

**89TH ANNUAL WEST TEXAS
COUNTY JUDGES AND
COMMISSIONERS ASSOCIATION
CONFERENCE**

Thursday, April 26, 2018
8:00 – 8:50 a.m.

**“3.012 Interlocal
Agreements”**

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INTERLOCAL AGREEMENTS

The Texas Constitution permits counties, or any political subdivision(s) comprising or located therein, to contract with one another for the performance of governmental functions required or authorized by the Constitution or by statute, under such terms and conditions as the Legislature may prescribe. Tex. Const. art III, § 64(b). The Legislature enacted the Interlocal Cooperation Act. Tex. Gov't Code Ann. § 791.001 et. seq. This Act promotes local governmental efficiency and effectiveness "by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state." *Id.* at § 791.001. Below is a table of some of the relevant statutes related to the Interlocal Cooperation Act:

Tex. Gov't Code Ann. § 791.003 (4)	Local governmental entities that may enter into these agreements are defined as a county, municipality, special district, junior college district, the state, or an agency of the state, (including a public corporation created by statute).
Tex. Gov't Code Ann. § 791.003 (3)	The governmental functions and services, in part or completely, that may be included in these agreements include: <ul style="list-style-type: none">• administrative functions, including tax assessment and collection, personnel services, purchasing, records management, data processing, warehousing, equipment repair and printing;• police protection and detention services;• fire protection;• streets, roads, and drainage;• public health and welfare;• parks and recreation;• library and museum services;• records center services;• waste disposal;• planning and engineering;• public funds investment;• comprehensive health care and hospital services; or• other governmental functions in which the contracting parties are mutually interested.

Tex. Gov't Code Ann. § 791.011(c)(1)	Each party to an interlocal contract that provides a governmental function or service must individually be authorized to perform that function or service.
Tex. Gov't Code Ann. § 791.011 (d)	<p>The interlocal contract must:</p> <ol style="list-style-type: none"> (1) be authorized by each governmental body that is a party to the contract; (2) state the purpose, terms, rights, and duties of the parties; and (3) specify that each party paying for the performance of the functions or services must make those payments from current revenues availability to the paying party.
Tex. Gov't Code Ann. § 791.011 (e)	“An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.”
Tex. Gov't Code Ann. § 791.014	<ul style="list-style-type: none"> • Before beginning a project to construct, improve or repair a building, road, or other facility under an Interlocal Contract, the Commissioners Court <u>MUST</u> give specific written approval for the project. The specific written approval must be: (1) in a separate document, other than the Interlocal Contract itself; (2) describe the type of project to be undertaken; and (3) identify the project location. • Without such prior consent, a County may not accept payment, and a County is liable for any amounts paid, if the County begins the project without the separate approval, or payment is made before the project is begun.

Interlocal Cooperation Contracts
Chapter 791, Texas Government Code

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Purpose of Interlocal Agreements

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- § 791.001. **PURPOSE.** The purpose of this chapter 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.
 - An interlocal agreement must be between another local governmental entity, (including public corporations created by a local government), the state, or an agency of the state.
 - It cannot be with a private organization.
 - Both sides of the agreement must have legal authority to engage in the contracted procedure.

Governmental Functions
Subject to Interlocal Contract-791.003 Gov't Code

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- Administrative. Governmental Functions and Services include:
 - Administrative Functions, including tax assessment and collection, personnel services, purchasing, records management, data processing, warehousing, equipment repair and printing.
 - Police protection and detention services
 - fire protection;
 - streets, roads, and drainage;
 - public health and welfare;
 - parks and recreation;
 - library and museum services;
 - records center services;
 - waste disposal;
 - planning;
 - engineering;
 - administrative functions;
 - public funds investment;
 - comprehensive health care and hospital services;
 - or
 - other governmental functions in which the contracting parties are mutually interested.

An Interlocal Contract Must:

- Be authorized by state law for all parties to the Contract.
- State the purpose, terms, rights and duties of the contracting parties.
- Specify that each party paying for the performance of a function or service must make those payments from current revenues available to the party.
- Payment must be in an amount that fairly compensates the performing party for the service or function performed.

An Interlocal Contract May/May Not:

- Be renewed annually (provision may be made for longer terms).
- May not use an Interlocal to avoid competitive bidding, or purchasing engineering or architectural services.
- May not alter the immunities or limitations on damages contained in the Tort Claims Act, but the parties may assign responsibility for civil liability arising from the performance of the function contracted for as they may agree.

