



# CITY OF LONG BEACH

City Clerk Department

**C-6**

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • (562) 570-6101 FAX (562) 570-6789

October 16, 2007

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

**RECOMMENDATION:**

Authorize the City Manager to sign a non-disclosure agreement with Hart Intercivic to facilitate the testing of the City's ballot printing equipment.

**DISCUSSION**

As part of the City Clerk Department's efforts to improve the quality of election administration while reducing its costs, we are in the process of applying to become "Certified Ballot Finishers" with the California Secretary of State's Office. In the event that the City Clerk Department is certified, we will have the authority to print our own ballots on unfinished ballot stock. However, prior to certification the Secretary of State requires that we work with our elections vendor, Hart Intercivic, to ensure that any ballots we print will be able to be read and tabulated by our voting equipment. Hart requests that we sign the attached non-disclosure agreement prior to conducting those tests.

The City Clerk Department has ordered its official ballots from vendors in the past, and we plan to continue to do so for the vast majority of ballots. However, we would prefer to have the ability to print our own ballots in case of emergency and to facilitate the small number of voters who request absentee ballots at the City Clerk counter in City Hall. For example, in the very unlikely event that we were to run low on polling place ballots on Election Day for a particular precinct, we would be able to print extra ballots on demand and send them to the polling place. Additionally, we plan on printing a small amount of absentee ballots to satisfy those who come directly to the City Clerk Department to request them. This will help us reduce waste, as we will be able to reduce unneeded inventory.

If the City Council authorizes the City Manager to sign the attached agreement, the City Clerk Department will proceed to test its equipment with Hart Intercivic to ensure that any ballots printed by the City are of the requisite quality. The City will then work with the Secretary of State's Office to implement the procedures necessary to ensure the security of such ballots and unfinished ballot stock. The City Clerk Department will then request certification from the Secretary of State in time for the April 2008 Municipal Election.

This non-disclosure agreement was reviewed by Deputy City Attorney Lori Conway on Monday, October 08, 2007.

TIMING CONSIDERATIONS

In order to proceed with the required testing of our printing equipment in time to become an official ballot finisher before the April 2008 Municipal Election, the City Clerk Department requests that the Council act at its October 16, 2007 meeting.

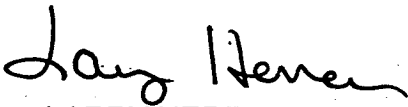
FISCAL IMPACT

Authorizing this non-disclosure agreement will allow us to proceed with our application to become Certified Ballot Finishers. To the extent that finishing ballots allows the Department to pre-order fewer ballots and reduce waste, there will be an unknown amount of savings to the City depending on the quantity of ballots saved and the unit price of the ballots.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



LARRY HERRERA  
City Clerk

Prepared by: James Johnson

Attachments: Mutual Non-Disclosure Agreement, Ballot Now Official Ballot Paper Agreement, and Ballot Now Stock Specifications.



## Mutual Non-Disclosure Agreement

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In order to protect certain Confidential Information (as defined below), **Hart InterCivic, Inc.**, for itself and its subsidiaries and affiliates, and **City of Long Beach California** for itself and its subsidiaries and affiliates, each individually referred to as a "Party" and collectively referred to as the "Parties", agree that:

