

Contract MA-031-24011168
with
Hart InterCivic, Inc.
for
Verity System Maintenance, Support, and Services

This Contract MA-031-24011168 (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (hereinafter referred to as “County”), and Hart InterCivic, Inc., with a place of business at 3800 Quick Hill Rd. Bldg. 1, Austin, TX 78728 (hereinafter referred to as “Contractor”), with County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Compensation/Payment
Attachment C – Master Preferred Escrow Agreement and Preferred Beneficiary Acceptance Form

RECITALS

WHEREAS, on September 10, 2019, the County Board of Supervisors authorized the Parties to execute Contract MA-031-20010105 for Software, Firmware, and Hardware Maintenance, Support, and Services of Hart InterCivic Voting System (“Verity System”); and

WHEREAS, in August 2020, County purchased additional Verity System Hardware through PO-031-21010252; and

WHEREAS, Contract MA-031-20010105 is expiring and County would like to continue receiving maintenance of the Verity System; and

WHEREAS, the Parties are entering into this Contract for Verity System Maintenance, Support, and Services of the previously purchased Verity System; and

WHEREAS, Contractor agrees to provide Verity System Maintenance, Support, and Services to County as further set forth in Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the fees as set forth in Compensation/Payment, attached hereto as Attachment B; and

WHEREAS, County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for Verity System Maintenance, Support, and Services with Contractor; and

WHEREAS, the Parties mutually agree as follows:

DEFINITIONS

Definition, Acronyms, and Abbreviations: Unless otherwise specified, the following capitalized terms shall be given the meanings below:

- a. **Commercial Software** – third party Software developed or regularly used that is not Hart Proprietary Software and: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- b. **Goods** – All types of tangible personal property, including, but not limited to, materials, supplies, and equipment (including computer and telecommunications equipment).
- c. **Hardware** – A complete, inclusive term to represent all hardware items provided by Contractor. This includes any voting device, accessory to voting device, direct record electronic, ballot-marking device, card programming device, and other hardware.
- d. **Hart Hardware** – means Contractor-provided Hardware not including Third Party Hardware.
- e. **Hart Proprietary Software** – means Contractor provided Software that does not meet the definition of Commercial Software.
- f. **Information Technology** – Includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- g. **Intellectual Property Rights** – Intellectual property rights as may exist anywhere in the world, including without limitation rights in trade secrets, trademarks, copyrights, and patents.
- h. **Services** – The work to be performed by Contractor under this Contract as stated in Attachment A.
- i. **Software** – An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by Contractor.
- j. **Third Party Hardware** – Hardware, which is provided by Contractor that was not developed, manufactured or assembled by Contractor.
- k. **Verity Software** – Commercial Software and Hart Proprietary Software.
- l. **Verity System** – The voting system comprised of Hart Hardware, Verity Software, Commercial Software, and Third Party Hardware.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue

shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

- B. **Entire Contract:** This Contract contains the entire contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein. Electronic acceptance of any additional terms, conditions or supplemental contracts by a Party's employee or agent, including but not limited to installers of software, shall not be valid or binding on a Party unless accepted in writing by such Party's authorized Purchasing Agent or designee. The use of preprinted customer forms, such as purchase orders or acknowledgments, in connection with the Contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by both Parties in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. During the period for inspection and acceptance testing as specified in Paragraph 37, County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in accordance with Paragraph 37.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) except as set forth in Paragraph 37 below, acceptance shall not be deemed complete unless in writing, and 2) payment shall be made in arrears after acceptance in accordance with the Contract. Upon County's acceptance, any defects in material or workmanship shall be addressed pursuant to the warranty in Article G below.
- G. **Warranty:**
1. Unless otherwise specified in the Scope of Work and unless the Contract is terminated for uncured failure to pay for the applicable Goods (in which case the warranty shall terminate as of termination of this Contract), the warranties in this Paragraph G begin upon delivery of the Goods or services in question and continue for one (1) year.

