BASICS AND POINTERS OF INTERLOCAL CONTRACTING: A MULTI-JURISDICTIONAL LOOK AT ISSUES

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Overview

A variety of governmental entities, from colleges to counties, rely on Sandy for sound judgment and deep subject-matter expertise in the area of public law.

Sandy's practice focuses on governance and compliance with an emphasis on complex public business and infrastructure matters. She works closely with clients to satisfy ethical and compliance requirements while still achieving the public functions required of them.

Whether it be addressing day-to-day business matters or responding to highly politicized disputes, Sandy utilizes her deep experience in representing educational institutions, special purpose districts and

"Husch Blackwell's Diversity and Inclusion event was fantastic. I especially enjoyed the opportunity to hear from Sandy Gomez-Hellums and Arturo Michel, and understand what other organizations are doing. I want to thank you for your commitment within both private and public entities. I look forward to learning more and engaging in such meaningful work."

— Ky Willson, Senior Staff Analyst - Title VI, Office of Business Opportunity

Industry

Real Estate, Development & Construction

Services

Government Contracts
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Higher Education
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Litigation & Alternative Dispute Resolution
Opportunity Zones
Political Ethics & Election Law
Public Law

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other public entities to build consensus, assess risks and solve legal problems rather than merely identifying them.

Sandy regularly provides counseling, training, investigation and dispute resolution services with an emphasis on infrastructure, federal compliance, purchasing and contracting. She also routinely advises boards and administrations on issues related to civil rights, ethics and land use.

Experience

- Advised largest Texas school district on all aspects of procurement and contracting related to $2 billion infrastructure improvement program.
- Provided more than 40 hours of procurement, ethics and contracting training to large urban school district.
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Sherea McKenzie serves as Director of Special Projects to Commissioner Rodney Ellis, Harris County Precinct One. In that capacity, she advises on general legal issues and policies impacting Precinct 1 constituents. She identifies and encourages best practices, collaboration and resource sharing within and outside of county departments.

Prior to assuming her role at Precinct One she served as the Executive Director of the Joint City County Commission on Children (JC4), a children's policy collaboration between the City of Houston and Harris County. The JC4 was comprised of 25 members who were jointly appointed by the City of Houston and Harris County. The goal was to increase the wellbeing of children and youth. Under Ms. McKenzie's leadership Houston /Harris County was recognized by the America's Promise Alliance's "100 Best Communities for Children" in multiple years.

Ms. McKenzie's distinct background, which includes practicing law, working with the office of the late George T. "Mickey" Leland, Congressman, 18th Congressional District and serving as the director of a local charter school, has enabled her to value the importance of children and family and the role of public service. Ms. McKenzie has served on numerous and varied nonprofits boards, both locally and nationally.

Sherea McKenzie received her Bachelor of Arts in Public Administration from Fisk University and a Juris Doctorate from the Texas Southern University, Thurgood Marshall School of Law. She is married to Carl Poston, III, also an attorney, and they are parents to three adult children, Carl, IV, Kirkland and Madison.



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Ms. Mickelson is an honors graduate of the Plan II program at The University of Texas, as well as The University of Texas School of Law and the Lyndon B. Johnson School of Public Affairs. She studied municipal and historic preservation practices in Krakow, Poland, and also studied in Germany and the former Yugoslavia.

She is a member of the Texas Bar Association and is Chair Elect of the State Bar Government Lawyers Section. She is also a member of the Houston Bar Association, the Texas City Attorney's Association (TCAA), the International Municipal Lawyer's Association (IMLA) (International Committee), and the Illinois State Bar Association (inactive).

Kim is very active in the American Planning Association (APA), is a member of the American Institute of Certified Planners (AICP), and is Region III Commissioner on the AICP Commission, the APA's ethics and education arm, where she is a member of the Ethics Committee and Education Committee. Kim is a frequent speaker and author in Texas and nationally, has been a planning committee member and faculty member for the UT Land Use Law Conference, has spoken at the State Bar of Texas Advanced Real Estate, Advanced Government Law conferences, and at numerous APA, TML and IMLA conferences.

She is a Past President of the Texas APA Chapter (APATX), and the Editor of A Guide to Urban Planning in Texas Communities. While President of APATX, she focused on improving advocacy efforts for planning in the Texas legislature, and post-Harvey, started "Texas Planners for Texas Communities," a recovery initiative designed to get assistance to affected communities and planning staff. She is a board member of Blueprint Houston, Inc., and a member of Preservation Texas and Preservation Houston.

