

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY**

DEPT: Elections

BOARD AGENDA: 7.3
AGENDA DATE: September 10, 2019

SUBJECT:

Approval of a Contract with Hart InterCivic, Inc. to Purchase a Replacement Certified Voter Tabulation System

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2019-0559

On motion of Supervisor DeMartini, Seconded by Supervisor Chiesa
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Berryhill, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None


1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: 
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Elections

BOARD AGENDA:7.3

AGENDA DATE: September 10, 2019

CONSENT ☐

CEO CONCURRENCE: YES

4/5 Vote Required: Yes

SUBJECT:

Approval of a Contract with Hart InterCivic, Inc. to Purchase a Replacement Certified Voter Tabulation System

STAFF RECOMMENDATION:

1. Approve an agreement with Hart InterCivic, Inc. to provide Stanislaus County a voting tabulation system and annual maintenance.
2. Authorize the Chairman of the Board of Supervisors to sign the agreement with Hart InterCivic, Inc. for the voting tabulation system and annual maintenance.
3. Authorize the Auditor-Controller to increase revenue and appropriations in the Clerk-Recorder budget in accordance with the attached budget journal.

DISCUSSION:

On July 27, 2004, the Board of Supervisors authorized the Registrar of Voters to negotiate, award, and execute a contract for the purchase and installation of a new countywide voting system (Board Resolution No. 2004-573). In September 2004, the County purchased an optical scan voting system from Election System & Software. This system included ballot marking units, optical scan units for each polling location, and central count optical scanners for the Main Office Central Count. All features met the strict requirements of Section 301 of the Help America Vote Act (HAVA) at the time of purchase. The existing voting system has been used to conduct 40 elections and has counted over two million ballots.

On February 27, 2019, the California Secretary of State announced the withdrawal of certification and conditional approval of all California voting systems, in whole or in part, that have not been tested and certified to the California Voting System Standards (CVSS). This change, effective August 27, 2019, is pursuant to Elections Code Section 19232, which states: "the Secretary of State has the right to withdraw his or her certification or conditional approval previously granted under this chapter of any voting system or part of a voting system should it be defective or prove unacceptable after such review." The decertified voting systems contain obsolete hardware and software components and employ operating systems that are no longer supported.

The CVSS were finalized in October 2014 and have been used to certify several voting systems. The CVSS are derived from the U.S. Election Assistance Commission (EAC).

These standards include: requiring source code review, volume testing, team testing, functional testing, and many other criteria that ensure California's voting equipment is rigorously tested (test results and reports are available on the Secretary of State's web site). They also require systems to be capable of performing risk-limiting audits.

The Secretary of State is providing funding to counties through a program known as the Voting System Replacement Contract 2018 (Voting System Replacement Funds). The funding allocated to Stanislaus County is \$1,500,500. The Voting System Replacement Funds will allow the Registrar of Voters to make the necessary reimbursable purchases to comply with the California Voting System Standards and replace decertified, obsolete election equipment and components needed for conducting legally mandated elections. The new election equipment will meet the needs of the current voting model and any future changes as well. In recognition of this need, the Board of Supervisors authorized the Registrar of Voters on June 18, 2019, to accept a grant award of \$1,500,500 from the California Secretary of State and to seek bids from vendors for voting system replacement.

Currently, in the State of California there are two certified voting systems available to Counties: Dominion Democracy Suites and Hart Verity. The Registrar of Voters' office has diligently reviewed and solicited public input on a new system. The new voting system will consist of a tabulation program, ballot readers, Americans with Disabilities Act (ADA)-compliant accessible equipment for marking ballots, and all necessary accessories to complete the new system. After observing voting system demonstrations and engaging in discussions with both available vendors, the Registrar of Voters made the decision to purchase the Hart Civic Verity system.

The Hart Civic Verity system is a comprehensive voting system specifically designed for County elections and meets the requirements and design specifications listed in California Senate Bill 450 (SB 450), known as the "Voters Choice Act." The system also meets any and all applicable federal, state, and local election code requirements and has the ability to fully support the current precinct model as well as the future Vote Center model for Stanislaus County.

The Hart system addresses and prioritizes the importance of voter confidentiality, the integrity of the process, the importance of a paper ballot system, a reduction in counting time, and overall simplification of workflow. Some of the featured components of the Hart system that support the County's needs are:

Election Management Software – The software offers user-friendly options for the overall election definition, ballot management, tabulation, and reporting that includes data analytics and provides room for growth in the future.

Precinct or Vote Center Voting Solutions – The hardware components include precinct count options, paper ballot scanning system (Verity Scan), and an ADA-accessible ballot marking system with a HAVA-compliant audio tactile interface (Verity Touch Writer) and an on-demand ballot system (Verity Print) for vote centers and satellite offices.

Central Count Scanning and Tabulation – High speed central scanning solutions with faster scanning options and the ability to adjudicate ballot marking questions in a much easier format.

The Hart system also includes a thorough training program, onsite support for acceptance testing, and installation as well as pre-election, Election Day, and post-election support as needed.

POLICY ISSUE:

Approval from the Board of Supervisors is required to authorize the Chairman of the Board of Supervisors to execute an agreement with Hart InterCivic, Inc. as recommended by the Registrar of Voters and to authorize an increase to estimated revenue and appropriations in the Clerk-Recorder budget. Elections Code 19207-19208 delegates authority to the Board to adopt a particular voting system and provide for the payment of the cost.

FISCAL IMPACT:

The cost of the equipment, installation, and support totals \$2,094,258 which includes the first year of annual maintenance costs and election programming. The agreement will automatically renew for one year with an annual maintenance cost of \$96,005 for Budget Year 2020-2021.

In June 2019, the Registrar of Voters entered into an agreement with the California Secretary of State for Voting System Replacement Contract 2018 funding totaling \$1,500,500. That agreement stipulates that state funding must be matched dollar-for-dollar, with matching funds coming from federal HAVA grant funds or the County General Fund. The Registrar of Voters has \$1,076,226 in available matching federal HAVA funds due to expire June 30, 2021 and anticipates approximately \$750,000 in Performance Visioning Carryover Savings (PVCS) funds with the 2019-2020 Final Budget.

Subsequent to entering into this agreement, the 2019 Budget Act provided additional funding, modified the match requirement, and allocated funding for election management system (EMS) replacement. The Department anticipates an amendment to the earlier agreement that would provide additional funding. The Department is requesting the use of \$593,758 in HAVA funding to cover the costs of the Hart agreement now and will fully recognize all required match funding along with the increase in funds provided from the State when returning to seek Board approval for the agreement amendment.

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Boards' priority of *Delivering Efficient Public Services and Community Infrastructure* by continuing to improve the

administration of elections by obtaining state funding along with existing federal HAVA funds to purchase an approved voting system.

STAFFING IMPACT:

Existing staff within the County Clerk-Recorder Elections Division will carry out the necessary administrative responsibilities associated with the implementation of the Hart agreement and expenditure of State and Federal funds.

CONTACT PERSON:

Donna Linder, County Registrar of Voters

209-525-5211

ATTACHMENT(S):

1. HART InterCivic Verity Master Agreement
2. Journal Voucher



VERITY

MASTER AGREEMENT

This Master Agreement ("**Agreement**"), entered into effective as of September 10, 2019 ("the **Effective Date**") by and between Hart InterCivic, Inc., a Texas corporation ("**Hart**") and the Customer set forth below ("**Customer**"), sets forth the terms and conditions pursuant to which Customer 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 foregoing may be referred to together as the "**Verity system**."