Contractor warrants that (i) the Hart Hardware furnished hereunder will substantially conform to the performance specifications in the Verity System Operator's Manuals for

the Hart Hardware applicable at the time of the installation and (ii) the Hart Hardware will be free from material defects in materials and workmanship. Where the Contract calls for delivery of Hart Proprietary Software, Contractor warrants that such Software shall perform in substantial accordance with the then-current functional specifications described in its accompanying documentation. County's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

Contractor warrants that Hart Hardware and Hart Proprietary Software furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any Intellectual Property Rights, provided that Contractor's sole obligation with respect to a breach of (ii) and County's sole and exclusive remedy is indemnification for third party claims in accordance with Paragraph Z. Without limiting the generality of the foregoing, if harmful code is present in any Software delivered hereunder, Contractor will, upon County's request, provide a new or clean install of the Software.

Contractor will, at its sole discretion, replace or repair any Hardware that does not comply with this warranty, at no additional charge to County. Contractor may elect to conduct any repairs at County's site, Contractor's facility, or any other location specified by Contractor. Any replacement Hardware provided to County under this warranty may be new or reconditioned. Contractor may use new and reconditioned parts in performing warranty repairs and building replacement products. If Contractor repairs or replaces Hardware, its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired Hardware. Contractor owns all replaced Hardware and all parts removed from repaired products. The Hardware warranty does not cover any Hardware that has had the original identification marks and/or numbers removed or altered in any manner. The Hardware warranty does not include any type of routine maintenance service or preventative maintenance service. This warranty may be extended after the initial period under separate Extended Hardware Warranty agreements.

County must report a failure to conform to the Hart Proprietary Software warranty in writing. Contractor shall 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.

To request warranty service for Hardware or Hart Proprietary Software, County must contact Contractor in writing within the warranty period. County acknowledges and agrees that the warranties in this Paragraph G are contingent upon and subject to County's proper use of the Verity System and the exclusions from warranty and support coverage set forth below.

2. Unless otherwise specified in the Scope of Work:

Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption or that all errors or defects will be corrected.

Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by County or third parties, unless such

modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by County.

3. Additionally, the warranties under this Paragraph G and Software Support do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) County's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of incompatible media, supplies, parts, or components; (c) use of equipment or software not supplied or authorized by Contractor; (d) 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); (e) failure to maintain proper site specifications and environmental conditions; (f) negligence, accidents, abuse, or neglect (g) use in a manner not authorized by this Contract or use inconsistent with Contractor's specifications and instructions; (h) use of software on Equipment that is not in good operating condition; (i) negligent acts of County, its agents, servants, employees, or any third party; (j) servicing or support not authorized by Contractor; or (k) Force Majeure. In any case where Hart Proprietary Software interfaces with third party software, including but not limited to, County's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems, Contractor 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. Contractor will also not be responsible for the proper operation of any Software running on County's computer equipment, should County install a new computer operating system on said equipment without advising Contractor of such changes and receiving Contractor's written approval. Contractor 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 County requests Contractor's review and approval of any system changes outside the original system specifications at the time of the original acceptance date of this Contract. Contractor reserves the right to charge for repairs on a time-and-materials basis at its then-prevailing rates, plus expenses, and for replacements at its list prices caused by these exclusions from warranty and support coverage.
 - a. CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THIRD PARTY HARDWARE AND COMMERCIAL SOFTWARE, IF ANY, PROVIDED BY CONTRACTOR TO COUNTY, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSSED TO COUNTY "AS IS," OTHER THAN AS MAY BE PROVIDED IN ANY PASS-THROUGH WARRANTY DESCRIBED BELOW. CONTRACTOR HAS NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY HARDWARE AND COMMERCIAL SOFTWARE, IF ANY, PROVIDED BY CONTRACTOR'S DISTRIBUTORS OR OTHER THIRD PARTIES TO COUNTY. Where Contractor resells Commercial Software or Third Party Hardware it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to County on a non-exclusive basis without recourse to Contractor, will reasonably cooperate in enforcing them, and shall facilitate the available remedies with the third party provider. County agrees to look solely to the warranties and remedies, if any, provided by the third-party provider. Such warranty pass-through will not relieve Contractor from Contractor's warranty obligations set forth above.

