



## HART VOTING SYSTEM 29956

### WARRANTY, SUPPORT, AND LICENSE AGREEMENT (SIGNATURE PAGE)

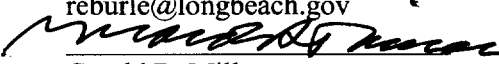
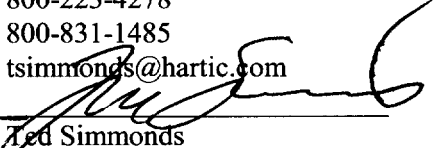
This Hart Voting System (HVS) Warranty, Support, and License Agreement ("Agreement") is entered into by and between Hart InterCivic, Inc., a Texas corporation ("Hart"), and the City of Long Beach, California ("Client"), a municipal corporation, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 9, 2007. This Agreement is entered into in connection with a Hart Voting System Master Agreement dated February 13, 2007, between Hart and Client under which Client has purchased Hart Voting System Hardware. This Agreement sets forth terms between Hart and Client applicable to Client's ownership and use of the Hart Voting System Hardware and license from Hart of Hart Proprietary Software (including Firmware), including warranty, support, license, and other terms. Defined terms used in this Agreement will have the meanings specified in Section 14, Definitions, or as otherwise set forth herein.

The following Schedules are attached to this Agreement and made a part hereof:

Schedule A	Support Contact Information
Schedule B	Hart Proprietary Software
Schedule C	Non-Hart Software
Schedule D	Initial Annual Fee
Schedule E	Hart Voting System Software Application Acceptance Document

The parties acknowledge they have read and understand this Agreement (including all Schedules) and are entering into this Agreement only on the basis of the terms expressly set forth in this Agreement. There are no oral agreements, representations, or warranties. The Effective Date of this Agreement is February 13, 2007.

#### Agreed and Accepted:

	<u>Client</u>	<u>Hart</u>
Name:	City of Long Beach	Hart InterCivic, Inc.
Address:	333 West Ocean Blvd. Long Beach, California 90802	15500 Wells Port Drive Austin, Texas 78728
	Attn: City Manager	Attn.: Ted Simmonds Senior Vice President/COO
Primary Phone:	562-570-7479	800-223-4278
Facsimile:	562-570-6789	800-831-1485
E-mail:	reburle@longbeach.gov	tsimmonds@hartic.com
Executed By:		
Name:	Gerald R. Miller	Ted Simmonds
Title:	City Manager	Senior Vice President/COO

APPROVED AS TO FORM

*This Agreement is not effective until executed by both parties.*

2/12, 2007

ROBERT E. SHANNON, City Attorney

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By Lou A. Conway  
Hart Voting System License Agreement - Rev. 01-02-2006  
DEPUTY CITY ATTORNEY

In consideration for the agreements set forth herein, the parties agree as follows:

**1. WARRANTY TERMS**

**1.1 Hart Voting System Limited Warranty.** Hart warrants that the Hart Voting System (HVS) will substantially conform to the definitions and/or descriptions in this Agreement, the Master Agreement, any schedules or exhibits to this Agreement or the Master Agreement, and any other documentation provided by Hart to Client, and will be fit for the purpose intended as specified in this Agreement and the Master Agreement, and the schedules and exhibits hereto and thereto. All work shall be performed in a skilled manner and workmanship shall conform or be superior to the industry standard in every material respect.

**1.2 Certification Limited Warranty.** Hart warrants that the HVS core voting system software and components have received all certifications from the Office of the California Secretary of State required by law at the time of the execution of this Agreement.

**1.3 Hart Voting System Hardware Limited Warranty.** Hart warrants that during the warranty period the HVS Hardware purchased by Client will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Hart Precinct Voting System Operator's Manual for the HVS Hardware. The hardware warranty period is three (3) years, other than the VBO unit(s) and/or eScan™ unit(s), which is one (1) year, beginning from the Installation Date. Hart will, at Hart's sole discretion, replace or repair any HVS Hardware that does not comply with this warranty, at no additional charge to Client. To request warranty service, Client must contact Hart in writing within the warranty period. Hart may elect to conduct any repairs at Client's site, Hart's facility, or any other location specified by Hart. Any replacement HVS Hardware provided to Client under this warranty may be new or reconditioned. Hart may use new and reconditioned parts in performing warranty repairs and building replacement products. If Hart repairs or replaces HVS Hardware, its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired HVS Hardware. Hart owns all replaced HVS Hardware and all parts removed from repaired products. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the HVS and the Exclusions from Warranty and Support Coverage set forth in Section 1.7. This warranty does not cover any HVS Hardware that has had the original identification marks and/or numbers removed or altered in any manner. The remedies set forth in this Section are the full extent of Client's remedies and Hart's obligations regarding this warranty.

**1.4 Hart Proprietary Software Limited Warranty.** Hart warrants that during the term of this Agreement, the Hart Proprietary Software will perform substantially according to the then-current functional specifications described in the BOSS™, Tally™, Rally™, and Ballot Now™ Operators' Manuals accompanying such Hart Proprietary Software. To request warranty service, Client must contact Hart in writing within the warranty period. Failure to conform to the warranty must be reported in writing and be accompanied with sufficient detail to enable Hart to reproduce the error and provide a remedy or suitable workaround (a solution that will allow the software to function appropriately as certified). Hart will make commercially reasonable efforts to remedy or provide a suitable workaround for defects, errors, or malfunctions covered by this warranty that have a significant adverse affect upon operation of the Hart Proprietary Software, at no additional charge to Client. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's use of the Hart Voting System in accordance with the applicable HVS manuals and documentation in applicable written documentation from Hart, including emails with technical information or updates, or other hardcopy or electronic communication from Hart, and the Exclusions from Warranty and Support Coverage set forth in Section 1.7. The remedies set forth in this Section 1.4 are the full extent of Client's

remedies and Hart's obligations regarding this warranty.

**1.5 Title Warranty.** Hart warrants that it has good title to the Hart Proprietary Software or HVS Hardware, and the right to license or sublicense the Software.

**1.6 Noninfringement Warranty.** Hart warrants that to Hart's knowledge the Hart Proprietary Software and HVS Hardware when used as authorized by the Master Agreement and this Agreement do not infringe upon or misappropriate any third party patent, copyright, trademark, trade secret, or other intellectual property right.

