

RFP NO. 2019-002 Election Equipment

Criteria	Max Points	Dominion Voting Denver, CO HUB - No	Election Systems & Software (ES&S) Omaha, NE HUB - No	Hart Intercivic, Inc. Austin, TX HUB - No COOP - Yes
Pricing	300	268.296	245.259	300.000
References	100	100.000	100.000	100.000
Scope of Work/Specifications	600	320.170	388.565	406.299
TOTAL SCORE	1000	688.466	733.823	806.299

Award: Hart Intercivic, Inc.

HEIDER GARCIA
Elections Administrator



TROY HAVARD
Assistant Elections Administrator

TARRANT COUNTY
ELECTIONS ADMINISTRATION

August 6, 2019

Ms. Christina Martinez
Purchasing Department
100 East Weatherford St
Fort Worth, TX 96196

Dear Ms. Martinez,

This letter is regarding RFP 2019-002, for Purchase of Election Equipment. Having reviewed the scores of the proposals received submitted to me by your department, I am pleased to recommend that the contract be awarded to the following vendor: **Hart Intercivic, Inc.**

A handwritten signature in black ink, appearing to be "H. Garcia", is written over a horizontal line.

Heider Garcia
Elections Administrator

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
TTY: 7-1-1
(800) 252-VOTE (8683)

Secretary of State

August 1, 2019

Heider Garcia
Elections Administrator
Tarrant County
2700 Premier Street
Fort Worth, Texas 76111

Dear Mr. Garcia,

We are in receipt of a copy of the proposed contract between Tarrant County and Hart InterCivic ("Hart"), which you have submitted to the Secretary of State pursuant to Section 123.035 of the Texas Election Code.

The contract indicates the county plans to acquire Hart's Verity 2.3.1 which includes Verity Controller, Verity Touch Writer Duo, Verity Scan, and Verity Central, firmware version 2.3.1. This letter will serve as confirmation from our office that these systems are currently certified for use in Texas. Enclosed is a copy of the certification order that pertains to these systems. Because the equipment identified in your proposed contract is currently certified for use in Texas, we officially approve the submitted contract for the purchase of these systems.

Pursuant to state law, this written approval of your voting system contract is required prior to your final execution of the contract, or it will be considered void.

If you need additional information, please contact the Elections Division toll-free at 1-800-252-2216.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Ingram".

Keith Ingram
Director of Elections

Enclosures

KI:CA

The State of Texas

Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.texas.gov



Secretary of State

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

REPORT OF REVIEW OF HART INTERCIVIC VERITY VOTING 2.3 SYSTEM

PRELIMINARY STATEMENT

On May 22-23, 2019, Hart InterCivic Inc. (the "Vendor") presented Verity Voting 2.3 for examination and certification. The examination was conducted in Austin, Texas. Pursuant to Sections 122.035(a) and (b) of the Texas Election Code, the Secretary of State appointed the following examiners:

1. Mr. Tom Watson, an expert in electronic data communication systems;
2. Mr. Brian Mechler, an expert in electronic data communication systems;
3. Mr. Brandon Hurley, an expert in election law and procedure; and
4. Mr. Charles Pinney, an expert in election law and procedure.

Pursuant to Section 122.035(a), the Texas Attorney General appointed the following examiners:

1. Dr. Jim Sneeringer, an expert in electronic data communication systems; and
2. Mr. Ryan Vassar, an employee of the Texas Attorney General.

On May 22, 2019, Mr. Pinney, Mr. Mechler, and Dr. Sneeringer witnessed the installation of the Verity Voting 2.3 software and firmware that the Office of the Texas Secretary of State (the "Office") received directly from the Independent Testing Authority. Mr. Pinney and Ms. Heidi Martinez, a staff attorney with the Office, examined the accessibility components of the Verity Touch, the Verity Touch with Access, the Verity Touch Writer with Access, and the Verity Touch Writer Duo.

On May 23, 2019, the Vendor demonstrated the system and answered questions presented by the examiners. Test ballots were then processed on each voting device. The results were accumulated and later verified for accuracy by staff of the Secretary of State.

Examiner reports regarding the Verity Voting 2.3 system are attached hereto and incorporated herein by this reference.

On July 10, 2019, pursuant to Section 122.0371 of the Texas Election Code, the Office held a public hearing for interested persons to express views for or against the certification of the Verity Voting 2.3 system.

BRIEF DESCRIPTION OF VERITY VOTING 2.3

The Verity Voting 2.3 system is an updated version of the Verity Voting 2.0 system, which the Office certified in December 2016 for use in Texas elections. The updated version includes

software enhancements to the existing election management system and introduces a new voting device, the Verity Touch Writer Duo. The Touch Writer Duo is a ballot marking device that allows users to input their selections on a digital interface and prints a paper record of the vote that can be scanned and tabulated using a precinct or central scanner.

Verity Voting 2.3 has been evaluated at an accredited independent voting system testing laboratory for conformance to the 2005 Voluntary Voting System Guidelines (VVSG). Verity Voting 2.3 was certified by the U.S. Election Assistance Commission (EAC) on March 15, 2019.

The components of Verity Voting 2.3 are as follows:

Component	Version	Description
Verity Data	2.3.1	Data management software
Verity Build	2.3.1	Election definition software
Verity Count	2.3.1	Tabulation and reporting software
Verity Central	2.3.1	Central scanning software
Verity User Management	2.3.1	User management software
Verity Election Management	2.3.1	Election management software
Verity Desktop	2.3.1	Election management software
Verity Scan	2.3.1	Precinct scanner
Verity Touch Writer with Access	2.3.1	Ballot marking device with accessibility features
Verity Controller	2.3.2	Voting machine ballot activation device
Verity Touch	2.3.1	Direct-recording electronic voting machine
Verity Touch with Access	2.3.1	Direct-recording electronic voting machine with accessibility features
Verity Touch Writer Duo	2.3.1	Ballot marking device

FINDINGS

The following are the findings, based on written evidence submitted by the Vendor in support of its application for certification, oral evidence presented at the examination, and the written reports of the voting system examiners (all of whom recommended certifying the Verity Voting 2.3 system for use in Texas elections).

The Verity Voting 2.3 system, including its hardware and software components, meets the standards for certification as prescribed by Section 122.001 of the Texas Election Code. Specifically, the Verity Voting 2.3 system and its components, among other things:

1. Preserve the secrecy of the ballot;
2. Are suitable for the purpose for which they are intended;
3. Operate safely, efficiently, and accurately and comply with the voting system standards adopted by the Election Assistance Commission;
4. Are safe from fraudulent or unauthorized manipulation;
5. Permit voting on all offices and measures to be voted on at the election;
6. Prevent counting votes on offices and measures on which the voter is not entitled to vote;
7. Prevent counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevent counting votes for more than the number of candidates for whom the voter is entitled to vote;
8. Prevent counting a vote on the same office or measure more than once;
9. Permit write-in voting;
10. Are capable of permitting straight-party voting; and
11. Are capable of providing records from which the operation of the system may be audited.