1. The Effective Date of this Non-Disclosure Agreement ("Agreement") is **October 5, 2007**. This Agreement shall terminate on **October 5, 2009**, unless extended by the parties via a written amendment.
2. The Agreement shall apply to all Confidential Information disclosed between the Parties. The purpose of this Agreement is **to protect intellectual property relating to Hart InterCivic's voting systems**. The Party disclosing Confidential Information is the "Discloser" and the Party receiving Confidential Information is the "Recipient".
3. In addition to this Agreement, the Parties may agree to additional matters in the form of Addenda that incorporate the terms of this Agreement (e.g. Product Evaluation).
4. The Confidential Information disclosed under this Agreement ("Confidential Information") is described generally as any and all current and future product information, roadmaps, technical or financial information, budgets, forecasts, prices and costs, customer names, supplier names, business plans, addresses, information regarding the skills and compensation of employees and contractors, and related data, contracts, practices, services and support, procedures, and other business information including, but not limited to software, trade secrets, reports, methods, strategies, plans, documents, drawings, designs, tools, models, inventions, components, schematics, know-how, processes, formulas, developmental or experimental work, discoveries, plans for research or products, bills of materials, product test results, patent disclosures, and Request For Proposals (or comparable customer requests) that may be disclosed between the Parties whether in written, oral, electronic, website-based, or other form. This Agreement also includes Confidential Information acquired during any facility(ies) tours. The foregoing notwithstanding, the terms of this Agreement also pertain to information not otherwise identified as Confidential Information if Receiving Party otherwise knows or should reasonably be expected to know of its confidential nature.
5. The Parties agree not to issue or release any articles, advertising, publicity or other matter relating to any Confidential Information (including the fact that a meeting or discussion has taken place between the Parties) or mentioning or implying the name of the other Party, except as may be required by law and then only after providing the other Party with an opportunity to review and comment thereon.
6. Either Party may terminate this Agreement in its entirety, terminating the use of all its Confidential Information by the other Party, or either Party may terminate the use of a particular item of its own Confidential Information disclosed under this Agreement, at any time without liability for such termination. The terms and conditions of this Agreement shall survive any termination of this Agreement and any termination of the use of any particular item of Confidential Information with respect to Confidential Information that is disclosed prior to the effective date of termination. The Recipient shall use the Confidential Information only for the purposes as set forth in this Agreement in connection with the business relationship between the Parties.
7. A Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure, except in the case of software and trade secrets, for which such obligations will not terminate until the occurrence of any circumstance listed in Section 12 below. After the obligations with respect to an item of Confidential Information end as provided in the previous sentence, use of that item of Confidential Information will continue to be governed by applicable law, including, without limitation, patent and copyright law. A Recipient, upon the Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies (including but not limited to writings, descriptions and summaries involving or based on such Confidential Information and all copies stored in computer memory or storage medium), or certify in writing that all such Confidential Information and copies thereof have been destroyed.
8. A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own similar information to protect the Confidential Information and to prevent (a) any use of Confidential Information not authorized in this Agreement, (b) dissemination of Confidential Information to any employee of Recipient without a need to know, (c) communication of Confidential Information to any third party except its authorized consultants with a need to know who are involved in the use of the Confidential Information in accordance with the terms of this Agreement and have agreed in writing to be bound by terms consistent with the provisions of this Agreement, or (d) publication of Confidential Information. Neither Party

shall make any copies of Confidential Information disclosed by the other Party except as necessary for use in accordance with the purposes as set forth in this Agreement, and all copies which are made shall be identified as Confidential Information in the same manner as the original. Each Party shall keep a log identifying by number each copy of each item of Confidential Information that is made by the Recipient, together with the name, company name, address and department name of the individual to whom such copy was given. Neither Party shall at any time reverse engineer, decompile, or disassemble any software, hardware, equipment, or prototypes or remove any proprietary rights notices attached to or included in any Confidential Information without the prior written consent of the other Party.

9. A Recipient will have a duty to protect Confidential Information (a) if it is marked or accompanied by documents clearly and conspicuously designating them as "confidential" or the equivalent; or (b) if it is identified by the Discloser as confidential before, during or promptly after the presentation or communication.
10. The Parties agree that trade secrets of a Party include, but are not limited to, software and product technical information, designs, drawings, plans, inventions, components, schematics, know-how, processes, formulas, developmental or experimental work, discoveries, plans for research or products, bills of materials and product test reports. Except for trade secrets described in the previous sentence, trade secret material disclosed pursuant to this Agreement must be identified by the Discloser by any of the following: (a) the Discloser must conspicuously mark the trade secret "TRADE SECRET" or "PROPRIETARY" or the equivalent at the time of disclosure, or (b) the Discloser must describe and list the trade secret in an addendum to this Agreement, or (c) the Discloser must inform the Recipient of the trade secret nature of the Confidential Information at the time of disclosure or within thirty calendar days after the disclosure and generally describe the trade secret via the form attached as Attachment A delivered to the Recipient within thirty (30) calendar days after the disclosure of the Confidential Information.
11. A Recipient will have a duty to notify Hart in writing, if it becomes known to, or suspected by, the Recipient that Confidential Information has been made available to any unauthorized party at any time during or after the presentation or communication of said Confidential Information, and/or if it becomes known to the Recipient that there has been any breach of the security of any system containing any Confidential Information in which Confidential Information was, or is reasonably believed to have been, acquired by an unauthorized person. This notification shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of Hart and/or law enforcement, but not more than forty-eight (48) hours after the known or suspected unauthorized disclosure of Confidential Information.
12. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; (e) is independently developed by the Recipient without a breach of this Agreement; or (f) is disclosed by the Recipient, without a confidentiality requirement imposed on the third party receiving the disclosure, with the Discloser's prior written approval. If a Recipient is required by a government body or court of law to disclose Confidential Information, the Recipient agrees to give the Discloser reasonable advance written notice so that Discloser may contest the disclosure or seek a protective order.
13. EACH DISCLOSER WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ITS CONFIDENTIAL INFORMATION. NO OTHER WARRANTIES ARE MADE. ALL CONFIDENTIAL INFORMATION CONTAINED HEREIN IS PROVIDED "AS IS".
14. This Agreement imposes no obligation on a Party to exchange Confidential Information or to purchase, sell, license, transfer or otherwise make use of any technology, services or products. A Recipient will adhere to all applicable laws and regulations of the U.S. Export Administration and will not export or re-export any technical data or products received from a Discloser, or the direct product of such technical data, to any proscribed person or country listed in the U.S. Export Administration regulations unless properly authorized by the U.S. government.
15. Title or the right to possess Confidential Information as between the Parties shall, except as otherwise provided in this Agreement, remain in the Discloser. No Party acquires any intellectual property rights or other rights under this Agreement except the limited rights necessary to carry out the purposes as set forth in this Agreement. Subject to the obligations of this Agreement, no Party will be precluded from independently developing technology or pursuing business opportunities similar to those covered by this Agreement. Each Party retains sole discretion to assign or reassign the job responsibilities of its employees.
16. Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.
17. The obligations and duties imposed by this Agreement with respect to any Confidential Information may be enforced by the Discloser of such Confidential Information against any and all Recipients of such Confidential Information.
18. **THIS AGREEMENT IS MADE UNDER, AND WILL BE CONSTRUED ACCORDING TO, THE LAWS**

**OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.**

19. This Agreement does not create any agency or partnership relationship. Any failure or delay by either Party in exercising any right or remedy will not constitute a waiver. This Agreement will not be assignable or transferable without the prior written consent of the other Party. This Agreement, including Attachment A or

similar writing, as supplemented, states the entire agreement and terminates and supersedes all prior negotiations, understandings and agreements, written or verbal, between the parties with respect to the subject matter of this Agreement. All additions or modifications to this Agreement must be made in writing and must be signed by all Parties.

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**Hart InterCivic, Inc.**

**City of Long Beach California**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:**

**Name:**

**Title:**

**Title:**

**Address:** 15500 Wells Port Drive

**Address:**

**City, State, Zip:** Austin, Texas 78728

**City, State,**

**Zip:**

**Zip:**

**Date:** \_\_\_\_/\_\_\_\_/2007

**Date:** \_\_\_\_/\_\_\_\_/2007

**Attachment A**

**Confidential Information Transmittal Record (CITR)**

**To Non-Disclosure Agreement between Hart and City of Long Beach California**

The description of Confidential Information in this **Attachment A** shall be general and summary in nature and shall not duplicate the actual Confidential Information being disclosed.

**Discloser**

Company Name: Hart InterCivic, Inc.

Address: 15500 Wells Port Dr  
Austin, Texas 78728

Name of Discloser:

Title of Discloser:

Signature of Discloser:

**Recipient**

Company Name: City of Long Beach California

Address:

Name of Recipient:

Title of Recipient:

Signature of Recipient:

**General Description of Confidential Information Disclosed (Include any drawing/document number, date, etc.)**

Ballot Now Mylar Dimensional Overlays

Postscript files generated by Ballot Now

Official Ballot Paper

Ballot Now Quality Control procedures

Ballot Now Print Specifications – REV B

**Form or Format of Confidential Information Disclosed (e.g., oral, hard copy, tape, CD-ROM)**

Hard Copy

CD-ROM

e-mail and attachments

**Date Confidential Information Disclosed**



## **Ballot Now Official Ballot Paper Agreement**

**City of Long Beach California** agrees to the following Official Ballot Paper terms.

**City of Long Beach California** agrees not to disclose Hart's intellectual property and/or priority information.

**City of Long Beach California** agrees to purchase and use Hart Official Ballot Paper or an equivalent paper as listed in Ballot NOW Stock Specifications. Hart Official Ballot Paper is exclusively limited to production of Ballot Now Ballots, and that excess or unused paper may not be sold or transferred without Hart's permission.

**City of Long Beach California** agrees to terms of certification.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

# Hart InterCivic, Inc.

## Ballot Now Stock Specifications

**Ballot Now Standard Paper must be a #1 grade bond, laser guaranteed, 28# basis weight meeting the following minimum specifications:**

Basis Weight:	28# Bond
Finish:	Smooth Xerography
Sheffield:	100-120
Brightness:	91-94
Content:	Virgin wood fiber, no recycled content
Florescent level:	4%
Moisture content:	4.5%
Packaging:	Moisture resistant ream wrap
Trim:	+/- .025"
Squareness:	+/- .0075"

**Ballot Now Secure Paper must meet the above specifications with the addition of:**

Toner Adhesion (mill treatment which allows optimum binding of toner and paper fibers)

Original, dandy roll watermark, random repeat, readable in any orientation (securely identifies paper as original issue to detect fraud)

<b>Sizes (inches):</b>	8.5 x 11
	8.5 x 14
	8.5 x 17
	11 x 17