



**CITY CLERK DEPARTMENT**  
*Long Beach, California*

**NB-35**

LARRY HERRERA  
*City Clerk*

**ADMINISTRATIVE DIVISION**  
*Monique De La Garza*  
*Administrative Officer*

June 22, 2010

**ELECTIONS BUREAU**  
*Poonam Davis*  
*City Clerk Bureau Manager*

**HONORABLE MAYOR AND CITY COUNCIL**  
City of Long Beach  
California

**LEGISLATIVE BUREAU**  
*Merianne Nakagawa*  
*City Clerk Bureau Manager*

**RECOMMENDATION**

Authorize the City Manager to Execute an Addendum to Agreement Number 29956 with Hart InterCivic to Establish a Fixed Five-Year Annual Licensing and Support Fee.

**DISCUSSION**

On January 9, 2007, the City Council unanimously approved (Uranga/Schipske) acquisition of the Ballot Now voting system from Hart InterCivic. With procurement of the City of Long Beach voting system, license and support fees have been budgeted and paid for via the biennial election budget. In turn, all election costs charged on a prorated basis to the Long Beach Unified School District and Long Beach Community College District for each election cycle in which they participate.

The purpose of the report is to request Council approval to the attached Addendum to the Warranty, Support and License Agreement so that the Annual License and Support fee is set at a fixed amount for the next five years. Given the budget constraints we face at the local level, we have worked with our vendor to draft an Addendum that will freeze our annual license and support fee over the next five years and ensure that our voting system remains compliant with State laws and regulations. Approval of the Addendum is projected to save \$61,684 in license and support fees over the next five years for six ballot tabulating stations. In addition, the Addendum provides for three days of additional training by Hart trainers for four City Clerk Department staff at no charge.

Pursuant to the California Elections Code, all voting systems used in California must maintain operational certification in accordance with applicable laws and regulations as administered by the Secretary of State. The annual license and support fee ensures that the City's voting system complies with this mandate.

**TIMING CONSIDERATIONS**

Approval of the recommended action is requested so that payment can be made prior to July 1, 2010.

FISCAL IMPACT

The FY 2010 election budget contains sufficient cost savings to cover the advanced payment of \$85,130.11, plus tax, for the initial year of the five-year Addendum.

Payments in fiscal years 2012 and 2014 will be included in the election budgets submitted by the City Clerk as part of each year's budget development and adoption process.

SUGGESTED ACTION

Approve recommendation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Herrera", with a stylized flourish at the end.

LARRY HERRERA  
CITY CLERK

Attachments



**ADDENDUM TO THE  
WARRANTY, SUPPORT, AND LICENSE AGREEMENT**

This Addendum to the Warranty, Support and License Agreement (“Addendum”) is made as of June 2, 2010 (“Addendum Effective Date”) by and between Hart InterCivic, Inc., a Texas corporation (“Hart”), and the City of Long Beach (“Client”), a governmental subdivision of the State of California.

**WHEREAS**, Hart and Client entered into a Warranty, Support, and License Agreement on or about February 13, 2007, (the “Agreement”); and

**WHEREAS**, Hart and Client desire to amend the Agreement as set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, Hart and Client hereby agree to amend certain of the provisions of the Agreement as follows:

1) **Definitions.** The following terms shall have the following respective definitions. Capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement for such term.

a) “Base Year” means \$96,163.11. A special one-time discount is applied only to the first year of the Initial Term Commitment Period. The first year of the Initial Term Commitment Period is February 13, 2011 through February 12, 2012. The annual L&S coverage for HVS software and five (5) Ballot Now seats is \$87,763.11. A one-time discount (approximately \$2,633.00) is applied against the \$87,763.11 because of the advance payment to be made in June 2010. Therefore, the payment due for the first year of the Initial Term Commitment Period is \$85,130.11 (\$87,763.11 less \$2,633.00). This payment of \$85,130.11 will also include three (3) days of Hart Voting System training provided at the Hart InterCivic facility in Austin, TX to four (4) City of Long Beach personnel at no charge. The City will be responsible for travel expenses to and from Austin, TX. This training will occur in 2010.

In November 2009, a separate purchase was made for one additional (the sixth) Ballot Now seat. The annual L&S of \$8,400 on that one additional (the sixth) Ballot Now seat was paid through February 12, 2012. In the remaining years of the Initial Term Commitment Period the annual L&S (\$87,763.11) for the HVS software and five (5) Ballot Now seats will be combined with the annual L&S (\$8,400) of the sixth Ballot Now seat. Combining annual L&S for the HVS software and all six Ballot Now seats into one annual L&S amount defines the Base Year to mean \$96,163.11 (\$87,763.11+\$8,400).

b) “Initial Term Commitment Period” means five (5) years.

c) “Revised Termination Date” means February 12, 2016.

d) “Second Term Commitment Period” means three (3) years.

