



**HART VOTING SYSTEM**

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

This Hart Voting System Warranty, Support, and License Agreement (“**Agreement**”) is entered into by and between Hart InterCivic, Inc., a Texas corporation (“**Hart**”), and the County of Yolo (“**Client**”), a political subdivision of the State of California. This Agreement is entered into in connection with a Hart Voting System Master Agreement dated April \_\_\_\_, 2006, between Hart and Client under which Client has purchased Hart Voting System Hardware. This Agreement sets forth terms between Hart and Client applicable to Client’s ownership and use of the Hart Voting System Hardware and license from Hart of Hart Proprietary Software (including Firmware), including warranty, support, license, and other terms. Defined terms used in this Agreement will have the meanings specified in Section 13, Definitions, or as otherwise set forth herein.

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

Schedule A	Support Contact Information
Schedule B	Hart Proprietary Software
Schedule C	Non-Hart Software
Schedule D	Initial Annual Fee
Schedule E	Additional Terms and Conditions

Client acknowledges it has read and understands this Agreement (including all Schedules) and is entering into this Agreement only on the basis of the terms expressly set forth in this Agreement. There are no oral agreements, representations, or warranties. The Effective Date of this Agreement is April \_\_\_\_, **2006**.

**Agreed and Accepted:**

	<b><u>Client</u></b>	<b><u>Hart</u></b>
Name:	Yolo County, California	Hart InterCivic, Inc.
Address:	Yolo County Clerk - Recorder 625 Court Street, Room 105 Woodland, California 95695	15500 Wells Port Drive Austin, Texas 78728 Attn.: Ted Simmonds Senior Vice President/COO
Primary Phone:	530-666-8264	800-223-4278
Facsimile:	530-666-8123	800-831-1485
E-mail:	cntyclrk@yoloelections.org	tsimmonds@hartic.com
Executed By:	_____	_____
Name:	Frank Sieferman, Jr.	Ted Simmonds
Title:	–Chairman, Board of Supervisors	Senior Vice President/COO

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

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

## **1. Warranty Terms**

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

**1.2 Hart Proprietary Software Limited Warranty.** Hart warrants that during the term of this Agreement, and as long as Client is in compliance with the Annual Fee requirements of this Agreement, the Hart Proprietary Software will comply with then-current federal and state certification requirements and perform substantially according to the then-current functional specifications described in the BOSS™, Tally™, Rally™, and Ballot Now™ Operators' Manuals accompanying such Hart Proprietary Software. To request warranty service, Client must contact Hart in writing within the warranty period. Failure to conform to the warranty must be reported in writing and, to the extent reasonably feasible, be accompanied with sufficient detail to enable Hart to reproduce the error and provide a remedy or suitable workaround (a solution that will allow the software to function appropriately as certified). Hart will make commercially reasonable efforts to remedy or provide a suitable workaround for defects, errors, or malfunctions covered by this warranty that have a significant adverse affect upon operation of the Hart Proprietary Software, at no additional charge to Client. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected; provided, however, that if any error or defect is not corrected Hart will document and certify in writing that (1) it is not commercially feasible to correct the defect or error, and (2) that the System nevertheless complies with this Agreement, including but not limited to the then-current federal and state certification requirements and other warranties set forth herein. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the Hart Voting System and the Exclusions from Warranty and Support Coverage set forth in Section 1.3. The remedies set forth in this Section 1.2 are the full extent of Client's remedies and Hart's obligations regarding this warranty.