CONDITIONS

In their written reports, some of the voting system examiners indicated that the Verity Voting 2.3 system does not provide a software solution to address the ballot-numbering requirements in Sections 51.006-.008, 52.062, and 62.009 of the Texas Election Code. However, the examiners noted that jurisdictions that adopt the Verity Voting 2.3 system can still comply with these requirements by following additional procedures provided by the Vendor. Therefore, the certification of system is conditioned on jurisdictions utilizing these additional procedures to comply with the Texas Election Code's ballot-numbering requirements when using the Verity Voting 2.3 system.

CONCLUSION

Accordingly, based upon the foregoing, I hereby certify Hart InterCivic's Verity Voting 2.3 system for use in Texas elections, subject to the above condition.

Signed under my hand and seal of office, this 22nd day of July 2019.


JOSE A. ESPARZA
DEPUTY SECRETARY OF STATE



VERITY

MASTER AGREEMENT

This Master Agreement ("MA"), Tarrant County's RFP 2019-002 and Hart's Response to RFP 2019-002 ("**Agreement**"), entered into effective as of August 13, , 2019 ("the **Effective Date**") by and between Hart InterCivic, Inc., a Texas corporation ("**Hart**") and the Customer set forth below ("**County**"), sets forth the terms and conditions pursuant to which County may procure from Hart certain hardware ("**Hardware**"), software ("**Software**") licenses and support services ("**Software Support Services**"), warranty services ("**Warranty Services**"), and/or design, engineering, software development, project management, operational training, election event support, and/or other services ("**Professional Services**"), from time to time. Hardware and Software may be referred to as "**Products**" and Warranty Services, Software Support Services and/or Professional Services may be referred to as "**Services**." Products may be "**Hart Hardware**," and "**Hart Proprietary Software**," (i.e. "**Hart Products**") or "**Third Party Hardware**" and "**Sublicensed Software**" (i.e. "**Third Party Products**"). The Parties hereby agree and acknowledge the language in RFP 2019-002 and Hart's RFP-Response take precedence over any conflicting terms and conditions contained in the Master Agreement or in any other documents associated with this Agreement. The foregoing may be referred to together as the "**Verity system**."

Hart agrees to sell or provide to County Products and Services according to this Agreement, which includes all Schedules, Attachments and Exhibits. County agrees to all terms and conditions of this Agreement. Pricing and other material terms of County's initial commitment are as set forth in the Schedule A or County Signed Quote attached hereto as **Exhibit A**. This Agreement, Tarrant County's RFP 2019-002, Hart's Response to RFP 2019-002, and Hart's quotations issued hereunder together comprise the complete and exclusive Agreement for the sale of the Products and the provision of the Services.

Agreed and Accepted:

SIGNED AND EXECUTED this _____ day of _____, 2019.

**COUNTY OF TARRANT
STATE OF TEXAS**

B. Glen Whitley
County Judge

APPROVED AS TO FORM:

CERTIFICATION OF
AVAILABLE FUNDS: \$ _____

Criminal District Attorney's Office*

Tarrant County Auditor

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.

Hart

Name: Hart InterCivic, Inc.

E-mail: pbraithwaite@hartic.com

Address: 15500 Wells Port Drive

Austin, Texas 78728

Executed By: _____

Attn.: Phillip W. Braithwaite, CEO

Name: Phillip W. Braithwaite

Phone: 800-223-4278

Title: CEO

Facsimile: 800-831-1485

This Agreement is not effective until executed by both parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement.

1. ORDERING

County may request quotations (each, a "**Quotation**") for Products or Services from time to time. The existence of this Agreement does not obligate County to request a Quotation or purchase any Products or Services from Hart. Any County request for Quotation must include the following information: (i) description of requested Product or Services; (ii) unit quantity and/or desired term; (iii) Hart's part number and/or vendor part number, if applicable; (iv) current unit price as provided by Hart, if applicable; (v) correct shipping address, if applicable; and (vi) any other order information required by Hart. Each request for Quotation shall identify the address of the shipping destination, if applicable. County may only make a request for Quotation via facsimile and other Hart approved electronic ordering methods, including email. All quotations are valid for only thirty (30) days unless specifically stated on the front of the Quotation. If the Quotation is signed by County within thirty (30) days, Hart will provide notice of its acceptance via countersignature within fifteen (15) days of the date on which it receives County's signature on the Hart Quotation. Failure to provide such written acceptance shall be deemed Hart's rejection of the order. Hart reserves the right to accept or reject any order initiated by County in Hart's discretion. Only signed Quotations will obligate the parties to the terms of such Quotations and this Agreement with respect to the applicable Products and/or Services. Each accepted Quotation shall be subject to the terms and conditions of this Agreement.

2. PRICING

- 2.1. **Products.** Prices for Products shall be specified by Hart in the relevant Quotation or proposal and are subject to change without notice, including Prices for backordered Products, however, Prices in Quotations or other agreements signed by both Parties are not subject to change. All prices are exclusive of shipping and packing costs, and insurance.
- 2.2. **Annual License and Support Fee.** The "**Annual Fee**" is the combined fee for licensing (in the case of Hart Proprietary Software), sublicensing (in the case of Sublicensed Software, if any), and support (a "**License and Support Subscription**"). Pricing for the initial Annual Fee is the amount specified as the "**Initial Annual Fee**" on **Exhibit A**. Pricing for subsequently ordered License and Support Subscriptions shall be specified on the applicable Quotation, and unless otherwise specified, shall be pro-rated so as to be co-terminus with the initially-ordered License and Support Subscriptions. Hart may adjust the amount of the Annual Fee for renewal License and Support Subscription terms by notifying County of any price changes with the invoice in which the adjustment is made. Unless adjusted by Hart, each renewal Annual Fee will be the same as the Annual Fee for the renewing License and Support Subscription.
- 2.3. **Other Services.** Pricing for other Services shall be set forth in the applicable Quotation, or if not specified, at Hart's then-current hourly rates.
- 2.4. **Additional Charges.** Additional charges may apply to Services e.g., travel, communication and other expenses if outside the scope of the RFP. 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 equipment purchased by the County for use with the Products. Any other additional charges must be mutually agreed to by Hart and County and documented in an amendment to this Agreement.
- 2.5. **Taxes.** Intentionally left blank.
- 2.6. **Most Favored Customer** - Hart shall not sell the Verity System to a different governmental entity or political subdivision ("Customer") in the State of Texas at prices lower than in this Agreement before March 31, 2021. If Hart charges a different Customer a lower price for the System, Hart must immediately apply the lower price for the Verity System purchased under this Agreement and refund the price difference to the County.