- 2) **Initial Term Commitment.** The term of the Agreement shall be extended by the Initial Term Commitment Period such that it now ends on the Revised Termination Date. The Annual Fee for each year of the Initial Term Commitment Period shall be equal to the Annual Fee for the Base Year.
- 3) **Second Term Commitment.** After the Initial Term Commitment Period, Client may elect to renew for a period equal to the Second Term Commitment Period by sending written notice to Hart. For the Second Term Commitment Period, Hart may increase the Annual Fee one time at the beginning of such period by a maximum of four percent (4%) of the Annual Fee for the Base Year, and such adjusted fee shall apply for the remainder of the Second Term Commitment Period.
- 4) **Post-Commitment.** After the Initial Term Commitment Period and, if elected by the Client pursuant to Section 3 above, the Second Term Commitment Period, the Agreement may be renewed for subsequent one (1) year renewal terms at Client's discretion pursuant to the renewal provisions set forth in the Agreement. For each such one (1) year period, the Annual Fee may be increased in Hart's discretion subject to any maximum increase limits set forth in the Agreement.
- 5) **Applicability and Additional Equipment.** This Addendum and the services provided pursuant thereto apply only to the Hart Voting System version 6.x. Notwithstanding the rest of this Addendum, to the extent that Client purchases additional equipment or software during the Revised Term or thereafter, Client's Annual Fee will be increased accordingly pursuant to the Agreement and as mutually agreed upon by and between Client and Hart.
- 6) **Early Termination.** In the event that the Agreement is terminated prior to the end of the Revised Term either by Client for any reason or by Hart as a result of Client's breach, Client shall pay to Hart a termination fee equal to the Annual Fee determined in accordance with Section 1 above, multiplied by the number of years remaining in the Revised Term for which the Annual Fee has not yet been paid. In addition, Client shall not be entitled to any refund or credit for Annual Fee payments made prior to such early termination.
- 7) **Representations.** Each party hereto represents and warrants that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Addendum and to perform and carry out its obligations hereunder, (ii) the persons executing this Addendum on its behalf have express authority to do so, and, in so doing, to bind the party thereto; and (iii) the execution, delivery, and performance of this Addendum does not violate any provision of any bylaw, charter, regulation, or any other governing authority of the party.

8) **General.** This Addendum supersedes the relevant provisions of the Agreement and any prior amendments thereto. All unaffected provisions of the Agreement are and shall remain valid and binding in accordance with the terms of the Agreement. This Addendum is governed by the laws of the State of Texas without regard to principles of conflict of laws. This Addendum may be executed in multiple counterparts. Facsimile signatures shall be valid and binding.

IN WITNESS WHEREOF, the parties have entered into this Addendum to the Agreement as of the Addendum Effective Date.

Agreed and Accepted:

	<u>Client</u>	<u>Hart</u>
Name:	City of Long Beach	Hart InterCivic, Inc.
Address:	333 West Ocean Blvd Long Beach, CA 90802 Attn: City Manager	15500 Wells Port Drive Austin, Texas 78728 Attn.: John Thornborrow, CFO
Primary Phone:	562-570-7479	800-223-4278
Facsimile:	562-570-6789	800-831-1485
E-mail:	poonam.davis@longbeach.gov	jthornborrow@hartic.com
Executed By:	_____	_____
Name:	Patrick West	John Thornborrow
Title:	City Manager	CFO

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



**INVOICE**

Invoice Number 001745  
 Invoice Date 5/24/2010  
 Customer ID LBC00000  
 Project ELSM-000211

BILL TO:	SHIP TO:
Poonam Davis City of Long Beach Bureau Manager, Elections 333 W. Ocean Blvd. Long Beach, CA 90802	Poonam Davis City of Long Beach Bureau Manager, Elections 333 W. Ocean Blvd. Long Beach, CA 90802

TERMS	SALESPERSON	PO NUMBER	CONTRACT NUMBER
Net 30	Jim Suver		

Effective Period: 2/13/2011 to 2/12/2012

Discount applies to year one of multiple year contract only. The next annual license and support payment will be due on or before February 13, 2012.

This payment of \$85,130.11 will include three (3) days of Hart Voting System training provided at the Hart InterCivic facility in Austin, TX to four (4) City of Long Beach personnel at no charge. The City will be responsible for travel expenses to and from Austin, TX. This training will occur in 2010.

Description	Units	Price	Amount
Annual Software License and Support Agreement	1	\$ 87,763.00	\$ 87,763.00
3% Discount for Early Payment and Multiple Year Contract	1	\$ (2,632.89)	(2,632.89)

<b>REMITTANCE</b> Hart InterCivic	<b>BILLING</b> Hart InterCivic	Sales Total \$ 85,130.11 Sales Tax \$ 8,300.19 <b>TOTAL \$ 93,430.30</b>
<b>ADDRESS:</b> Dept 0453	<b>INQUIRIES:</b> PO Box 80649	
PO Box 120453	Austin, TX 78708-0649	
Dallas, TX 75312-0453	800.223.HART* Fax 800.831.1485	
<b>ORIGINAL INVOICE</b>	www.hartintercivic.com * info@hartic.com	
	TAX ID#: 95-3248916	



**City of Long Beach Memorandum**  
*Working Together to Serve*

## REQUEST TO ADD AGENDA ITEM

**Date:** June 18, 2010  
**To:** Larry Herrera, City Clerk  
**From:** Larry Herrera, City Clerk  
**Subject:** Request to Add Agenda Item to Council Agenda of June 22, 2010

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Pursuant to Municipal Code Section 2.03.070 [B], the City Councilmembers signing below request that the attached agenda item (due in the City Clerk Department by Friday, 12:00 Noon) be placed on the City Council agenda under New Business via the supplemental agenda.

The agenda title/recommendation for this item reads as follows:

**Authorize the City Manager to Execute an Addendum to Agreement Number 29956 with Hart InterCivic to Establish a Fixed Five-Year Annual Licensing and Support Fee.**

Council District	Authorizing Councilmember	Signed by
3	GARY DeLONG	Jane Cramer
2	Sueja Lowenthal	H. Blumenthal
8	Rae Gabelich	Jan O'Keefe

Attachment: Staff Report dated June 22, 2010

CC: Office of the Mayor