**1.3 Exclusions from Warranty and Support Coverage.** The warranties under this Section 1 and Software Support under Section 2 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) Client's failure to follow operational, support, or storage instructions as reasonably set forth in applicable documentation provided in writing by Hart to the Client; (b) the use of noncompatible media, supplies, parts, or components not recommended or consented to by Hart; (c) modification or alteration of the Hart Voting System, or its components, by Client or third parties not authorized or consented to by Hart; (d) use of equipment or

software not supplied, authorized or consented by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions provided in writing by Hart to the Client; (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 Hart's specifications and instructions provided in writing by Hart to the Client; (j) use of software on Equipment that is not in good operating condition; (k) acts of Client, its agents, servants, employees, or any third party; (l) servicing or support not authorized or consented by Hart; or (m) Force Majeure. Hart reserves the right to charge for repairs on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices. Compensation for additional services required of Hart caused by these exclusions from warranty and support coverage must be approved in writing by Client prior to the start of any additional services by Hart.

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

**1.5 Disclaimer.** THE WARRANTIES IN THIS WARRANTY TERMS SECTION GIVE CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). HART'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HART VOTING SYSTEM HARDWARE AND HART PROPRIETARY SOFTWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY TERMS SECTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION 1 OF THIS AGREEMENT, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SALE OF HART VOTING SYSTEM HARDWARE AND LICENSE OF HART PROPRIETARY SOFTWARE, AND (B) HART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NONINFRINGEMENT FOR ALL EQUIPMENT, SOFTWARE, AND SERVICES. THE EXPRESS WARRANTIES EXTEND SOLELY TO CLIENT. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

## **2. Software Support Services**

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

agreed in writing by Hart and Client.

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

**2.1.2 Software Support Services.** Software Support Services will consist of periodic updates and any software “bug” corrections to Hart software. A software “bug” is any malfunction that prevents the Hart software from performing substantially as described in the then-current operator’s manual for such software and as otherwise warranted or agreed to in this Agreement. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected; provided, however, that if any error or defect is not corrected Hart will document and certify in writing that (1) it is not commercially feasible to correct the defect or error, and (2) that the System nevertheless complies with this Agreement, including but not limited to the then-current federal and state certification requirements and other warranties set forth herein. Hart reserves the right to determine whether any reported, claimed software malfunction is in fact a “bug.” Software “bugs” must be reported in writing and, to the extent reasonably feasible, be accompanied with sufficient detail to enable Hart staff to reproduce the error and provide a remedy or suitable workaround. The exclusions from warranty coverage under Section 1.3 also are exclusions from Software Support Services under this Section 2.1.2.

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

**2.1.4 Client Suggestions and Recommendations.** Client may propose, suggest, or recommend changes to the Software at any time in writing to Hart. Such proposals, suggestions, or recommendations will become Hart’s property. Hart may include any such proposals, suggestions, or recommendations, solely at Hart’s option, in subsequent periodic Software updates. Hart is under no obligation to change, alter, or otherwise revise the Software according to Client’s proposals, suggestions, or recommendations.

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

### **3. Software Licenses and Sublicenses**

**3.1 Licenses and Sublicenses.** Subject to the terms and conditions of this Agreement, Hart grants to Client a personal, nonexclusive, nontransferable, and limited license to use the Hart Proprietary

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

**3.2 Delivery and Installation.** Hart will deliver and install the Software at the Client's site on a mutually agreed-upon date during Hart's normal working hours. The Software will be deemed accepted upon the Installation Date.

**3.3 Training and Documentation.** Hart will provide standard user-level documentation in electronic form for the Software and standard operational training before the first election for which the Software will be used. Charges for additional training or support services will be invoiced to Client at Hart's then-current hourly rates, plus travel, communication, and other expenses. Any nonstandard or additional training or support services will be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

**3.4 Protection of Software.**

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

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

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

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

(e) Client shall not publish any results of benchmark tests run on any Software; provided, however, that nothing contained in this Agreement limits the County's right or obligation to release such information or any other information in accordance with the California Public Records Act.

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

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

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

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

#### **4. Annual Fee**

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

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

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

**4.4** Additional Charges. Additional charges may apply to services rendered outside contracted hours or beyond normal coverage at Client's request, (e.g., travel expenses, and premium and minimum charges). There will be an additional charge at Hart's current technician's rate per hour for any technical work required as a result of *other than Hart-recommended hardware* purchased by the Client for use with the Voting System, if such services are not disputed by the Client within ten (10) days.