Ms. Mickelson has taught undergraduate and graduate courses at the University of Texas at El Paso, Webster University, Boston College, and City Colleges of Chicago, including classes in Germany, Holland, Belgium, and Turkey, and is a Visiting Professor of Practice in the Masters in Urban Planning program at Texas Southern University and the College of Architecture at Texas A&M University in College Station.

During COVID-19, Kim turned to sewing masks and relearning German, and did without attending Longhorn football games.



Nicole Montgomery is currently the Deputy General Counsel with Houston Community College, an open-admission public institution providing high quality innovative education. Nicole is formally the General Counsel of YES Prep Public Schools, where she managed all legal aspects of the high performing open enrollment charter school district, with 14 campuses, 10,000 students, and 1,000 employees. Prior to joining the YES Prep team, Nicole was Senior Counsel of the Metropolitan Transit Authority of Harris County, Texas (METRO). While at METRO, Nicole managed the legal team in structuring a **$1.4 Billion** complex infrastructure light rail project that included Design-Build construction, rail car purchases, and debt financing. Nicole began her legal career as an Assistant City Attorney with the City of Houston responsible for all design contracts for the civil design of city facilities and public works projects.

Nicole is a seasoned legal executive with over 19 years of experience in public law, board governance, and complex business transactions. She is known for building internal and external constituencies as well as bringing a win-win approach and creative problem solving to all matters.

Nicole earned her law degree from Thurgood Marshall School of Law on the campus of Texas Southern University, Master in Public Administration (MPA) from the University of Arkansas at Little Rock and a Bachelor of Arts in Economics and Business from Hendrix College. Outside of work, Nicole volunteers in the community with several organizations focused on social justice issues, foster-to-adopt programs, education, and child literacy. Nicole is a member of Alpha Kappa Alpha Sorority, Inc., enjoys volunteering at her church, and serving as chair of a faith-based Professional Women's Group.

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INTERLOCAL AGREEMENTS: AN OVERVIEW

I. INTRODUCTION

From a "doing business" perspective, governmental entities do many of the same things that private entities do. They hire and fire employees. They procure and provide goods and services. They enter into contracts and other agreements with other entities. In most communities, local governmental entities are the largest organizations with the largest workforces…and the largest budgets. But governmental entities are unlike most private entities. They enjoy governmental immunity from most legal actions, including suits for breach of contract in many cases. Governments are not profit-driven. They are rightfully required to operate with a degree of openness and transparency that simply would not work in the private sector. In recognition of the special circumstances which govern the day to day operation of government, local governmental entities in Texas are given special treatment when they enter into contractual agreements with each other.

Officials within a governmental entity may not realize they are proposing an interlocal agreement when they ask for legal guidance, review, or approval. Interlocal agreements are often drafted by appointed officials or department heads, who believe they are simply putting an informal agreement with a counterpart at another governmental agency into writing...which is a good thing. They may believe they are formalizing what was once a "hand shake" agreement, and they may be taken aback when you, as their lawyer, inform them that the agreement will need to go before the city council, commissioners court, board of regents, or some other governing body and that it will need to include certain provisions. I am sure many lawyers have been approached by a government client who describes a new project as "just an MOU...it's not a contract." The contemplated single page "MOU" soon begins to look like...a "contract." And the client usually finds this frustrating. And blames the lawyer for making it more complicated than it needs to be.

This paper seeks to make this transformation from "letter agreement" to "interlocal contract" as smooth, painless, and straightforward as possible.

A. What is an Interlocal Agreement?

An interlocal agreement is a contract between a local governmental entity and another local government that complies with the statutory requirements of Chapter 791 of the Local Government Code.

Interlocal agreements can go by many names, including mutual aid agreements, joint operation plans, letters of agreement, memoranda of understanding, cooperative agreements, or any of a number of other titles which make no reference to the word "contract."

If the agreement is between two or more governmental entities, it is an interlocal agreement, subject to the requirements of the Interlocal Cooperation Act.

