

**COUNTY OF CALAVERAS
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT (“Agreement”) made and entered by and between the County of Calaveras, a political subdivision of the State of California, whose principal place of business is 891 Mountain Ranch Road, Calaveras, California 95249 (hereinafter referred to as “County”), and Hart InterCivic, Inc., a Texas Corporation duly qualified to conduct business in the State of California, and whose principal place of business is 15500 Wells Port Drive, Austin, TX 78728 (hereinafter referred to as “Consultant”); both County and Consultant constituting “the Parties” to the Agreement.

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to provide election hardware, software and services for the County of Calaveras Registrar of Voters; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are authorized by Government Code 31000.

NOW, THEREFORE, County and Consultant mutually agree as follows:

SECTION 1.

Scope of Services: This Agreement sets forth the terms and conditions pursuant to which County may procure from Consultant certain hardware ("Hardware"), software ("Software") licenses and support services ("Software Support Services"), warranty services ("Warranty Services") and/or design, engineering, software development, project management, operational training, election event support, and/or other services ("Professional Services"), from time to time. Hardware and Software may be referred to as "Products" and Warranty Services, Software Support Services and/or Professional Services may be referred to as "Services." Products may be "Contractor Hardware," and "Contractor Proprietary Software," (i.e. "Contractor Products") or "Third Party Hardware" and "Sublicensed Software" (i.e. "Third Party Products"). The foregoing may be referred to together as the "Verity system." Consultant agrees to furnish the personnel, services, and equipment necessary to perform the services described in "Exhibit A- Hart InterCivic Quote" attached hereto and incorporated herein by this reference ("Exhibit A"), and within the times or by the dates provided for in Exhibit A. In the event of any conflict between any provisions of this Agreement and any Exhibit(s) to this Agreement, the provision that requires the highest level of performance from the Contractor for the County's benefit shall prevail.

SECTION 2.

Term:

A. Term:

1. Of Agreement: This Agreement shall become effective upon final execution by both parties hereto and shall remain in effect for three (3) years, unless terminated in accordance with **SECTION 10. – Default, Termination, Cancellation.**
2. Of License and Support Subscription: Unless earlier terminated as set forth herein, the initial term of the License and Support Subscriptions (defined in Section 26.B. below) is one (1) year. Unless otherwise provided in the applicable quotation subsequently ordered License and Support Subscriptions shall be pro-rated so as to be co-terminus with the initially ordered License and Support Subscriptions.
3. Of Hardware Warranty: Unless earlier terminated as set forth herein, the initial term of new Hardware Warranties is one (1) year.

B. Renewals:

1. Of Agreement: This Agreement shall automatically renew for successive periods of one (1) year following the initial term unless one party notifies the other of its intent not to renew not less than ninety (90) days prior to the end of the then-current term.
2. Of License and Support Subscriptions: Except as otherwise provided in this Agreement, County must renew License and Support Subscriptions before their expiration by paying the Annual Fee invoiced by Consultant, as provided in Section 27.B., before the anniversary date immediately following the date of invoice. Each renewal License and

Support Subscriptions term will be a one (1) year, commencing on the expiration of the prior term and expiring on the immediately following anniversary date.

3. **Hardware Warranties:** Hardware warranties may be extended through a separate Extended Hardware Warranty, ordered in accordance with this Agreement. Renewal of this Agreement and the License and Support Subscription do not, in themselves, extend hardware warranties.

SECTION 3.

Compensation for Services and Reimbursement of Expenses: For the services described in Section 1 above, and subject to the condition that the specified task has been completed in as set forth in Section 1.3 above, Contractor shall be compensated at the rates as set forth in Exhibit A provided, however, that the total amount of compensation to be paid Contractor for the services described in Section 1 during the initial three (3) year term shall not exceed two hundred sixty thousand, three hundred, and seventy two dollars (\$260,372.) as summarized in Exhibit A. Unless otherwise agreed by the parties in writing, the total amount of this Agreement for the initial three (3) year term shall not to exceed \$260,372. For purposes of clarity, notwithstanding any provision in this Agreement to the contrary, pricing for services other than those described in Section 1 above on the effective date of the Agreement shall be set forth in the applicable quotation, or if not specified, at Consultant's then-current hourly rates and shall be in addition to the do-not-exceed amounts described in this Section 3.

SECTION 4.

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

SECTION 5.

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof. For purposes of clarity, this Agreement is non-exclusive; nothing in this Section 5 is intended to limit either party's ability to provide or obtain, as applicable, the same or similar services to/from one or more third parties.

SECTION 6.

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

SECTION 7.

Subcontracting: Consultant shall not subcontract any portion of the services required of Consultant by this Agreement without the express written consent of the County Administrative

Officer. If any portion of the services required of Consultant is subcontracted, the sub-consultant(s) shall maintain the same insurance as required of Consultant by this Agreement and Consultant shall be fully responsible to the County for all work undertaken by sub-consultant(s).

SECTION 8.

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and sub-consultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

SECTION 9.

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, Calaveras County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

SECTION 10.

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any material default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in material default does not cure the default within thirty (30) days of the date of notice (time to cure), then such party shall be in material default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing,

prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this **SECTION 10.** shall specify the alleged material default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for material default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar day's written notice by County without cause. If such prior termination is effected, County will be responsible for payment obligations incurred prior to the effective date of termination as set forth in the Notice of Termination provided to Consultant, and pay for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract as a result of termination under this section. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

SECTION 11.