3. PAYMENT

- 3.1. **Products.** Except as otherwise provided in Hart's Quotation, amounts due for Products shall be billed upon receipt and shall be paid in full within thirty (30) days after delivery.
- 3.2. **Annual Fee.** The Annual Fee for the initial License and Support Subscription will be subject to Texas Government Code, Title 10, Subtitle F, Chapter 2251 ("Texas Prompt Payment Act") due upon delivery and annually thereafter before expiration thereof. Annual Fees for subsequently ordered License and Support Subscriptions, if any, shall be due upon acceptance of order and unless specified on the applicable Quotation, the corresponding Annual Fees for renewals thereof shall be due annually with the renewal of the initially-ordered License and Support Subscription (i.e. shall be pro-rated and become co-terminus). If Customer fails to timely pay an Annual Fee and does not cure the failure within thirty (30) days of receipt of notice of delinquency, all Software licenses and Software Support Services will automatically terminate.
- 3.3. **Other Services.** Amounts due for other Services shall be billed upon the earlier to occur of one or more of the following: first election in which the Professional Services are used; receipt of Services acceptance; not later than sixty (60) days after the date

of County's first election in which any portion of the Hardware and/or Software is used, and shall be due within thirty (30) days of receipt of invoice.

- 3.4. **Payment Mechanics.** County will pay all amounts due under this Agreement in U.S. Dollars. 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 County. County shall promptly notify Hart in writing of any change to County's name, address, or billing information.
- 3.5. **Late Fees.** Hart may impose interest at the rate of interest then permitted by Texas Government Code, Title 10, Subtitle F, Chapter 2251 ("Texas Prompt Payment Act") for all past due balances. Hart shall have the right, in addition to any and all other rights and remedies available at law or in equity, to delay or cancel any deliveries, to reduce or cancel any or all quantity discounts extended to County, and/or to suspend the provision of Services if County is in default of payments or any other material term of this Agreement.
- 3.6. **Billing Disputes.** If any dispute exists between the parties concerning the amount due or due date of any payment, County shall promptly pay the undisputed portion. Such payment will not constitute a waiver by County or Hart of any of their respective legal rights and remedies against each other. County has no right of set-off.

4. HARDWARE SPECIFIC TERMS

- 4.1. **Delivery.** Hart will provide estimated shipment dates upon acceptance of County's Purchase Order. Shipment dates on Hart Quotations are approximate only and Hart will reimburse the County for any expenses incurred due to late or delayed shipment. In the event County is unable to receive the Hardware Products at the time of delivery Hart, at its sole option and convenience, may deliver such products to storage at any suitable location including Hart's facilities. All costs incurred by Hart for the transportation, storage, and insurance of such Hardware Products shall be borne by County.
- 4.2. **Legacy Hart Voting System.** If County decides to accept Hart's buyback offer, Hart will pick up and salvage all legacy Hart Voting Systems (HVS), voting devices, computers, and peripherals at no cost to County. County may retain at no expense, databases and reports stored on such equipment, copies of legacy software for access to records retention databases. County agrees to remove all HVS software from all retained computers and equipment at the close of the records retention period. Upon request, County will provide Hart with written certification that such software has been deleted.
- 4.3. **Acceptance.** County shall examine all Hardware Products promptly upon receipt thereof. Within thirty (30) days of such receipt, County shall notify Hart in writing of any manner in which County claims that the Hardware Products fail to conform to their applicable specification, or as to any claimed shortages, or shipments errors. If no written notification is received by Hart within such period, the Hardware Products delivered hereunder shall be deemed accepted by County ("**Hardware Acceptance**"). Hardware Product will be deemed conforming if it meets Hart's published specification for such Product, and any specifications identified on the applicable Quotation. Upon County's Acceptance, any defects in material or workmanship shall be addressed pursuant to the warranty in Section 9 below.
- 4.4. **Installation.** A Hart representative may install the Hardware Products at the County's site on a mutually agreed upon date during Hart's normal working hours, within ten (10) business days of delivery, or as soon as is practicable for both parties. Billing will occur on the date the Hardware is the County's site, per Section 3.1 If additional labor and rigging or County-specified customization is required for installation due to County's special site requirements, County will pay those costs including costs to meet union or local law requirements.
- 4.5. **Title and Transportation.** Hardware Products are shipped F.O.B. Destination from Hart's designated shipping point. Title transfer shall be deemed to occur upon acceptance by Tarrant County at its designated destination. All risk of carrier and transit shall reside with Hart. Hart reserves the right to select the method and routing of transportation and the right to make delivery in installments unless otherwise specified at the time of Quotation acceptance by Hart.
- 4.6. **Rescheduling and Cancellation.** Except in the event of unreasonable delays beyond the quoted delivery dates or an uncured default of a material term of this Agreement by Hart, following the date that is 10 days after placing an order, County shall not have the right to change, cancel, or reschedule an accepted Quotation in whole or in part without the prior consent of Hart. In the event County requests a rescheduling of any Hardware Product and such request is accepted by Hart, County agrees to promptly pay Hart's standard reschedule charge. Hart may not cancel a Quotation after it has accepted County's signed submission thereof. County may not cancel an order after submission to Hart of a signed Quotation. Any cancellations following such times will be at the non-cancelling party's sole discretion and upon terms dictated by the non-cancelling party.

5. SOFTWARE SPECIFIC TERMS

- 5.1. **License.** Subject to the terms and conditions of this Agreement and for so long as County has a current License and Support Subscription in effect, Hart grants to County (i) a personal, nonexclusive, nontransferable, and limited license to use the Hart Proprietary Software (which includes Firmware, meaning the Hart Proprietary Software embedded in any Verity system device that allows execution of the software functions) and (ii) a personal, nonexclusive, nontransferable, and limited sublicense to use the Sublicensed Software, if applicable. With this right to use, Hart will provide County, and County will be permitted to use, only the

run-time executable code and associated support files of the Software for County's internal data processing requirements as part of the Verity system. The Software may be used only at the Licensed Location specified as the jurisdiction on the signature page of this Agreement and only on the hardware or other computer systems authorized by Hart in writing. County's use of the Software will be limited to the number of licenses specified in the applicable Quotation. Only County and its authorized employees, agents or contractors may use or access the Software. For applicable components, Voters are also authorized to interact with the Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election. To the extent Hart Proprietary Software contains embedded third party software, third party licenses may apply. More information concerning embedded third party software can be found in the application's "Help->About" and is available upon written request. Such embedded third party software is distinguished from "Sublicensed Software" which is stand-alone software not part of Hart Proprietary Software that may be included under this Agreement. See Exhibit D for a listing of Hart Proprietary Software and Sublicensed Software.

