



When It Is Your Circus, and You Don't Have Enough Clowns - Interlocal Agreements

Presented by:
Cynthia Trevino, DNRB&Z

Interlocal Cooperation Contracts

Texas Government Code – Chapter 791

- What is an interlocal contract?
 - Short answer: A contract between local government entities that complies with the requirements of Texas Government Code, Chapter 791.
 - Frequently known by other names: ILA, Mutual Aid Agreements, Joint Operations Plan, Cooperative Agreement
 - Other names that make no mention of the word “contract” or “interlocal”



PURPOSE OF AN ILA

- § 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.



BASIC REQUIREMENTS

Authority

Be authorized by the governing body of each party to the contract.

Purpose

State the purpose (governmental function or service), terms, rights, and duties of the contracting parties.

Revenues

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.

Payment


Payment must be in an amount that fairly compensates the performing party for the service or function performed.

CONTRACTING PARTIES

Texas Government Code §
791.003 AND 791.011



Local governments as defined by 791.003(4)(A-E): county, municipality, special district, junior college district, or other political subdivision of this state or another state, local government corporation, political subdivision corporation, local workforce development board or combination of two or more of the listed local government.



Other agencies as defined by 791.011: state agency, federally recognized Indian tribes

AUTHORIZED BY GOVERNING BODY

- Governing Body must authorize the agreement – city council, commissioner’s court, school board. Tex. Gov’t Code §791.011(d)(1 - 3)
- Exception to the rule: a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body. Tex. Gov’t Code § 791.011(d)(1)
- Practice tip: delegated authority is not sufficient
- Practice tip: a department is not a proper contracting authority



ADDITIONAL APPROVAL REQUIREMENTS FOR COUNTIES

Tex. Gov't Code § 791.014 - (a) Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.

(b) The approval must:

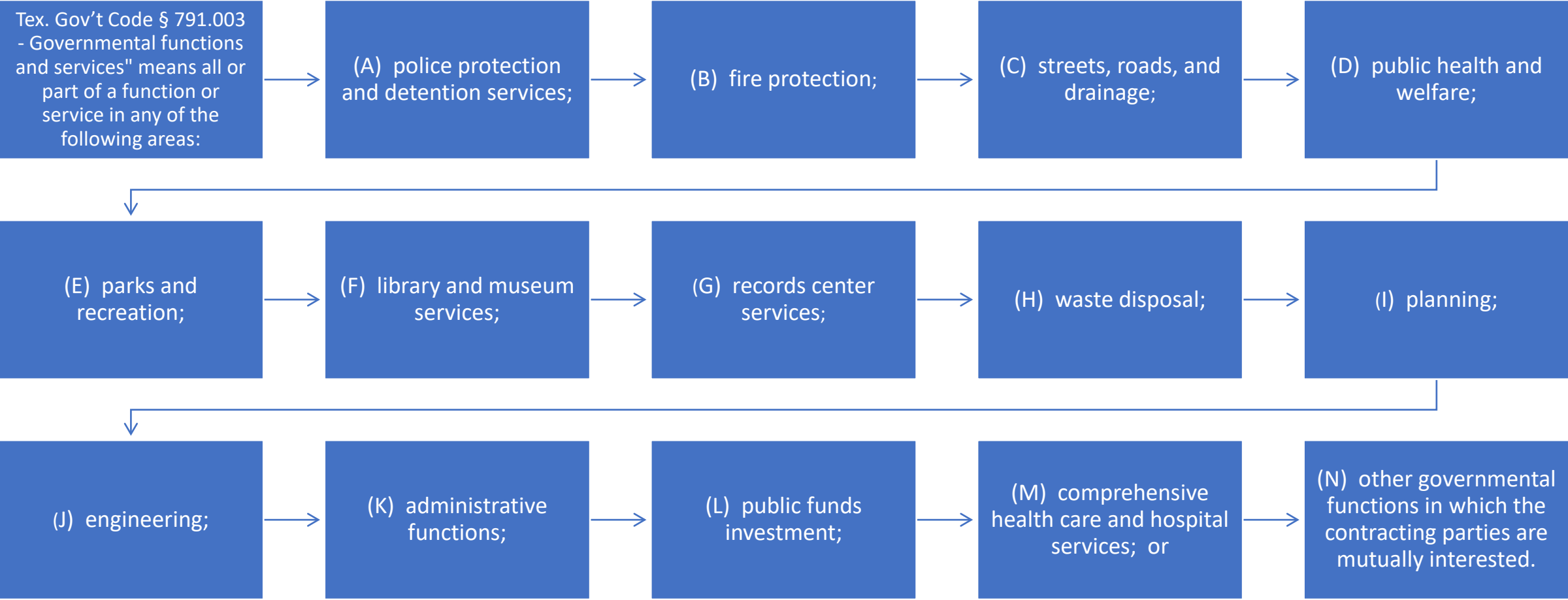
- (1) be given in a document other than the interlocal contract;
- (2) describe the type of project to be undertaken; and
- (3) identify the project's location.

(c) The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.

(d) A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:

- (1) the county begins the project without the approval required by this section; and
- (2) the local government makes the payment before the project is begun by the county.

PURPOSE – GOVERNMENTAL FUNCTION



PURPOSE – GOVERNMENTAL FUNCTION

- Tex. Gov't Code § 791.011(c) An interlocal contract may be to:
 - (1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or
 - (2) provide a governmental function or service that each party to the contract is authorized to perform individually.
- Practice tip: Each party must be authorized to perform the functions or services contemplated by the agreement.