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

(The remainder of this page is intentionally left blank)

COUNTY OF CALAVERAS
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249
ATTN: REBECCA TURNER
REGISTRAR OF VOTERS

With a Carbon Copy to:

COUNTY OF CALAVERAS
ADMINISTRATION
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249
ATTN: BONNIE H. RICH
DEPUTY CAO

Or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

HART INTERCIVIC, INC.
15500 WELLS PORT DRIVE
AUSTIN, TX 78728
ATTN: PETE LICHTENHELD, VP OF CUSTOMER SUCCESS

Or to such other location as the Consultant directs.

SECTION 12.

Indemnity:

- A. The Parties shall indemnify and hold harmless each other, their elected representatives, officers, agents, and employees from and against third party claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability of any kind or nature, including for personal injury or property damage to the extent arising out of:
1. Any negligent act, error or omission by the Parties, its officers, agents, subconsultant(s)/contractor(s), or employees, in performing the services, responsibilities or duties required of the Party by this Agreement; or
 2. Concerning Consultant, any breach of any statutory, regulatory, contractual, or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of Consultant by this Agreement.
- B. Consultant acknowledges and agrees that he/she is an independent Consultant in the performance of this Agreement and is not and shall not be an employee of the County and will defend, indemnify and save harmless the County, its elected representatives, officers, agents and employees from any and all third party claims or losses for damage from death

and/or injury to persons or physical damage of properties resulting from any willful act, fault or negligence of Consultant or its subconsultant(s)/contractor(s), and employees in the performance of the services under this Agreement, except for claims or losses due to the negligence, willful acts or breach of this Agreement by the County, its elected representatives, officers, agents or employees. In providing any defense under this **SECTION 12**, Consultant shall use counsel reasonably acceptable to the County.

- C. Consultant's obligations under this Section are contingent upon County timely notifying Consultant of the claim in writing, and County authorizing Consultant to conduct and control the dispute and settlement of such claim, as long as no settlement may be agreed to by Consultant that includes a financial obligation of County. County at Consultant's expense must provide Consultant with all reasonable assistance to defend against any such claim.

SECTION 13.

Insurance:

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Coverage shall be at least as broad as, and not less than:

- A. Commercial General Liability (CGL): Insurance covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.
- B. Automobile Liability: Insurance with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- C. Workers' Compensation: Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
- D. Professional Liability: (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limits no less than \$1,000,000 per claim, and \$2,000,000 in the aggregate.
- E. Excess Coverage: If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.
- F. Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (1) Additional Insured Status: The County, its elected representatives, officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
- (2) Primary Coverage: For any claims related to this Agreement, the Consultant's insurance coverage shall be primary as respects the County, its elected representatives, officers, officials, employees, and volunteers.

Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- (3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with at least 30 days' prior written notice to the County.
- (4) Waiver of Subrogation: Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
- (5) Self-Insured Retentions: Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
- (6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (7) Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

(8) Verification of Coverage: Consultant shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this **SECTION 13**. All certificates and endorsements are to be received and approved by the County Risk Manager before work commences, and shall be signed by person authorized by that insurer to bind coverage on its behalf. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The County, its elected representatives, officers, agents, employees, and volunteers shall be named as additional insureds on the commercial general and automobile liability insurance policies.

(9) Subcontractors: If subcontractors are permitted pursuant to **SECTION 7. – Subcontracting** of this Agreement, Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.

(10) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SECTION 14.

Public Records Act: Consultant is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Consultant to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

SECTION 15.

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 16.

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

SECTION 17.

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees.

Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement.

County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

SECTION 18.

Ownership of Data: As between Consultant and County, County shall own all right, title, and interest in and to any County Data. For purposes of this Agreement "County Data" means all electronic data or information that County or its registered voters submit to the services described in Section 1 above or is extracted or processed from such data or information. County grants and agrees to grant to Consultant a non-exclusive, non-transferable (except as permitted pursuant to Section 6 above), non-sublicensable (except as permitted pursuant Section 7 above) royalty free license during the term of this Agreement to use County Data in order to provide the services to County pursuant to the terms of this Agreement.

SECTION 19.

Taxpayer Identification Number (Form W-9): All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

SECTION 20.

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of Calaveras County without possessing a County business license unless exempt under County Code Section 5.04.090.

SECTION 21.

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

SECTION 22.

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

SECTION 23.

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in Calaveras County, California, and shall be resolved in accordance with the laws of the State of California.

SECTION 24.

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

SECTION 25.

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

SECTION 26.

Pricing:

- A. **Products:** Prices for Products shall be specified by Consultant in the relevant quotation or proposal and are subject to change without notice, including Prices for backordered Products, however, Prices in quotations or other agreements signed by both Parties, including Exhibit A hereto, are not subject to change. All prices are exclusive of shipping and packing costs, and insurance.

- B. **Annual License and Support Fee:** The "Annual Fee" is the combined fee for licensing (in the case of Consultant Proprietary Software), sublicensing (in the case of Sublicensed Software, if any), and support (a "License and Support Subscription"). Pricing for the initial Annual Fee is the amount specified as the "Annual License and Support Fee" on Exhibit A. Pricing for subsequently ordered License and Support Subscriptions shall be specified on the applicable quotation, and unless otherwise specified, shall be pro-rated so as to be co-terminus with the initially-ordered License and Support Subscriptions. Consultant may adjust the amount of the Annual Fee for renewal License and Support Subscription terms by notifying County of any price changes with the invoice in which the adjustment is made, provided that any such adjustment will not exceed 5% of the Annual Fee in the immediately prior License and Support Subscription term. Unless adjusted by Consultant, each renewal Annual Fee will be the same as the Annual Fee for the renewing License and Support Subscription.