Hart agrees to sell or provide to Customer Products and Services according to this Agreement, which includes all Schedules, Attachments and Exhibits. Customer agrees to all terms and conditions of this Agreement. Pricing and other material terms of Customer's initial commitment are as set forth in the Schedule A or Customer Signed Quote attached hereto as **Exhibit A**. This Agreement 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. No other terms and conditions sent by Customer shall apply, including any terms or conditions contained in any purchase order, request for quote (RFQ), request for proposal (RFP), communication or other operational form that is in addition to or different than the terms and conditions of this Agreement. Any of Customer's terms and conditions that are different from or in addition to those contained herein are hereby objected to and shall be of no effect unless specifically agreed to in writing by an officer of Hart. Customer acknowledges it has read and understands this Agreement (including all Schedules, Attachments and Exhibits) and is entering into this Agreement only on the basis of the terms set forth in this Agreement (including all Schedules, Attachments and Exhibits).

Agreed and Accepted:


Customer

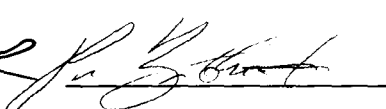
Jurisdiction: County of Stanislaus
Stanislaus County
Name: Registrar of Voters Office
Address: 1021 "I" Street
Modesto, CA 95354

Phone: 209-525-5211
Facsimile: 209-525-5800
E-mail: stanvote@stancounty.com


Hart

Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, Texas 78728
Attn.: Phillip W. Braithwaite, CEO
800-223-4278
800-831-1485
pbraithwaite@hartic.com

Executed By: 
Name: Terrance Withrow
Title: Chairman of the Board


Phillip W. Braithwaite
CEO

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.

APPROVED AS TO FORM
STANISLAUS COUNTY COUNCIL
BY

DATE: 9/4/2019

1. ORDERING

Customer may request quotations for Products or Services from time to time. The existence of this Agreement does not obligate Customer to request a quotation or purchase any Products or Services from Hart. Any Customer 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. Customer may only make a request for quotation via facsimile and other Hart approved electronic ordering methods, including email. All quotations are valid for only 30 days unless specifically stated on the front of the quotation. If the quotation is signed by Customer within thirty (30) days, Hart will provide notice of its acceptance via countersignature within fifteen (15) days of the date on which it receives Customer'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 Customer 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 Customer 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., per Stanislaus County travel policy <http://www.first5stan.org/pdf/travel-policy.pdf>, communication and other expenses. 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 Customer for use with the Products. Any other additional charges must be mutually agreed to by Hart and Customer and documented in an amendment to this Agreement.

2.5. **Taxes.** All prices are exclusive of applicable taxes. All taxes shall be payable by Customer, unless Customer presents Hart with a proper certificate of exemption from such tax. If Customer challenges the applicability of any such tax, Customer shall pay the tax and may thereafter seek a refund. In the event Hart is required to pay any tax at time of sale or thereafter, Customer shall promptly reimburse Hart therefore.

3. PAYMENT

3.1. **Products.** Except as otherwise provided in Hart's quotation, amounts due for Products shall be billed upon shipment 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 is due upon execution of this Agreement and annually thereafter before expiration thereof. Annual Fees for subsequently ordered License and Support Subscriptions, if any, shall be due upon acceptance of order and unless specified on the applicable quotation, the corresponding Annual Fees for renewals thereof shall be due annually with the renewal of the initially-ordered License and Support Subscription (i.e. shall be pro-rated and become co-terminus). If Customer fails to timely pay an Annual Fee, 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 Customer'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.** Customer 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 Customer. Customer shall promptly notify Hart in writing of any change to Customer's name, address, or billing information.
- 3.5. **Billing Disputes.** If any dispute exists between the parties concerning the amount due or due date of any payment, Customer shall promptly pay the undisputed portion. Such payment will not constitute a waiver by Customer or Hart of any of their respective legal rights and remedies against each other. Customer has no right of set-off.
- 4. HARDWARE SPECIFIC TERMS**
- 4.1. **Delivery.** Hart will provide estimated shipment dates upon acceptance of Customer's signed quotation. Shipment dates on Hart quotations are approximate only and Hart will not be subject to liability for late or delayed shipment unless shipment has been delayed more than one month from the estimated shipment date.. In the event Customer 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 Customer.
- 4.2. **Hart Voting System Equipment Pick-Up.** If Customer has legacy Hart Voting System (HVS) equipment, Hart will pick up and salvage all HVS voting devices, computers, and peripherals at no cost to Customer. Customer may retain databases and reports stored on such equipment solely to comply with record retention policies. Customer may retain minimal necessary computers and copies of legacy software for access to records retention databases. Customer agrees to remove all HVS software from all retained computers at the close of the records retention period. Upon request, Customer will provide Hart with written certification that such software has been deleted.
- 4.3. **Acceptance.** Customer shall examine all Hardware Products promptly upon receipt thereof. Within ten (10) business days of such receipt, Customer shall notify Hart in writing of any manner in which Customer 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 Customer ("**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 Customer'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 Customer'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 shipped to the Customer's site, per Section 3.1 If additional labor and rigging or Customer-specified customization is required for installation due to Customer's special site requirements, Customer will pay those costs including costs to meet union or local law requirements.
- 4.5. **Title and Transportation.** Hardware Products are shipped Ex Works (Incoterms 2010) from Hart's designated shipping point. Title transfer and transfer of risk of loss or damage shall be deemed to occur upon Hart making such Hardware Products available to the carrier at Hart's designated shipping point. 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 but in no event will the carrier be deemed the agent of Hart. Notwithstanding the foregoing, if customer chooses a financing option offered by Hart, then title to hardware will pass to Customer according to the terms of the finance agreement.
- 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, Customer 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 Customer requests a rescheduling of any Hardware Product and such request is accepted by Hart, Customer agrees to promptly pay Hart's standard reschedule charge. Hart may not cancel a quotation after it has accepted Customer's signed submission thereof. Customer 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 Customer has a current License and Support Subscription in effect, Hart grants to Customer (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 Customer, and Customer will be permitted to use, only the run-time executable code and associated support files of the Software for Customer'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. Customer's use of the Software will be limited to the number of licenses specified in the applicable quotation. Only Customer 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.** Customer shall keep clear, complete and accurate books of account and records with respect to the usage of Software and access to the Software licensed hereunder, including without limitation with respect to access thereto. Licensee shall retain such books and records for a period of five (5) years from the date of cessation of any such usage, notwithstanding any expiration or termination of this Agreement. Customer 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 Customer to verify Customer's compliance with the terms of the licenses and sublicenses granted to Customer. If any such examination discloses unauthorized usage, then Customer, 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, Customer shall comply with the following practices and shall not deviate from them without the express written consent of Hart: (i) Customer shall use the Software and Hardware only in connection with the Verity system, and Customer may only use Hart branded or approved peripherals and consumables with the Verity system; (ii) Customer 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) Customer shall not modify the Hardware or Software. If Customer 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 Customer 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 Customer under Section 5.1, Hart reserves its rights to enforce its patents with respect to those claims.
- 5.3.2. Customer shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Software. Customer shall not use any Software for application development, modification, or customization purposes, except through Hart.
- 5.3.3. Customer 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 Customer from contracting for election services for other local governments located within Customer's jurisdictional boundaries. Customer 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 Customer'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 Customer. Customer shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to Customer regarding any unauthorized possession or use of the Software.
- 5.3.4. Customer shall not publish any results of benchmark tests run on any Software.
- 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. Customer 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 Customer 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 Customer's location before the first election for which the Product will be used, following installation.

7. PROPRIETARY RIGHTS

- 7.1. **Reservation of Rights.** Customer 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. Customer 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 Customer 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. Customer 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 Customer 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 Customer) in connection with Confidential Information, Verity system, and Hart Proprietary Software will be the exclusive property of Hart.
- 7.2. **Customer Suggestions and Recommendations.** Customer 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 Customer's proposals, suggestions, or recommendations.
- 7.3. **License Back** If Customer possesses or comes to possess a licensable or sub-licensable interest in any issued patent with claims that read upon the Verity system, its method of operation, or any component thereof, Customer hereby grants and promises to grant a perpetual, irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use, and sell materials or services within the scope of the patent claims.