The Clerk-Recorder may approve additional services and charges beyond those specifically described in this Agreement in an amount not exceeding one hundred thousand dollars (\$100,000) without further approval by the County Board of Supervisors. Any other additional charges must be mutually agreed to by Hart and Client and documented in writing and made an attachment to this Agreement.

**4.5** Payment Disputes. If any dispute exists between the parties concerning the amount due or due date of any payment, Client shall promptly pay the undisputed portion. Such payment will not constitute a waiver by Client or Hart of any of their respective legal rights and remedies against each other.

**4.6** Taxes. If Client is tax-exempt, Client will provide Hart with proof of its tax-exempt status. If Client is not tax-exempt, (a) Client will pay any tax Hart becomes obligated to pay in connection with this Agreement, exclusive of taxes based on the net income of Hart and (b) Client will pay all personal property and similar taxes assessed after shipment. If Client challenges the applicability of any such tax, Client shall pay the tax and may thereafter seek a refund.

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

## **5. Client Responsibilities**

**5.1** Independent Determination. Client acknowledges it has independently determined that the Hart Voting System meets its requirements for this Agreement based upon its own independent review together with Hart's recommendations and Hart's representations as set forth or incorporated in this Agreement and the License Agreement including specifications and other documentation that Hart has provided to Client.

**5.2** Cooperation. Client agrees to cooperate with Hart and promptly perform Client's responsibilities under this Agreement. Client will (a) provide reasonable adequate working and storage space for use by Hart personnel near Equipment; (b) provide Hart reasonable access to the Equipment and Software and sufficient computer time, subject to Client's security rules; (c) follow Hart's written procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's written 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 reasonable and timely access to key Client personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.

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

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

**5.5** Use. Client is exclusively responsible for supervising, managing, and controlling its use of the Hart Voting System, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making daily backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. Client will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Hart Voting System and that the Equipment and Software are used in accordance with applicable manuals, instructions, and specifications. Client shall comply with all applicable laws, rules, and regulations with respect to its use of the Hart Voting System.

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

## **6. Protection of Confidential and Proprietary Information**

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

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

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

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

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

**6.6** License Back. If Client possesses or comes to possess a licensable or sublicensable interest in any issued patent with claims that read upon the Hart Voting System, its method of operation, or any component thereof, Client hereby grants and promises to grant an irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use, and sell materials or services within the scope of the patent claims.

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

## **7. Title; Risk of Loss**

### **7.1** Software.

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

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

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

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

**7.3** Proprietary Rights. Client acknowledges and agrees that the design of the Hart Voting System, design of the Hart Voting System Hardware, Hart Proprietary Software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, information, and material, are the property of Hart. Client agrees that the sale of Hart Voting System Hardware and license of Hart Proprietary Software to Client does not grant to or vest in Client any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the Hart Voting System, Hart Voting System Hardware, and Hart Proprietary Software, are the sole and absolute property of Hart and no interest therein is being vested in Client by the execution of this Agreement or the sale of

the Hart Voting System Hardware or license of the Hart Proprietary Software to Client. Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software or Equipment. Client will have no authority or right to copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. The provisions of this Section 7.3 will survive the termination or cancellation of this Agreement.

## **8. Term of Agreement; Termination**

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

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

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

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

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

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

## **8.4** Termination.

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

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

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

**8.5** Survival. Section 1.1 will survive the termination or expiration of this Agreement until the end of the warranty period stated therein. Sections 3.4(b), 3.4(c), 3.4(d), 3.4(e), 3.4(f), 6, 7.3, 8.5, 9, 11, and 12 will survive the termination or expiration of this Agreement.