- C. Additional Charges: Additional charges may apply to Services e.g., travel, communication and other expenses. There will be an additional charge at Consultant's current technician's rate per hour for any technical work required as a result of other than Consultant-recommended equipment purchased by the County for use with the Products. Any other additional charges must be mutually agreed to by Consultant and County and documented in an amendment to this Agreement.
- D. Taxes: All prices are exclusive of applicable taxes. All taxes shall be payable by County, unless County presents Consultant with a proper certificate of exemption from such tax. If County challenges the applicability of any such tax, County shall pay the tax and may thereafter seek a refund. In the event Consultant is required to pay any tax at time of sale or thereafter, County shall promptly reimburse Consultant therefore.

SECTION 27.

Payment:

- A. Products: Except as otherwise provided in Consultant's quotation, amounts due for Products shall be billed upon shipment and shall be paid in full within thirty (30) days after delivery.
- B. Annual Fee: The Annual Fee for the initial License and Support Subscription is due upon execution of this Agreement and annually thereafter before expiration thereof. Annual Fees for subsequently ordered License and Support Subscriptions, if any, shall be due upon acceptance of order and unless specified on the applicable quotation, the corresponding Annual Fees for renewals thereof shall be due annually with the renewal of the initially-ordered License and Support Subscription (i.e. shall be pro-rated and become co-terminus). If County fails to timely pay an Annual Fee, all Software licenses and Software Support Services will automatically terminate.
- C. Other Services: Amounts due for other Services shall be billed upon the earlier to occur of one or more of the following: first election in which the Professional Services are used; receipt of Services acceptance; not later than sixty (60) days after the date of County's first election in which any portion of the Hardware and/or Software is used, and shall be due within thirty (30) days of receipt of invoice.

SECTION 28.

Hardware Specific Terms:

- A. Delivery: Consultant will provide estimated shipment dates upon acceptance of County's signed quotation. Shipment dates on Consultant quotations are approximate only and Consultant will not be subject to liability for late or delayed shipment. In the event County is unable to receive the Hardware Products at the time of delivery Consultant, at its sole option and convenience, may deliver such products to storage at any suitable location including Consultant's facilities. All costs incurred by Consultant for the transportation, storage, and insurance of such Hardware Products shall be borne by County.

- B. Hart Voting System Equipment Pick-Up: If County has legacy Hart Voting System (HVS) equipment, Consultant will pick up and salvage all HVS voting devices, computers, and peripherals at no cost to County. County may retain databases and reports stored on such equipment solely to comply with record retention policies. County may retain minimal necessary computers and copies of legacy software for access to records retention databases. County agrees to remove all HVS software from all retained computers at the close of the records retention period. Upon request, County will provide Consultant with written certification that such software has been deleted.
- C. Acceptance: County shall examine all Hardware Products promptly upon receipt thereof. Within ten (10) business days of such receipt, County shall notify Consultant in writing of any manner in which County claims that the Hardware Products fail to conform to their applicable specification, or as to any claimed shortages, or shipments errors. If no written notification is received by Consultant within such period, the Hardware Products delivered hereunder shall be deemed accepted by County ("Hardware Acceptance"). Hardware Product will be deemed conforming if it meets Consultant's published specification for such Product, and any specifications identified on the applicable quotation. Upon County's Acceptance, any defects in material or workmanship shall be addressed pursuant to the warranty in Section 33 below.
- D. Installation: A Consultant representative may install the Hardware Products at the County's site on a mutually agreed upon date during Consultant's normal working hours, within ten (10) business days of delivery, or as soon as is practicable for both parties. Billing will occur on the date the Hardware is shipped to the County's site, per Section 28.A. If additional labor and rigging or County-specified customization is required for installation due to County's special site requirements, County will pay those costs including costs to meet union or local law requirements.
- E. Title and Transportation: Hardware Products are shipped Ex Works (Incoterms 2010) from Consultant's designated shipping point. Title transfer and transfer of risk of loss or damage shall be deemed to occur upon Consultant making such Hardware Products available to the carrier at Consultant's designated shipping point. Consultant reserves the right to select the method and routing of transportation and the right to make delivery in installments unless otherwise specified at the time of quotation acceptance by Consultant but in no event will the carrier be deemed the agent of Consultant. Notwithstanding the foregoing, if County chooses a financing option offered by Consultant, then title to Hardware will pass to County according to the terms of the finance agreement.

SECTION 29.

Software Specific Terms:

- A. License: Subject to the terms and conditions of this Agreement and for so long as County has a current License and Support Subscription in effect, Consultant grants to County (i) a personal, nonexclusive, nontransferable, and limited license to use the Consultant Proprietary Software (which includes Firmware, meaning the Consultant Proprietary Software embedded in any Verity system device that allows execution of the software functions) and (ii) a personal, nonexclusive, nontransferable, and limited sublicense to use

the Sublicensed Software, if applicable. With this right to use, Consultant will provide County, and County will be permitted to use, only the run-time executable code and associated support files of the Software for County's internal data processing requirements as part of the Verity system. The Software may be used only at the Licensed Location specified as Calaveras County and only on the hardware or other computer systems authorized by Consultant in writing. County's use of the Software will be limited to the number of licenses specified in the applicable quotation. Only County and its authorized employees, agents or contractors may use or access the Software. For applicable components, 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. To the extent Consultant Proprietary Software contains embedded third party software, third party licenses may apply. More information concerning embedded third party software can be found in the application's "Help->About" and is available upon written request. Such embedded third party software is distinguished from "Sublicensed Software" which is stand-alone software not part of Consultant Proprietary Software that may be included under this Agreement. See Exhibit D for a listing of Consultant Proprietary Software and Sublicensed Software.