**1.7 Exclusions from Warranty and Support Coverage.** The warranties under this Section 1 and Software Support under Section 2 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) Client's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of noncompatible media, supplies, parts, or components; (c) modification or alteration of the Hart Voting System, or its components, by Client or third parties not authorized by Hart; (d) use of equipment or software not supplied or authorized by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions; (g) negligence, accidents, abuse, neglect, misuse, or tampering by Client; (h) improper or abnormal use or use under abnormal conditions by Client; (i) use by Client in a manner not authorized by this Agreement or inconsistent with Hart's specifications and instructions; (j) use by Client of software on Equipment that is not in good operating condition; (k) acts of Client, its agents, servants, employees, or any third party; (l) servicing or support not authorized by Hart; or (m) Force Majeure. Hart reserves the right to charge for repairs on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices caused by these exclusions from warranty and support coverage.

**1.8 Non-Hart Equipment and Non-Hart Software Excluded.** HART MAKES NO REPRESENTATIONS OR WARRANTIES AS TO NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART TO CLIENT, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSED TO CLIENT "AS IS." HART HAS NO RESPONSIBILITY OR LIABILITY FOR NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART'S DISTRIBUTORS OR OTHER THIRD PARTIES TO CLIENT. If Hart sells, licenses, or sublicenses any Non-Hart Equipment or Non-Hart Software to Client, Hart will pass through to Client, on a nonexclusive basis and without recourse to Hart, any third-party manufacturer's warranties covering the equipment or software, but only to the extent, if any, permitted by the third-party manufacturer. Client agrees to look solely to the warranties and remedies, if any, provided by the manufacturer or third-party licensor.

**1.9 Disclaimer.** THE WARRANTIES IN THIS WARRANTY TERMS SECTION GIVE CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). HART'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HVS HARDWARE AND HART PROPRIETARY SOFTWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY TERMS SECTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION 1 OF THIS AGREEMENT, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SALE OF HVS HARDWARE AND LICENSE OF HART PROPRIETARY SOFTWARE, AND

(B) HART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, FOR ALL EQUIPMENT, SOFTWARE, AND SERVICES. THE EXPRESS WARRANTIES EXTEND SOLELY TO CLIENT. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

## **2. SOFTWARE SUPPORT SERVICES**

**2.1 Description of Software Support Services.** Subject to the terms and conditions of this Agreement, Hart will provide Client the Software Support Services described below. Support Services under this Section 2 do not cover any of the exclusions from warranty and support coverage as described under Section 1.3. If Hart, in its discretion, provides Support Services in addition to the services described under this Section 2, Client will pay Hart for such services on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices, unless otherwise agreed in writing by Hart and Client.

**2.1.1 General Software Support.** General Software Support will consist of assisting the Client in the design and production of elections, including pre-election and post-election testing and general operation of the Hart Voting System.

**2.1.2 Software Support Services.** Software Support Services will consist of periodic updates and any software "bug" corrections to Hart software. A software "bug" is any malfunction that prevents the Hart software from performing substantially as described in the then-current operator's manual for such software. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Hart reserves the right to determine whether any reported, claimed software malfunction is in fact a "bug." Software "bugs" must be reported in writing and be accompanied with sufficient detail to enable Hart staff to reproduce the error and provide a remedy or suitable workaround. The exclusions from warranty coverage under Section 1.3 also are exclusions from Software Support Services under this Section 2.1.2.

**2.1.3 Engineering Services.** In any case where Hart software interfaces with a third party software system, including but not limited to, Client's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems; Hart will not be responsible for proper operation of any Hart software that interfaces with the third party software should such third party software be upgraded, replaced, modified, or altered in any way. Hart will also not be responsible for the proper operation of any Hart software running on Client's computer hardware, should Client install a new computer operating system on said hardware without advising Hart of such changes and receiving Hart's written approval. Engineering services and associated costs may be required in those situations where Client requests Hart's review and approval of any system changes outside the original system specifications at the time of the original effective date of this Agreement and the Hart Voting System Master Agreement. Hart will not be responsible for the proper operation of any Hart software that interfaces with third party software should such third party software be configured or operated in any manner contrary to that described in a Statement of Work (to be attached as a mutually agreed upon Schedule to this Agreement if engineering services are requested by the Client).

**2.1.4 Client Suggestions and Recommendations.** Client may propose, suggest, or recommend changes to the Software at any time in writing to Hart. Hart may include any such proposals,

suggestions, or recommendations, solely at Hart's option, in subsequent periodic Software updates. Should Hart elect to include any such proposals, suggestions, or recommendations in subsequent periodic Software updates, such proposals, suggestions, or recommendations will become Hart's property. Hart is under no obligation to change, alter, or otherwise revise the Software according to Client's proposals, suggestions, or recommendations.

**2.2**     Software Support Services Contact Information. Support contact information is set forth in Schedule A, Support Contact Information.

### **3.        SOFTWARE LICENSES AND SUBLICENSES**

**3.1**     Licenses and Sublicenses. Subject to the terms and conditions of this Agreement, Hart grants to Client a personal, nonexclusive, nontransferable, and limited license to use the Hart Proprietary Software and a personal, nonexclusive, nontransferable, and limited sublicense to use the Sublicensed Software. Hart will provide Client, and Client will be permitted to use, only the run-time executable code and associated support files of the Software for Client's internal data processing requirements as part of the Hart Voting System Electronic Voting System. The Software may be used only in the United States at the Licensed Location specified on Schedule B on the Equipment or other computer systems authorized by Hart in writing. Client may temporarily transfer the Software to a backup computer system at an alternative location within Client's county of operation if the Equipment or other authorized computer system is inoperative or the Licensed Location is temporarily unavailable, provided Client must promptly give Hart written notice of such temporary transfer, including a description of the backup computer system and the alternative location. Client's use of the Software will be limited to the number of licenses specified in Schedules B and C. Only Client and its authorized employees may use or access the Software. Voters are also authorized to interact with the Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election. Client agrees that Hart, the licensors of Sublicensed Software, and their representatives may periodically inspect, conduct, and/or direct an independent accounting firm to conduct an audit, at mutually agreed-upon times during normal business hours, of the computer site, computer systems, Equipment, and appropriate records of Client to verify Client's compliance with the terms of the licenses and sublicenses granted to Client.