## **9. Limitation of Damages**

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

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

**9.3** LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HART, HART'S LICENSORS, AND ANY PARTY INVOLVED IN THE CREATION, MANUFACTURE, OR DISTRIBUTION OF THE EQUIPMENT, SOFTWARE, AND PERFORMANCE OF SERVICES UNDER THIS AGREEMENT WILL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED IN CONNECTION WITH THE EQUIPMENT, 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, HART'S TOTAL LIABILITY TO CLIENT FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THE EQUIPMENT, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CLIENT TO HART UNDER THIS AGREEMENT. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS OR FOR ANY CLAIM AGAINST CLIENT OR ANYONE ELSE BY ANY THIRD PARTY.

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

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

## **10. Infringement Indemnity**

**10.1** Indemnity. Hart, at its own expense, will defend and indemnify Client against claims that the Hart Voting System Hardware or Hart Proprietary Software infringe a United States patent, copyright, or misappropriate trade secrets protected under United States law, provided Client (a) gives Hart prompt written notice of such claims; (b) permits Hart to control the defense and settlement of the claims; and (c) provides all reasonable assistance to Hart in defending or settling the claims.

**10.2** Remedies. As to Hart Voting System Hardware or Hart Proprietary Software that is subject to a claim of infringement or misappropriation, Hart may (a) obtain the right of continued use of the Hart Voting System or Hart Proprietary Software for Client or (b) replace or modify the Hart Voting

System Hardware or Hart Proprietary Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Hart, any applicable Software license and its charges will end, Client will cease using the applicable Hart Voting System and Hart Proprietary Software, Client will return to Hart all applicable Hart Voting System and return or destroy all copies of the applicable Hart Proprietary Software, and Client will certify in writing to Hart that such return or destruction has been completed. Upon return or Hart's receipt of certification of destruction, Hart will give Client a credit for the price paid to Hart for the returned or destroyed Hart Voting System Hardware and Hart Proprietary Software, less a reasonable offset for use and obsolescence.

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

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

## **11. Dispute Resolution**

**11.1 Disputes and Demands.** The parties will attempt to resolve any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("**Dispute**"), on a confidential basis according to the following process, which either party may start by delivering to the other party a written notice describing the dispute and the amount involved ("**Demand**").

**11.2 Negotiation and Meditation.** After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed-upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after this meeting, either party may start voluntary, nonbinding mediation under the commercial mediation rules of the American Arbitration Association ("**AAA**") or such other mediation process as is mutually acceptable to the parties.

**11.3 Injunctive Relief.** Notwithstanding the other provisions of this Section 11, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the negotiation and mediation provisions of this Section 11.

**11.4 Time Limit.** Neither mediation under this section nor any legal action, regardless of its form, related to or arising out of this Agreement may be brought more than four (4) years after the cause of action first accrued.

## **12. General Provisions**

**12.1 Entire Agreement.** This Agreement and the attachments, schedules, and exhibits hereto are the entire agreement and supersede all prior negotiations and oral agreements. Hart has made no representations or warranties with respect to this Agreement or the Hart Voting System and its components that are not included herein or incorporated herein by reference. Client acknowledges and agrees that Hart has no responsibility or liability under the Hart Voting System Agreement except to the extent, if any, that Hart is a party to the eSlate® Agreement. This Agreement may not be amended or

waived except in writing signed by an officer of the party to be bound thereby.

**12.2 Preprinted Forms.** The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Agreement will govern and the conflicting terms and conditions in the preprinted form will be void and of no effect. The terms and conditions of this Agreement, including, but not limited to, this Section 12.2, cannot be amended, modified, or altered by any conflicting preprinted terms or conditions in a preprinted form.

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

**12.4 GOVERNING LAW.** THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, AND WITH VENUE RESIDING IN THE COUNTY OF YOLO.