B. Records and Audit: County shall keep clear, complete and accurate books of account and records with respect to the usage of Software and access to the Software licensed hereunder, including without limitation with respect to access thereto. Licensee shall retain such books and records for a period of five (5) years from the date of cessation of any such usage, notwithstanding any expiration or termination of this Agreement. County agrees that during the term of this Agreement and such period, Consultant, the licensors of any 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, and appropriate records of County to verify County's compliance with the terms of the licenses and sublicenses granted to County. If any such examination discloses unauthorized usage, then County, in addition to paying such payment then due and without limiting Consultant's remedies, shall pay the reasonable fees for the audit.

C. Restrictions:

1. The Consultant Hardware and Consultant Proprietary Software are designed to be used only with each other and/or the agreed-upon Sublicensed Software (if any) and Third Party Hardware. To protect the integrity and security of the Verity system, County shall comply with the following practices and shall not deviate from them without the express written consent of Consultant: (i) County shall use the Software and Hardware only in connection with the Verity system, and County may only use Consultant branded or approved peripherals and consumables with the Verity system.; (ii) County shall not install or use other software on or with the Hardware or Software or network the Hardware or Software with any other hardware, software, equipment, or computer systems; and (iii) County shall not modify the Hardware or Software. If County does not comply with any provisions of this Section 29.C., then (i) the Limited Warranties under Section 33 and the licenses and sublicenses granted under Section 29.A. will

automatically terminate; (ii) Consultant may terminate its obligation to provide Software Support Services under Section 32; (iii) Consultant will have no further installation obligations. Furthermore, if County uses the Software and Hardware in combination with other software and equipment (other software or equipment being those not provided by Consultant or its designees), and the combination infringes Consultant proprietary patent claims outside the scope of the software license granted to County under Section 29.A., Consultant reserves its rights to enforce its patents with respect to those claims.

2. County shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Software. County shall not use any Software for application development, modification, or customization purposes, except through Consultant.
3. County shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau serving others outside of the jurisdiction. This restriction does not preclude or restrict County from contracting for election services for other local governments located within County's jurisdictional boundaries. County shall not modify, copy, or duplicate the Software. All use of software and hardware on which the software resides shall take place and be for activities within County's jurisdictional boundaries, except for in cases of joint elections conducted cooperatively with neighboring jurisdictions. All copies of the Software, in whole or in part, must contain all of Consultant'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 County. County shall notify Consultant of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to County regarding any unauthorized possession or use of the Software.
4. County shall not publish any results of benchmark tests run on any Software.
5. 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. County shall not use the Software in any inherently dangerous application and agrees that Consultant and any third-party licensor will not be liable for any claims or damages arising from such use.

SECTION 30.

Documentation: Consultant will provide County with one (1) electronic copy of the standard user-level documentation and operator's manuals and where applicable, environmental specifications

for the Product installed at the County's location before the first election for which the Product will be used, following installation.

SECTION 31.

Proprietary Rights:

- A. **Reservation of Rights:** County acknowledges and agrees that the design of the Products, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, firmware, information, ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, equipment architecture, improvements, code, updates, trade secrets and material are the property of Consultant and its licensors. County agrees that the sale of the Hardware and license of the Software does not, other than as expressly set forth herein, grant to or vest in County 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 Consultant with respect to the Products, are the sole and absolute property of Consultant and its licensors. County shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Product(s), or copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Consultant. Further County shall not remove any trademark, copyright, or other proprietary or restrictive notices contained on any Consultant user documentation, operator's manuals, and environmental specifications, and all copies will contain such notices as are on the original electronic media. Intellectual Properties. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, code, updates, and trade secrets developed by Consultant personnel (alone or jointly with others, including County) in connection with Confidential Information, Verity system, and Consultant Proprietary Software will be the exclusive property of Consultant.
- B. **County Suggestions and Recommendations:** County may propose, suggest, or recommend changes to the Products at any time. Such proposals, suggestions, or recommendations will become Consultant's property and are hereby assigned to Consultant. Consultant may include any such proposals, suggestions, or recommendations, solely at Consultant's option, in subsequent periodic Product updates, without restriction or obligation. Consultant is under no obligation to change, alter, or otherwise revise the Products according to County's proposals, suggestions, or recommendations.
- C. **License Back:** If County possesses or comes to possess a licensable or sub-licensable interest in any issued patent with claims that read upon the Verity system, its method of operation, or any component thereof, County hereby grants and promises to grant a perpetual, irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Consultant permitting Consultant to make, have made, use, and sell materials or services within the scope of the patent claims.

SECTION 32.

Software Support Services:

- A. Description of Software Support Services: Subject to the terms and conditions of this Agreement and for so long as County has the requisite number of License and Support Subscriptions in effect, Consultant will provide County the Software Support Services described below. Software Support Services under this Section do not cover any of the exclusions from warranty and support coverage as described under Section 33. If Consultant, in its discretion, provides Software Support Services in addition to the services described under this Section, County will pay Consultant for such services on a time-and-materials basis at Consultant's then-prevailing rates, plus expenses, and for replacements at Consultant's list prices, unless otherwise agreed in writing by Consultant and County.
- B. Software Support Services: Software Support Services will consist of assisting the County in the use of software for purposes of election administration, including functions related to pre-election and post-election testing and general operation of the Verity system. Assistance is available via phone and email through the Consultant County Support Center. See Exhibit B for Hart Customer Support contact information and hours.

Software Support Services may consist of periodic updates to Consultant Proprietary Software, at Consultant's discretion. Because not all errors or defects can or need to be corrected, Consultant does not warrant that all errors or defects will be corrected. Software errors or defects must be reported in writing and be accompanied with sufficient detail to enable Consultant staff to reproduce the error and provide a remedy or suitable corrective action. The exclusions from warranty coverage under Section 33 also are exclusions from Software Support Services under this Section. There may be consumable, shipping and on-site service charges for update releases of software and there may be feature charges for update or enhancement releases of software.