- 5.2. **Records and Audit.** County shall keep clear, complete and accurate books of account and records with respect to the usage of Software and access to the Software licensed hereunder, including without limitation with respect to access thereto. County shall retain such books and records for a period of five (5) years from the date of cessation of any such usage, notwithstanding any expiration or termination of this Agreement. County agrees that during the term of this Agreement and such period, Hart, the licensors of any Sublicensed Software, and their representatives may periodically inspect, conduct, and/or direct an independent accounting firm to conduct an audit, at mutually agreed-upon times during normal business hours, of the computer site, computer systems, and appropriate records of County to verify County's compliance with the terms of the licenses and sublicenses granted to County. If any such examination discloses unauthorized usage, then County, in addition to paying such payment then due and without limiting Hart's remedies, shall pay the reasonable fees for the audit.
- 5.3. **Restrictions**
- 5.3.1. The Hart Hardware and Hart Proprietary Software are designed to be used only with each other and/or the agreed-upon Sublicensed Software (if any) and Third Party Hardware. To protect the integrity and security of the Verity system, County shall comply with the following practices and shall not deviate from them without the express written consent of Hart: (i) County shall use the Software and Hardware only in connection with the Verity system, and County may only use Hart branded or approved peripherals and consumables with the Verity system.; (ii) County shall not install or use other software on or with the Hardware or Software or network the Hardware or Software with any other hardware, software, equipment, or computer systems; and (iii) County shall not modify the Hardware or Software. If County does not comply with any provisions of this Section 5.3, then (i) the Limited Warranties under Section 9 and the licenses and sublicenses granted under Section 5.1 will automatically terminate; (ii) Hart may terminate its obligation to provide Software Support Services under Section 8; (iii) Hart will have no further installation obligations. Furthermore, if County uses the Software and Hardware in combination with other software and equipment (other software or equipment being those not provided by Hart or its designees), and the combination infringes Hart proprietary patent claims outside the scope of the software license granted to County under Section 5.1, Hart reserves its rights to enforce its patents with respect to those claims.
- 5.3.2. County shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Software. County shall not use any Software for application development, modification, or customization purposes, except through Hart.
- 5.3.3. County shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau serving others outside of the jurisdiction. This restriction does not preclude or restrict County from contracting for election services for other local governments located within County's jurisdictional boundaries. County shall not modify, copy, or duplicate the Software. All use of software and hardware on which the software resides shall take place and be for activities within County's jurisdictional boundaries, except for in cases of joint elections conducted cooperatively with neighboring jurisdictions. All copies of the Software, in whole or in part, must contain all of 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 County. County shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to County regarding any unauthorized possession or use of the Software.
- 5.3.4. County shall not publish any results of benchmark tests run on any Software. Hart acknowledges such records may be subject to disclosure under the Texas Public Information Act.
- 5.3.5. The Software is not developed or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous applications. County shall not use the Software in any inherently dangerous application and agrees that Hart and any third-party licensor will not be liable for any claims or damages arising from such use.

6. DOCUMENTATION

Hart will provide County with one (1) electronic copy of the standard user-level documentation and operator's manuals and where applicable, environmental specifications for the Product installed at the County's location before the first election for which the Product will be used, following installation.

7. PROPRIETARY RIGHTS

- 7.1. **Reservation of Rights.** County acknowledges and agrees that the design of the Products, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, firmware, information, ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, equipment architecture, improvements, code, updates, trade secrets and material are the property of Hart and its licensors. County agrees that the sale of the Hardware and license of the Software does not, other than as expressly set forth herein, grant to or vest in County any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the Products, are the sole and absolute property of Hart and its licensors. County shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Product(s), or copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. Further County shall not remove any trademark, copyright, or other proprietary or restrictive notices contained on any Hart user documentation, operator's manuals, and environmental specifications, and all copies will contain such notices as are on the original electronic media. Intellectual Properties. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, code, updates, and trade secrets developed by Hart personnel (alone or jointly with others, including County) in connection with Confidential Information, Verity system, and Hart Proprietary Software will be the exclusive property of Hart.
- 7.2. **County Suggestions and Recommendations.** County may propose, suggest, or recommend changes to the Products at any time. Such proposals, suggestions, or recommendations will become Hart's property and are hereby assigned to Hart. Hart may include any such proposals, suggestions, or recommendations, solely at Hart's option, in subsequent periodic Product updates, without restriction or obligation. Hart is under no obligation to change, alter, or otherwise revise the Products according to County's proposals, suggestions, or recommendations.

8. SOFTWARE SUPPORT SERVICES

- 8.1. **Description of Software Support Services.** Subject to the terms and conditions of this Agreement and for so long as County has the requisite number of License and Support Subscriptions in effect, Hart will provide County the Software Support Services described below. Software Support Services under this Section do not cover any of the exclusions from warranty and support coverage as described under Section 9. If Hart, in its discretion, provides Software Support Services in addition to the services described under this Section, County 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 County.
- 8.1.1. *Software Support Services.* Software Support Services will consist of assisting the County in the use of software for purposes of election administration, including functions related to pre-election and post-election testing and general operation of the Verity system. Assistance is available via phone and email through the Hart County Support Center. See **Exhibit B** for Hart Support contact information and hours.

Software Support Services may consist of periodic updates to Hart Proprietary Software, at Hart's discretion. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Software errors or defects must be reported in writing and be accompanied with sufficient detail to enable Hart staff to reproduce the error and provide a remedy or suitable corrective action. The exclusions from warranty coverage under Section 9.5 also are exclusions from Software Support Services under this Section. There may be consumable, shipping and on-site service charges for update releases of software and there may be feature charges for update or enhancement releases of software.

9. WARRANTY AND EXTENDED WARRANTY

- 9.1. **Certification.** Where applicable, Verity system components that require certification will meet the certification requirements in place on the effective date of the Master Agreement.
- 9.2. **Hart Hardware Limited Warranty.** Hart warrants that during the warranty period, the Hart Hardware purchased by County will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Verity Operator's Manuals for the Hart Hardware applicable at the time of the installation of the Hardware. The warranty period for new Hart Hardware (other than Consumables) is one (1) year, beginning on date of receipt. The warranty period for used and/or refurbished hardware is ninety (90) days, beginning ten (10) days after date of receipt. Consumables are warranted only to be free from manufacturing defects for a period ninety (90) days, beginning ten (10) days after receipt. Hart will, at Hart's sole discretion, replace or repair any Hart Hardware that does not comply with this warranty, at no additional charge to County. To request warranty service, County must contact Hart in writing within the warranty period. Hart may elect to conduct any repairs at County's site, Hart's facility, or any other location specified by Hart. Any replacement Hart Hardware provided to County 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 Hardware, its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired Hart Hardware. Hart owns all replaced Hart Hardware and all parts removed from repaired products. County acknowledges and agrees that this warranty is contingent upon and subject to County's proper use of the Verity system and the Exclusions from Warranty and Software Support Services set forth in Section 9.5. This warranty does not cover any Hart Hardware that has had the original identification marks and/or numbers removed or altered in any manner. This warranty does not include any type of routine maintenance service or preventative maintenance service. This Hardware Limited Warranty may be extended after the initial period under separate Extended Hardware Warranty agreements, subject to the order process contemplated by Section 1. Extended warranties exclude consumable items, including all types of batteries, vDrives and paper ("Consumables"). Renewal of the annual License and Support Subscription does not, in itself, extend the Hardware Limited Warranty. The remedies set forth in this Section are the full extent of County's remedies and Hart's obligations regarding this warranty. If the Hart Hardware is required to be reconfigured, modified, or otherwise changed after its sale to and installation at the County's location due to the County's or a local, state, or federal government certification change(s) or due to any statutory changes or new requirements, Hart will determine the feasibility and cost of the required changes and advise the County of the total amount due for those Hart Hardware changes. Upon written approval to move forward with the changes and receipt from the County of the stated fees, Hart will complete the required changes to the County's Hart Hardware. THIS LIMITED WARRANTY DOES NOT APPLY TO ANY THIRD PARTY HARDWARE.