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 Customer has the requisite number of License and Support Subscriptions In effect, Hart will provide Customer 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, Customer 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 Customer.
- 8.1.1. **Software Support Services.** Software Support Services will consist of assisting the Customer 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 Customer Support Center. See **Exhibit B** for Hart Customer 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 Customer will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Verity Operator's Manuals and the applicable requirements stated in Exhibit E. 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 ten (10) days after the shipping date. The warranty period for used and/or refurbished hardware is ninety (90) days, beginning ten (10) days after the shipping date. Consumables are warranted only to be free from manufacturing defects for a period ninety (90) days, beginning ten (10) days after the shipping date. 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 Customer. To request warranty service, Customer must contact Hart in writing within the warranty period. Hart may elect to conduct any repairs at Customer's site, Hart's facility, or any other location specified by Hart. Any replacement Hart Hardware provided to Customer 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. Customer acknowledges and agrees that this warranty is contingent upon and subject to Customer'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 Customer'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 Customer's location due to the Customer'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 Customer of the total amount due for those Hart Hardware changes. Upon written approval to move forward with the changes and receipt from the Customer of the stated fees, Hart will complete the required changes to the Customer'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 Customer 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, Customer 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. Customer acknowledges and agrees that this warranty is contingent upon and subject to Customer'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 Customer'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) Customer'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 Customer 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 Customer, 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 Customer'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 Customer's computer equipment, should Customer 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 than that described herein. Professional Services and associated costs may be required in those situations where the Customer 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 CUSTOMER, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSED TO CUSTOMER "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 CUSTOMER. If Hart sells, licenses, or sublicenses any Third Party Hardware or Sublicensed Software to Customer, Hart will pass through to Customer, 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. Customer 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 Customer (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, Customer-signed quotation. Professional Service days cannot be exchanged for Product fees, Annual Fees, or fees for other Services. If the Professional Services in an applicable quotation are not used prior to 60 days after the date of the Customer'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 Customer 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. CUSTOMER RESPONSIBILITIES

12.1. **Independent Determination.** Customer acknowledges it has independently determined that the Products purchased under this Agreement meet its requirements

12.2. **Cooperation.** Customer agrees to cooperate with Hart and promptly perform Customer's responsibilities hereunder. Customer 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 Customer'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 Customer personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.

12.3. **Site Preparation.** Customer shall prepare and maintain the installation site in accordance with instructions provided by Hart. Customer 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.** Customer 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. Customer shall properly store the Products when not in use.

12.5. **Use.** Customer 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. Customer 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. Customer shall comply with all applicable laws, rules, and regulations with respect to its use of the Products.

- 12.6. **Backups.** Customer is solely responsible for timely data backups, and Customer will maintain backup data necessary to replace critical Customer 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, Customer 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. *By Hart.* This Agreement and/or all then-current License and Support Subscriptions and Professional Services orders shall automatically terminate or expire as set forth herein and may be terminated by Hart if Customer is in breach of a term hereof and fails to cure such breach within thirty (30) days after written notice of such breach has been given.
- 13.3.2. *By Customer.* Customer may terminate this Agreement, a Product order, or a License and Support Subscriptions and Professional Services orders issued hereunder if Hart is in breach of a term hereof or thereof, as applicable, and fails to cure such breach within thirty (30) days after written notice of such breach has been given.
- 13.4. **Effect of Expiration and Termination.** Any termination under Section 13.3.1 shall operate to terminate this Agreement and any then current License and Support Subscriptions and Professional Services orders. Any termination under Section 13.3.2 of a License and Support Subscription or Professional Services order shall operate only upon such subscription or order, and shall have no effect on this Agreement or other subscriptions or orders then in effect. Sections 3, 5.2-5.4, 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.** Customer 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. Customer 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. Customer 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 Customer to use the Software. Customer acknowledges that unauthorized disclosure of Confidential Information may cause substantial economic loss to Hart or its suppliers and licensors.

- 14.3. **Return of Confidential Information.** Upon termination or expiration of this Agreement or, if earlier, upon termination of Customer's permitted access to or possession of Confidential Information, Customer shall return to Hart all copies of the Confidential Information in Customer's possession (including Confidential Information incorporated in software or writings, electronic and hard copies). Upon termination of Customer's license or sublicense of Software, Customer 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. **Customer Employees, Agents and Contractors.** Customer 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 Customer 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 Customer against and pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer, provided Customer (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 Customer or (b) replace or modify the Hart Hardware or Hart Proprietary Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Hart, any applicable Software license and its charges will end, Customer will cease using the applicable Hart Hardware and Hart Proprietary Software, Customer will return to Hart all applicable Hart Hardware and return or destroy all copies of the applicable Hart Proprietary Software, and Customer will certify in writing to Hart that such return or destruction has been completed. Upon return or Hart's receipt of certification of destruction, Hart will give Customer a credit for the price paid to Hart for the returned or destroyed Hart Hardware and Hart Proprietary Software, less a reasonable offset for use and obsolescence.
- 15.3. **Exclusions.** Hart will not defend or indemnify Customer if any claim of infringement or misappropriation (a) is asserted by an affiliate of Customer; (b) results from Customer'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 Customer-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 Customer specifications.
- 15.4. **EXCLUSIVE REMEDIES.** THIS SECTION 15 STATES THE ENTIRE LIABILITY OF HART AND CUSTOMER'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. CUSTOMER IS SOLELY RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL CUSTOMER DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO CUSTOMER DATA. THE EXPRESS LIMITED WARRANTIES REFERENCED ABOVE EXTEND SOLELY TO CUSTOMER 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 CUSTOMER 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 CUSTOMER 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 CUSTOMER TO HART UNDER THIS AGREEMENT. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY CUSTOMER'S NEGLIGENCE OR INTENTIONAL ACTS OR, EXCEPT AS EXPRESSLY SET FORTH HEREIN, FOR ANY CLAIM AGAINST CUSTOMER 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 CUSTOMER. 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 Customer to third parties having products or services that may be of interest to Customer for use in conjunction with the Products or Services. Notwithstanding any Hart recommendation, referral, or introduction, Customer 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. If the Dispute remains unresolved after this meeting, either party may start mandatory nonbinding mediation under the commercial mediation rules of the American Arbitration Association ("AAA") or such other mediation process as is mutually acceptable to the parties.
- 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 and the Schedules, Attachments, and Exhibits hereto (including Hart-provided quotations signed by Customer 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 Customer 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 Customer purchase order, acknowledgment, or other Customer 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, UNLESS CUSTOMER IS A GOVERNMENTAL SUBDIVISION OF ANOTHER STATE, IN WHICH CASE THE LAWS OF THE STATE IN WHICH CUSTOMER IS A GOVERNMENTAL SUBDIVISION WILL CONTROL.
- 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 Customer's performance, the Customer, 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.** Customer 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. Customer 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, without Customer's consent. Customer will be notified in writing if Hart makes an assignment of this Agreement. Customer 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 Customer employment. Customer'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 that a material breach of the confidentiality provisions of this Agreement or restrictions set forth herein would cause irreparable injury to Hart for which monetary damages alone would not be an adequate remedy, and therefore Hart shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.
- 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

1. Compensation

Total Price for the initial term of the contract shall be a fixed, not to exceed amount of \$2,094,258.00 payable as follows and as per the terms of the Agreement.

A. Initial Term One-Time Costs – Total \$ 2,094,258.00

- I. Fifty five percent (55%) of all one-time cost total \$1,151,842 payable upon receipt of equipment.
- II. Twenty five percent (25%) of all one-time costs total \$523,564 payable upon completion of acceptance testing.
- III. Twenty percent (20%) of all one-time cost total \$418,852 payable upon completion of county November 5 Stanislaus County District Election
- IV. Initial term includes 1st year of Annual Maintenance costs, plus election programming.

B. Additional Term Annual Maintenance Costs – total \$96,005.00:

- I. Annual maintenance payable upon each calendar year at start of renewal term per the terms of the Agreement.

2. Method of payment

Upon submission of an invoice by Contractor, and upon approval of County's representative, County shall, within thirty days of receipt, endeavor to pay Contractor in arrears according to the milestones listed above.