4. All warranties shall inure solely to County, its successors, and assigns.

Except as may be specifically provided in Attachment A, Scope of Work, or elsewhere in this Contract, for any breach of the warranties provided in this Paragraph G, County's exclusive remedy and Contractor's sole obligation will be limited to:

- a. re-performance, repair, or replacement of the nonconforming Deliverable or service.
- b. If Hart Hardware is required to be reconfigured, modified, or otherwise changed after its sale to and installation at County's location due to County's or a local, state, or federal government certification change(s) or due to any statutory changes or new requirements, Contractor will determine the feasibility and cost of the required changes and advise County of the total amount due for those Hart Hardware changes. Upon written approval to move forward with the changes and receipt from County of the stated fees, Contractor will complete the required changes to County's Hart Hardware.

5. Except for the express warranties specified in this section, Contractor makes no warranties either express or implied and disclaims all implied warranties, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims in accordance with the more specific requirements contained in Paragraph "Z" below.

I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, no consent is required in connection with any assignment by Contractor to an affiliate or in connection with any merger, reorganization, consolidation, amalgamation, sale of assets or similar transaction, except where the transaction results in headquarters of Contractor, or its parent or holding company, being located in a country that is subject to export or import controls as listed in 15 CF Part 740, Supplement 1, Country Group D or E.

In such case, County may require consent, which shall not be unreasonably withheld, conditioned or delayed.

J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause shall be defined as a material breach of contract, misrepresentation or fraud on the part of Contractor.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract in accordance with Paragraph G above. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, and shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in each case connection with Contractor's performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Provisions:** Prior to the provision of services under this Contract, Contractor agrees to carry all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage current, provide Certificates of Insurance, and endorsements to County during the entire term of this Contract.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by County's Risk Manager, or designee. County reserves the right to require current audited financial reports from Contractor. If Contractor is self-insured, Contractor will indemnify County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this Contract.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, CEO/ Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned, and hired vehicles	\$1,000,000 combined single limit each accident
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per accident or disease
Network Security and Privacy Liability	\$1,000,000 per claims-made
Technology Errors and Omissions	\$1,000,000 per claims-made \$2,000,000 aggregate

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the County of Orange its elected and appointed officials, officers, employees,

and agents as Additional Insureds, or provide blanket coverage, which will state As Required by Written Contract.

- 2) A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that Contractor's insurance is primary, and any insurance or self-insurance maintained by County shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees, and agents** or provide blanket coverage, which will state **As Required by Written Contract**.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributory endorsement evidencing that Contractor's insurance is primary, and any insurance or self-insurance maintained by County shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees, and agents** when acting within the scope of their appointment or employment.

Contractor shall provide thirty (30) calendar days prior written notice to County of any policy cancellation or non-renewal and ten (10) calendar days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which County may suspend or terminate this Contract.

If Contractor's Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Contractor shall agree to the following:

- 1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.
- 2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract services, Contractor must purchase an extended reporting period for a minimum of three (3) years after expiration or earlier termination of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to:
County of Orange

c/o: Registrar of Voters
Attn: Procurement
1300 S. Grand Ave. Bldg. C
Santa Ana, CA 92705

If Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by County, County may terminate this Contract for cause.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- Q. **Change In Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract where consent is required, and County agrees to an assignment of the Contract, the assignee shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them in accordance with the Contract.

In addition, Contractor must notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also must notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor must provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to Contractor, this obligation shall apply to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties nor deemed to have violated its obligations under the Contract during or as a result of any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any commercially reasonable and available remedies.
- S. **Confidentiality:**

1. County Information

Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

2. Contractor Information

(a) Confidentiality. To the extent allowed by the California Public Records Act, Government Code §7920, et seq., County will keep in confidence and protect Contractor Confidential Information from disclosure to third parties and restrict its use to uses expressly permitted under this Contract. "Contractor Confidential Information" means any information related to Contractor'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. Contractor Confidential Information includes, without limitation, all Verity Software, the documentation and support materials. Contractor Confidential Information will be deemed to exclude any particular information that, as evidenced by written documentation: (1) is already known to County without restrictions at the time of its disclosure by Contractor or a third party; (2) after its disclosure by Contractor or a third party, is made known to County without restrictions by a third party having the right to do so; (3) is or becomes publicly known without violation of this Contract or any other confidentiality obligation; or (4) is independently developed by County without reference to Contractor Confidential Information. Except to the extent otherwise required by applicable law, County will keep in confidence and protect Contractor Confidential Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Contract and shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Verity System and the other Contractor Confidential Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Contract. County shall keep the Verity Software and all tapes, diskettes, CDs, and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable County to use the Verity Software.