B. Governed by Chapter 791 of the Local Government Code

In 1971, Texas enacted the "Interlocal Cooperation Act" as Chapter 791 of the Government Code. The purpose of the 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. *Tex. Gov't Code §791.001 (Vernon 2012)*. The Act is the statutory authority for local governmental entities to enter into contractual agreements with each other, with the State of Texas, with administrative agencies, and with similar entities in other states.

1. Very Little Interpretive Caselaw

The Act has generated very little by way of interpretive caselaw. This is due, in part, to the clear, simple wording of the Act. The Act has also been legislatively stable. The only recent amendments have been to add provisions by moving them into the Act from other Codes. Practically speaking, because agreements under the Act are between governmental entities which enjoy general immunity from breach of contract suits, and because of the cooperati8ve nature of these agreements, parties to an interlocal agreement are not inclined to sue each other over contractual disagreements. Finally, most disputes arising under the Act have been addressed, historically, by opinions from the Texas Attorney General.

C. Common Types of Interlocal Agreements

Common types of Interlocal Agreements include agreements for such government services and functions as:

1. Police protection and detention services;
2. Fire protection;
3. Streets, roads, and drainage;
4. Public health and welfare;
5. Parks and recreation;
6. Library and museum services;
7. Records center services;
8. Waste disposal;
9. Planning;
10. Engineering;
11. Administrative functions (including tax assessment and collection, personnel services, purchasing, records management,

data processing, warehousing, equipment repair, and printing)[1];
12. Public funds investment;
13. Comprehensive health care and hospital services; or
14. Other governmental functions in which the contracting parties are mutually interested.

Tex. Gov't Code §791.003(3)(A-N) (Vernon 2012).

D. Governmental Entities Authorized to Enter Into Interlocal Agreements

Local governments authorized to enter into interlocal agreements include:

1. County, municipality, special district, junior college district, or other political subdivision of this state or another state;
2. Local government corporations;
3. Political subdivision corporations;
4. Local workforce development boards; or
5. Combination of two or more entities described above.

Tex. Gov't Code §791.003(4)(A-E) (Vernon 2012).

II. BASIC REQUIREMENTS FOR AN INTERLOCAL AGREEMENT

A. Requirements Imposed by Chapter 791 of the Local Government Code

Chapter 791 includes three mandatory requirements for all interlocal agreements. An interlocal agreement must:

1. be authorized by the governing body of each party to the contract;
2. state the purpose, terms, rights, and duties of the contracting parties; and
3. specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Tex. Gov't Code §791.011(d)(1-3) (Vernon 2012).

1. Authorized by the Governing Body

An interlocal agreement must be authorized by the governing body of each party. The delegated authority to enter into a contract is not sufficient. An interlocal agreement, to comply with the Act, must be approved by the governing body of each party (*i.e.*, the city council, commissioners court, etc.), even if the subject matter of the agreement is within the delegated authority of the Purchasing Manager, City Manager, Chief of Police, Sheriff, etc. In *Anderson v. Wood*, 152 S.W.2d 1084 (Tex. 1941), the Texas Supreme Court held, for example, that the Commissioners Court of a county is the, "general business and contracting agency of the county, and it alone has authority to make contracts binding on the county, unless otherwise specifically provided by statute." For cities, this authority rests with the city council.

An example of ineffective authority is discussed in Attorney General Opinion JM-892, which addressed whether a county commissioner acting as ex officio road commissioner could enter into an interlocal agreement with a municipality to perform road construction. The Attorney General found the interlocal agreement to have been improperly executed because it was not authorized by the county commissioners court. *Op. Tex. Att'y Gen. No. JM-892 (1988)*. The agreement would have been permissible, as an interlocal agreement, if it had been properly authorized by the commissioners court.

However, the Texas Attorney General also addressed a proper delegation of authority in Attorney General Opinion GA-0352. In this Opinion, the question addressed is "whether the Interlocal Cooperation Act, Government Code Chapter 791, permits a state agency governing body to delegate authority to approve an interlocal contract." The Attorney General found that an entity's governing body may delegate authority to approve an interlocal contract, if the contracting authority statute for such governmental entity authorizes a delegation. *Op. Tex. Att'y Gen. No. GA-0352 (2005).*

The rationale for this finding is that the purpose of Chapter 791 is not to control and manage how governmental entities authorize contracts through its internal operations, but instead to provide overall guidance for an interlocal contract. Therefore, a governing body of an entity may determine it is best for its operations and efficiency to delegate authorization of interlocal contracts, if the contracting authority statute of the applicable entity allows delegation for approval of such interlocal contracts.