- 9.3. **Hart Proprietary Software Limited Warranty.** Hart warrants that beginning ten (10) days after the shipping of the Hart Proprietary Software and for so long as County has the requisite number of License and Support Subscriptions in effect, the Hart Proprietary Software will perform substantially according to the then-current functional specifications described in the applicable software Operators' Manuals accompanying such Hart Proprietary Software. To request warranty service, County 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 corrective action (a solution that will allow the software to function appropriately). 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 effect upon operation of the Hart Proprietary Software. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. County acknowledges and agrees that this warranty is contingent upon and subject to County's proper use of the Verity system and the Exclusions from Warranty and Support Coverage set forth in Section 9.5. The remedies set forth in this Section 9.3 are the full extent of County's remedies and Hart's obligations regarding this warranty. THIS LIMITED WARRANTY DOES NOT APPLY TO ANY SUBLICENSED SOFTWARE.
- 9.4. **Professional Services Warranty.** Hart represents and warrants that any Professional Services shall be performed in a professional and workmanlike manner.
- 9.5. **Exclusions from Warranty and Software Support Services.** The warranties under this Section and Software Support under Section 8 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) County's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of incompatible media, supplies, parts, or components; (c) modification or alteration of the Verity system, or its components, by County or third parties not authorized by 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 County, its agents, servants, employees, or any third party; (l) servicing or support not authorized by Hart; (m) Force Majeure; or (n) Consumables, unless expressly set forth in Section 9.2. In any case where Hart Proprietary Software interfaces with third party software, including but not limited to, the County'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 Software that interfaces with the third party software should such third party software be updated, replaced, modified, or altered in any way. Hart will also not be responsible for the proper operation of any Software running on County's computer equipment, should County install a new computer operating system on said equipment without advising Hart of such changes and receiving Hart's written approval. Hart will not be responsible for the proper operation of any Software should it be configured or operated in any manner contrary to that described herein. Professional Services and associated costs may be required in those situations where the County 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. 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 caused by these exclusions from warranty and support coverage.
- 9.6. **Third Party Hardware and Sublicensed Software Excluded.** HART MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THIRD PARTY HARDWARE AND SUBLICENSED SOFTWARE, IF ANY, PROVIDED BY HART TO COUNTY, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSED TO COUNTY "AS IS," OTHER THAN AS MAY BE PROVIDED IN ANY PASS-THROUGH WARRANTY DESCRIBED BELOW. HART HAS NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY HARDWARE AND SUBLICENSED SOFTWARE, IF ANY, PROVIDED BY HART'S DISTRIBUTORS OR OTHER THIRD PARTIES TO COUNTY. If Hart sells, licenses, or sublicenses any Third Party Hardware or Sublicensed Software to County, Hart will pass through to County, 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. County agrees to look solely to the warranties and remedies, if any, provided by the manufacturer or third-party licensor. For a list of Third Party Hardware, see Exhibit A. For a list of Sublicensed Software, see Exhibit D or the applicable order. The disclaimers in this Section 9.6 are not intended to apply to embedded third party software integrated within the Hart Proprietary Software, contemplated by Section 5.1.

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

10. PROFESSIONAL SERVICES

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

11. REPRESENTATIONS AND WARRANTIES

- 11.1. **Due Organization.** Each party represents that it is duly organized, validly existing, and in good standing in the jurisdiction of its organization, and that it has the requisite power and authority to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement.
- 11.2. **Conflicting Agreements.** Each party represents and warrants that it has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude it from complying with the provisions hereof.

12. COUNTY RESPONSIBILITIES

- 12.1. **Independent Determination.** County agrees once Hart has completed the functional testing acceptance County shall independently determine whether the Products purchased under this Agreement meet its requirements.
- 12.2. **Cooperation.** County agrees to cooperate with Hart and promptly perform County's responsibilities hereunder. County will (a) provide adequate working and storage space for use by Hart personnel near the applicable Hardware; (b) provide Hart full access to the Hardware and Software and sufficient computer time, subject to County's security rules; (c) follow Hart's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's instructions for obtaining hardware and software support and warranty services; (e) provide a memory dump and additional data in machine-readable form if requested; (f) reproduce suspected errors or malfunctions in Software; (g) provide timely access to key County personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.
- 12.3. **Site Preparation.** County shall prepare and maintain the installation site in accordance with instructions provided by Hart. County is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Hart's specifications. Any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.
- 12.4. **Site Maintenance; Proper Storage.** County shall maintain the appropriate operating environment, in accordance with Hart's specifications, for the Products and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning, and all other equipment and utilities necessary for the Products to operate properly. County shall properly store the Products when not in use.
- 12.5. **Use.** County is exclusively responsible for supervising, managing, and controlling its use of the Products, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making timely data backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. County will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the Products and that the Hardware and Software are used in accordance with applicable manuals, instructions, and specifications. County shall comply with all applicable laws, rules, and regulations with respect to its use of the Products.
- 12.6. **Backups.** County is solely responsible for timely data backups, and County will maintain backup data necessary to replace critical County data in the event of loss or damage to data from any cause. Hart is not liable for data loss.

13. TERM AND TERMINATION

13.1. Term.

- 13.1.1. *Of Agreement.* Unless earlier terminated as set forth herein, the initial term of this Agreement is one (1) year.
- 13.1.2. *Of License and Support Subscription.* Unless earlier terminated as set forth herein, the initial term of the License and Support Subscriptions is one (1) year. Unless otherwise provided in the applicable Quotation subsequently ordered License and Support Subscriptions shall be pro-rated so as to be co-terminus with the initially ordered License and Support Subscriptions.
- 13.1.3. *Of Hardware Warranty.* Unless earlier terminated as set forth herein, the initial term of new Hardware Warranties is one (1) year.

13.2. Renewals.

- 13.2.1. *Of Agreement.* This Agreement shall automatically renew for successive periods of one (1) year following the initial term unless one party notifies the other of its intent not to renew not less than ninety (90) days prior to the end of the then-current term.
- 13.2.2. *Of License and Support Subscriptions.* Except as otherwise provided in this Agreement, County must renew License and Support Subscriptions before their expiration by paying the Annual Fee invoiced by Hart, as provided in Section 2.2, before the anniversary date immediately following the date of invoice. Each renewal License and Support Subscriptions term will be a one (1) year, commencing on the expiration of the prior term and expiring on the immediately following anniversary date.
- 13.2.3. *Hardware Warranties.* Hardware warranties may be extended through a separate Extended Hardware Warranty, ordered in accordance with Section 1. Renewal of this Master Agreement and the License and Support Subscription do not, in themselves, extend hardware warranties.