(b) Return of Confidential Information. Upon termination or expiration of this Contract or, if earlier, upon termination of County's permitted access to or possession of Contractor

Confidential Information, and except as otherwise permitted by any surviving license, County shall return to Contractor all copies of the Contractor Confidential Information in County's possession (including Contractor Confidential Information incorporated in software or writings, electronic and hard copies). Upon any termination of County's license or sublicense of Verity Software, County shall immediately discontinue all use of the Verity Software and return to Contractor or destroy at Contractor's option, the Verity Software, including firmware (and all related documentation (electronic and hard copy)) and all archival, backup, and other copies of Verity Software, including firmware, and documentation, and provide certification to Contractor of such return or destruction. Return or destruction may include hard drives and/or component flash drive devices. County will inform its employees and other agents and contractors of their obligations under this Section and shall be fully responsible for any breach thereof by such personnel. The parties agree that a material breach of the confidentiality provisions of this Contract or restrictions set forth herein would cause irreparable injury to Contractor for which monetary damages alone would not be an adequate remedy, and therefore Contractor 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.

(c) Public Records Act Requests. Contractor acknowledges that, pursuant to California law, all information provided by Contractor pursuant to this Contract is subject to California Public Records Act, Government Code §7920, et seq., and may be subject to disclosure. County will attempt to notify Contractor if disclosure is requested of information that Contractor has indicated is Contractor Confidential Information, to give Contractor an opportunity to seek a court order prohibiting disclosure of such information. However, due to the short statutory time period of County's responses to request for public records, County will be able to give Contractor only a short period of time in which to seek such a court order before County will be required to disclose the requested information. Further, it is Contractor's responsibility to assert that information Contractor believes is Confidential Information should not be disclosed; County will not make such a claim for Contractor, but will obey a valid court order obtained by Contractor prohibiting disclosure of such information.

- T. **Compliance with Laws:** Contractor covenants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all local, state and federal standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all third party liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to County's express receipt, Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, which approval may not be unreasonably withheld or delayed, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any third party claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. As to Hart Hardware or Hart Proprietary Software that is subject to a claim of infringement or misappropriation, Contractor may (a) obtain the right of continued use of the Hart Hardware or Hart Proprietary Software for County or (b) replace or modify the Hart Hardware or Hart Proprietary Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Contractor, any applicable Software license and its charges will end, County will cease using the applicable Hart Hardware and Hart Proprietary Software, County will return to Contractor all applicable Hart Hardware and return or destroy all copies of the applicable Hart Proprietary Software, and County will certify in writing to Contractor that such return or destruction has been completed. Upon return or Contractor's receipt of certification of destruction, Contractor will give County a credit for the price paid to Contractor for the returned or destroyed Hart Hardware and Hart Proprietary Software, less a reasonable offset for use and obsolescence This Paragraph states Contractor's

entire liability and County's sole and exclusive remedies for infringement and other violations of intellectual property rights.

- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to County's project manager.

- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which Contractor shall provide Verity System Maintenance, Support, and Services to County, as further detailed in Attachment A, Scope of Work.
2. **Term of Contract:** This term of this Contract shall commence on September 11, 2024, and shall be effective through and including September 10, 2029, unless otherwise terminated by County. This Contract may not be renewed.
3. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without the prior written approval of the County assigned Deputy Purchasing Agent.