3. Withholding of Payment

The County may withhold payment, in whole or in part, to protect the County for loss on account of any claims that are uncontested or have been finally determined by the court.

4. Budget Table

The County will pay for all costs and associated services as defined in the attached quote



Quote Number

00005432

Account Name

Stanislaus County, CA

Grand Total

\$2,094,258.00

Item	Description	Unit Price	Quantity	Total Price
Verity Scan	Digital ballot scanner	\$6,100.00	160	\$976,000.00
Verity Ballot Box	Ballot box w/ transport bag and privacy screens included with Verity Scan		160	
Secure Ballot Transport Bag	Bag for easy and secure removal and transport of ballots from ballot box	\$50.00	160	\$8,000.00
Verity Touch Writer w/ Access	Ballot marking device with accessibility	\$5,300.00	173	\$916,900.00
Verity Accessible Booth	Wheelchair-accessible voting booth w/ transport bag and privacy screens included with Verity Touch Writer w/ Access		173	
Okidata B430 Series Printer	Laser printer w/ starter cartridge included with Verity Touch Writer for ballot printing		173	
Printer Stand	Small table for printer included with Verity Touch Writer		173	
Verity Print	Paper ballot printing unit	\$5,875.00	14	\$82,250.00
Okidata B430 Series Printer	Laser printer w/ starter cartridge included with Verity Print for ballot printing		14	
Verity Build	Verity Build software; includes Verity Data	\$40,000.00	1	\$40,000.00
Verity Count	Verity Count software	\$13,500.00	1	\$13,500.00
Verity Central	Verity Central software (server)	\$50,000.00	2	\$100,000.00
Verity Central - Client	Verity Central software (client)	\$12,500.00	4	\$50,000.00
Verity Workstation	Workstation for Verity software w/ 5-year warranty; includes qty 1 backup Verity Count workstation	\$5,900.00	9	\$53,100.00
23" Monitor	Monitor for use with Verity Workstation		9	
Canon DR-G1130 Central Scanner	Central ballot scanner w/ 1-year warranty	\$10,000.00	6	\$60,000.00
Okidata C831 Printer	Color ballot printer w/ starter cartridge for use with Verity Build	\$4,000.00	2	\$8,000.00
Okidata B430 Series Printer	Laser printer w/ starter cartridge for report printing	\$380.00	8	\$3,040.00
vDrive	Flash memory card/audio card for use with Verity devices	\$66.00	500	\$33,000.00
Verity Key	Electronic security token	\$109.00	25	\$2,725.00
Battery Charger, 6 Bay	6-bay charger for Verity voting device battery	\$540.00	6	\$3,240.00
Battery Charger, 1 Bay	1-bay charger for Verity voting device battery	\$185.00	10	\$1,850.00
Verity Voting Device Battery	Rechargeable battery for Verity voting device	\$102.00	15	\$1,530.00
AutoBallot Kit	Barcode scanner kit for automatic Verity access code creation from VR/electronic poll book data	\$419.00	174	\$72,906.00
New Implementation Services	Includes training, acceptance testing, project management, and on-site support for the first two elections (November 2019 and March 2020) on the Verity voting system. Additional services, if required, must be purchased separately.	\$40,000.00	1	\$40,000.00
Election Day Support	Election Day Support for November 3, 2020 election.	\$4,540.00	1	\$4,540.00



Quote Number

00005432

Account Name

Stanislaus County, CA

Grand Total

\$2,094,258.00

Ballot

Production
ServicesBallot Production Services (English and Spanish only) for November 2020
Election. Additional languages, if required, must be purchased separately.

\$9,460.00

1

\$9,460.00

License and
Support

Annual license and support fee

\$96,005.00

1

\$96,005.00

Subtotal

\$2,576,046.00

Shipping and Handling (Estimated)

\$13,275.00

Solution Price

\$2,589,321.00

Special Discount

(\$495,063.00)

Grand Total

\$2,094,258.00

Bill To

1021 I St., Suite 101
Modesto, CA 95354

Ship To

1021 I St., Suite 101
Modesto, CA 95354

Customer Contact

Contact Name

Donna Linder

Email

linderd@stancounty.com

Phone

(209) 525-5211

General Information

Expiration Date

9/13/2019

Instructions

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

Payment Terms

Net 30

Terms and Conditions

Stanislaus County is considering the move to a Vote Center model after the 2020 Election Year. In support of this transition, Hart agrees to offer an equipment buy back and corresponding device conversion option for the Verity system. Beginning January 1, 2021 and no later than December 31, 2021:

1. Customer may elect to sell up to 62 Verity Scan units to Hart at \$1,840/unit. If executed, this buyback will be applied as credit to customer's account. Hart requires 30 days notice of intent to execute buyback prior to shipment of units to Hart. Credit for buyback will be applied to customer's account upon receipt of equipment and verification of working order by Hart. Buybacks executed after December 31, 2021 will be negotiated separately.
2. Customer may elect to convert up to 61 devices (23 Scans to Prints and 38 Touch Writers to Print) at the following rates through December 31, 2021:
 - Touch Writer to Print: \$330.00/unit
 - Scan to Print: \$1,250.00/unit

Subsequent License and Support will be billed annually per contract terms.

Delivery includes removal and salvage of customer's existing voting system at no extra charge.

Pricing subject to inventory availability at time of quote execution and acceptance.

Taxes will be calculated in conjunction with the Customer based on the final approved price list. Estimated tax is \$164,922.82.

Hart Approval

Prepared By

Karen Clakeley

Title

Director, Strategic Accounts

Signature

Customer Approval

Name:

Title:

County Clerk - Records, Registrar
of Voters b

Exhibit B

Hart Customer Support Contact Information and Hours

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

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

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Exhibit C

Definitions

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

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

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

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

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

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

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

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

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

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Exhibit D

HART PROPRIETARY SOFTWARE AND SUBLICENSED SOFTWARE

Hart Proprietary Software Licensed to Customer 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 Customer via annual subscription:

None

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Exhibit E

SCOPE OF WORK

1. Introduction

Pursuant to the requirements of the United States Election Assistance Commission, State of California and all applicable local regulations, Contractor shall provide the following system as described in the County of Solano's RFP #578-0314-19 and the requirements, specifications and terms and conditions of RFP #578-0314-19 including, but not limited to the following documents and exhibits:

- a. - Schedule A or Customer Signed quote for Initial Order
- b. - Hart Customer Support Contact Information and Hours
- c. - Definitions
- d. - Hart Proprietary Software and Sublicensed Software
- e. - Statement of Work

as set forth in the Solano County's contract dated June 12, 2019, and by this reference, made a part hereof.

This Scope of Work (SOW) defines the scope of work for Hart InterCivic, Inc. ("Contractor") to provide a comprehensive, modern voting system to design ballots, collect, count, tabulate and report votes for all elections administered by the Stanislaus County Registrar of Voters ("County"). The collection of components that make up the Contractor voting system shall be referred to as the "system."

- Precinct/Poll Place Ballot Scanners;
- Precinct/Poll Place accessible voting devices;
- Central Count High-Speed ballot scanners;
- Ballot on Demand
- Software components necessary to achieve the goals identified below;
- All accessories necessary to achieve the goals identified below.

2. Goals and Objectives

The system provided by Contractor will provide to the County a comprehensive system of software and hardware to provide a solution for ballot creation, tabulation, counting, accessible in-person voting, producing ballots on-demand.

All components of the system must be certified by the United States Election Assistance Commission (EAC). All components of the system must also be certified to the latest California Voting System Standards (CVSS) on the effective date of the Contract.

Additional specific operations and performance of the system components and responsibilities of the Contractor are identified in this Exhibit.

3. The system shall meet the following requirements:

- a. The Contractor shall provide to County a voting system that meets all Federal and State requirements for Election Administration in California including those contained in

California Elections Code (EC), the California Code of Regulations (CCR) and any guidance documents issued by the California Secretary of State, in each case in effect on the date of the Contract.