**3.2**     Delivery and Installation. Hart will deliver and install the Software at the Client's site on a mutually agreed-upon date during Hart's normal working hours. The Software will be deemed accepted upon successful completion of acceptance testing by Client per Schedule E, Acceptance Procedures.

**3.3**     Training and Documentation. Hart will provide standard user-level documentation in electronic form for the Software and standard operational training, which will commence no earlier than forty-five (45) days and be completed no later than thirty (30) days before the first election for which the Software will be used. Hart will provide Client a minimum of forty (40) hours of operational training and on-site support at the first election in which the Equipment and Software are used. Charges for additional training or support services will be invoiced to Client at Hart's then-current hourly rates, plus travel, communication, and other expenses. Any additional training or support services will be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

**3.4**     Protection of Software.

- (a)       The HVS Hardware and Hart Proprietary Software are designed to be used only

with each other and the agreed-upon Non-Hart Software and Non-Hart Equipment. To protect the integrity and security of the Hart Voting System, Client shall use the Software and Equipment only in connection with the Hart Voting System, and, without the express written consent of Hart, shall not (i) install or use other software on or with the Equipment or Software or network the Equipment or Software with any other hardware, software, equipment, or computer systems; or (ii) modify the Equipment or Software. If Client does not comply with any provisions of the preceding sentence, then (i) the Limited Warranties under Section 1 will automatically terminate; (ii) Hart may terminate its obligation to provide Support Services under Section 2; (iii) Hart will have no further installation obligations under Section 3.2 (Delivery and Installation); and (iv) Hart will have no further obligations under Section 3.3 (Training and Documentation). Furthermore, if Client uses the Software and Equipment in combination with other software and equipment (other software or equipment being those not provided by Hart or its designees), and the combination infringes Hart proprietary patent claims outside the scope of the software license granted to Client under Section 3, Hart reserves its rights to enforce its patents with respect to those claims.

(b) Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software. Client shall not use any Software for application development, modification, or customization purposes, except through Hart.

(c) Client shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau. This restriction does not preclude or restrict Client from contracting for election services for other local governments located within Client's jurisdictional boundaries. Client shall not modify, copy, or duplicate the Software; provided, during the term of the Software licenses and sublicenses, Client may have in its possession one (1) copy of the Software for inactive archival or backup purposes. All copies of the Software, in whole or in part, must contain all of Hart's or the third-party licensor's titles, trademarks, copyright notices, and other restrictive and proprietary notices and legends (including government-restricted rights) as they appear on the copies of the Software provided to Client. Client shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to Client regarding any unauthorized possession or use of the Software.

(d) Upon termination of Client's license or sublicense of Software, Client shall immediately discontinue all use of the Software and return to Hart or destroy, at Hart's option, the Software (and all related documentation (electronic and hard copy) and Confidential and Proprietary Information) and all archival, backup, and other copies thereof, and provide certification to Hart of such return or destruction.

(e) Client shall not publish any results of benchmark tests run on any Software; provided, however, that nothing in this Agreement shall preclude Client from disclosing such information in accordance with the California Public Records Act.

(f) Although the Hart Proprietary Software and Sublicensed Software are protected by copyright and/or patents, they may be unpublished, and constitute Confidential and Proprietary Information of Hart and the third-party licensor, respectively. Client shall maintain the Software in confidence and comply with the terms of Section 6, Protection of Confidential and Proprietary Information, with respect to the Software.

(g) This Section 3.4 will survive the termination or cancellation of this Agreement.

**3.5     No Transfer of Title.** This Agreement does not transfer to Client title to any Software, intellectual property contained in any Software, or Confidential and Proprietary Information. Title to Hart Proprietary Software and all copies thereof, and all associated intellectual property rights therein, will remain in Hart. Title to Non-Hart Software and all copies thereof, and all associated intellectual property rights therein, will remain in the applicable third-party licensor.

**3.6     Inherently Dangerous Applications.** The Software is not developed or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous applications. Client shall not use the Software in any inherently dangerous application and agrees that Hart and any third-party licensor will not be liable for any claims or damages arising from such use.

**3.7     Source Code Escrow.** No later than thirty (30) days after delivery of the Hart Proprietary Software to Client, and within thirty (30) days after delivery of any new releases, corrections, bug fixes, updates, enhancements, or other modifications thereto, Hart shall deliver to Iron Mountain Intellectual Property Management the source code for the Hart Proprietary Software, including but not limited to, all relevant commentary, documentation and instructions to compile and use the source code. In the event Hart ceases operations or fails to support the Hart Proprietary Software as provided in this Agreement (and does not assign its obligations under this Agreement to a third party pursuant to Section 13.8 hereof), the escrow agent shall be instructed to release all source code materials to Client. Client shall be granted a nonexclusive, nontransferable license to use of the source code shall be limited to the terms of this Agreement and the license granted herein. Hart shall pay all fees for the escrowing of the software.

#### **4.     ANNUAL FEE**

**4.1     Amount of Annual Fee.** The Annual Fee is a combined licensing, sublicensing, and support fee. Client will pay Hart an Annual Fee upon execution of this Agreement and annually thereafter before each Anniversary Date. The amount of the Initial Annual Fee, payable upon execution of this Agreement, is the amount specified as the "Initial Annual Fee" on Schedule D, Initial Annual Fee. Subsequent Annual Fees are due annually before each Anniversary Date of this Agreement. Hart may adjust the amount of the Annual Fee payable on each Anniversary Date by notifying Client of any price changes with the invoice in which the adjustment is made. Unless adjusted by Hart, each Annual Fee will be the same as the immediately preceding Annual Fee.

**4.2     Invoices.** Hart will invoice Client annually ninety (90) calendar days before the due date of the Annual Fee.

**4.3     Payments.** Client must pay each invoiced Annual Fee before the Anniversary Date immediately following the date of invoice. If Client elects not to or fails to timely pay an Annual Fee, this Agreement and the licenses, sublicenses, and software support services will automatically terminate on such Anniversary Date. All payments are to be made to Hart at its principal office in Austin, Texas, as set forth on the Signature Page or to such other location as may be designated by Hart in a notice to Client.