4. **Americans with Disabilities Act:** Section 504 of the Rehabilitation Act of 1973, as amended; Title VI and VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.
5. **Breach of Contract:** The material failure of either Party to comply with any of the provisions, covenants, or conditions of this Contract shall be a material breach of this Contract. In such event the non-breaching party may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - 1) Afford the breaching party written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and if the breach is not cured within that time, terminate the Contract, provided that if such a notice is issued by Contractor within ninety (90) days of a scheduled County election, then County has until forty-five (45) days following the election to cure the breach and avoid termination by Contractor; no termination by Contractor can take place after a primary election until forty-five (45) days after the general election for the same calendar year.
 - 2) In the case of breach by Contractor, discontinue payment to Contractor for and during the period in which Contractor is in breach; and
 - 3) In the case of breach by Contractor, offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act of 1990; and other applicable state and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex, or disability.
7. **Conditions Affecting Work:** Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s), or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract.
8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and Services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone communications, and fax communications while on County sites during the performance of work and services under this Contract.
11. **Contractor Personnel Reference Check:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
12. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This project manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld.

Contractor's Project Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project timelines. Key personnel are those individuals who report directly to Contractor's Project Manager.

13. **Data – Title To:** All materials, documents, data, or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data, or information, including copies, must be returned to County at the end of this Contract.
14. **Debarment:** Contractor certifies that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction by any federal department or agency.
15. **Disputes – Contract:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
 - a. Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 - b. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount

requested accurately reflects the Contract adjustment for which Contractor believes County is liable.

- c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the provision of services under this Contract. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.
- d. Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If County does not render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this section shall be construed as affecting either Party's right to terminate the Contract for Breach of Contract pursuant to Paragraph 5 of Additional Terms or County's right to terminate as stated in Paragraph K herein.
- e. Nothing in this Section shall prohibit the Parties from pursuing any other remedies at law, in equity or otherwise specified in this Contract.

16. **Drug-Free Workplace:** Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and Contractor may be ineligible for award of any future County contracts if County determines that any of the following has occurred:

- 1) Contractor has made false certification, or

- 2) Contractor violates the certification by failing to carry out the requirements as noted above.
17. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and the Contract number.
18. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation, or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay, or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

19. **Errors and Omissions:** All reports, files, and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Contractor Project Manager, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction without payment of additional compensation.

20. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
21. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
22. **Liquidated Damages:** It is agreed by and between the Contractor and the County that if the units of the Verity System, are not delivered as per the phased delivery schedule set forth as Attachment A for reasons other than County's breach or force majeure, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County, as County's sole and exclusive remedy for the delay, liquidated damages in a set amount of \$1,000 for each and every day of delay in excess of thirty (30) days beyond the schedule set forth on Attachment A, until delivery, provided that for the final delivery, the liquidated damages shall begin to accrue after a fifteen (15) day delay.
- In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this Contract. This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.
- If Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays cause by the County, the time of performance of this Contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension. If this Contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.
23. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through County's Project Manager.
24. **Nondiscrimination – Statement of Compliance:** Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Sections 11102 and 11103.

25. **Notices:** Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Hart InterCivic, Inc.
Attn: CEO
3800 Quick Hill Rd. Bldg. 1
Austin, TX 78728

County Registrar of Voters
Attn: Deputy Purchasing Agent
PO Box 11298
Santa Ana, CA 92711
cc: Christina.Morales@ocvote.gov
cc: Kimberly.Hostler@ocvote.gov

25. **Ownership of Documents:** County has permanent ownership of all outputs of the Verity System created in its operation by County. All such documents, reports, and other incidental or derivative work or materials shall become and remains the sole property of County and may be used by County as it may require without additional cost to County.
26. **Precedence:** The Contract documents consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
27. **Project Manager, County:** County shall appoint a project manager to act as liaison between County and Contractor during the term of this Contract. County's Project Manager shall coordinate the activities of County staff assigned to work with Contractor.

County's Project Manager shall have the right to require the removal and replacement of Contractor's Project Manager and key personnel. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

28. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps, or graphs, including graphic at work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, a partnership, company, corporation, or agency, without prior written approval by County, except as necessary for the performance of the services of this

Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc. are to be administered only by County unless otherwise agreed to by both Parties.