- b. All components of the system must allow the county to report election results using the fully automated "auto certification" of election results, as of date of contract.
- c. The system shall allow for the County to successfully conduct traditional polling place, vote center, or all-mail ballot elections utilizing central count scan and poll-place scan/tabulation.
- d. The system shall print on-demand at a poll place a full-face/complete ballot for a voter to manually mark and scan on a separate device.
- e. Provide true equality of access, with a standardized, uniform ballot for all voters.
- f. Accommodates the formatting of multiple-language official ballots and is designed to integrate additional languages with minimal preparation of, and modification to, the overall system. Languages available shall comply with current requirements under 1965 Voting Rights Act Sec. 203, and CA Code §14201 (which currently requires Stanislaus County to provide facsimile ballots and voting instructions in Spanish, Khmer, Punjabi, Syriac).
- g. Complies with the Help America Vote Act (HAVA) by including at least one piece of voting equipment per polling place or three per Vote Center that is accessible to all voters including those with visual and physical impairments. The accessible voting equipment allows voters to cast ballots privately and independently, as per HAVA.

4. The system shall also meet the following requirements in specific areas:

a. Ballot Design and Election Definition

- i. The ballot design and election definition system shall meet the following overall minimum requirements:
 - 1. Provide for a central database solution for election information for ballot design and election definition.
 - 2. Enable County staff to program, proof and print ballots, with no programming skills required and with no vendor help needed.
 - 3. Enable County staff to proof ballots, ballot types, districts, candidates, and poll place relationships with no vendor help needed.
 - 4. Enable County staff to generate and deploy election definitions to all media devices with no vendor help needed.
 - 5. Enable County staff to copy election definition from previous elections.
- ii. Include options that enable elections staff to design ballots and define elections to comply with specific and varied election needs with features that enable specific under vote rejections, write-in images printed at the polling place, and results printed by votes received.
- iii. The system shall provide a full-face/complete ballot for use by all voters with no separate or "non-standard" sized ballots required for voters with special accessibility needs.
- iv. The system shall provide election definitions that are universal and can be used in any vote capture device in the system and for any combination of precincts, including as few as a single precinct split or as many as all precincts for the election.

- v. Enable the creation of an automated test deck, so no hand-marking ballots for logic and accuracy testing is required.
- vi. Enable elections staff to make changes until the election definition is finalized and deployed – with What You See is What You Get (WSIWYG) ballot views and no programming skills required, and with no need to take ballot data to a separate application to see how the ballot will look. Staff must be able to use the software application to make corrections in real time.
- vii. Produces camera-ready images/art for production of sample ballots, official ballots, vote-by-mail ballots, provisional and facsimile ballots in all federally required languages as of the date of the contract. Provide the ability to output ballots and/or ballot images to a PDF file for third-party printers.
- viii. System must be certified to have paper ballots printed with Pro Vote Solutions, K&H printers or Runbeck Election Services.
- ix. Enable elections staff to build the election once for all components – for any voting type including both paper and audio ballots.
- x. Include multiple ballot templates for up to four-column ballots, with the ability to add rich text and images.
 - 1. Each template shall allow for forced column/paging as necessary by County staff.
 - 2. Images includes bit-map, JPEG, PNG, and GIF formats.
- xi. Allow up to 600 unique ballot choices (candidates and proposition options) to be defined for a single election, with the capability for each of these choices to be repeated on multiple ballot styles and across thousands of individual ballots.
- xii. Provide the ability to record audio and to import synthesized speech, with built-in text translation and audio recording. Text translations and audio recording are done within the application – no need to use separate applications.
- xiii. Handle preference voting, multiple choices for specified individual races.
- xiv. Support ballots of the following sizes:
 - 1. 8-1/2 x 11 inch (letter)
 - 2. 8-1/2 x 14 inch (legal)
 - 3. 8-1/2 x 17 inch (super legal)
 - 4. 8-1/2 x 20 inch
- xv. Capable of managing all types of contest and measure elections conducted by the County including but not limited to statewide "Top Two" primary/general, presidential primary, and recall. System is also capable of managing multiple elections simultaneously.
- xvi. Compatible with existing election information management system (DIMS) and maximizes efficiency by importing data used in election operations including but not limited to contest/candidate/measure management, ballot layout, vote-by-mail, voter registration, precincts, and polling places.
- xvii. Maximizes use of commercial off the shelf (COTS) hardware and/or software, where allowable by law. The system identifies all COTS equipment used, location within system hardware and software, manufacturer, and model number.

b. Central Count Scanning, Vote Capture and Ballot Adjudication

The system must include the following features for central count scanning. Central Count scanning is the scanning of any ballot at the main County office, and includes scanning Vote by Mail, poll ballots, provisional ballots and conditional voter ballots. Specifically, the system shall meet the following requirements:

- i. Have the capability of being used for Vote by Mail and other high-volume ballot processing.
- ii. Has a combination of high-speed and medium speed scanners to tabulate official ballots, vote-by-mail ballots, provisional ballots, CVR and poll place ballots.
 - 1. Six medium-speed scanners shall be included in the solution with a rated, documented processing speed of 5,000 17" double-sided sheets per hour.
- iii. The system shall not require presorting of ballots or any additional ballot "prep" steps for ballots to count. Ballots will be extracted from envelopes, barely flattened and void of preliminary review for damage, markings, missing pieces, or other steps to prepare for scanning.
- iv. The system shall accept batches of up to 200 ballots which include multiple precincts and ballot styles and/or multiple languages in the same batch.
- v. The system shall read all ballots programmed from the ballot creation system, printed from a certified vendor, or printed from the ballot on demand system without the use of a unique barcode on the ballot.
- vi. Scan two-sided and multipage ballots, including when pages become separated from each other, when pages are out of order, or when all pages are not returned. The system shall maintain proper auditing and accounting for balancing back to voter participation history (VPH).
- vii. Able to process any ballot style included in each election definition with a single scanner. Ability to accommodate multiple styles and precincts, without the need to pre-configure any scanner in the solution.
- viii. Ability to identify and electronically manage multiple precinct styles, regardless of the order in which ballots are batched. Ensure that only those ballots styles specific to the current election are recorded and tabulated. Reject ballots that are not printed for the election that is currently defined and open on the system.
- ix. The ability to read all ballots except in circumstances where a ballot literally cannot be imaged for exceptional reasons (missing a portion of the ballot), in which case scanning continues without interruption and without deletion of the entire batch. A report can be produced which identifies specific ballots in the batch that could not be read, with a plain language message to the operator. In addition, the reasons for the rejection, as well as the sequence number of the ballot, are identified in an easy-to-read report.
- x. Include plain-language annotations that describe how scanners processed voter marks.
- xi. Provide transparency and easy auditability, with the ability for elections staff to easily locate exactly the ballot images they need, and plain-language processing notes that clearly show exactly how voter selections are recorded.
- xii. Stores ballot images from all tabulating equipment provide; option for the County to enable/disable this functionality.
- xiii. Provide on-screen adjudication of scanned ballot images, enabling batch by batch resolution of questionable voter intent issues with clear, color-coded flags, with no need for ballots to be out stacked or re-scanned for further review or duplication.
- xiv. Identify ballots or portions of ballots requiring adjudication (write-ins, mismarks, overvotes, under votes, cross-over votes, blank ballots) per parameters set by the County.
- xv. Provide separate ballot adjudication workstations where County staff can review the ballot's digital image to record write-in votes or to reject voter write-in entries. An audit log, including the user name provided by the County, records all resolution decisions.