**4.4     Additional Charges.** Additional charges may apply to services rendered outside contracted hours or beyond normal coverage at Client's request, e.g., travel expenses, and premium and minimum charges. There will be an additional charge at Hart's current technician's rate per hour for any technical work required as a result of other than Hart-recommended hardware purchased by Client for use with the Hart Voting System. Any other additional charges must be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

**4.5 Payment Disputes.** If any dispute exists between the parties concerning the amount due or due date of any payment, the parties shall resolve such dispute pursuant to Section 7 of the Master Agreement. Client shall pay the undisputed portion in accordance with the payment schedule agreed to by the parties. Such payment will not constitute a waiver by Client or Hart of any of their respective legal rights and remedies against each other.

**4.6 Taxes.** The City of Long Beach, California, claims an exemption from use tax pursuant to the Use Tax Direct Payment Exemption Certificate attached as Exhibit B to the Master Agreement. If Client is not tax-exempt, (a) Client will pay any tax Hart becomes obligated to pay in connection with this Agreement, exclusive of taxes based on the net income of Hart, and (b) Client will pay all personal property and similar taxes assessed after shipment.

**4.7 Suspension of Performance.** If any payment due to Hart under this Agreement is past due more than thirty (30) days, Hart may suspend performance under this Agreement until all amounts due are current.

## **5. CLIENT RESPONSIBILITIES**

**5.1 Independent Determination.** Client acknowledges it has independently determined that the Hart Voting System meets its requirements.

**5.2 Cooperation.** Client agrees to cooperate with Hart and promptly perform Client's responsibilities under this Agreement. Client will (a) provide adequate working and storage space for use by Hart personnel near Equipment; (b) provide Hart full access to the Equipment and Software and sufficient computer time, subject to Client's security rules; (c) follow Hart's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's instructions for obtaining hardware and software support and warranty services; (e) provide a memory dump and additional data in machine-readable form if requested; (f) reproduce suspected errors or malfunctions in Software; (g) provide timely access to key Client personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.

**5.3 Site Preparation.** Client shall prepare and maintain the installation site in accordance with instructions provided by Hart. Client is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Hart's specifications. Any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.

**5.4 Site Maintenance; Proper Storage.** Client shall maintain the appropriate operating environment, in accordance with Hart's specifications, for the Equipment and Software and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning, and all other equipment and utilities necessary for the Equipment and Software to operate properly. Client shall properly store the Equipment and Software when not in use.

**5.5 Use.** Client is exclusively responsible for supervising, managing, and controlling its use of the Hart Voting System, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making daily backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing



the use of information and data obtained. Client will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Hart Voting System and that the Equipment and Software are used in accordance with applicable manuals, instructions, and specifications. Client shall comply with all applicable laws, rules, and regulations with respect to its use of the Hart Voting System.

**5.6 Backups.** Client will maintain backup data necessary to replace critical Client data in the event of loss or damage to data from any cause.

## **6. PROTECTION OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

### **6.1 Confidentiality.**

(a) Client will keep in confidence and protect Confidential and Proprietary Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Agreement. Client shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Equipment and Software and the other Confidential and Proprietary Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. Client shall keep the Software and all tapes, diskettes, CDs, and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable Client to use the Software. Client acknowledges that unauthorized disclosure of Confidential and Proprietary Information may cause substantial economic loss to Hart or its suppliers and licensors. Each permitted copy of Confidential and Proprietary Information, including its storage media, will be marked by Client to include all notices that appear on the original. Title, copyright, and all other proprietary rights in and to the HVS Software at all times remains vested exclusively in Hart or, as applicable, third-party licensors.

(b) The provisions of Section 6.1(a) shall not apply to Confidential and Proprietary Information that: (i) Client demonstrates Client knew prior to the time Hart disclosed it; or (b) is or becomes publicly available without breach of this Agreement by Client; or (c) a third party who has a right to disclose does so to Client without restrictions on further disclosure; or (d) must be disclosed pursuant to law, subpoena, or court order.

**6.2 Return of Confidential and Proprietary Information.** Upon termination or cancellation of this Agreement or, if earlier, upon termination of Client's permitted access to or possession of Confidential and Proprietary Information, Client shall return to Hart all copies of the Confidential and Proprietary Information in Client's possession (including Confidential and Proprietary Information incorporated in software or writings, electronic and hard copies).

**6.3 Intellectual Properties.** All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, bug fixes, upgrades, and trade secrets developed by Hart personnel (alone or jointly with Client) in connection with Confidential and Proprietary Information, HVS Hardware, and Hart Proprietary Software will be the exclusive property of Hart.

**6.4 Support Materials.** Client acknowledges that all support materials are the property of Hart and include Confidential and Proprietary Information of Hart. Client agrees that it will not permit anyone other than Hart installation and support personnel and authorized County employees to use such materials.

**6.5** Client Employees. Client will inform its employees of their obligations under this Section 6 to ensure that such obligations are met.

**6.7** Survival. This Section 6 will survive termination or cancellation of this Agreement.

## **7. TITLE; RISK OF LOSS**

### **7.1** Software.

(a) *Hart Proprietary Software:* Title to Hart Proprietary Software, all copies thereof, and all associated intellectual proprietary rights therein will remain in Hart including, but not limited to, all patents, copyrights, trade secrets, trademarks, and other proprietary rights.

(b) *Non-Hart Software:* Title to Non-Hart Software, all copies thereof, and all associated intellectual proprietary rights therein will remain in the applicable third-party licensor including, but not limited to, all patents, copyrights, trade secrets, trademarks, and other proprietary rights.

(c) *Risk of Loss:* Risk of loss to Software will pass to Client upon delivery.

**7.2** Confidential and Proprietary Information. Title to Hart's Confidential and Proprietary Information will remain in Hart. Title to Confidential and Proprietary Information of Hart's suppliers and licensors will remain in the respective suppliers and licensors.

**7.3** Proprietary Rights. Client acknowledges and agrees that the design of the Hart Voting System, design of the HVS Hardware, Hart Proprietary Software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, information, and material, are the property of Hart. Client agrees that the sale of HVS Hardware and license of Hart Proprietary Software to Client does not grant to or vest in Client any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the Hart Voting System, HVS Hardware, and Hart Proprietary Software, are the sole and absolute property of Hart and no interest therein is being vested in Client by the execution of this Agreement or the sale of the HVS Hardware or license of the Hart Proprietary Software to Client. Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software or Equipment. Client will have no authority or right to copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. The provisions of this Section 7.3 will survive the termination or cancellation of this Agreement.