29. **Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County's Project manager and Contractor's Project Manager will meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
30. **Subcontracting:** In the event that Contractor is authorized by County to subcontract, this Contract shall prevail and the terms of the subcontract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which County expects to receive services, County shall look to Contractor for performance and not deal directly with any subcontractor. All matters related to this Contract shall be handled by Contractor with County; County will have no direct contact with the subcontractor in matters related to the performance of this Contract. All subcontractor work must meet the approval of County. Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of County under this Contract.
31. **Substitutions:** Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
32. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. Contractor agrees to supply services and/or commodities requested, as needed by County, at rates/prices listed in the Contract, regardless of quantity requested.
33. **Waivers – Contract:** The failure of a Party in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
34. **Rights in Work Product:**
- a. County acknowledges and agrees that the design of the Verity System, 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, bug fixes, updates, trade secrets and material are the property of Contractor and its licensors. County agrees that the sale of the Hardware and license of the Verity Software does not, other than as expressly set forth herein, grant to or vest in County any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Contractor with respect to the Verity System, are the sole and absolute property of Contractor and its licensors. County shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Product(s), or copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Contractor. Further, County shall not remove any trademark, copyright, or other proprietary or restrictive notices contained on any Contractor 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, bug fixes, updates, and trade secrets developed by Contractor personnel (alone or jointly with others, including State) in connection with Confidential Information, Verity System, and Verity Software will be the exclusive property of Contractor and its licensors.

- b. County may propose, suggest, or recommend changes to the Products at any time. Such proposals, suggestions, or recommendations will become Contractor's property and are hereby assigned to Contractor. Contractor may include any such proposals, suggestions, or recommendations, solely at Contractor's option, in subsequent periodic Product updates, without restriction or obligation. Contractor is under no obligation to change, alter, or otherwise revise the Products according to County's proposals, suggestions, or recommendations.
 - c. If County possesses or comes to possess a licensable or sub-licensable interest in any issued patent with claims that read upon the Verity System, its method of operation, or any component thereof, County hereby grants and promises to grant a perpetual, irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Contractor permitting Contractor to make, have made, use, and sell materials or services within the scope of the patent claims.
 - d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by Contractor or jointly by Contractor and County may be used by either Party without obligation of notice or accounting.
 - e. This Contract shall not preclude Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to County pursuant to this Contract.
35. **Software License:** Contractor hereby grants to County and County accepts from Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable (other than for an uncured breach of subdivision (e) of Paragraph 35), royalty-free, non-exclusive, non-transferable (except as expressly permitted herein) license to use the Verity Software.
- a. The rights and restrictions set forth in this paragraph shall survive the expiration or termination of this Contract, provided that the license for a component of the Verity System shall not survive if this Contract is terminated by Contractor for an uncured breach by County of its obligation to pay for the licensed component. In the event that Contractor terminates the Contract for breach or purported breach of a County payment obligation and County disputes the basis for such termination, at County's request, Contractor will establish an account into which County shall fund any disputed payments, with the disbursement of funds to be resolved following resolution of the dispute. So long as County works in good faith with Contractor with respect to escrowing such disputed funds, County's license will continue pending resolution of the dispute.
 - b. County may use the Verity Software in the conduct of its own business, and any division thereof, to conduct elections.
 - c. With this right to use, Contractor will provide County, and County will be permitted to use, only the run-time executable code and associated support files of the Verity Software for County's internal data processing requirements as part of the Verity System. The Verity

Software may be used only on the Hardware comprising the Verity System or other computer systems authorized by Contractor in writing. County's use of the Verity Software will be limited to the number of licenses acquired by County. Only County and its authorized employees, agents or contractors may use or access the Verity Software. For applicable components, voters are also authorized to interact with the Verity Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election.