2. State the Purpose, Terms, Rights, and Duties of the Parties

When drafting an interlocal agreement, avoid broad delegations of authority or references to an agreement to made later. Besides being sloppy, doing so runs afoul of the requirement of §791.011(d)(1) that the agreement be authorized by the governing body.

[1] *Tex. Gov't Code §791.003(1) (Vernon 2012).*

3. Specify That Payments Must Come From Current Revenues

An interlocal agreement may not confer authority that neither party to the contract has otherwise. This statutory requirement is in keeping with the rule that a governing body may only commit to an expenditure of current revenue and avoids an unconstitutional lending of the governmental entity's credit. *Tex. Const. Art XI, §3*.

B. Other Requirements Imposed by Chapter 791

1. Each Party Must be Authorized to Perform the Functions or Services Contemplated by the Agreement

It is not uncommon for two governmental entities to contemplate an agreement which would, in effect, allow one of the parties to perform a governmental function or service which it cannot otherwise perform (or to delegate to the other party a function or service the other party is not authorized to perform.) This is one of the few areas with guidance from both caselaw and attorney general opinions.

Attorney General John Hill addressed the issue in 1973, when his office was asked to opine on the authority of a water conservation and reclamation district to contract for fire protection with a volunteer fire department. *Op. Tex. Att'y Gen. No. H-28 (1973).* The district desired to operate a fire department under an interlocal agreement with a rural volunteer fire department. Attorney General Hill first noted that a water conservation and reclamation district has no authority to engage in firefighting activities. He rejected the district's argument that putting out fires was a "useful purpose" for the water that the district was conserving and reclaiming. (Nice try.) The opinion cites *Deason v. Orange County Water Control and Improvement District*, 244 S.W. 2d 981 (Tex. 1952), which held that the purpose of providing fire protection was outside the subject matter of the district's authority. As such, the Attorney General held that because the district lacked the authority to provide fire protection services, it could not enter into an interlocal agreement for those services.

More recently, Attorney General Greg Abbott advised the Texas Department of Public Safety that it could not contract with a county tax assessor-collector to issue driver's licenses. *Op. Tex. Att'y Gen. No. GA-0917 (2012).* The Attorney General found that DPS...and only DPS...is authorized to issue driver's licenses, and that county tax assessor-collectors are similarly not authorized to issue them. Because the authority to issue driver's licenses did not rest with each party to the contemplated interlocal agreement, the interlocal agreement was not authorized by Chapter 791.

One important "take away" from this requirement is that even though an agreement between two governmental entities might make sense, from a practical standpoint, it does not mean that the two entities can enter into an interlocal agreement to achieve that practical result.

2. Payments Must Fairly Compensate the Performing Party

Section 791.011(e) of the Act requires that payments under an interlocal agreement must fairly compensate the performing party. This statutory requirement fits within the context of the constitutional prohibition against governmental entities making gifts of public funds or resources. *Tex. Const. Art III, §51 and 52*. Care should be taken in drafting interlocal agreements to make sure that the consideration for the agreement, and the value for the functions or services received, can be justified from an accounting standpoint. An interlocal agreement may, however, take into account the value given and received by the two entities. If there is additional consideration given by the paying party, it should be spelled out in the agreement and not recited merely as "other good and valuable consideration." Likewise, if there is some valid reason for a discount or devaluation on the part of the performing party, that, too, should be included with specificity.

C. Considerations When Drafting an Interlocal Agreement

1. Dispute Resolution

Given how regularly governmental entities enter into interlocal agreements, the amount of resulting litigation is very small. Litigation between two governmental entities is often precluded by mutual immunities and, when allowed, it is cumbersome and often not worth the time or expense. Disputes between governmental entities, unless of a significant nature, are often resolved informally. It can be helpful to make provisions for alternative dispute resolution within the agreement itself.

a. Dispute Resolution Agreement

Section 791.015 provides for the submission of disputes arising under the contract to be submitted to the alternative dispute resolution (ADR) procedures authorized by Chapter 2009 of the Government Code[2], which itself authorizes governmental entities to engage in the various forms of ADR described in the Civil

[2] *Tex. Gov't Code Chapter 2009 (Vernon 2012).*

Practices & Remedies Code[3]. These forms of ADR include[4]:

1. Mediation, pursuant to §154.023;
2. Mini-trial, pursuant to §154.024;
3. Moderated Settlement Conference, pursuant to §154.025;
4. Summary Jury Trial, pursuant to §154.026; and
5. Arbitration (binding or non-binding) , pursuant to §154.027.