- xvi. Enable elections staff to override/adjudicate how the machine processed all marks captured by the system.
- xvii. Allows for ballot adjudication to take place at any workstation connected to the internal scanning network.

c. Poll Place Ballot Scanner

The County will deploy ballot scanners to all polling places and/or vote centers in the county. At a minimum, this device must:

- i. Capture and store full digital images of each ballot scanned.
- ii. Handle hundreds of ballot styles and be programmed to accept specific ballot styles or all ballot styles for the election.
- iii. Print ballot count totals or tabulated results at the polling place, including summary or precinct-by-precinct reports on a built-in thermal printer, using COTS paper rolls.
- iv. Automatically deposit scanned ballots directly into a secure ballot box.
- v. Allow a voter using an Accessible marking device to mark and print a ballot from one device, while casting the ballot on a completely physically separate device. Alternatively, if the system allows the ballot to be cast on the same device as printed, describe how the County can disable this functionality.
- vi. Scan both sides of a ballot in under five seconds and accept ballots header first, footer first, face up, or face down.
- vii. Be capable of scanning one-sided ballots, two-sided ballots, and multiple-page ballots while recording the event as one ballot cast.
- viii. Provide safeguards designed to prevent acceptance of multiple ballots at the same time (double feeds).
- ix. Comply with ADA standards in effect on the date of the contract, with controls in easy reach of users in wheelchairs.
- x. Provide customizable second-chance voting. Plain-language notices must alert the voter about possible problems such as overvotes and invalid marks and provide the voter the opportunity to correct their ballot. The device must enable elections officials to configure the system to display such second-chance options or not.
- xi. Support multiple languages, with instructions in all languages that have been defined for the election, both in written and audio form.
- xii. Display any voter-facing messages in the language of the ballot that is scanned on the device.
- xiii. Include multiple, built-in means of storing ballot images for auditing, backup, and recovery.
- xiv. Have the memory capacity to store a minimum of:
 - 1. 200 contests per ballot;
 - 2. 100 candidates per contest, 600 overall per ballot;
 - 3. 10,000 single-sheet ballots per voting event.
- xv. Connect to standard 3-prong 10-amp AC power outlets and include an uninterruptible power supply (UPS) and an internal, rechargeable battery capable of providing backup power for a minimum of two hours.
- xvi. Provide alerts if memory capacity is being reached.
- xvii. Display in plain-language whether the ballot was counted if a ballot jam occurs.
- xviii. Be compact for easy transport in typical private vehicles, and for flexible deployment by poll workers. Must be stackable for efficient storage. The storage

dimensions and weight of the tabulation device (with battery) must not exceed a weight of 35 lbs.

- xix. Contain design that promotes fast learning and easy setup by all poll workers regardless of prior elections or technical experience.
- xx. Provide access control restrictions for power button, activating voting, and closing polls. Also, allow for separate tamper-evident seals for main removable memory device that is capturing vote totals.

d. Poll or Vote Center Ballot Box Requirements

The ballot box provided by the system is designed for the poll place scanner to securely capture ballots that are cast and provide for easy to use mechanisms for poll workers to retrieve ballots at the close of the polls. In addition, the ballot box must meet the following minimum requirements:

- i. Be collapsible for easy transport in typical private vehicles, for flexible deployment by poll workers, and for efficient storage.
- ii. Accept scanned ballots deposited directly into the box by the portable digital ballot scanning/tabulation device.
- iii. Include a secure compartment for scanned ballots and a separate secure storage compartment for voted ballots that cannot be scanned until later (for example, due to loss of power).
- iv. Accommodate up to 4,000 sheets of 8-1/2 x 17-inch paper, with the ability to accept up to 1,000 additional ballots in the compartment for un-scanned ballots.
- v. Include the following physical access controls:
 - 1. Keyed locks to protect the main access door and all other points of access.
 - 2. Support for tamper-evident seals for the main access door and all other points of access.

e. Ballot on Demand

The system must include an integrated ballot on demand (BOD) system that meets the following requirements:

- i. The BOD components must print a full, mark-able, individual official ballot that looks and can be scanned/processed exactly like a regular printed official ballot.
- ii. The BOD system must be capable of producing poll ballots, provisional ballots, vote by mail ballots, replacement ballots, ballots for duplication, and conditional voter ballots.
- iii. The BOD system must produce the first ballot in under 15 seconds. Each subsequent ballot shall be produced in less than 10 seconds.
- iv. The BOD system must accept input to produce ballots from any precinct or ballot type created for the election. Users can call up the correct precinct or ballot type using either a manual input or from a barcode produced from the system used by the county.
- v. The County desires the BOD system to be incorporated with the accessible voting device to allow either function to be processed on the same device at a polling place or vote center.
- vi. The BOD system shall have components that have a small footprint for easy transportation to each polling location. For the BOD system for the County office, the printer can be larger to accommodate larger volumes of printing.

- vii. The BOD system shall have a daily use cycle of no less than 1,500 ballots. The Vendor should anticipate a single printer to experience printing 1,500 ballots per day.
- viii. The BOD system shall have the capability to operate for 2 hours in the event of a power failure.

f. Minimum system Security Requirements

Maintaining the integrity of all components of the system is critical. In addition to the security requirements identified in both EAC and SOS certification testing and the Use Procedures documents, the following minimum-security features shall be included:

- i. Protections from unauthorized access to data. All data must be encrypted and digitally signed for tamper evidence. If someone attempts to tamper with data, the system must be designed to alert elections staff.
- ii. Protections from unauthorized access to electrical power and network connectivity.
- iii. Enclosures that are designed to protect data during transportation and allow for tamper-evident notification for poll workers and observers to easily see that devices are secured throughout an election cycle.
- iv. Firmware security that is designed to protect against the loading or updating of firmware while the device is set for an election or is in election mode.

g. Results Reports

The system must provide access to vote totals in a variety of formats throughout the election cycle. The County believes that quick and routine access to updated results is important to achieve our goals for transparent and auditable elections. Typically, the County will update election results each hour on election night, followed by periodic updates throughout the canvass period. Report features need to be easy, repeatable, and conductible without support by the vendor. In addition, the following minimum requirements shall be met by the system:

- i. Provides rapid, versatile, and easily customizable reports in real or near-real time including but not limited to partial election returns throughout Election Night, Semifinal (unofficial) and Official Results, canvass reports (including Statement of the Vote, Supplemental Statement of the Vote), and Presidential Primary results by congressional district (as required by the SOS).
- ii. Allows for reporting tabulation results in near-real time in such manner that does not require elections personnel to manually prepare and post results-related information.
- iii. Organizes and exports data in a variety of formats including but not limited to TXT (delimited-separated), CSV, XLSX, PDF, html, and XML/EML that the County may upload to its website and provide to the Secretary of State, press/media, etc., with minimal intervention. The system will meet the accessibility/ADA standards for information intended for posting on websites as in effect on the date of the Contract;
- iv. Produces reports that facilitate verification (proofing) of the data extracted from County's EIMS related to contests, candidates, measures, ballot styles or types, ballot voting positions, precincts, and rotation schemes in such a manner that all imported election and ballot counting system settings may be verified.

- v. Allows for the County staff to conduct auto-transmitting of reports to the Secretary of State on an hourly basis throughout election night and each day after election night if the County decides to update result information
 - vi. Issues all result reports, ballot tally files, and audit logs in machine-readable and human-readable formats.
- h. Administration of all individual components by the County shall provide for the following features:
- i. The Contractor shall provide tools to allow the County to administer the software. Tools shall include the following capabilities:
 - 1. Access, edit, delete, enable and disable User accounts;
 - 2. Access, edit, and delete User assignments.
 - 3. Reset passwords on User Accounts
 - 4. Access, edit and delete election specific information including precincts, polling places, and assignments;
 - 5. Access administrative reports on system events;
 - ii. Include roll-based security for County staff to set various levels of access to the system depending on user role.
 - 1. Roles will include different roles to view courses vs. schedule courses.