## **8. TERM OF AGREEMENT; TERMINATION**

**8.1** Term. The initial term of this Agreement and the licenses granted herein is one (1) year commencing on the Effective Date and expiring on the first Anniversary Date.

**8.2** Renewal Terms. Except as otherwise provided in this Agreement, Client may renew this Agreement before its expiration or termination by paying the Annual Fee invoiced by Hart, as provided in Section 4.2, before the Anniversary Date immediately following the date of invoice, as provided in Section 4.3. Each renewal term will be a one-year (1-year) term, commencing on the expiration of the prior term and expiring on the immediately following Anniversary Date.

**8.3**     Defaults. The following events will be deemed to be defaults:

(a)     A party committing a material breach of any term of this Agreement if such breach has not been cured within thirty (30) days after written notice of such breach has been given by the nondefaulting party to the defaulting party;

(b)     A party filing bankruptcy, becoming insolvent, or having its business placed in the hands of a receiver, assignee, or trustee, whether by voluntary act or otherwise; or

(c)     A party failing to comply in any material respect with any federal, state, or local laws applicable to a party's performance under this Agreement or the Hart Voting System Master Agreement in compliance with elections law applicable at the time of the Effective Date of this Agreement.

**8.4**     Termination.

(a)     This Agreement will automatically terminate at the end of its then-current term if Client has elected not to or has failed to timely make full payment to Hart of the invoiced Annual Fee required to renew the term, as provided in Sections 4.3 and 8.2.

(b)     Hart may terminate Software Support Services under Section 2 on thirty (30) days prior written notice to Client if Hart determines that any alterations, attachments, or modifications not made by Hart or the failure to install a software or hardware release will substantially interfere with the provision of support.

(c)     A party may terminate this Agreement before expiration of its term for a default identified in Section 8.3 by the other party. If default occurs, the parties will have all remedies provided in this Agreement and otherwise available by statute, law, or equity.

**8.5**     Survival. Section 1.1 will survive the termination or expiration of this Agreement until the end of the warranty period stated therein. Sections 3.4(b), 3.4(c), 3.4(d), 3.4(e), 3.4(f), 6, 7.3, 8.5, 9, 11, and 13 will survive the termination or expiration of this Agreement.

**9.**       **LIMITATION OF DAMAGES**

**9.1**     EXCLUSIVE REMEDY. HART DOES NOT ACCEPT ANY LIABILITY FOR WARRANTIES BEYOND THOSE SET FORTH IN SECTION 1. HART'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS CONCERNING THE HVS HARDWARE PROVIDED TO CLIENT BY HART OR ITS DISTRIBUTORS, THIS AGREEMENT, AND SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT ARE SET FORTH IN THIS SECTION.

**9.2**     DISCLAIMER. CLIENT IS RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL CLIENT DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO CLIENT DATA.

**9.3**     LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER

PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OF THE OTHER PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, HART'S TOTAL LIABILITY TO CLIENT FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THE EQUIPMENT, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY IN THE EVENT DAMAGES ARISE OUT OF OR ARE RELATED TO FRAUD OR INTENTIONAL WRONGDOING ON THE PART OF HART. HART IS NOT LIABLE FOR DAMAGES CAUSED ENTIRELY BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS OR FOR ANY CLAIM AGAINST CLIENT OR ANYONE ELSE BY ANY THIRD PARTY AS A RESULT OF CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS. TO THE EXTENT DAMAGES ARE DETERMINED TO BE CAUSED IN PART BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS, HART WILL NOT BE LIABLE FOR THAT PORTION OF SUCH DAMAGES DETERMINED TO BE CAUSED BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS.

SOME STATES (OR JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO CLIENT.

**9.4 Referrals.** Hart may direct Client to third parties having products or services that may be of interest to Client for use in conjunction with the Equipment and Software. Notwithstanding any Hart recommendation, referral, or introduction, Client will independently investigate and test non-Hart products and services and will have sole responsibility for determining suitability for use of non-Hart products and services. Hart has no liability with respect to claims relating to or arising from use of non-Hart products and services, including, without limitation, claims arising from failure of non-Hart products to provide proper time and date functionality.

## **10. INDEMNITY**

**10.1 Indemnity.** Hart, at its own expense, will defend, indemnify and hold harmless Client, and its Boards, Commissions, officers, employees and agents against (a) any and all third party claims for damage to tangible property or injury to persons to the extent caused by or alleged to be caused by Hart's negligence or willful misconduct during Hart's performance of this Agreement, and (b) any and all third party claims that the HVS Hardware or Hart Proprietary Software infringe a United States patent, copyright, trademark, or other proprietary right, or misappropriate trade secrets protected under United States law. Hart's obligation to defend, indemnify and hold harmless Client is contingent upon Client (i) giving Hart prompt written notice of such claims; (ii) permitting Hart to control the defense and settlement of claims (provided, however, that Hart shall not be permitted to settle any claim without the express written consent of Client, which consent shall not be unreasonably withheld by Client, unless the settlement results in a full and unconditional release of liability for Client); and (iii) providing all reasonable assistance to Hart in defending or settling the claims at Hart's sole expense.

**10.2 Remedies.** As to HVS Hardware or Hart Proprietary Software that is subject to a claim of infringement or misappropriation, Hart may (a) obtain the right of continued use of the HVS Hardware or Hart Proprietary Software for Client or (b) replace or modify the HVS Hardware or Hart Proprietary Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Hart, any applicable Software license and its charges will end, Client will cease using the

applicable HVS Hardware and Hart Proprietary Software, Client will return to Hart all applicable HVS Hardware and return or destroy all copies of the applicable Hart Proprietary Software, and Client will certify in writing to Hart that such return or destruction has been completed. Upon return or Hart's receipt of certification of destruction, Hart will give Client a credit for the price paid to Hart for the returned or destroyed HVS Hardware and Hart Proprietary Software, less a reasonable offset for use and obsolescence.