13.3. Termination.

- 13.3.1. The contract may be terminated by either party upon written thirty (30) day notice prior to cancellation.
- 13.4. **Effect of Expiration and Termination.** Sections 3, 5.2, 7, 9.5-9.7, 12, 13.4, and 14-18 shall survive any termination or expiration of this Agreement or the applicable License and Support Subscription and/or Professional Services order. All other rights and obligations shall be of no further force or effect.

14. **CONFIDENTIALITY**

- 14.1. **Definition.** "Confidential Information" means any information related to Hart's business or the Verity system, including but not limited to technical data, trade secrets, know-how, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information. Confidential Information includes, without limitation, all Software, the Documentation and support materials, and the terms and conditions of this Agreement.
- 14.2. **Non-Use and Non-Disclosure.** County will keep in confidence and protect Confidential Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Agreement. County shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Hardware and Software and the other Confidential Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. County shall keep the Software and all tapes, diskettes, CDs, and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable County to use the Software. Notwithstanding any other language to the contrary, Hart acknowledges confidential information may be subject to disclosure as prescribed by the Texas Public Information Act.
- 14.3. **Return of Confidential Information.** Upon termination or expiration of this Agreement or, if earlier, upon termination of County's permitted access to or possession of Confidential Information, County shall return to Hart all copies of the Confidential Information in County's possession (including Confidential Information incorporated in software or writings, electronic and hard copies). Upon termination of County's license or sublicense of Software, County shall immediately discontinue all use of the Software and return to Hart or destroy at Hart's option, the Software, including Firmware (and all related Documentation (electronic and hard copy)) and all archival, backup, and other copies of Software, Firmware and Documentation, and provide certification to Hart of such return or destruction. Return or destruction may include hard drives and/or component flash drive devices.
- 14.4. **County Employees, Agents and Contractors.** County will inform its employees and other agents and contractors of their obligations under this Section 14 and shall be fully responsible for any breach thereof by such personnel.

15. **INDEMNIFICATION**

- 15.1. **Indemnity.** Hart, at its own expense, will defend County against any claim that the Hart Hardware or Hart Proprietary Software infringes an issued United States patent, registered United States copyright, or misappropriates trade secrets

protected under United States law, and shall indemnify County against and pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against County, provided County (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.

- 15.2. **Remedies.** As to Hart 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 Hardware or Hart Proprietary Software for County or (b) replace or modify the Hart Hardware or Hart Proprietary Software to avoid the claim.
- 15.3. **Exclusions.** Hart will not defend or indemnify County if any claim of infringement or misappropriation (a) is asserted by an affiliate of County; (b) results from County's design or alteration of any Hardware or Software; (c) results from use of any Hart 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 Verity system designed by Hart; (d) relates to Sublicensed Software or Third Party Hardware alone; or (e) arises from County-specified customization work undertaken by Hart or its designees in response to changes in Hart Proprietary Software or Sublicensed Software that are made in response to County specifications.
- 15.4. **EXCLUSIVE REMEDIES.** THIS SECTION 15 STATES THE ENTIRE LIABILITY OF HART AND COUNTY'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT AND TRADE SECRET MISAPPROPRIATION.

16. DISCLAIMERS AND LIMITATIONS OF LIABILITY

- 16.1. **Disclaimer of Warranty.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES APPLICABLE TO THE PRODUCT(S) AND/OR SERVICES SET FORTH IN SECTION 9, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT, AND (B) 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 HARDWARE, SOFTWARE, AND SERVICES. COUNTY IS SOLELY RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL COUNTY DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO COUNTY OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO COUNTY DATA THE EXPRESS LIMITED WARRANTIES REFERENCED ABOVE EXTEND SOLELY TO COUNTY AND DO NOT INCLUDE ANY TYPE OF ROUTINE MAINTENANCE SERVICE OR PREVENTATIVE MAINTENANCE SERVICE. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY.
- 16.2. **Limitations of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HART WILL NOT BE LIABLE TO COUNTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED IN CONNECTION WITH THE HARDWARE, SOFTWARE, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, HART'S TOTAL LIABILITY TO COUNTY FOR DAMAGES ARISING OUT OF OR RELATING TO THE HARDWARE, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY COUNTY TO HART UNDER THIS AGREEMENT UNDER THE ORDER FOR THE HARDWARE, SOFTWARE OR SERVICE GIVING RISE TO THE APPLICABLE CLAIM. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY COUNTY'S NEGLIGENCE OR INTENTIONAL ACTS OR, EXCEPT AS EXPRESSLY SET FORTH HEREIN, FOR ANY CLAIM AGAINST COUNTY OR ANYONE ELSE BY ANY THIRD PARTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES, SO THE ABOVE EXCLUSIONS AND/OR LIMITATIONS MAY NOT APPLY TO COUNTY. THE PARTIES AGREE THAT THE LIABILITY AND WARRANTY LIMITATIONS SET FORTH IN THIS AGREEMENT ARE A REASONABLE ALLOCATION OF RISK AND LIABILITY CONSIDERING THE RESPECTIVE BENEFITS OBTAINED HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.
- 16.3. **Third Party Products, Services and Referrals.** In addition to Third Party Products that may be ordered hereunder, Hart may direct County to third parties having products or services that may be of interest to County for use in conjunction with the Products or Services. Notwithstanding any Hart recommendation, referral, or introduction, County 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.
- ## 17. DISPUTE RESOLUTION
- 17.1. **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**").
- 17.2. **Negotiation and Mediation.** 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.

- 17.3. **Injunctive Relief.** Notwithstanding the other provisions of this Section 17, 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.
- 17.4. **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 two (2) years after the cause of action first accrued.