5. Additional Support

- a. The Contractor shall provide updates to maintain software compliance with any applicable state or federal law, plus requested enhancements, in each case in accordance with the following:
 - i. Upon County's request, Contractor will determine the feasibility and cost of the required changes and advise the County of the total amount due for the update.
 - ii. Upon written approval to move forward with the changes and receipt from the County of the stated fees, Contractor will complete the required update.
 - iii. When updates are released, the Contractor shall provide updated documentation on all aspects of the system functionality.
 - iv. The Contractor shall provide additional documentation, if needed, through an on-line help file which will be updated with each software release.
 - v. The contractor shall provide proof of updated state certification before installing any such updates to the system.
- b. Technical Support:
 - i. Contractor shall provide appropriate and trained remote technical support throughout the implementation of the system as necessary for proper installation, training, operation, and use of all equipment, hardware, software, and materials supplied to County.
 - ii. Contractor agrees that it will continue to have available personnel competent to assistant with the software. Contractor also agrees that it will provide, at no charge, software upgrades for the system in accordance with the Agreement.

- iii. Contractor will provide telephone support to County as defined in Section 3.c below for the Initial year and each optional Renewal period of this contract for so long as the appropriate quantity of support licenses are maintained. This support will be by telephone and include the Contractor's escalation system for technical and service management.
 - iv. Contractor will provide pre and post-election support which will include performing an inspection and test of the system for readiness for the next election and that all tasks have been completed successfully. See itemized pricing in Exhibit A.
 - v. At the conclusion of each pre-election inspection, Contractor will provide an operator training refresher course for new and experienced operators.
- c. Support and Issue Response: Provided the appropriate quantity of support licenses are maintained, in the event the system fails to perform as required by this Contract (an "Issue"), the following Issue Response Procedure shall apply:
 - i. County will notify Contractor of any identified Issue as soon as possible. County will also provide the reasonable availability of a single point of contact to assist Contractor in resolving any Issue with the system.
 - ii. Upon notification of an Issue, County and Contractor by mutual agreement in good faith shall classify the severity of the Issue based on the levels detailed in Section 3.c.viii below. Contractor shall use commercially reasonable efforts to follow up with County with a telephone call or email response within 60 minutes upon notification of an Issue, subject to Section 3.c.viii below.
 - iii. During the follow-up telephone or email, Contractor shall provide County with an initial assessment of the Issue in conjunction with the proposed steps for the parties to mitigate the Issue.
 - iv. During the normal service time period (outside of 50 days prior to an election through one day past an election),
 - Contractor shall provide telephone support to County between the hours of 7:00 A.M. to 7:00 P.M., Monday through Friday, Central Time ("Standard Support Hours").
 - 1. Calls received outside of Standard Support Hours will be forwarded to the on-call Customer Support Consultant and best efforts will be made to respond to the call. All calls during Standard Support Hours, Early Voting Support Hours, Election Support Hours, or After Hours will go to 1-866-275-4278
 - 2. Contractor shall provide system support via e-mail that is monitored hourly during 7:00 A.M. to 7:00 P.M., Monday through Friday, Central Time. Emails received outside of this time frame will receive a response on the next business day.
 - v. During the fifty-day period preceding an election, Contractor shall provide telephone support to County between the hours of 7:00 A.M. to 7:00 P.M., Monday through Friday, Central Time ("Election Support Hours").

1. Calls received outside of Election Support Hours will be forwarded to Contractor's on-call Customer Support Consultant and best efforts will be made to respond to the call. All calls during Standard Support Hours, Early Voting Support Hours, Election Support Hours, or After Hours will go to 1-866-275-4278.
 2. Contractor shall provide email support monitored every thirty minutes between 7:00 A.M. to 7:00 P.M., Monday through Friday, Central Time. Emails received outside of this time frame will receive a response in accordance with the priority of the reported Issue in accordance with Section 3.c.viii below.
- vi. During early voting periods 14 days prior to an election day, Contractor shall provide telephone support to County between the hours of 7:00 A.M. to 7:00 P.M., Monday through Friday, Central Time ("Early Voting Support Hours").
1. Calls received outside of Early Voting Support Hours will be forwarded to the Customer Support Consultant and best efforts will be made to respond to the call.
 2. Contractor shall provide email support monitored continuously between 7:00 A.M. and 7:00 P.M., Monday through Friday, Central Time. Emails received outside of this time frame will receive a response in accordance with the priority of the reported Issue in accordance with Section 3.c.viii, below.
- vii. During the period 12 hours prior to voting polls opening and 24 hours after polls close, Contractor shall provide telephone support to County continuously during this time frame. Calls not answered immediately will be returned within 60 minutes.
1. Contractor shall provide continuously monitored email support during this time frame. Emails will receive a response in accordance with the priority of the reported Issue in accordance with Section 3.c.viii below.
- viii. Under this Incident Response Procedure, Contractor shall use commercially reasonable efforts to respond to Issues and requests submitted by County within the following time frames according to severity level to assist in the resolution:
1. Critical Priority: 0-60 minutes (during specific support hours)
 2. Significant Priority: within 24 business hours
 3. Minimal Priority: within five working days

6. Deliverable Schedule:

Contractor shall use commercially reasonable efforts to deliver access to the software, materials, testing, support and training defined in this Contract in accordance with the following schedule:

- All equipment – no later than 10 days after effective date;
 - On-Site Training – no later than 30 days after receipt of equipment;
 - Mock Election and Testing – at the conclusion of training.
 - Fully Operational – First Operational will be the November 5, 2019 Consolidated District Election.
- a. "Training" included with this Exhibit shall consist of the Contractor working with up to five (5) County users to conduct the following:

- i. Five Eight (8) days of on-site acceptance testing of all equipment.
- ii. Seven (7) complete days of system training and overview.
- iii. Two (2) days internal mock election to ensure all functions work as described in this Exhibit.

7. System Pick Up

- a. Contractor will pick up and salvage as per HAVA and State required guidelines, previous used ES&S voter tabulation equipment including:
 - i. Model 100 Precinct Count Scanner
 - ii. Automark Voter Assist Terminal
 - iii. Model 650 Central Count Scanner

8. Software License and Documentation:

- a. The software provided to County pursuant to this Exhibit, other than Third Party Software, shall remain the property of Contractor, and all such software is subject to the License granted to County pursuant to this section. All Third-Party Software shall remain the property of and is subject to the licenses granted by its third-party owner.

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ENTER AS MMM-YY (ALL CAPS FOR MMM) EX: NOV-11

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Totals:		2,094,258	2,094,258
Tip: This is not the end of the Template. Unprotect the sheet and insert as many rows as needed.			

Explanation: Increase revenue and appropriations to purchase elections equipment.			
Revenue provided by State Grant for Replacment of Voter Tabulation Equipment and Supplies per State Agreement #18G30150 and Federal HAVA funding			
Requesting Department		CEO	
Data Entry		Auditors Office Only	
Martin Rojas	Jewel Warr		Jian Ou-Yang
Prepared by	Supervisor's Approval	Keyed by	Prepared By Approved By
8/22/2019	8/29/2019		8/29/2019
Date	Date	Date	Date Date

Stanislaus County Registrar of Voters

Purpose:

Recommendation for purchase of voting system and award contract with Hart InterCivic, Inc.