SECTION 33.

Warranty and Extended Warranty:

- A. Certification: Where applicable, Verity system components that require certification will meet the certification requirements in place on the effective date of the Agreement.
- B. Consultant Hardware Limited Warranty: Consultant warrants that during the warranty period, the Consultant Hardware purchased by County will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Verity Operator's Manuals for the Consultant Hardware applicable at the time of the installation of the Hardware. The warranty period for new Consultant Hardware (other than Consumables) is one (1) year, beginning ten (10) days after the shipping date. The warranty period for used and/or refurbished hardware is ninety (90) days, beginning ten (10) days after the shipping date. Consumables are warranted only to be free from manufacturing defects for a period ninety (90) days, beginning ten (10) days after the shipping date. Consultant will, at Consultant's sole discretion, replace or repair any Consultant Hardware that does not comply with this warranty, at no additional charge to County. To request warranty service, County must contact Consultant in writing

within the warranty period. Consultant may elect to conduct any repairs at County's site, Consultant's facility, or any other location specified by Consultant. Any replacement Consultant Hardware provided to County under this warranty may be new or reconditioned. Consultant may use new and reconditioned parts in performing warranty repairs and building replacement products. If Consultant repairs or replaces Consultant Hardware, its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired Consultant Hardware. Consultant owns all replaced Consultant Hardware and all parts removed from repaired products. County acknowledges and agrees that this warranty is contingent upon and subject to County's proper use of the Verity system and the Exclusions from Warranty and Software Support Services set forth in Section 33.E. This warranty does not cover any Consultant Hardware that has had the original identification marks and/or numbers removed or altered in any manner. This warranty does not include any type of routine maintenance service or preventative maintenance service. This Hardware Limited Warranty may be extended after the initial period under separate Extended Hardware Warranty agreements, subject to the order process contemplated by this Agreement. Extended warranties exclude consumable items, including all types of batteries, vDrives and paper ("Consumables"). Renewal of the annual License and Support Subscription does not, in itself, extend the Hardware Limited Warranty. The remedies set forth in this Section are the full extent of County's remedies and Consultant's obligations regarding this warranty. If the Consultant Hardware is required to be reconfigured, modified, or otherwise changed after its sale to and installation at the County's location due to the County's or a local, state, or federal government certification change(s) or due to any statutory changes or new requirements, Consultant will determine the feasibility and cost of the required changes and advise the County of the total amount due for those Consultant Hardware changes. Upon written approval to move forward with the changes and receipt from the County of the stated fees, Consultant will complete the required changes to the County's Consultant Hardware. THIS LIMITED WARRANTY DOES NOT APPLY TO ANY THIRD PARTY HARDWARE.

- C. Consultant Proprietary Software Limited Warranty: Consultant warrants that beginning ten (10) days after the shipping of the Consultant Proprietary Software and for so long as County has the requisite number of License and Support Subscriptions in effect, the Consultant Proprietary Software will perform substantially according to the then-current functional specifications described in the applicable software Operators' Manuals accompanying such Consultant Proprietary Software. To request warranty service, County must contact Consultant 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 Consultant to reproduce the error and provide a remedy or suitable corrective action (a solution that will allow the software to function appropriately). Consultant 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 effect upon operation of the Consultant Proprietary Software. Because not all errors or defects can or need to be corrected, Consultant does not warrant that all errors or defects will be corrected. County acknowledges and agrees that this warranty is contingent upon and subject to County's proper use of the Verity system and the Exclusions from Warranty and Support Coverage set forth in Section 33.E. The remedies set forth in this Section 33.C. are the full

extent of County's remedies and Consultant's obligations regarding this warranty. THIS LIMITED WARRANTY DOES NOT APPLY TO ANY SUBLICENSED SOFTWARE.

- D. Professional Services Warranty: Consultant represents and warrants that any Professional Services shall be performed in a professional and workmanlike manner.
- E. Exclusions from Warranty and Software Support Services: The warranties under this Section and Software Support under Section 32 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) County's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of incompatible media, supplies, parts, or components; (c) modification or alteration of the Verity system, or its components, by County or third parties not authorized by Consultant; (d) use of equipment or software not supplied or authorized by Consultant; (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; (h) improper or abnormal use or use under abnormal conditions; (i) use in a manner not authorized by this Agreement or use inconsistent with Consultant's specifications and instructions; (j) use of software on Equipment that is not in good operating condition; (k) acts of County, its agents, servants, employees, or any third party; (l) servicing or support not authorized by Consultant; (m) Force Majeure; or (n) Consumables, unless expressly set forth in Section 33.B. In any case where Consultant Proprietary Software interfaces with third party software, including but not limited to, the County's voter registration system, non-Consultant election management system, early voting validation system, non-Consultant election systems, absentee envelope management systems, or other like systems, Consultant will not be responsible for proper operation of any Software that interfaces with the third party software should such third party software be updated, replaced, modified, or altered in any way. Consultant will also not be responsible for the proper operation of any Software running on County's computer equipment, should County install a new computer operating system on said equipment without advising Consultant of such changes and receiving Consultant's written approval. Consultant will not be responsible for the proper operation of any Software should it be configured or operated in any manner contrary than that described herein. Professional Services and associated costs may be required in those situations where the County requests Consultant's review and approval of any system changes outside the original system specifications at the time of the original acceptance date of this Agreement. Consultant reserves the right to charge for repairs on a time-and-materials basis at Consultant's then-prevailing rates, plus expenses, and for replacements at Consultant's list prices caused by these exclusions from warranty and support coverage.
- F. Third Party Hardware and Sublicensed Software Excluded: Consultant makes no representations or warranties as to THIRD PARTY HARDWARE AND SUBLICENSED SOFTWARE, IF ANY, PROVIDED BY CONSULTANT TO COUNTY, all of which is sold, licensed, or sublicensed to County "AS IS," OTHER THAN AS MAY BE PROVIDED IN ANY PASS-THROUGH WARRANTY DESCRIBED BELOW.