- d. Compliance. Upon Contractor's written request, County shall certify as to its compliance with this Paragraph 35.
- e. Restrictions.
 - i. The Hart Hardware and Hart Proprietary Software are designed to be used only with each other and/or the agreed-upon Commercial Software and Third Party Hardware. To protect the integrity and security of the Verity System, County shall comply with the following practices and shall not deviate from them without the express written consent of Contractor: (i) County shall use the Verity Software and Hardware only in connection with the Verity System, and County may only use Contractor branded or approved peripherals and consumables with the Verity System.; (ii) County shall not install or use other software on or with the Hardware or Verity Software or network the Hardware or Verity Software with any other hardware, software, equipment, or computer systems; and (iii) County shall not modify the Hardware or Verity Software. If County does not comply with any provisions of this Section, then (i) the limited warranties and the licenses and sublicenses granted above will automatically terminate; (ii) Contractor may terminate its obligation to provide Software Support Services; (iii) Contractor will have no further installation obligations. Furthermore, if County uses the Verity Software and/or Hardware in combination with other software and equipment (other software or equipment being those not provided by Contractor or its designees), and the combination infringes Contractor proprietary patent claims outside the scope of the software license granted to County, Contractor reserves its rights to enforce its patents with respect to those claims.
 - ii. County shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Verity Software. County shall not use any Verity Software for application development, modification, or customization purposes, except through Contractor.
 - iii. County shall not assign, transfer, sublicense, time-share, or rent the Verity Software or use it for facility management or as a service bureau serving others outside of the jurisdiction. This restriction does not preclude or restrict County from contracting for election services for other local governments located within County's jurisdictional boundaries. County shall not modify, copy, or duplicate the Verity Software. All use of Verity Software and Hardware on which the Verity Software resides shall take place and be for activities within County's jurisdictional boundaries, except for in cases of joint elections conducted cooperatively with neighboring jurisdictions. All copies of the Verity Software, in whole or in part, must contain all of Contractor'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 Verity Software provided to County. County shall notify Contractor of the following: (i) the location of all Verity Software and all copies thereof and (ii) any circumstances known to County regarding any unauthorized possession or use of the Verity Software.

36. Protection of Proprietary Software and Other Proprietary Data:

- a. County agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for County's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of Contractor. County agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
 - b. County will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
 - c. County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection, and security of proprietary software and other proprietary data.
37. **Acceptance:** An acceptance test shall be performed when new Verity System voting devices are received for the first time. An acceptance test includes an assessment of the basic physical condition of the Hardware of the Verity System, as well as Contractor's standard functionality tests and procedures designed to verify that the Verity System meets the requirements necessary to function within an election environment. A Contractor project manager will work with County election officials to prepare an acceptance testing plan appropriate to County and to the types and quantity of equipment being implemented. County shall notify Contractor in writing of a failure to satisfy the applicable requirements within thirty (30) days of delivery.
38. **Source Code Escrow:** Source code for the Hart Proprietary Software previously provided to County will continue to be maintained in the source code escrow account with NCC Group, Inc., Escrow Agreement No. 44993, as documented in Attachment C, California State Voting System Software Escrow Agreement and Beneficiary Registration Agreement, respectively (collectively, the "Escrow Agreements"), to this Contract. Within thirty (30) calendar days after the delivery of any corrections, bug fixes, enhancements, updates, versions, new releases, derivatives, improvements, rewrites or other modifications, including custom modifications, Contractor shall place in escrow the source code for the Hart Proprietary Software, including all relevant commentary, explanations and other documentation, as well as instructions to compile the source code, as provided in the Escrow Agreements. County shall be entitled to receive a copy of such source code under the circumstances set forth in the Escrow Agreements and may use the source code only pursuant to the sublicense granted herein. County is granted a non-exclusive, non-transferable sublicense to use the source code solely for its own internal benefit to modify, support and maintain the Hart Proprietary Software. Contractor shall pay all of the escrow holder's fees.
39. **Data Location:** Except where Contractor obtains County's prior written approval, the physical location of Contractor's data center where County data is stored shall be within the Continental United States.