**10.3 Exclusions.** Hart will not defend or indemnify Client if any claim of infringement or misappropriation (a) is asserted by an affiliate of Client; (b) results from Client's design or alteration of any HVS Hardware or Hart Proprietary Software; (c) results from use of any HVS Hardware or Hart Proprietary Software in combination with any non-Hart product, except to the extent, if any, that such use in combination is restricted to the Hart Voting System designed by Hart; (d) relates to Non-Hart Software or Non-Hart Equipment alone; or (e) arises from Client-specified customization work undertaken by Hart or its designees in response to changes in Hart Proprietary Software or Non-Hart Software that are made in response to Client specifications.

**10.4 EXCLUSIVE REMEDIES.** THIS SECTION 10 STATES THE ENTIRE LIABILITY OF HART AND CLIENT'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT AND TRADE SECRET MISAPPROPRIATION.

## **11. DISPUTE RESOLUTION**

All disputes arising under this Agreement shall be handled in accordance with Section 7 of the Master Agreement.

## **12. INSURANCE**

**12.1** As a condition precedent to the effectiveness of this Agreement, Hart shall procure and maintain at its expense for the duration of this Agreement from insurance companies that are admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractor's liability, and products and completed operations liability. Client, its officials, employees, and agents shall be named as additional insureds by endorsement (on Client's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to both CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no special limitations on the scope of protection given to Client, its officials, employees, and agents.

(b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000.

(c) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

(d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single

limit per accident.

**12.2** Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by Client's Risk Manager or designee and shall protect Client, its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written notice to Client, and shall be primary and not contributing to any other insurance or self-insurance maintained by Client. Hart shall notify Client in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one year, commencing on the date this Agreement expires or is terminated, unless Hart guarantees that it will provide to Client evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

**12.3** Hart shall require that all consultants and contractors that it uses in the performance of services under this Agreement maintain insurance in compliance with this Section unless otherwise agreed in writing by Client's Risk Manager or designee.

**12.4** Prior to the start of performance, Hart shall deliver to Client certificates of insurance and endorsements for approval as to sufficiency and form. In addition, Hart shall, within thirty (30) days prior to expiration of the insurance furnish to Client certificates of insurance and endorsements evidencing renewal of the insurance. Client reserves the right to require complete certified copies of all policies of Hart and Hart's consultants and contractors, at any time. Hart shall make available to Client's Risk Manager or designee all books, records, and other information relating to this insurance, during normal business hours.

**12.5** Any modification or waiver of these insurance requirements shall only be made with the approval of Client's Risk Manager or designee. Not more frequently than once a year, Client's Risk Manager or designee may require that Hart, Hart's consultants and contractors change the amount, scope or types of coverages if, in his or her sole opinion, the amount, scope, or types of coverages are not adequate.

**12.6** The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Hart's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

### **13. GENERAL PROVISIONS**

**13.1** Entire Agreement. This Agreement and the attachments, schedules, and exhibits hereto constitute the entire agreement and supersede all prior negotiations and oral agreements between the parties relative to the subject matter hereof. Hart has made no representations or warranties with respect to this Agreement or the Hart Voting System and its components that are not included herein. This Agreement may not be amended or waived except in writing signed by an authorized representative of the party to be bound thereby.

**13.2** Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. If any conflict exists between this Agreement

and any terms and conditions on a purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Agreement will govern. The terms and conditions of this Agreement, including, but not limited to, this Section 13.2, cannot be amended, modified, or altered by any conflicting preprinted terms or conditions in a preprinted form.

**13.3 Interpretation.** This Agreement will be construed according to its fair meaning and not for or against either party. Headings are for reference purposes only and are not to be used in construing the Agreement. All words and phrases in this Agreement are to be construed to include the singular or plural number and the masculine, feminine, or neuter gender as the context requires.

**13.4 GOVERNING LAW.** THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS.

**13.5 Severability.** Whenever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law; but if any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof will be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, or unenforceable provision. If it is not possible to modify the provision to render it legal, valid, and enforceable, then the provision will be severed from the rest of the Agreement and ignored. The invalidity, illegality, or unenforceability of any provision will not affect the validity, legality, or enforceability of any other provision of this Agreement, which will remain valid and binding.

**13.6 Force Majeure.** “Force Majeure” means a delay encountered by a party in the performance of its obligations under this Agreement that is caused by an event beyond the reasonable control of the party. Without limiting the generality of the foregoing, “Force Majeure” will include, but is not restricted to, the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities (other than, with respect to Client’s performance, the Client, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; and strikes, lockouts, or other labor disputes. If any event constituting Force Majeure occurs, the affected party shall notify the other party in writing, disclosing the estimated length of the delay and the cause of the delay. If a Force Majeure occurs, the affected party will not be deemed to have violated its obligations under this Agreement, and time for performance of any obligations of that party will be extended by a reasonable period of time necessary to overcome the effects of the Force Majeure.

**13.7 Compliance with Laws.** Client and Hart shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Equipment and Software. Equipment and Software provided under this Agreement may be subject to U.S. and other government export control regulations. Client shall not export or re-export any Equipment or Software. Hart shall defend, indemnify and hold harmless Client, and its Boards, Commissions, officers, employees, and agents against any and all claims that Hart failed to comply with any federal, state, or local law in the performance of this Agreement. Hart’s HVS will be compliant with the applicable election laws at the time of the Effective Date of this Agreement.

**13.8 Assignments.** Hart may not assign this Agreement or its interest in any Equipment or Software, or the right to receive payments, without Client’s express written consent, such consent not to be unreasonably withheld. Any such assignment, however, will not change the obligations of Hart to Client that are outstanding at the time of assignment. Client shall not assign this Hart Voting System Agreement without the express written consent of Hart, such consent not to be unreasonably withheld. In

the event of any permitted assignment of this Agreement, the assignee shall assume the liabilities and responsibilities of the assignor, in writing.

**13.9 Independent Contractors.** Client and Hart are independent contractors and are not agents or partners of each other. Hart's employees, agents, and subcontractors will not be entitled to any privileges or benefits of Client employment. Client's employees, agents, and contractors will not be entitled to any privileges or benefits of Hart employment.

**13.10 Notices.** Any notice required or permitted to be given under this Agreement by one party to the other must be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth on the Signature Page for the party to whom the notice is given, or on the fifth business day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at their address set forth on the Signature Page. Each party may change its address for notice by giving written notice of the change to the other party.

**13.11 Trademarks.** eScan™, eSlate®, Judge's Booth Controller™, JBC™, Disabled Access Unit™, DAU™, Mobile Ballot Box™, Ballot Origination Software System™, BOSS™, Tally™, Rally™, FUSION™, and Ballot Now™ are trademarks of Hart.