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

**12.6 Delays.** Hart is not responsible for failure to fulfill its obligations when due to causes beyond its reasonable control, including the failure of third parties to timely provide Software, Equipment, materials, or labor contemplated herein. Hart will notify Client in writing of any such delay, and the time for Hart's performance will be extended for a period corresponding to the delay. Hart and Client will determine alternative procedures to minimize delays.

**12.7 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 Client's performance, the Client, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; and strikes, lockouts, or other labor disputes. If any event constituting Force Majeure occurs, the affected party shall notify the other party in writing, disclosing the estimated length of the delay and the cause of the delay. If a Force Majeure occurs, the affected party will not be deemed to have violated its obligations under this Agreement, and time for performance of any obligations of that party will be extended by a period of time necessary to overcome the effects of the Force Majeure.

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

**12.9** Assignments. Hart may assign this Agreement or its interest in any Equipment or Software, or may assign the right to receive payments, without Client's consent. Any such assignment, however, will not change the obligations of Hart to Client that are outstanding at the time of assignment. Client will be notified in writing if Hart makes an assignment of this Agreement. Client shall not assign this Agreement without the express written consent of Hart, such consent not to be unreasonably withheld. In the event of any permitted assignment of this Agreement, the assignee shall assume the liabilities and responsibilities of the assignor, in writing.

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

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

**12.12** Trademarks. Ballot Now™, BOSS™, Disabled Access Unit™, eCM™, eScan™, eSlate®, FUSION™, InFusion™, Judge's Booth Controller™, Mobile Ballot Box™, Tally™, Rally™, SERVO™, and Verifiable Ballot Option™ (VBO™) are trademarks of Hart.

### **13. Definitions**

"*Agreement*" has the meaning set forth on the Signature Page.

"*Anniversary Date*" means each anniversary of the Effective Date.

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

"*Ballot Now™*" means the Paper Ballot Management System.

"*BOSS™*" means the Ballot Origination Software System used to define the election.

"*Client*" has the meaning set forth on the Signature Page.

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

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

“*eCM™*” means eSlate® Cryptographic Module, the electronic “key” required for access to secure election functions.

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

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

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

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

“*FUSION™*” means the integration and reporting software application used to facilitate the integration of election data.

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

“*Force Majeure*” has the meaning set forth in Section 12.7.

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

“*Hart Proprietary Software*” means the run-time executable code and associated support files of the Ballot Origination Software System (BOSS™) Software, Tally™ Software, Rally™ Software, Ballot Now™ Software, computer code, and software resident in the Hart Voting System Hardware and other support software utilities as specified on Schedule B, consisting of computer programs and computer code owned by Hart that are licensed to Client pursuant to this Agreement, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications, including any custom modifications, to such computer programs and code that are provided to Client, and all copies of the foregoing. Hart Proprietary Software also includes all documentation provided by Hart to Client with respect to these computer programs and code and all copies of the foregoing.

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

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

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

“*InFusion*<sup>™</sup>” means the software utility that manages source data for ballot definition.

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

“*Installation Date*” means, with respect to Hart Voting System Hardware, the date of delivery to Client and, with respect to Hart Proprietary Software, the date Hart completes delivery and installation of the Hart Proprietary Software.

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

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

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

“*SERVO*<sup>™</sup>” means the election records and recount management system.

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

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

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

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## SCHEDULE A

### SUPPORT CONTACT INFORMATION

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

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

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

Primary Client Contact Point (“CCP”):	Tom Stanionis 625 Court Street, #B05 Woodland, California 95695 530-666-8231 tomstan@yoloelections.org
First Alternate CCP:	Barbara Patenaude 530-666-8265

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**SCHEDULE B**

**HART PROPRIETARY SOFTWARE**

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	INITIAL LICENSE FEE
One (1).	Ballot Origination Software System (BOSS™), Tally™, Ballot Now™, and SERVO™.	Election Management Software	\$125,100.00	Four (4) (One license per each software title).	\$125,100.00
Four (4).	Ballot Now™ Software.	Election Management Software (additional Ballot Now™ licenses).	\$60,000.00	Four (4).	\$240,000.00
One (1).	InFusion™ Software.	EMS import software.	\$15,000.00	One (1).	\$15,000.00

Licensed Location: **Yolo County, California.**

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

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**SCHEDULE C**

**NON-HART SOFTWARE**

Non-Hart Software Sublicensed to Client:

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	TOTAL PRICE
Six (6).	Sybase Embedded Runtime Program	Database software.	Included.	Six (6).	No Charge.