Presented by:

Donna Linder – Clerk Recorder / Registrar of Voters
Tatjana Mendoza – Elections Manager

September 10, 2019

Voting System Selection Update:

- ROV required to replace decertified voting equipment before 2020 elections
 - Conducted demonstration of available systems for stakeholders
 - Requested quotes from certified vendors
 - Consulted with various counties regarding system choice
 - Conducted contract negotiations with selected vendor

ROV recommendation – Hart InterCivic system:

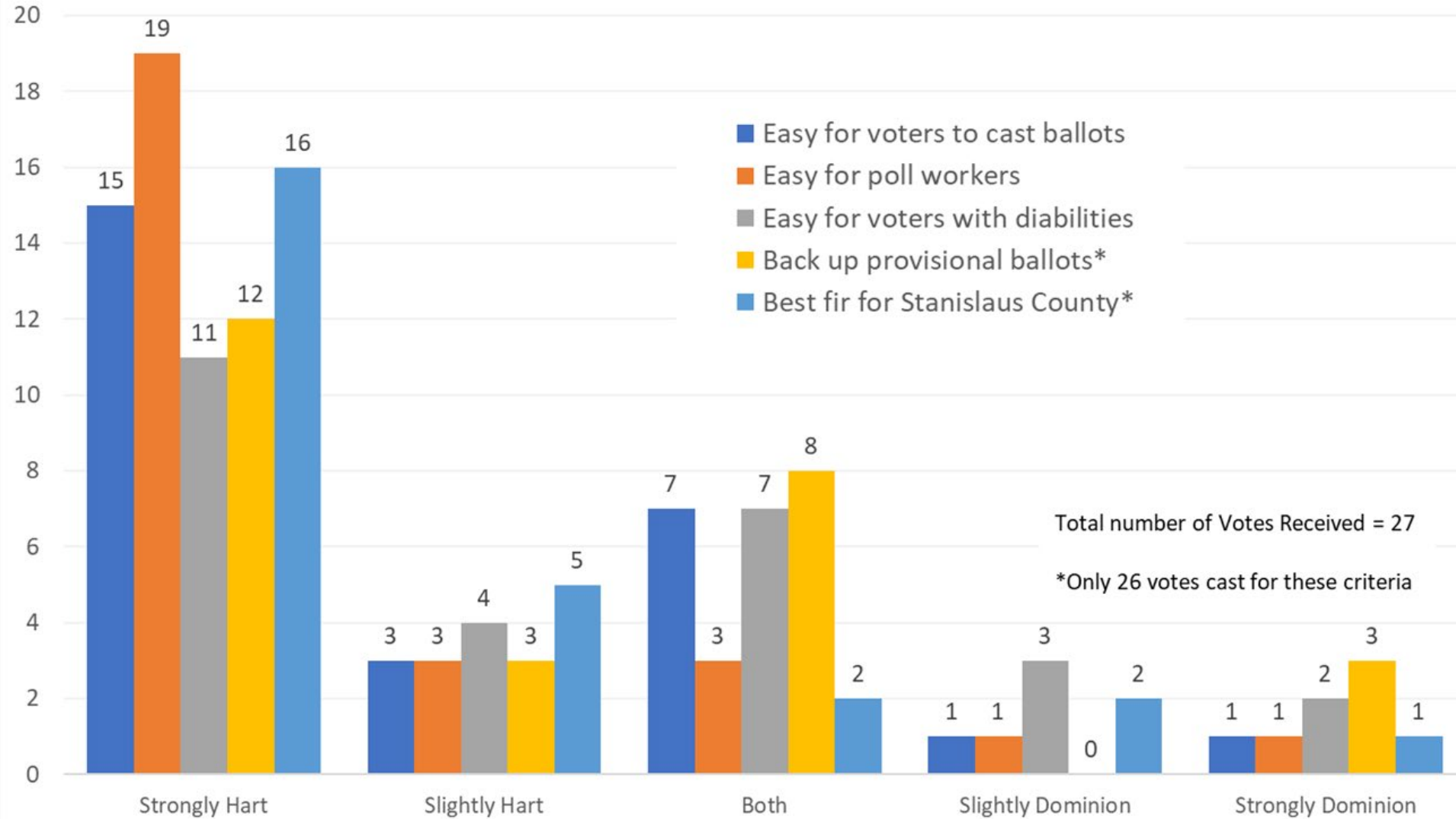
Hart InterCivic determined best fit for Stanislaus:

- Data security meets or exceeds state standards
- VBM, polling place votes, ADA accessible voting all have full-faced paper ballot
- Provides a compact system for pollworkers
- System meets Vote Center model should the County adopt the Voter's Choice Act
- Integration with existing systems will simplify staff and poll worker training

Recommendation explained:

**ROV Recommendation – Hart InterCivic
Stakeholders provided feedback during demonstration**

Voting System Demonstration Feedback Hart versus Dominion



Other jurisdictions using Hart:

California Counties:

- Calaveras
- Humboldt
- Lake
- Mendocino
- Nevada
- Orange
- San Joaquin
- Sierra
- Solano
- Trinity
- Yolo

Other States:

- Colorado
- Hawaii
- Idaho
- Illinois
- Indiana
- Kentucky
- Michigan
- Minnesota
- Mississippi
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Tennessee
- Texas
- Washington



Next steps to prepare for 2019 election:

May 2019	Conduct stakeholder vendor demonstration
June 2019	Requested initial quotes from certified vendors
July 2019	Evaluated and reviewed equipment needs
August 2019	Negotiated contract with selected vendor Hart InterCivic
September 2019	Seek Board of Supervisors approval
September 2019	Receive and conduct acceptance testing of equipment
October 2019	Conduct equipment training for staff and poll workers
October 2019	Notify the voters of equipment upgrade
November 5, 2019	Conduct the 2019 Consolidated District Election

Voting system costs FY19/20:

Category	Actual cost:
1) Poll place ballot scanner and accessible voting stations:	\$2,016,175
2) Central count tabulators and software:	\$409,866
3) Professional services and additional supplies:	\$150,005
4) Miscellaneous:	\$13,275
5) Negotiated discount:	-\$495,063
Total Voting System Project Costs:	\$2,094,258
State funding:	\$1,570,693
Federal (HAVA) funding:	\$523,565
Net County Cost:	\$0

Voter's Choice Act (VCA)

- The Voter's Choice Act was signed into law in 2016
- Voters choose how, when and where they cast a ballot:
 - Each registered voter is mailed a ballot
 - Voters can cast ballot at any Vote Center up to 10 before election
 - Voters return ballots by either mail, using drop off locations or visiting any Vote Center throughout the County
 - Polling places are replaced by Vote Centers strategically located throughout the County, allowing for a 10-day in-person voting option
 - Voters will have the opportunity to obtain their precinct-specific ballot from any Vote Center

VCA vs. Polling Place Equipment Costs:

Category	Polling Place Cost:	VCA Cost:
1) Poll place ballot scanner and accessible voting stations:	\$2,016,175	\$1,635,510
2) Central count tabulators and software:	\$409,866	\$395,520
3) Professional services and additional supplies:	\$150,005	\$139,882
4) Miscellaneous:	\$13,275	\$11,475
5) Negotiated discount:	-\$495,063	-\$415,701
Total Voting System Project Costs:	\$2,094,258	\$1,766,686
Difference:	\$327,572	
Hart Buy Back Option (62 Machines x \$1,840/unit):	-\$114,080	
Net Difference:	\$213,492	

Location costs

VCA Location Cost

Includes Data from VCA Counties

LOCATIONS	DAYS	Average Cost	Rent Cost
5	11	\$150.00	8,250.00
20	4	\$150.00	12,000.00

2018 Polling Place Location Cost (maximum)

# Polls	Days	Average Cost	Polling Place Cost
145	1	\$40.00	\$5,800

Staffing costs

VCA Staffing Costs

LOCATIONS	DAYS	Hours	Staffing	Total Staffing
5	7	8	4	16,800.00
5	3	8	6	10,800.00
5	1	15	8	9,000.00
20	3	8	6	43,200.00
20	1	15	8	36,000.00
Wage Per Hour			\$15.00	\$115,800.00

Poll Worker Costs

LOCATIONS	DAYS	2018 Poll Worker Actual Budget
145	1	\$74,316

Cost difference between VCA and polling place

Projected VCA Costs	\$136,050
Required VCA postcards	\$147,440
2018 Polling Place Cost	\$80,116
Total Cost Difference	\$203,374

Stanislaus 2019 and 2020 Elections

- Drop boxes will be placed at most City Clerk offices throughout the county
- Satellite offices open four days to serve any voter in Stanislaus County:
 - 1 in 2019
 - 4 in 2020

Concluding – Board action

Approve ROV recommendation:

- Approve the contract with Hart InterCivic, Inc. (Hart) to provide replacement voting equipment, support and professional services effective September 10, 2019, in the amount of \$2,094,258, authorizing the Chairman of the Board to sign the agreement
- Authorize the Auditor-Controller to increase revenue and appropriations in the Clerk-Recorder budget



Questions?