Administration of Interlocal Contracts

- Parties may establish a joint administrative agency or designate one of the parties to administer the contract functions.
 - Or contract with an exempt, 501(c) organization to provide administrative services.
 - Any property held by the administrative agency, or 501(c) organization used to provide the service or function is tax exempt.

Limitations on Counties to Interlocal Contracts

- **BEFORE beginning a project to construct, improve or repair a building, road, or other facility under an Interlocal Contract, the Commissioners Court MUST give specific written approval for the project in a document OTHER than the Interlocal Contract itself, and in that separate document**
 - Describe the type of project to be undertaken and
 - Identify the project location.
- **Without such prior consent, County may not accept payment, and County is liable for any amounts paid, if the County begins the project without the separate approval, or payment is made before the project is begun.**

Specific Contracting Authority

- Regional Jails
- Purchasing Entities for goods and services
- Water Supply and Wastewater Treatment Facilities
- Emergency Assistance Agreements
- Joint Road Construction and Improvements
- Regional Record Centers
- Health Care and Hospital Services
- Transportation Infrastructure
 - City Streets or alleys
 - State Highways

Fair Compensation

- Act was amended in 1989 to require fair compensation. That requires there to be an actual exchange of value, i.e. money, or something of value flowing from the recipient of the service or function to the performing party.
 - City provides the materials and County the equipment and labor DOES NOT provide fair value to the County. The City has to buy the materials anyway to repair the street, but is getting the equipment and labor for free.
 - County should have a fair rate for use of county labor and equipment for Interlocals that City, ISD, Water District, etc. must pay for county labor and equipment. Rate should essentially meet counties real cost of making assets available.

Sample Interlocal



- **Interlocal Agreement Between**
- **[County Name] County, Texas**
- **And the**
- **[Other Local Governmental Entity]**
- This Agreement is made on the _____ day of _____, 20____, by and between the County of [County Name], a political subdivision of the State of Texas, hereinafter referred to as "[County Name] County" and the [Other Local Governmental Entity], hereinafter referred to as the "[OTHER]".
- WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform government functions and services; and

Sample Interlocal



- WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, Chapter 791 of the Texas Government Code, for the performance of governmental functions and services; specifically, the _____ (description of the project), and for such other and further acts of cooperation as the parties may subsequently agree to by the execution of a separate and specific agreement ratified by the governing bodies of each contracting party, specifically the Commissioners Court of [County Name] and the [Governing Board of the Other Entity]; and

Sample Interlocal



- WHEREAS, [County Name] County provides these services to the citizens of [County Name] County, and has the capacity to service the needs of the [OTHER]; and
- WHEREAS, [County Name] County and the [OTHER] have investigated and determined that it would be advantageous and beneficial to both the [OTHER] and to [County Name] County and its inhabitants for [County Name] County to provide _____ (description of project) services to the [OTHER]; and

Sample Interlocal

- WHEREAS, the [OTHER] wishes to engage [County Name] County to _____ (description of project) on behalf of the [OTHER], and the [OTHER] desires to engage [County Name] County to provide such services; and
- WHEREAS, from time to time the [OTHER] may wish to engage [County Name] County in various additional services, such as hauling, dispensing, spreading, building, paving, or improving real property by the use of county owned earth moving equipment, together with the labor and materials necessary to accomplish a public purpose beneficial to the [OTHER] and to the people of [County Name] County, Texas; and

Sample Interlocal

- WHEREAS, the governing bodies of the [OTHER] and [County Name] County desire to foster good-will and cooperation between the two entities; and
- WHEREAS, the [OTHER] and [County Name] County, deem it to be in the best interest of both entities to enter into this Agreement relative to the _____ (description of project) and for such other and additional services as the parties may subsequently agree to by the execution of separate and specific agreements, and in consideration of the mutual covenants contained herein, the [OTHER] and [County Name] County agree as follows:

Sample Interlocal

- **Services to be Performed**
- The [OTHER] agrees to engage [County Name] County to _____ (description in detail the specific work to be performed by the County) to the [OTHER], together with all incidental acts, procedures, and methods necessary to accomplish the ends of such project.
- **Duration of Agreement**
- Unless mutually initiated, cancelled, or terminated earlier with thirty (30) days written notice, this Agreement shall commence on the _____ day of _____, 20____. This contract expires at midnight on _____, 20____. This contract may be extended for Three (3) annual renewals with the renewal fees and payments for each successive year to be negotiated and agreed to by the parties annually.