Mediation and arbitration are the most familiar forms of dispute resolution, but the other procedures are authorized and may make sense given the nature of a specific interlocal agreement.

If the result of a mediation or arbitration is a modification of the substantive terms of the agreement, §791.011(d)(1) (approval by the governing bodies) requires that the modification of the agreement be authorized by the governing bodies of the contracting parties. *Tex. Gov't Code §791.011(d)(1) (Vernon 2012)*.

b. Termination

One way to resolve many disputes that arise under an interlocal agreement is to allow for termination of the agreement, without cause, on short notice (*i.e.*, 30 days or, if appropriate, less.) The existence of an "early out" clause can provide incentive for both parties to work together to resolve any disagreements or uncertainties which might arise.

c. Fully Executed At Outset

Another way to avoid disputes altogether (at least for your client) is to make the agreement fully performed at the time of execution (or very shortly thereafter.) If your client has received the benefit of its bargain, there is little for your client to subsequently dispute.

2. Venue and Choice of Law

Parties to an interlocal agreement may provide for choice of law (which in the case of virtually all agreements will be Texas law, given that the vast majority of these agreements will concern two entities within the State of Texas) and choice of venue. *Tex. Gov't Code §791.012 (Vernon 2012)*. Note that the statutory authorization for parties to choose the law that will govern the interlocal agreement does not imply a waiver of governmental immunity. *Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund v. Ben Bolt-Palito Blanco Cosol. Indep. Sch. Dist.*, 163 S.W.3d 172, (Tex. App. – San Antonio 2005, pet. granted), reh'g denied, No. 04-04-00658-CV (Tex. App. San Antonio 2005), rev'd, 212 S.W.3d 320 (Tex. 2006), reh'g denied. Any immunities available to the parties are preserved.

3. Creation of an Administrative Agency

Parties to an interlocal agreement may create an administrative agency to supervise the performance under the contract. *Tex. Gov't Code §791.013(a)(1) (Vernon 2012)*. The agreement may also designate an existing local government to supervise the agreement. *§791.013(a)(2)*. The parties may also contract with a tax-exempt organization that provides services on behalf of political subdivisions and derives at least 50% of its income from governmental sources. *§791.013(a)(3)*. Third parties who administer interlocal agreements may employ personnel, perform administrative activities, and provide administrative service necessary to perform the interlocal contract. *§791.013(b)*. All property held by the administrative agency is exempt from taxation as if it was held by the governmental parties to the interlocal agreement. *§791.013(c)*. The administrative agency retains any intellectual property it develops. *§791.013(d)*.

Risk pools are an example of this type of third-party administrative agency, created expressly to act as a neutral third party for a group of governmental entities who join together by way of interlocal agreements.

4. General Terms Common to Most Contracts

As with any other contract to which a governmental entity is a party, there are several provisions which are good practice in any contract, even those in which the other party is also a governmental entity.

a. No Joint Enterprise

Even since the Texas Supreme Court's decision in *Texas DOT v. Able*, 35 S.W.3d 608 (Tex. 2000), which waived immunity for governmental agencies engaged in a "joint enterprise," it has been a common practice to disclaim any such "joint enterprise" in any agreement between two or more governmental agencies (assuming the intent of the contract is not to form a joint enterprise.) Care should be taken to avoid inadvertently creating a joint enterprise by eliminating one or more of the required elements, to wit:

[3] *Tex. Civil Practices & Remedies Code Chapter 154 (Vernon 2012)*.

[4] Chapter 154 also provides for "Mediation Following Application for Expedited Foreclosure," however this type of specialized alternative dispute resolution is not readily applicable in the context of interlocal agreements, and is therefore not included in the foregoing list. *Tex. Gov't Code §154.028 (Vernon 2012)*.

1. an express or implied agreement among the members of the group,
2. a common purpose to be carried out by the group,
3. a community of pecuniary interest among the members of the group, and
4. an equal right to voice in the management of the joint enterprise that gives each party an equal right of control.