**NOTE:** Hart and Client will update this Schedule as appropriate if Hart provides new or different Non-Hart Software to Client under this Agreement.

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**SCHEDULE D**

**INITIAL ANNUAL FEE**

Initial Annual Fee: **\$76,020.00**

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## SCHEDULE E

### ADDITIONAL TERMS AND CONDITIONS

#### 1. Hart Responsibilities:

**1.1 Compliance with Law, Certification Requirements.** The Equipment, Software, and Voting System provided by Hart will comply with all applicable Federal, State and local laws and regulations, including but not limited to all requirements pertaining to the use and certification of voting systems, and that they comply with current federal and state certification requirements at the time of installation.

**1.2 Cooperation.** Hart agrees to cooperate with Client and promptly perform Hart's responsibilities under this Agreement and the License Agreement.

**1.3 Records.** Hart agrees that the County and the California Department of General Services, the Bureau of State Audits, and their designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Hart agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated. Hart agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Hart agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896). At least thirty (30) calendar days prior to any destruction of these records following the four years, Hart shall notify the Director. Upon such notification, the County Director shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

**1.4 Non-Discrimination.** Hart certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services. Hart and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Hart shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**1.5 Indemnification.** Hart shall indemnify, defend and hold harmless the Client, its officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is

caused in whole or in part by any negligent or intentional act or omission of Hart, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

**1.6 Insurance.** During the term of this Agreement, Hart shall maintain insurance meeting the following requirements:

A. Comprehensive general liability insurance, Workers' Compensation and Employers' Liability insurance as required by the State of California, and automobile liability insurance (including coverage for hired and non-owned vehicles). The comprehensive general liability insurance shall include broad form property damage insurance.

1. The limits of such insurance shall be no less than \$1,000,000 per individual/\$2,000,000 per occurrence for the comprehensive general liability insurance, statutory limits for the Workers' Compensation/\$1,000,000 for the Employers' Liability insurance per accident for bodily injury or disease, and \$1,000,000 general and \$500,000 property per occurrence for the automobile liability insurance.

2. Said policies shall remain in force through the life of this Agreement and shall be payable on a "per occurrence" basis.

3. The Client, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages.

4. Hart shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the Client's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the Client's Risk Manager.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Clerk-Recorder.

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the Client's Risk Manager.

8. The policies shall cover all activities of Hart, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Hart's insurance coverage shall be primary, including as respects the Client, its officers, agents, employees and volunteers. Any insurance maintained by the Client shall apply in excess of, and not contribute with, insurance provided by Hart's liability insurance policy.

10. The insurer shall waive all rights of subrogation against the Client, its officers, employees, agents and volunteers.

B. Prior to commencing services pursuant to this Agreement, Hart shall furnish the Clerk-Recorder with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the Client's Risk Manager before work commences. Upon Client's request, Hart shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

C. During the term of this Agreement, Hart shall furnish the Clerk-Recorder with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon Client's request, Hart shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

**1.7 Conflicts of Interest.** Hart shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission. Hart covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Hart's obligations and responsibilities hereunder, and that, in the performance of this Agreement, no person having any such interest shall be employed. Hart agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, Hart will immediately inform the Client and provide all information needed for resolution of the question.