**13.12 Waiver.** No provision of this Agreement shall be deemed waived or breach excused unless such waiver or consent shall be in writing signed by the party claimed to have waived or consented. A waiver of, or consent by any party to, a breach by the other party, shall not constitute a waiver of, or consent to, a subsequent or different breach.

**13.13 Costs.** If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies under this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

**13.14 Nondiscrimination.** In connection with performance of this Agreement and subject to applicable rules and regulations, Hart shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability. Hart shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. It is the policy of Client to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in Client's procurement process, and Hart agrees to use its best efforts to carry out this policy in the hiring of consultants and contractors to the fullest extent consistent with the efficient performance of this Agreement. Hart may rely on written representations by consultants and contractors regarding their status.

**13.15 Advertising.** Hart shall not use the name of Client, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.

#### **14. DEFINITIONS**

*"Acceptance Date"* means the date Hart and Client complete the Acceptance Testing in



accordance with Schedule E, Acceptance Procedures, of this Agreement.

*“Agreement”* has the meaning set forth on the Signature Page.

*“Anniversary Date”* means each anniversary of the Effective Date.

*“Annual Fee”* means the combined annual license, sublicense, and support fees payable by Client to Hart as described in Section 4.

*“Client”* has the meaning set forth on the Signature Page.

*“Confidential and Proprietary Information”* means Software, firmware, diagnostics, documentation (including operating manuals, user documentation, and environmental specifications), designs and configurations of Equipment, Software, firmware, trade secrets and related documentation, and any other information confidential to Hart or its suppliers or licensors.

*“DAU™”* means the Disabled Access Unit (DAU™) created by Hart as an add-on component to an eSlate® that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from specialized switch mechanisms, such as head switches, breath switches, and panel switches that facilitate interaction with disabled voters, as needed.

*“Effective Date”* has the meaning set forth in the Signature Page and indicates the date this Agreement becomes effective.

*“Equipment”* means the HVS Hardware and Non-Hart Equipment.

*“eScan™”* means the eScan™ device created by Hart, consisting of a precinct digital ballot imaging device single-feed scanner that transports and scans both sides of a ballot simultaneously, and a base that provides for secure ballot storage and transport.

*“eSlate®”* means the eSlate® created by Hart and consisting of hardware including an electronically configurable, network-capable voting station that permits a voter to cast votes by direct interaction, which voting station in its present configuration created by Hart comprises an electronically configurable liquid crystal display (LCD) panel for use in displaying ballot images, a rotary input device for use in ballot navigation, and various buttons that facilitate voter options for selecting ballot choices and casting a ballot.

*“Firmware”* means the Hart Proprietary Software embedded in eSlate® voting devices that allows execution of the software functions, but does not allow access to or modification of the software by an end user.

*“Force Majeure”* has the meaning set forth in Section 13.6.

*“Hart”* means Hart InterCivic, Inc., a Texas corporation.

*“Hart Proprietary Software”* means the run-time executable code and associated support files of the Ballot Origination Software System (BOSS™) Software, Tally™ Software, Rally™ Software, Ballot Now™ Software, computer code, and software resident in the HVS Hardware and other support software utilities as specified on Schedule B, consisting of computer programs and computer code owned by Hart

that are licensed to Client pursuant to this Agreement, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications, including any custom modifications, to such computer programs and code that are provided to Client, and all copies of the foregoing. Hart Proprietary Software also includes all documentation provided by Hart to Client with respect to these computer programs and code and all copies of the foregoing.

*“Hart Voting System”* means the Equipment and the Software.

*“HVS Hardware”* means the eSlate® units, JBC™ units, and DAU™ units purchased by Client pursuant to the Hart Voting System Master Agreement.

*“Hart Voting System Master Agreement”* means the agreement, between Client and Hart or Hart’s authorized distributor of HVS Hardware, under which Client has purchased the HVS Hardware. The Hart Voting System Master Agreement is identified on the Signature Page.

*“Initial Annual Fee”* means the first Annual Fee, in the amount specified as the “Initial Annual Fee” on Schedule D, which is payable upon execution of this Agreement.

*“Installation Date”* means the date upon which the HVS Hardware and Software are installed at the Client’s site by a Hart representative.

*“JBC™”* means the Judge’s Booth Controller (JBC™) created by Hart that is a local area network controller capable of interacting with one or more eSlate® devices or DAU devices by transmitting and receiving signals that manage or control an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

*“Master Agreement”* means the Master Agreement dated of even date herewith, between Client and Hart.

*“Non-Hart Equipment”* means the equipment, if any, not consisting of HVS Hardware that was sold to Client by Hart or Hart’s distributor for use with, and in connection with the sale of, the HVS Hardware.

*“Non-Hart Software”* means the run-time executable code and associated support files of computer programs owned by third parties that are identified on Schedule C and sublicensed by Hart to Client pursuant to this Agreement or licensed directly by the third-party licensor to Client, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications to such computer programs and code that are provided to Client, and all copies of the foregoing. Non-Hart Software also includes all documentation provided to Client with respect to these computer programs, and all copies of the foregoing.

*“Software”* means the Hart Proprietary Software and Firmware, and Non-Hart Software.

*“Sublicensed Software”* means Non-Hart Software that is identified on Schedule C as being sublicensed by Hart to Client pursuant to this Agreement.

*“VBO™”* means the Verifiable Ballot Option unit used in conjunction with the eSlate® for a Voter Verifiable Paper Audit Trail.