CONSULTANT HAS NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY HARDWARE AND SUBLICENSED SOFTWARE, IF ANY, PROVIDED BY CONSULTANT'S DISTRIBUTORS OR OTHER THIRD PARTIES TO COUNTY. If Consultant sells, licenses, or sublicenses any Third Party Hardware or Sublicensed Software to County, Consultant will pass through to County, on a nonexclusive basis and without recourse to Consultant, any third-party manufacturer's warranties covering the equipment or software, but only to the extent, if any, permitted by the third-party manufacturer. County agrees to look solely to the warranties and remedies, if any, provided by the manufacturer or third-party licensor. For a list of Third Party Hardware, see Exhibit A. For a list of Sublicensed Software, see Exhibit D or the applicable order. The disclaimers in this Section 33.F. are not intended to apply to embedded third party software integrated within the Consultant Proprietary Software, contemplated by Section 29.A.

- G. Limited Remedies: CONSULTANT'S SOLE RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN PRODUCTS AND SERVICES IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN, AND TO THE EXTENT SET FORTH IN, THIS WARRANTY TERMS SECTION.

SECTION 34.

County Responsibilities:

- A. Independent Determination: County acknowledges it has independently determined that the Products purchased under this Agreement meet its requirements
- B. Cooperation: County agrees to cooperate with Consultant and promptly perform County's responsibilities hereunder. County will (a) provide adequate working and storage space for use by Consultant personnel near the applicable Hardware; (b) provide Consultant full access to the Hardware and Software and sufficient computer time, subject to County's security rules; (c) follow Consultant's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Consultant'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 County personnel and timely respond to Consultant's questions; and (h) otherwise cooperate with Consultant in its performance under this Agreement.
- C. Site Preparation: County shall prepare and maintain the installation site in accordance with instructions provided by Consultant. County is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Consultant's specifications. Any delays in preparation of the installation site will correspondingly extend Consultant's delivery and installation deadlines.
- D. Site Maintenance; Proper Storage: County shall maintain the appropriate operating environment, in accordance with Consultant's specifications, for the Products and all communications equipment, telephone lines, electric lines, cabling, modems, air

conditioning, and all other equipment and utilities necessary for the Products to operate properly. County shall properly store the Products when not in use.

- E. Use: County is exclusively responsible for supervising, managing, and controlling its use of the Products, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making timely data 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. County will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Products and that the Hardware and Software are used in accordance with applicable manuals, instructions, and specifications. County shall comply with all applicable laws, rules, and regulations with respect to its use of the Products.
- F. Backups: County is solely responsible for timely data backups, and County will maintain backup data necessary to replace critical County data in the event of loss or damage to data from any cause. Consultant is not liable for data loss.

SECTION 35.

Professional Services: Subject to the terms and conditions of this Agreement, Consultant will provide County (i) operational training and on-site support at the first election in which the Products are used, and (ii) the Professional Services described in each Consultant-accepted, County-signed quotation. Professional Service days cannot be exchanged for Product fees, Annual Fees, or fees for other Services. If the Professional Services in an applicable quotation are not used prior to 60 days after the date of the County's first election in which any portion of the Product is used, Consultant's Professional Services obligations shall expire and unused days will be billed to the County without recovery of amounts paid in advance for Professional Services.

SECTION 36.

Confidentiality:

- A. Definition: "Confidential Information" means any information related to Consultant's business or the Verity system, including but not limited to technical data, trade secrets, know-how, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information. Confidential Information includes, without limitation, all Software, the Documentation and support materials, and the terms and conditions of this Agreement.
- B. Non-Use and Non-Disclosure: County will keep in confidence and protect Confidential Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Agreement. County shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Hardware and Software and the other Confidential Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. County 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 County to use the Software. County

acknowledges that unauthorized disclosure of Confidential Information may cause substantial economic loss to Consultant or its suppliers and licensors.

- C. Return of Confidential Information: Upon termination or expiration of this Agreement or, if earlier, upon termination of County's permitted access to or possession of Confidential Information, County shall return to Consultant all copies of the Confidential Information in County's possession (including Confidential Information incorporated in software or writings, electronic and hard copies). Upon termination of County's license or sublicense of Software, County shall immediately discontinue all use of the Software and return to Consultant or destroy at Consultant's option, the Software, including Firmware (and all related Documentation (electronic and hard copy)) and all archival, backup, and other copies of Software, Firmware and Documentation, and provide certification to Consultant of such return or destruction. Return or destruction may include hard drives and/or component flash drive devices.
- D. County Employees, Agents and Contractors: County will inform its employees and other agents and contractors of their obligations under this Section 36 and shall be fully responsible for any breach thereof by such personnel.
- E. For purposes of clarity, nothing in this Section 36 shall restrict or in any way limit the parties' rights and obligations under Section 14 (Public Records Act) of this Agreement;

SECTION 37.