**1.8 No Contingent Fees.** Hart agrees that it has not employed or retained any company or person, other than a bona fide employee working for Hart, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this provision, the Client shall have the right to annul this Agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**1.9 Source Code.** Hart shall deposit all source code for all Software provided or licensed under this Agreement in an escrow facility approved by California Secretary of State pursuant to the California Elections Code and its implementing regulations. Such escrow deposits shall be made concurrent with the delivery of the Software to County. Hart's duty to deposit all source codes, and any modifications made during the course of this Agreement, shall continue throughout the term of this Agreement (including renewals).

Hart shall name County as a Preferred Beneficiary under Hart's Escrow Agreement with Iron Mountain Intellectual Property Management ("Escrow Service"), which agreement provides for release of the source codes upon the occurrence of the following: 1) termination of this Agreement due to the filing of a voluntary or involuntary petition regarding Hart under the United States bankruptcy code (which involuntary petition is not dismissed within sixty (60) days); 2) termination of this Agreement by County for Hart's default, if Hart fails to cure such default within sixty (60) days of receiving written notice from the County of Yolo, California, documenting any issue that Hart has not cured; or 3) Hart's failure to provide Software of upgrade that will meet State and Federal requirements for use at a scheduled Statewide election, and install it at least six (6) months prior to said election at any time within the term of this Agreement, as long as the County of Yolo is up-to-date with its payment to Hart for the Annual Fees required per the Hart Warranty, Support, and license Agreement.

**1.10 Hart Representatives.** Hart shall provide a list of any representatives of Hart whose services are billed directly to the Client, along with their qualifications to perform said services on the Client's Hart Voting System. Hart will provide Client an updated list if any personnel changes occur, requesting approval of Client for such changes, such consent not to be unreasonably denied. All representatives of Hart must

provide valid government-issued identification when on site at a Client facility, and must wear Client-issued Identification Badges at all times when on Client premises.

## **2. General Provisions**

2.1 Subcontracts. Hart shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of the Clerk-Recorder or his/her designee. If any portion of the services required of Hart are subcontracted, the subcontractor(s) shall maintain the same insurance as required of Hart by this Agreement and Hart shall be fully responsible to the Client for all work undertaken by subcontractors.

2.2 Complete Compensation. Hart shall not be entitled to any further compensation or reimbursement for any expenses except as specifically set forth in this Agreement.

2.3 External Requirements. This Agreement is subject to any additional restrictions or conditions that may be imposed upon the Client or the Clerk-Recorder by the Federal or State government.

### 2.4 Default; Termination:

A. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said sixty-day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. In the event of such termination based upon Hart default, the Client reserves the right to purchase or obtain the supplies or services elsewhere, and Hart shall be liable for the difference between the prices set forth herein and the actual cost thereof to the County. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

B. If Hart, or any of its officers, agents, employees, or five percent (5%) owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the Client may terminate this Agreement by giving ten (10) days advance written notice thereof to Hart.

C. This Agreement is subject to the Client, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Contractor pursuant to this Agreement. If the Client's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the Client may terminate this Agreement by giving ten (10) days advance written notice thereof to the Hart, in which event the Client shall have no obligation to pay the Hart any further funds or provide other consideration and the Hart shall have no obligation to provide any further services pursuant this Agreement. If the Client terminates the Agreement pursuant to this subparagraph, the Client will pay Hart in accordance with this Agreement for all services performed to the satisfaction of the Clerk-Recorder before such termination and for which funds have appropriated as required by law.

2.5 Waiver. The waiver by either party or any of its officers, agents or employees, or the

failure of a party or its officers, agents or employees to take action, with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

2.6 Authorized Representative. Each person executing this Agreement on behalf of a party affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of that party and to bind that party to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of a party and that party understand that the other party is relying on this representation in entering into this Agreement.

2.7 Public Records Act. Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

2.8 No Third-Party Beneficiaries. Except where specifically stated otherwise in this document, the promises in this document benefit the Client and Hart only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

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