Able, 35 S.W.3d at 613.

Of the four required elements, the first three would be hard to avoid in an interlocal agreement. The fourth element (*e.g.*, an equal right to voice in the management of the enterprise) can be eliminated by giving one party dominant control over the subject matter of the interlocal agreement.

b. Preservation of Immunities

While both the Act and subsequent caselaw preserve the parties' immunities in an interlocal agreement, it is prudent to include a statement that nothing in the agreement is intended to waive any party's immunities."

c. No Indemnification

Lawyers representing governmental entities are, no doubt, familiar with the prohibition against contractual indemnifications (as an improper form of indebtedness), "...unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two percent, thereon." *Tex. Const. Art XI, §5* and *Op. Tex. Att'y Gen. No. GA-0176 (2012)*. Nevertheless, it is common for proposed interlocal agreements to contain indemnification language. When the drafter is aware of the Constitutional prohibition against indemnification, the contractual provision may be prefaced with, "To the extent allowed by law..." or something similar. While there is no caselaw on this point, and while this language may defeat a governmental obligation to indemnify, it could be argued that this prefatory language only requires the indemnifying governmental party to assess and collect revenue and to create a sinking fund to satisfy the indemnification obligation, because these actions are "allowed by law" and would thus give force and effect to the otherwise improper indemnification requirement. When an indemnification clause in an interlocal agreement is prefaced with "to the extent allowed by law," it is prudent to request that the provision be struck in its entirety. If the other party refuses, then the provision should be revised, adding that, "[n]othing in this provision requires that funds be assessed or collected or that a sinking fund be created."

d. Notices

If the parties anticipate giving notices to each other, the notices should go to the office for each party charged with acting as the legal agent for service of process, with copies to the person or office actually administering the interlocal agreement. For example, if one party to the agreement is a municipality, notices to the municipality should be given to the City Secretary. If the interlocal is being administered by the Chief of Police, then the contract may specify that notices should be copied to the Chief of Police.

e. Termination

As discussed above, with regard to Dispute Resolution, one way to encourage the parties to resolve any conflict is to provide for termination of the agreement without cause, on short notice.

f. Renewal

Interlocal agreements may also provide for renewal of the agreement at the end of the contractual term. This can be accomplished in one of several different ways.

5. <u>"Evergreen" Clause</u>

The original contract may provide that the interlocal agreement will automatically renew at the end of each term unless notice is given by one of the parties of a desire to allow the agreement to expire. No action is required by either party for the agreement to renew if automatic renewal was authorized by the governing bodies of the contracting parties at the time the agreement was initially executed.

6. <u>Contractual Renewal Provision</u>

The original contract may provide that the interlocal agreement is subject to X number of renewals at the conclusion of the original term. The contract may provide for these renewals on the approval of a delegated party, if so authorized by the governing bodies of the contracting parties at the time the agreement was initially executed.

7. <u>Renewal by Mutual Written Agreement</u>

If the original interlocal agreement does not provide for renewals, any such renewal must be authorized by the governing bodies of the contracting parties.

a. Amendments

An amendment to an interlocal agreement that makes a substantive change to the agreement must be authorized by the governing bodies of the contracting parties, in the same way that the original agreement was authorized.

III. SPECIAL PROVISIONS FOR SPECIFIC TYPES OF INTERLOCAL AGREEMENTS

The Act makes special provisions for certain types of specialized agreements[5]:

§791.006 Liability in Fire Protection Contract for Provision of Law Enforcement Services
§791.021 Regional Correction Facilities
§791.022 Regional Jail Facilities
§791.023 State Criminal Justice Facilities
§791.024 Community Corrections Facilities
§791.025 Purchases
§791.026 Water Supply and Waste Water Treatment Facilities
§791.027 Emergency Assistance
§791.028 Joint Payment of Road Construction and Improvements
§791.029 Regional Records Centers
§791.030 Health Care and Hospital Services
§791.031 Transportation Infrastructure
§791.032 Construction, Improvement, and Repair of Streets in Municipalities
§791.033 Construction, Operation or Maintenance of Facilities on State Highway System
§791.034 Relief Highway Route Around Certain Municipalities
§791.035 Contracts with Institutions of Higher Education or University Systems
§791.036 Regulation of Traffic in Special Districts

If you are drafting or reviewing an interlocal agreement concerning any of these special situations, you should review the corresponding section of Chapter 791 for specific requirements and guidance.