Disclaimers and Limitations of Liability:

- A. Disclaimer of Warranty: EXCEPT FOR THE EXPRESS LIMITED WARRANTIES APPLICABLE TO THE PRODUCT(S) AND/OR SERVICES SET FORTH IN SECTION 33, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT, AND (B) CONSULTANT DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND NONINFRINGEMENT FOR ALL HARDWARE, SOFTWARE, AND SERVICES. COUNTY IS SOLELY RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL COUNTY DATA. UNDER NO CIRCUMSTANCES WILL CONSULTANT BE LIABLE TO COUNTY OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO COUNTY DATA THE EXPRESS LIMITED WARRANTIES REFERENCED ABOVE EXTEND SOLELY TO COUNTY AND DO NOT INCLUDE ANY TYPE OF ROUTINE MAINTENANCE SERVICE OR PREVENTATIVE MAINTENANCE SERVICE. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY.
- B. Limitations of Liability: NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT WILL NOT BE LIABLE TO COUNTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED

IN CONNECTION WITH THE HARDWARE, SOFTWARE, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, CONSULTANT'S TOTAL LIABILITY TO COUNTY FOR DAMAGES ARISING OUT OF OR RELATING TO THE HARDWARE, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY COUNTY TO CONSULTANT UNDER THIS AGREEMENT UNDER THE ORDER FOR THE HARDWARE, SOFTWARE OR SERVICE GIVING RISE TO THE APPLICABLE CLAIM, PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY WITH RESPECT TO AMOUNTS THAT ARE CONSULTANT'S RESPONSIBILITY UNDER SECTION 12 (INDEMNITY) WHICH IN COMBINATION WITH ALL OTHER LIABILITIES OF CONSULTANT, SHALL BE LIMITED TO 150% OF THE TOTAL AMOUNT ACTUALLY PAID BY COUNTY TO CONSULTANT UNDER THIS AGREEMENT UNDER THE ORDER FOR THE HARDWARE, SOFTWARE OR SERVICE GIVING RISE TO THE APPLICABLE CLAIM. CONSULTANT IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY COUNTY'S NEGLIGENCE OR INTENTIONAL ACTS OR, EXCEPT AS EXPRESSLY SET FORTH HEREIN, FOR ANY CLAIM AGAINST COUNTY OR ANYONE ELSE BY ANY THIRD PARTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES, SO THE ABOVE EXCLUSIONS AND/OR LIMITATIONS MAY NOT APPLY TO COUNTY. THE PARTIES AGREE THAT THE LIABILITY AND WARRANTY LIMITATIONS SET FORTH IN THIS AGREEMENT ARE A REASONABLE ALLOCATION OF RISK AND LIABILITY CONSIDERING THE RESPECTIVE BENEFITS OBTAINED HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

- C. Third Party Products, Services and Referrals: In addition to Third Party Products that may be ordered hereunder, Consultant may direct County to third parties having products or services that may be of interest to County for use in conjunction with the Products or Services. Notwithstanding any Consultant recommendation, referral, or introduction, County will independently investigate and test non-Consultant products and services and will have sole responsibility for determining suitability for use of non-Consultant products and services. Consultant has no liability with respect to claims relating to or arising from use of non-Consultant products and services, including, without limitation, claims arising from failure of non-Consultant products to provide proper time and date functionality.

SECTION 38.

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, but does not include any delays in the payment of monies due by either 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 County's performance, the County, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; failure of third parties to timely provide software, hardware, materials, or labor contemplated herein

including by reason of 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 or other such event 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 period of time necessary to overcome the effects of the Force Majeure.

SECTION 39.

Compliance with Laws: County and Consultant shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Products. Products provided under this Agreement may be subject to U.S. and other government export control regulations. County shall not export or re-export any Products.

SECTION 40.

Equitable Relief: The parties agree that a material breach of the confidentiality provisions of this Agreement or restrictions set forth herein would cause irreparable injury to Consultant for which monetary damages alone would not be an adequate remedy, and therefore Consultant shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.

SECTION 41.

Government Use: The use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, no matter how received by the United States Government, is restricted in accordance with the terms and conditions contained herein. All other use is prohibited. Further, the Products were developed at Consultant's private expense and are commercial in nature. By using or receiving the Products, the Government user agrees to the terms and conditions contained in this Agreement including the terms and conditions contained in this paragraph.


SECTION 42

Survival: Sections 27, 29.C., 31, 33.E.-33.G., 34 and 36-42 shall survive any termination or expiration of this Agreement or the applicable License and Support Subscription and/or Professional Services order. All other rights and obligations shall be of no further force or effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

-- COUNTY OF CALAVERAS --

By:  Dated: 6/27/2019
Rebecca Turner
Calaveras County Clerk-Recorder & Registrar of Voters
"County"

-- CONSULTANT --

Hart InterCive, Inc.,
A Texas Corporation

By:  Dated: 6/27/19
Phillip Braithwaite
Chief Executive Officer
"Consultant"

Approved As To Form:

Date: 06/27/2019

By: 
Deputy County Counsel

Exhibit A

Hart InterCivic Quote



Quote Number

00005595

Account Name

Calaveras County, CA

Grand Total

\$260,372.00

Item	Description	Unit Price	Quantity	Total Price
Verity Scan	Digital ballot scanner	\$6,100.00	6	\$36,600.00
Verity Ballot Box	Ballot box w/ transport bag and privacy screens included with Verity Scan		6	
Verity Touch Writer w/ Access	Ballot marking device with accessibility	\$5,300.00	22	\$116,600.00
Verity Accessible Booth	Wheelchair-accessible voting booth w/ transport bag and privacy screens included with Verity Touch Writer w/ Access		22	
Okidata B430 Series Printer	Laser printer w/ starter cartridge included with Verity Touch Writer for ballot printing		22	
Printer Stand	Small table for printer included with Verity Touch Writer		22	
Verity Print	Paper ballot printing unit	\$5,875.00	4	\$23,500.00
Okidata B430 Series Printer	Laser printer w/ starter cartridge included with Verity Print for ballot printing		4	
Verity Build	Verity Build software; includes Verity Data	\$30,000.00	1	\$30,000.00
Verity Count	Verity Count software	\$12,000.00	1	\$12,000.00
Verity Central	Verity Central software (server)	\$35,000.00	1	\$35,000.00
Verity Central - Client	Verity Central software (client)	\$8,750.00	2	\$17,500.00
Verity Workstation	Workstation for Verity software w/ 5-year warranty	\$5,900.00	5	\$29,500.00
23" Flat Panel Monitor	Monitor for use with Verity Workstation		5	
Canon DR-G1100 Central Scanner	Central ballot scanner w/ 1-year warranty	\$7,500.00	3	\$22,500.00
Okidata B430 Series Printer	Laser printer w/ starter cartridge for report printing	\$380.00	5	\$1,900.00
vDrive	Flash memory card/audio card for use with Verity devices	\$66.00	50	\$3,300.00
Verity Key	Electronic security token	\$109.00	3	\$327.00
Battery Charger, 6 Bay	6-bay charger for Verity voting device battery	\$540.00	5	\$2,700.00
New Implementation Services	Includes training, acceptance testing, project management, and on-site support for the first election on the Verity voting system. Additional services, if required, must be purchased separately.	\$28,000.00	1	\$28,000.00
License and Support	Annual license and support fee	\$8,773.00	1	\$8,773.00

Subtotal

\$368,200.00

Special Discount

(\$107,828.00)

Grand Total

\$260,372.00



Quote Number 00005595
 Account Name Calaveras County, CA
 Grand Total \$260,372.00

Bill To 891 Mountain Ranch Rd.
 San Andreas, CA 95249

Ship To 891 Mountain Ranch Rd.
 San Andreas, CA 95249

Customer Contact

Contact Name Rebecca Turner

Email rturner@co.calaveras.ca.us

Phone (209) 754-6376

General Information

Expiration Date 6/28/2019

Instructions Please fax with signature to or scan and email to kclakeley@hartic.com to order.

Payment Terms Net 30

Terms and Conditions

Subsequent License and Support will be billed annually per contract terms.
 Delivery includes removal and salvage of customer's existing voting system at no extra charge.
 Pricing subject to inventory availability at time of quote execution and acceptance.
 Taxes will be calculated in conjunction with the Customer based on the final approved price list. Estimated tax is \$18,876.97.

Hart Approval

Prepared By Karen Clakeley

Title Director, Strategic Accounts

Signature

Karen S. Clakeley

Customer Approval

Name: Rebecca Turner

Title: Registrar of Voters

Customer Approval: *Rebecca Turner*

Date: 6/27/2019

Exhibit B

Hart Customer Support Contact Information and Hours

The following contact information is to be used by County for submitting Support requests to Hart:

Customer Support Center	1-866-275-4278 (1-866-ASK-HART)
Customer Support Center Fax	1-512-252-6925 or 1-800-831-1485
E-mail Address	hartsupport@hartic.com
Hart InterCivic, Inc. Switchboard	1-800-223-HART (4278)
Hours of Operation	7AM-6PM Central Time, M-F
After Hours	Leave Voicemail with contact information for return call

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Exhibit C

Definitions

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

“*Verity Access*[™]” means the audio tactile interface (ATI) controller created by Hart as an add-on component to a Verity Touch[™] that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from adaptive switch mechanisms that facilitate interaction with disabled voters, as needed.

“*Verity Print*[™]” means the device created by Hart for purposes of on-demand ballot printing; this device creates a blank paper ballot from the poll worker’s selection of the voter’s ballot style or precinct on the Verity Print interface.

“*Verity Controller*[™]” is a polling place management console capable of interacting with one or more Verity Touch[™] devices by transmitting and receiving signals that manage 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.

“*Verity Scan*[™]” means the Verity Scan[™] device created by Hart, consisting of an in-person digital ballot imaging device. The single-feed scanner transports and scans both sides of a ballot simultaneously, and it is securely attached to a ballot box that provides for secure ballot storage and transport.

“*Verity Election Office*” means Hart InterCivic’s software platform that can accommodate a variety of election administration applications and is designed for interoperability with Verity Voting Hardware and Software.

“*Verity Touch*[™]” means the Verity Touch[™] electronic voting device created by Hart. Verity Touch devices consist of hardware including an electronically configurable 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 touchscreen liquid crystal display (LCD) panel for use in displaying ballot images, and options for tactile input buttons that facilitate voter options for selecting ballot choices and casting a ballot.

“*Verity Touch Writer*[™]” means the device created by Hart for ballot-marking functions. Touch Writer creates a paper marked ballot from the voter’s selections on the electronic interface or the Verity Access ATI controller.

“*Verity Voting*” means Hart InterCivic’s family of voting system components designed to conform to federal voting system standards.

Exhibit D

CONTRACTOR PROPRIETARY SOFTWARE AND SUBLICENSSED SOFTWARE

Contractor Proprietary Software Licensed to County via annual subscription may include the following. Actual software and firmware licensed is indicated in the quote or response associated with this Agreement:

SOFTWARE/FIRMWARE NAME	VERSION NUMBER
Verity TouchWriter with Access	3.0.1
Verity Print	3.0.1
Verity Build	3.0.1
Verity Count	3.0.1
Verity Central	3.0.1

Licensed Location is the jurisdiction of Calaveras County. Any future releases or updates to the software versions listed above will be documented in Contractor Release Notes and Version Verification documents. Such releases and updates shall be considered Contractor Proprietary Software licensed under this Agreement.

Software Sublicensed to County via annual subscription:

None

bkramer



bkramer

Hart Agreement-Inc.pdf

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