PAYMENT FOR SERVICES



Specify that each party paying for the performance of a function or service must make those payments from current revenues available to the party. § 791.011(d)(3).



Must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. § 791.011(e).



Practice tip: template documents should include the “current revenues” language.



Practice tip: document the value of in-kind services to show fair compensation.

MAY INCLUDE

An interlocal contract may:

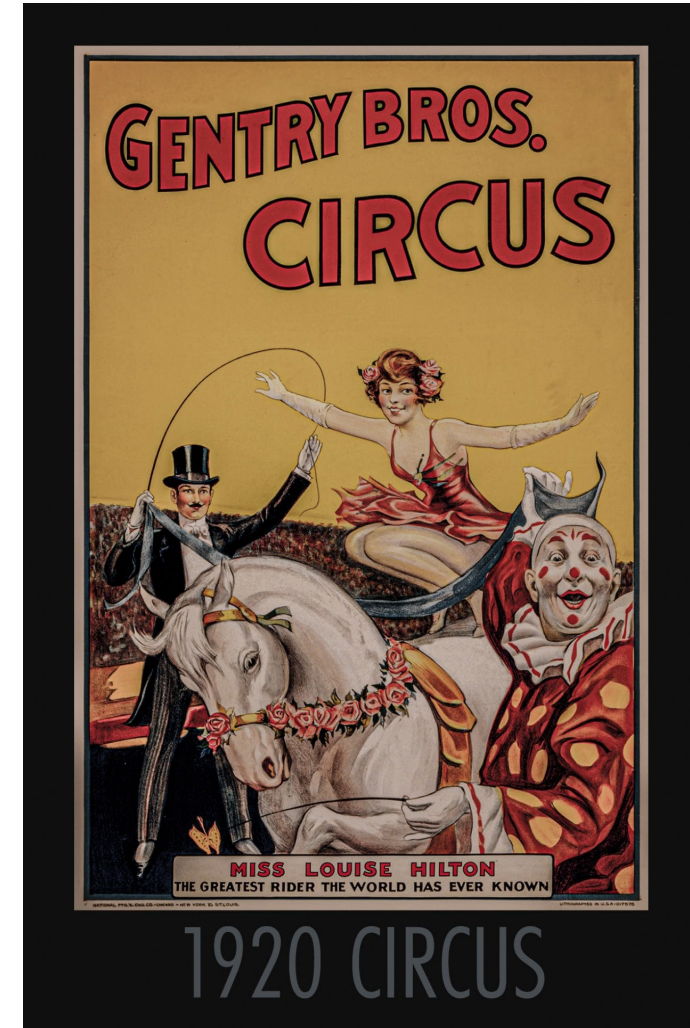
- be renewed (TCG§ 791.011(f)) ;
- have a specified term of years (TCG§ 791.011(i)) ;
- to administer contract - create a joint admin agency, designate a local government or contract with exempt 501(c)(3) for services. TGC § 791.013
- Provide for the submission of disputes to the alternative dispute resolution procedures authorized by Chapter 2009. TGC § 791.015

Practice tip: consider automatic renewal with budget appropriations language

MAY NOT INCLUDE

An interlocal contract may not:

- be used to purchase engineering or architectural services (TCG§ 791.011(h)) ; or
- enter into a contract to purchase construction-related goods or services through a purchasing cooperative under this chapter in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that:
 - (1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
 - (2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared. (TCG§ 791.011(j))



IMMUNITIES AND LIMITATIONS

§791.006. LIABILITY IN FIRE PROTECTION CONTRACT OR PROVISION OF LAW ENFORCEMENT SERVICES.



Condensed language:

May not alter the immunities or limitations on damages contained in the Texas Tort Claims Act;

The parties may assign responsibility for civil liability arising from the performance of the function contracted for as they may agree.

SPECIFIC INTERLOCAL CONTRACTING AUTHORITY

Subchapter C

- REGIONAL CORRECTIONAL FACILITIES – TGC §791.021
- REGIONAL JAIL FACILITIES - TGC §791.022
- STATE CRIMINAL JUSTICE FACILITIES - TGC §791.023
- COMMUNITY CORRECTIONS FACILITIES - TGC §791.024
- CONTRACTS FOR PURCHASES (GOODS AND SERVICES) - TGC §791.025
- WATER SUPPLY AND WASTEWATER TREATMENT FACILITIES - TGC §791.026
- EMERGENCY ASSISTANCE - TGC §791.027
- JOINT ROAD CONSTRUCTION AND IMPROVEMENTS - TGC §791.028
- REGIONAL RECORD CENTERS - TGC §791.029
- HEALTH CARE AND HOSPITAL SERVICES - TGC §791.030
- TRANSPORTATION INFRASTRUCTURE - TGC §791.031
- CONSTRUCTION, IMPROVEMENT, AND REPAIR OF STREETS IN MUNICIPALITIES - TGC §791.032
- CONSTRUCT, MAINTAIN, OR OPERATE FACILITIES ON STATE HIGHWAY SYSTEM - TGC §791.033
- RELIEF HIGHWAY ROUTE AROUND CERTAIN MUNICIPALITIES - TGC §791.034
- INSTITUTIONS OF HIGHER EDUCATION OR UNIVERSITY SYSTEMS - TGC §791.035
- REGULATION OF TRAFFIC IN SPECIAL DISTRICTS - TGC §791.036
- SOLID WASTE DISPOSAL SERVICES IN CERTAIN COUNTIES - TGC §791.037



Questions?

Cynthia Trevino

(210) 227-3243

2517 N. Main

San Antonio, TX 78212

xtrevino@rampagelaw.com