## **SCHEDULE A**

### **SUPPORT CONTACT INFORMATION**

The following contact information is to be used by Client for submitting Support requests to Hart InterCivic, Inc.:

Client Support Center:	1-800-750-HART (4278)
Client Support Center Fax:	1-800-396-HART (4278)
E-mail Address:	<a href="mailto:hartsupport@hartic.com">hartsupport@hartic.com</a>
Hart InterCivic, Inc. Switchboard:	1-800-223-HART (4278)
Client Support Manager:	

The following contact information is to be used by Hart for contacting Client on Software Support Service requests:

Primary Client Contact Point ("CCP"):	Becky Burleson, City Clerk Bureau Manager – Elections 562-570-7479 (reburle@longbeach.gov)
First Alternate CCP:	_____

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## SCHEDULE B

### HART PROPRIETARY SOFTWARE

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	INITIAL LICENSE FEE
One (1).	Election Management Software.	Ballot Origination Software System (BOSS™), Tally™, Ballot Now™, and SERVO™ software	\$125,100.00	Four (4) (One license per each software title).	\$125,100.00
Four (4).	Extra Ballot Now™ Stations.	Additional Ballot Now™ stations.	\$60,000.00	Four (4) (One license per each software title).	\$240,000.00
One (1).	InFUSION™ Software.	Election Management System import software.	\$10,000.00	One (1).	\$10,000.00
One (1).	FUSION™	Tabulation integration software.	\$15,000.00	One (1).	\$15,000.00
One (1).	SCORE™ Software.	Election results reporting software.	\$4,000.00	One (1).	\$4,000.00

Licensed Location: **City of Long Beach, California.**

**NOTE:** Hart and Client will update this Schedule as appropriate if Hart releases new Hart Proprietary Software that is made available to Client under the Hart Voting System Warranty, Support, and License Agreement.

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## **SCHEDULE C**

### **NON-HART SOFTWARE**

Non-Hart Software Sublicensed to Client:

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	TOTAL PRICE
Eight (8).	Sybase Embedded Runtime Program.	Database Engine.	No Charge.	Eight (8) (One license per each software title).	No Charge.

**NOTE:** Hart and Client will update this Schedule as appropriate if Hart provides new or different Non-Hart Software to Client under the Hart Voting System Warranty, Support, and License Agreement.

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**SCHEDULE D**  
**INITIAL ANNUAL FEE**

Initial Annual Fee: **\$78,020.00**

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**SCHEDULE E**  
**HART VOTING SYSTEM SOFTWARE APPLICATION**  
**ACCEPTANCE DOCUMENT**  
*Ballot Origination Software System*  
*Tally Tabulation Application*  
*Ballot Now Paper Ballot On Demand Voting System*

Purpose:

The purpose of this document is to provide the criterion and the media to be used for testing and documenting customer acceptance of Hart Voting System (HVS) Software Applications.

Scope:

The scope of this document encompasses all major HVS Software Applications. The criterion presented herein are not intended to specify all detailed functional capabilities and features, but are meant to identify and verify proper execution of the major functions required for the application or device to meet functional requirements for system operation.

Organization and Use:

This document consists of individual acceptance forms that present acceptance criterion for each of the major software applications used by a customer. These documents will be used to record the results of functional testing and to verify the customer's initial acceptance of the respective application.

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# **SYSTEM ACCEPTANCE DOCUMENTATION—BOSS™**

PC ID	Name of Tester	Date	Accepted by:

Test Activity		Acceptance Criteria	Result		Discrepancy Noted
#	Description		P	F	
<b>1</b>	<b>BOSS™</b>				
1	Open BOSS™ and login	Login successful			
2	Create new election from Default database	Add Election successful			
3	Open the new database	Open db successful			
4	Enter ballot data	Data entry successful			
5	Print Contest List Report	Report print successful			
6	Export text for recording	XLIFF files exported			
7	Import audio files	Audio files imported			
8	Select eSlate template	Template accessed			
9	Select BN template	Template accessed			
10	Generate ballot preview	Preview generated			
11	Accept ballot generation	Generation accepted			
12	Enter eCM™ PIN	eCM™ PIN matches			
13	Write MBBs	Card write successful			
14	Write Audio card	Card write successful			
15	Finalize election for Tally™	Election opens in Tally™			
16	Exit BOSS™	BOSS™ closes			

*(The rest of this page has been intentionally left blank.)*



# **SYSTEM ACCEPTANCE DOCUMENTATION—Tally™**

PC ID	Name of Tester	Date	Accepted by:

Test Activity		Acceptance Criteria	Result		Discrepancy Noted
#	Description		P	F	
<b>1.1</b>	<b>Tally™</b>				
1	Open Tally™ and login	Login successful			
2	Verify Audit log printing	Audit print successful			
3	Create new Tally™ database	New db created			
4	Select new Tally™ db	New db open successful			
5	Print Zero Reports	Report print successful			
6	Review Zero Reports	Zero votes reported			
7	Read MBB into Tally	MBB read successful			
8	Enter eCM™ PIN	eCM™ key matches			
9	Tabulate MBB	Tabulation successful			
10	Resolve Write-ins	Resolve successful			
11	Resolve Provisionals	Resolve successful			
12	Print Cumulative Report	Report data accurate			
13	Configure Tally™ for Rally™	Config successful			
14	Connect to Rally™ Station	Data transfer successful			
15	Tabulate Rally™ MBB	Tabulation successful			
16	Print Cumulative Report	Report data accurate			
17	Print Cum Report to PDF	PDF created successful			
18	Create Tally™ Export	Export successful			
19	Save Tally™ Export to File	Save successful			
20	Burn Tally™ Export to CD	CD write successful			
21	Review Tally™ Export on CD	CD read successful			
22	Exit Tally™	Tally™ closed			

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**SYSTEM ACCEPTANCE DOCUMENTATION—Ballot Now™**

PC ID	Name of Tester	Date	Accepted by:

Test Activity		Acceptance Criteria	Result		Discrepancy Noted
#	Description		P	F	
<b>2</b>	<b>Ballot Now™ (BN)</b>				
1	Open BN and login	Login successful			
2	Read New Election MBB	Card read successful			
3	Enter eCM™ Pin	eCM™ key matches			
4	Open New Election	Election open successful			
5	Set Program Options	Settings successful			
6	Print Election Report	Report print successful			
7	Print Ballots Printed Report	Zero ballots printed			
8	Print ballots from multiple precincts	Print ballots successful and new Start Number correct			
9	Print Ballots Printed Report	Report shows all ballots printed			
10	Mark and scan ballots	Ballots scan successfully			
11	Monitor BNIP operation	BNIP processes images			
12	Save batch	Batch saved			
13	Resolve ballots manually	Ballots resolve correctly			
14	Autoreresolve ballots	Ballots resolve correctly			
15	Print Scanned Ballot Report	All batches resolved			
16	Write CVRs to MBB	Card writes successfully			
17	Exit BN	BN closes			
18	Read MBB into Tally™	Card read successful			

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