Sample Interlocal

• **Compensation**

• The [OTHER] shall [County Name] County for the services referred to in Paragraph I at the rate of \$ _____, annually, on or before the ____ day of _____ of each year, in twelve monthly installments of \$ _____/ month. Each monthly installment payment is to be made on or before the 1st day of each month beginning 1st day of _____, 20____. Compensation for any year shall be prorated should the Agreement be terminated, pursuant to Paragraph II prior to the expiration of the service year in effect at the time of the termination.

Sample Interlocal

• **Relationship of Parties**

• The parties intend that [County Name] County, in performing services specified in this agreement, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. Neither [County Name] County, its agents, employees, volunteer help or any other person operating under this Agreement, shall be considered an agent or employee of the [OTHER] and shall not be entitled to participate in any pension or other benefits that [County Name] County provides its employees.

Sample Interlocal

• **Notice to Parties**

• Any notice given hereunder by either party to the other shall b in writing and may be affected by personal delivery in writing or by certified mail, return receipt requested. Notice to [County Name] County shall be sufficient if made or addressed to the office of the County Judge,

Sample Interlocal

- Notice to the [OTHER] shall be sufficient if made or addressed to the office of Superintendent, [Other Local Governmental Entity], _____.

Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

Sample Interlocal

- **Miscellaneous Provisions**
- Indemnification
- [OTHER] agrees to promptly defend, indemnify and hold [County Name] County harmless from and against any and all claims, demands, suits, causes of action, and judgments for (a) damages to the loss of property of any person; and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, arising out of incident to, concerning or resulting from the negligent or willful act or omissions of the [OTHER], its agents, officers, and or employees in the performance of activities of duties pursuant to this Agreement.

Sample Interlocal

- Entire Agreement
- This Agreement contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing signed by both parties.
- This Agreement shall be governed by and constructed in accordance with the laws of the State of Texas. No assignment of this Agreement or of any right accrued hereunder shall be made, in whole or in part, by either party without the prior written consent of the other party. Venue shall be in [County Name] County, Texas.

Sample Interlocal

- The undersigned officer and/or agents of the parties hereto are the properly authorized officials of the party presented and have the necessary authority to execute this Agreement on behalf of the parties hereto and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and approved and are now in full force and effect.
- EXECUTED by the parties hereto, each respective entity acting by and through its duly authorized official as required by law, on the date specified on the multiple counterpart executed by such entity.

Sample Interlocal

- [Other Local Governmental Entity]
- By: _____
- Officer's title
- Date:
- _____
- [County Name] County, Texas
- _____
- _____
- _____
- By: _____
- County Judge
- Date:

Separate Approval

- IN THE COMMISSIONERS COURT OF
- [COUNTY NAME] COUNTY, TEXAS
- _____
- SEPARATE WRITTEN APPROVAL OF INTERLOCAL
- COOPERATION CONTRACT WITH
- [OTHER GOVERNMENTAL ENTITY]
- FOR
- [DESCRIPTION OF PROJECT]

Separate Agreement

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- The Commissioners Court of [COUNTY NAME] County, Texas, in compliance with §791.014 of the Texas Government Code, otherwise known as the Interlocal Cooperation Act, and before the commencement of any work to construct, improve, or repair the subject matter of an Interlocal Contract with [OTHER GOVERNMENTAL ENTITY], hereby authorizes and approves this separate specific written approval for the proposed project. In this regard, the following provisions apply to such proposed Interlocal Cooperation Contract:

Separate Agreement

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- This approval is separate and distinct from the Interlocal Cooperation Contract itself.
- The proposed project is for [COUNTY NAME] County to: DESCRIBE PROJECT, AND INCLUDE SUFFICIENT DETAIL TO IDENTIFY THE SCOPE OF WORK, AND LOCATION OF THE PROJECT, IF POSSIBLE BY REFERENCE TO PROPERTY DESCRIPTION IN DEED RECORDS
- The Commissioners Court of [COUNTY NAME] County, Texas specifically finds that herein described project would serve a public purpose, and would be beneficial to the citizens of [COUNTY NAME] County, Texas.
-
- Date:

Separate Agreement

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- _____
- County Judge,
-
- Attest:
-
- _____
- County Clerk, ex officio clerk of the
- Commissioners Court
-
