individuals.

12. Either party hereto may voluntarily terminate this Agreement at any time upon sixty (60) days prior written notice to the other party sent as provided herein. Within seven (7) days after the date of termination, the Lessee shall return to County all Voting Machines, together with associated equipment and supplies.

13. Notice given pursuant to this Agreement shall be in writing and shall be given by United States certified mail, postage prepaid, addressed to the appropriate party as set forth below:

COUNTY: Jana Onyon, Ellis County Elections Administrator
204 E Jefferson Street
Waxahachie, Texas 75165

LESSEE: Name of Entity CITY OF MANSFIELD
 Name of Contact SUSANA MARIN
 Address for Notice 1200 E. BROAD ST.
 MANSFIELD, TEXAS 76063

The person and address to which notices are to be given may be changed at any time upon written notice to the other party.

14. The term of this Agreement shall continue in full force and effect for one year from the date of the Agreement. However, the agreement may expire at an earlier time through the complete fulfillment of the obligations set forth herein by all parties hereto.

15. This Agreement shall be construed under and in accordance with the laws of the State of Texas. Exclusive venue for any action taken relative to this agreement shall be Ellis County, Texas.

16. Neither party shall assign its rights, nor delegate its duties under this Agreement without prior written consent of the other party. Such unauthorized assignment and/or delegation shall, at the option of the non-assigning and/or non-delegating party be a material breach for which the non-assigning and/or non-delegating party may void this Agreement.

17. The provisions of this Agreement are not intended to create, nor shall they be in any way construed to create, a joint venture, a partnership, agency, or any other similar relationship between the parties. The Lessee acknowledges that it is an independent contractor and that it will be acting as an independent contractor in performing its obligations under this Agreement.

18. Ellis County is not obligated nor is it expected to file, defend the filing of, intervene into, or otherwise join or participate in any way in any litigation that may be filed by or against Lessee relating in any way either directly or indirectly to the use of the leased equipment or any training relating thereto. Should litigation be instituted by any other person or entity, Lessee shall, to the extent permitted by law, hold harmless and indemnify Ellis County against all claims, costs and expenses, including attorney's fees, arising from the use of the leased equipment and/or any training relating thereto, as well as any other action filed against Lessee or Ellis County or the Ellis County Elections Office's actions associated with this agreement.

19. This Agreement shall supersede any and all other agreements for services specified hereunder, whether oral or written.

20. This Agreement shall not be amended or modified, except in writing signed by authorized representatives of the Lessee, County, and the County Elections Office.

21. This agreement replaces all other agreements or contracts, if any, by and between the Parties hereto as they pertain to lease of voting machines.

22. This agreement shall become effective after the authorization and approval of the governing body of Lessee acting through its presiding officer or official and upon approval by the Commissioners Court of Ellis County, Texas, as Lessor, acting through its County Judge.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

County of Ellis, State of Texas:

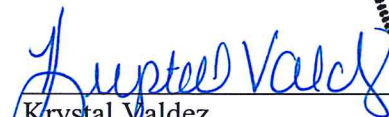
Lessee:



Todd Little
Ellis County Judge

By: _____
Signature of Authorized Representative

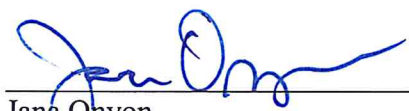
Attest:



Krystal Valdez
Ellis County Clerk



Printed Name and Title of Authorized
Representative of Lessee (City, School, or
Special District)



Jana Onyon
Ellis County Elections Administrator

Name of Lessee (City, School District, or
Special District)

Telephone: _____

E-Mail: _____

Signed Agreement and payment for lease shall be mailed to:

Ellis County Elections

Attn: Jana Onyon

204 E Jefferson Street

Waxahachie, TX 75165

Check made payable to: "Ellis County Treasurer" with the note "for election lease" included with check documentation.