

ORIGINAL

HART INTERCIVIC, INC.

eSLATE WARRANTY, SUPPORT, MAINTENANCE AND LICENSE AGREEMENT

(SIGNATURE PAGE)

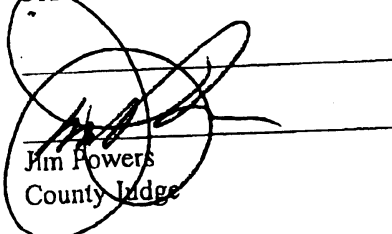
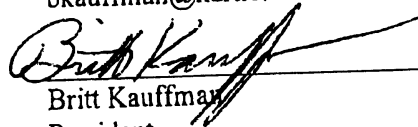
This eSlate Warranty, Support, Maintenance and License Agreement ("Agreement") is entered into by and between Hart InterCivic, Inc., a Texas corporation ("Hart"), and Hays County ("Client"), a governmental subdivision of the State of Texas. This Agreement is entered into in connection with an eSlate Agreement dated **June 22, 2004**, between Hart InterCivic and Client under which Client has purchased eSlate™ Hardware. This Agreement sets forth terms between Hart and Client applicable to Client's ownership and use of the eSlate Hardware and license from Hart of Hart Proprietary Software, including warranty, support, maintenance, 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

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 June 15, 2004.

Agreed and Accepted:

	<u>Client</u>	<u>Hart</u>
Name:	Hays County, Texas	Hart InterCivic, Inc.
Address:	401-C Broadway San Marcos, TX 78666 Attn: Joyce Cowan Elections Administrator	15500 Wells Port Drive Austin, TX 78728 15500 Wells Port Drive Austin, TX 78728 Attn.: Britt Kauffman, President
Primary Phone:	512.393.7310	800-223-4278
Facsimile:	512.393.7315	800-831-1485
e-mail		bkauffman@hartic.com
Executed by		
Name:	Jim Powers	Britt Kauffman
Title:	County Judge	President

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 eSlate Hardware Limited Warranty. Hart warrants that during the warranty period the eSlate 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 eSlate Hardware. The warranty period is three years beginning with the Installation Date. Hart will, at Hart's sole discretion, replace or repair any eSlate Hardware which 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 eSlate 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 eSlate Hardware its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired eSlate Hardware. Hart owns all replaced eSlate 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 eSlate Electronic Voting System and the Exclusions from Warranty, Support and Maintenance Coverage set forth in Section 1.3. This warranty does not cover any eSlate Hardware which 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 the Hart Proprietary Software will perform substantially according to the then current functional specifications described in the BOSS™, Tally™ and Ballot Now™ Operators' Manual accompanying such Hart Proprietary Software. To request warranty service, Client must contact Hart in writing within the warranty period. Failure to conform to the warranty must be reported in writing and be accompanied with sufficient detail to enable Hart to reproduce the error and provide a remedy or suitable work-around. Hart will make commercially reasonable efforts to remedy or provide a suitable work-around 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 be corrected, Hart does not warrant that all errors or defects will be corrected. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the eSlate Electronic Voting System and the Exclusions from Warranty, Support and Maintenance 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, Support and Maintenance Coverage. The warranties under this Section 1 and Software support and maintenance under Section 2 do not cover defects, errors or malfunctions which are caused by any external causes, including but not limited to any of the following: (a) Client's failure to follow operational, maintenance or storage instructions as set forth in applicable documentation; (b) the use of non-compatible media, supplies, parts or components; (c) modification or alteration of the eSlate Electronic Voting System, or its components, by Client or third parties not authorized by Hart; (d) use of equipment or software not supplied or authorized by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions; (g) negligence, accidents, abuse, neglect, misuse or tampering; (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; (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, support or maintenance not authorized by Hart; or, (m) Force Majeure. Hart reserves the right to charge for repairs (on a time and materials basis at Hart's then prevailing rates, plus expenses) and replacements (at Hart's list prices) caused by these exclusions from warranty, support and maintenance coverage.

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 non-exclusive 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 ESLATE 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 ESLATE 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 NON-INFRINGEMENT 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 and Maintenance Services.

2.1 Description of Support and Maintenance Services. Subject to the terms and conditions of this Agreement, Hart will provide Client the Software support and maintenance services described below. Support and maintenance under this Section 2 do not cover any of the exclusions from warranty, support and maintenance coverage as described under Section 1.3. If Hart, in its discretion, provides support and maintenance in addition to the services described under this Section 2, Client will pay Hart for 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 Software Support. Software support will consist of assisting the Client in design and production of elections including pre-election and post-election testing and general operation of the eSlate Electronic Voting System.

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

2.1.3 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 Support Contact Information. Support contact information is set forth on 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, non-exclusive, nontransferable limited license to use the Hart Proprietary Software and a personal, non-exclusive, nontransferable 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 eSlate Electronic Voting System. The Software may be used only in the United States at the Licensed Location specified on Schedule B on the Equipment or other computer systems authorized by Hart in writing. Client may temporarily transfer the Software to a back-up computer system at an alternative location within Client's county of operation if the Equipment or other authorized computer system is inoperative or the Licensed Location is temporarily unavailable, provided Client must promptly give Hart written notice of such temporary transfer, including a description of the back-up computer system and the alternative location. Client's use of the Software will be limited to the number of users specified in Exhibits 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 and 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 in order 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 for the Software and standard operational training prior to 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 non-standard 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 eSlate Hardware and Hart Proprietary Software are designed to be used only with each other and the Non-Hart Software and Non-Hart Equipment. To protect the integrity and security of the eSlate Electronic Voting System, without the express written consent of Hart, (i) Client shall use the Software and Equipment only in connection with the eSlate Electronic 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 and Maintenance 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 de-compilation 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 copy of the Software for inactive archival or back-up 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 and Confidential and Proprietary Information) and all archival, back-up 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.

(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