18. GENERAL PROVISIONS

- 18.1. **Entire Agreement.** This Agreement, Tarrant County's RFP 2019-002, Hart's Response to RFP 2019-002 and the Schedules, Attachments, and Exhibits hereto (including Hart-provided Quotations signed by County and accepted by Hart) are the entire agreement between the parties with respect to the subject matter contemplated herein, and supersede all prior negotiations and oral agreements with respect thereto. Hart makes no representations or warranties with respect to this Agreement or its Products or Services that are not included herein. The use of preprinted County 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 County purchase order, acknowledgment, or other County 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. This Agreement may not be amended or waived except in writing signed by an officer of the party to be bound thereby.
- 18.2. **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.
- 18.3. **GOVERNING LAW.** THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS.
- 18.4. **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.
- 18.5. **Force Majeure.** "Force Majeure" means a delay encountered by a party in the performance of its obligations under this Agreement that is caused by an event beyond the reasonable control of the party, but does not include any delays in the payment of monies due by either party. Without limiting the generality of the foregoing, "Force Majeure" will include, but is not restricted to, the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities (other than, with respect to County's performance, the County, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; failure of third parties to timely provide software, hardware, materials, or labor contemplated herein including by reason of strikes, lockouts, or other labor disputes. If any event constituting Force Majeure occurs, the affected party shall notify the other party in writing, disclosing the estimated length of the delay and the cause of the delay. If a Force Majeure or other such event occurs, the affected party will not be deemed to have violated its obligations under this Agreement, and time for performance of any obligations of that party will be extended by a period of time necessary to overcome the effects of the Force Majeure.
- 18.6. **Compliance with Laws.** County and Hart shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Products. Products provided under this Agreement may be subject to U.S. and other government export control regulations. County shall not export or re-export any Products.
- 18.7. **Assignment.** Hart may assign this Agreement or its interests herein any including the right to receive payments, with County's consent, which shall not be unreasonably withheld, provided that no consent shall be required in connection with any assignment to an affiliate or in connection with any merger, reorganization, consolidation, amalgamation, sale of assets or similar transaction. County will be notified in writing if Hart makes an assignment of this Agreement. County shall not assign this Agreement or any licenses granted hereunder without the express written consent of Hart, such consent not to be unreasonably withheld.
- 18.8. **Independent Contractors.** The parties to the Agreement are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Hart's employees, agents, and subcontractors will not be entitled to any privileges or benefits of County employment. County's employees, agents, and contractors will not be entitled to any privileges or benefits of Hart employment.
- 18.9. **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 (5th) 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 the party's 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.

- 18.10. **Trademarks.** Verity Election Office™, Verity Voting™, Verity Scan™, Verity Touch™, Verity Controller™, Verity Access™, Verity vDrive™, Verity Touch Writer™, Verity Ballot™, Verity Layout™, Verity Build™, Verity Count™, Verity Relay™, Verity Key™, and Verity Central™, and such other Product names indicated as trademarked names of Hart are trademarks of Hart.
- 18.11. **Equitable Relief.** The parties agree Hart shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law.
- 18.12. **Government Use.** The use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, no matter how received by the United States Government, is restricted in accordance with the terms and conditions contained herein. All other use is prohibited. Further, the Products were developed at Hart's private expense and are commercial in nature. By using or receiving the Products, the Government user agrees to the terms and conditions contained in this Agreement including the terms and conditions contained in this paragraph.

Exhibit A

Schedule A or County Signed Quote for Initial Order

REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT BEST AND FINAL OFFER - PRICE FORM

Hybrid aka Ballot Marking

Price all components that complete the Election Management System – All prices to include shipping and delivery to 2700 Premier St. Fort Worth, 76111. Quantities are to be estimated to support 3,000 DRE's & 400 Scanners.

Respondent Name: Hart InterCivic, Inc.

A. Election Management System (EMS)

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2 (Maintenance & Fees)			Year 3 (Maintenance & Fees)		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Verity Build Networked (includes On-Demand Ballot Printing)	Verity 2.3	Election definition and ballot production software. Supports requirement for central on-demand ballot printing.	\$ 20,000	2	\$ 40,000						
Verity Relay	Verity 2.3	Election night results collection at temporary hubs.	\$ 5,000	1	\$ 5,000						
License & Support for		Annual License & Support Fee	\$ 11,446	1	\$ 11,446	\$ 11,446	1	\$ 11,446	\$ 11,446	1	\$ 11,446
Workstations & Monitor	HP Z240	HP Z240 Workstation for Verity Software. Includes 5-year warranty. Includes 23" Flat Panel Monitor.	\$ 5,900	10	\$ 59,000						

A. Election Management System (EMS) continued

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2 (Maintenance & Fees)			Year 3 (Maintenance & Fees)		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Printer w/ Starter Cartridge	Okidata B430 series	Laser Printer w/starter cartridge included with Verity Software for printing	\$ 325	6	\$ 1,950						
Ballot Printer w/ Starter Cartridges	Okidata C831	Ballot Printer	\$ 4,000	2	\$ 8,000						
TOTAL			\$ 125,396			\$ 11,446			\$ 11,446		

**REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT
BEST AND FINAL OFFER - PRICE FORM**

Hybrid aka Ballot Marking

Price all components that complete a Voting Device for your system – All prices to include shipping and delivery to 2700 Premier St. Fort Worth, 76111. Quantities are to be estimated to support 3,000 DRE's & 400 Scanners.

Respondent Name: Hart InterCivic, Inc.

C. Voting Devices

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Verity Duo	Verity 2.3	Hybrid touchscreen ballot marking device capable of producing a paper trail. Includes Verity Standard Booth, Transport Bag and Privacy Screens.	\$ 3,000	3,000	\$ 9,000,000						
Verity Controller	Verity 2.3	Precinct Management Device used by the poll workers facilitating faster results reporting and other administrative efficiencies.	\$ 2,850	400	\$ 1,140,000						

C. Voting Devices continued

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Verity Scan	Verity 2.3	Precinct-based ballot scanner. Includes Ballot Box, Transport Bag & Privacy Screens.	\$ 5,500	400	\$ 2,200,000						
Verity Access	Verity 2.3	Detachable ATI module for use with Verity tablet. Includes Verity Duo Accessible Booth w/ Transport Bag and Privacy Screens.	\$ 520	400	\$ 208,000						
Verity Relay	Verity 2.3	Remote transmission station	\$ 2,850	9	\$ 25,650						
vDrives		Flash memory card/audio card for use with Verity devices	\$ 66	850	\$ 56,100						
Verity Ballot Box Lock Kit		Secondary lock kit for Verity Ballot Box	\$ 23	70	\$ 1,610						
6 Bay Battery Charger		6 Bay battery charger for Verity voting device	\$ 540	43	\$ 23,220						
Verity Key		Electronic security token	\$ 109	48	\$ 5,232						

C. Voting Devices continued

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Relay Modem Kit		Modem kit required for electronic transmission from Verity Scan. May be shipped separately pending customer carrier selection; invoicing and testing will be independent if shipped separately.	\$ 500	9	\$ 4,500						
AutoBallot Kit		Barcode scanner kit for automatic Verity access code creation from VR/electronic poll book data	\$ 419	400	\$ 167,600						
License & Support for Verity Hardware		Annual License & Support Fee	\$ 471,880	1	\$ 471,880	\$ 471,880	1	\$ 471,880	\$ 471,880	1	\$ 471,880
TOTAL			\$ 13,303,792			\$ 471,880			\$ 471,880		

**REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT
BEST AND FINAL OFFER - PRICE FORM**

Hybrid aka Ballot Marking

Price all components that complete a Central Scanning solution for your system – All prices to include shipping and delivery to 2700 Premier St. Fort Worth, 76111. Quantities are to be estimated to support 3,000 DRE's & 400 Scanners.

Respondent Name: Hart InterCivic, Inc.