IV. CONCLUSION

The interlocal Cooperation Act, codified in Chapter 791 of the Texas Government Code, provides a roadmap for drafting clear, concise agreements designed to achieve the stated purpose of the Act: 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.

[5] *Tex. Gov't Code Chapter 791, Sub-chapters A and C (Vernon 2012).*

The What and How of Governmental Cooperation

FOCUS ON INTER-LOCAL AGREEMENTS (ILAS)

Panelists

- Sherea McKenzie
- Kimberley Mickelson
- Nicole Montgomery

Panelists

Sherea A. McKenzie, Esq.

- Director of Special Projects
  Harris County, Precinct 1



Panelists



Kimberley Mickelson, AICP, MPA, JD

- Senior Assistant City Attorney, City of Houston

Panelists

Nicole Montgomery, MPA, JD

- Deputy General Counsel, Houston Community College



What are ILAs

- Occurs between the local government or state agencies or "similar agencies of another state"
- Each party to the agreement must be statutorily authorized to perform the service individually

What are ILAs

- Must be approved by governing body of entity
- Must state the public purpose, terms, rights, and duties of contracting parties

What should you know about ILAs?

- Fair compensation
- Specify that each party is paying out of current fiscal funds



What should you know about ILAs?



- Renewable or for term of years
- Infrastructure projects, requires we must have ILA's that define the responsibilities of the Parties

Laws that impact ILAs

- Chapter 791 of the Texas Government Code
  - *Purpose 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"*

Laws that impact ILAs

- AG Opinions
  - **Background:** The Texas A&M University System ("TAMUS") asks if the Interlocal cooperation Act, Government Code chapter 791 permits a state agency governing body to delegate authority to approve an Interlocal contracts.
  - **Response:** Section 791.01 declares that an Interlocal contract must be "be authorized by the governing body of each party to the contract." further more the governing body has the authority to delegate authority based of the specific governing body's code of conduct relating to such matters.

Significance of ILAs to Governmental Business

- When it comes to project management, maintenance, placement or relocation of utilities and funding responsibilities.
- ILA's help us to better serve the community so that we can ensure services are provided to residents.
- ILAs improve the aesthetic of the community. (Example: ILA Harris County, City of Houston and University of Houston completed for a mural under an overpass).

Significance of ILAs to Business

- ILA's contribute to the infrastructure, basic services, and supports.
- Cooperative purchasing increases efficiency



Example of what "Perspectives" will look like once the mural is installed under the I-45 underpass at Cullen Boulevard.

- ILA's are also used for cooperative purchasing, which allows local governments to procure items more quickly, and at times for better prices.

Examples of possible ILAs

- Road projects
- Flood mitigation
- Sidewalks
- Hike and bike trails
- Beautification projects
- *All examples often require ILAs between the county municipalities, the state, HOA's, or MUDs*

Harris County Approves Interlocal Agreement with City Concerning Woodridge Village

Harris County Commissioners Court unanimously approved an interlocal agreement with the City of Houston concerning the purchase of Woodridge Village from Perry Homes. On December 9, the City of Houston approved the same interlocal agreement.

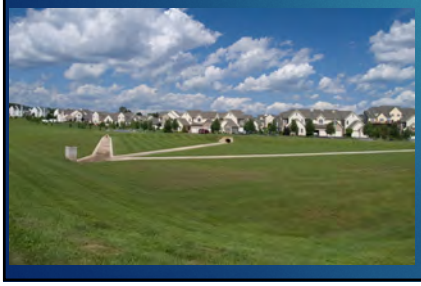
Ideally ILAs Provide Solutions

- Is there a Public Benefits?
- Effects on livability
- Effects on likeability
- Access to clean air
- Access to food and water
- Are the precinct, municipality, city or county better because of it?

Is the Quality of Life Somehow increased?

Hypotheticals

- Detention Ponds(Flood Mitigation) ILA(SH)
  - Make the area around a detention pond into a park with an ILA
- UH & Metro Interlocal(NM)
  - Rail line on UH Property
- Buffalo Bayou(KM)







Hypotheticals







- Would all three or any of these increase the marketability of the city, county, or state?(Rhetorical question)