D. Central Scanning

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Verity Central	Verity 2.3	High-speed central scanning and onscreen	\$ 45,000	1	\$ 45,000						
Verity Central Client	Verity 2.3	High-speed central scanning and onscreen adjudication	\$ 10,000	2	\$ 20,000						
Central Scanner	Canon DR-G1130	High-Speed Scanner (for Central Count of Absentee Ballots)	\$ 10,000	3	\$ 30,000						
License & Support for Verity Central		Annual License & Support Fee	\$ 18,730	1	\$ 18,730	\$ 18,730	1	\$ 18,730	\$ 18,730	1	\$ 18,730
TOTAL			\$ 113,730			\$ 18,730			\$ 18,730		

**REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT
BEST AND FINAL OFFER - PRICE FORM**

Hybrid aka Ballot Marking

Price all components that complete the Tabulation solution for your system – All prices to include shipping and delivery to 2700 Premier St. Fort Worth, 76111. Quantities are to be estimated to support 3,000 DRE's & 400 Scanners.

Respondent Name: Hart InterCivic, Inc.

E. Tabulation

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Verity Count Networked	Verity 2.3	Tabulation and report software	\$ 6,000	2	\$ 12,000						
License & Support for Verity Count		Annual License & Support Fee	\$ 3,122	1	\$ 3,122	\$ 3,122	1	\$ 3,122	\$ 3,122	1	\$ 3,122
TOTAL			\$ 15,122			\$ 3,122			\$ 3,122		

**REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT
BEST AND FINAL OFFER - PRICE FORM**

Hybrid aka Ballot Marking

Price all anticipated Project Costs for your system – All prices to include shipping and delivery to 2700 Premier St. Fort Worth, 76111. Quantities are to be estimated to support 3,000 DRE's & 400 Scanners.

Respondent Name: Hart InterCivic, Inc.

F. General Project Costs

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Installation		Includes training, acceptance testing, project management, travel, and on-site support for the first election on the Verity voting system. Additional services, if required, may be purchased separately.			included						
Warranty					included						
Training					included						
Testing					included						
TOTAL			\$		-	\$		-	\$		-

**REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT
BEST AND FINAL OFFER - PRICE FORM**

Hybrid aka Ballot Marking

Price for Optional items offered - will not be included in the total for price scoring. All prices to include shipping and delivery to 2700 Premier St. Fort Worth, 76111. Quantities are to be estimated to support 3,000 DRE's & 400 Scanners.

Respondent Name: Hart InterCivic, Inc.

G. Optional Items Offered

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
vDrives		Flash memory card/audio card for use with Verity devices	\$ 66	750	\$ 49,500						
Verity Voting Device Battery		Rechargeable battery for Verity voting device	\$ 102	380	\$ 38,760						
6 Bay Battery Charger		6 Bay battery charger for Verity voting device	\$ 540	37	\$ 19,980						
Verity Key		Electronic security token	\$ 109	32	\$ 3,488						
Secure Ballot Transport Bag		Bag for easy and secure removal and transport of ballots from ballot box	\$ 50	400	\$ 20,000						
vDrive Duplicator		Loads election data on up to 23 vDrives simultaneously	\$ 1,975	1	\$ 1,975						

G. Optional Items Offered continued

Component	Version	Description	Price breakdown per year								
			Year 1			Year 2			Year 3		
			Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)	Unit Price (\$)	Est. Qty.	Total (\$)
Discount (5% Discount per line item total)					\$ (6,685)						

REQUEST FOR PROPOSALS FOR PURCHASE OF ELECTIONS EQUIPMENT
BEST AND FINAL OFFER - PRICE FORM

Respondent Name: Hart InterCivic, Inc.

H. Price Summary: Election Management System, Central On-Demand Ballot Printing, Voting Devices, Central Scanning, Tabulation & General Costs

Price Summary: EMS, Central OD Ballot Printing, Voting Devices, Central Scanning, Tabulation, General Costs			
Component	Year 1	Year 2	Year 3
A. An Election Management System (EMS) where the election project is created and configured.	\$ 125,396	\$ 11,446	\$ 11,446
B. On-Demand Ballot Printing system to generate Mail Ballots for voters who request them. This system will be used only at the main office of the Elections Administration.	included in Section A	\$ -	\$ -
C. Voting devices for each type of solution.	\$ 13,303,792	\$ 471,880	\$ 471,880
D. A high speed central scanning solution to be used for processing ballots mailed back by voters that are accepted by the Ballot Board.	\$ 113,730	\$ 18,730	\$ 18,730
E. A tabulation solution that is capable of processing all the results produced by the voting machines and generating all necessary reports. This system includes any and all components necessary for collecting results at temporary hubs on election night.	\$ 15,122	\$ 3,122	\$ 3,122
F. General project costs.	included	\$ -	\$ -
HVS System Trade-In / Customer Loyalty - Additional Discount	\$ (4,158,043)	\$ -	\$ -
Total	\$ 9,399,997	\$ 505,178	\$ 505,178
3-year TOTAL offer:	\$	10,410,353	

Exhibit B

Hart County Support Contact Information and Hours

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

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

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Exhibit C

Definitions

"*Hart*" means Hart InterCivic, Inc., a Texas corporation.

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

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

"*Verity Controller™*" is a polling place management console capable of interacting with one or more Verity Touch™ devices by transmitting and receiving signals that manage an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

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

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

"*Verity Touch™*" means the Verity Touch™ electronic voting device created by Hart. Verity Touch devices consist of hardware including an electronically configurable voting station that permits a voter to cast votes by direct interaction, which voting station in its present configuration created by Hart comprises an electronically configurable touchscreen liquid crystal display (LCD) panel for use in displaying ballot images, and options for tactile input buttons that facilitate voter options for selecting ballot choices and casting a ballot.

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

"*Verity Voting*" means Hart InterCivic's family of voting system components designed to conform to federal voting system standards.

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Exhibit D

HART PROPRIETARY SOFTWARE AND SUBLICENSED SOFTWARE

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

[illegible]

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

Software Sublicensed to County via annual subscription:

None

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TAKINGS IMPACT ASSESSMENT CHECKLIST

Complete this form for any county action that involves the adoption of a regulation, policy, guideline, court resolution, or order.

Project/Regulation Name: RFP No. 2019-002, Purchase of Election Equipment

County Department: PURCHASING

Contact Person: Jack Beacham, C.P.M., A.P.P.

Phone Number for Contact Person: (817) 884-1133

Type of TIA Performed: SHORT TIA or FULL TIA. Circle one after answering the questions in Sections II and III below.

I. Stated Purpose

Attach to this checklist an explanation of the purpose of the regulation, policy, guideline, court resolution or order.

Note: The remainder of this Takings Impact Assessment Checklist should be completed in consultation with the Criminal District Attorney's Office.

II. Potential Effect on Private Real Property

1. Does the county action require a physical invasion, occupation or dedication of real property?

Yes _____ No ✓

2. Does the county action limit or restrict a real property right, even partially or temporarily?

Yes _____ No ✓

If you answered yes to either question, go to Section III. If you answered no to both, STOP HERE and circle SHORT TIA at the top of the form.