40. Compliance With County Information Technology Policies And Procedures:

Contractor, its subcontractors, Contractor personnel, and all other agents and representatives of Contractor, will at all times comply with and abide by all Information Technology (IT) policies and procedures of County that are provided or made available to Contractor that reasonably pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor's performance under this Contract. Contractor shall cooperate with County in ensuring Contractor's compliance with the IT policies and procedures described in this Contract and as adopted by County from time-to-time, and any material violations or disregard of such IT policies or procedures shall, in addition to all other available rights and remedies of County, be cause for termination of this Contract. In addition to the foregoing, Contractor shall comply with the following while performing services hereunder:

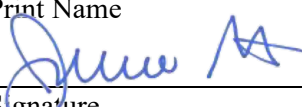

- a. **Security and Policies** – All performance under this Contract, shall be in accordance with County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by County from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective or as soon as reasonably thereafter (collectively, the "Security Policies"). Contractor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.
- b. **Information Access** – County may require all Contractor personnel performing services under this Contract to execute a confidentiality and non-disclosure agreement concerning access protection and data security in the form provided by County. County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Contractor permit any such mechanisms to be shared or used by other than the individual Contractor personnel to whom issued. Contractor shall provide its personnel with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and Software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.
- c. **Enhanced Security Procedures** – County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contractor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.
- d. **Breach of Security** – Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract.

- e. **Conduct on County Premises** – Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of County (or that may be established thereby, from time to time) that pertain to conduct on County’s premises, possession, or distribution of contraband, or the access to, and security of, the Party’s real property or facilities, to the extent that Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party’s premises. The operation of vehicles by either Party’s personnel on the other Party’s property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party’s property and involving either Party’s personnel shall be reported promptly to the appropriate Party. Each Party covenants that at all times during the Term, it, and its employees, agents, and subcontractors shall comply with any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party’s personnel shall clearly identify themselves as the appropriate Party’s personnel and not as employees of the other Party. When on the other Party’s premises, each Party’s personnel shall wear and clearly display identification badges or tags, as approved by the other Party.
- f. **Security Audits** –Each Contract year, County may perform or have performed security reviews and testing based on an IT infrastructure review plan. Such testing shall ensure all pertinent County security standards as well as any customer agency requirements, such as federal and state requirements.
41. **Limitations of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR WILL NOT BE LIABLE TO COUNTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) 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, CONTRACTOR’S TOTAL LIABILITY TO COUNTY FOR DAMAGES ARISING OUT OF OR RELATING TO THE HARDWARE, SOFTWARE, SERVICES, AND THIS CONTRACT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY COUNTY TO CONTRACTOR UNDER THIS CONTRACT IN THE 24 MONTH PERIOD PRIOR TO THE APPLICABLE CLAIM. THE LIMITATION IN THE PRECEDING SENTENCE SHALL NOT APPLY IN THE EVENT OF DAMAGES ARISING FROM CONTRACTOR’S FRAUD OR OTHER INTENTIONAL WRONGDOING.
42. **Third Party Products, Services and Referrals.** In addition to Third Party Products that may be ordered hereunder, Contractor may direct County to third parties having products or services that may be of interest to County for use in conjunction with the Products or Services. Notwithstanding any Contractor recommendation, referral, or introduction, County will independently investigate and test non-Contractor products and services and will have sole responsibility for determining suitability for use of non-Contractor products and services. Contractor has no liability with respect to claims relating to or arising from use of non-Contractor products and services, including, without limitation, claims arising from failure of non-Contractor products to provide proper time and date functionality.

SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

CONTRACTOR: HART INTERCIVIC, INC.

Julie Mathis	President & CEO
Print Name	Title
	May 22, 2024
Signature	Date
Hollie Osbourn	CFO
Print Name	Title
	May 21, 2024
Signature	Date

* If Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

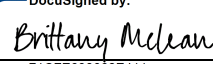
The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above-described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

COUNTY OF ORANGE, a political subdivision of the State of California

Print Name	Title
Signature	Date

APPROVED AS TO FORM

County Counsel

Brittany McLean	Deputy County Counsel
Print Name	Title
	5/23/2024
Signature	Date

ATTACHMENT A Scope of Work

1. Overview

Contractor shall provide County the maintenance, support, and services prescribed in this Scope of Work for the previously purchased Verity Software, Hart Hardware, Hart Proprietary Software, Commercial Software and Third-Party Hardware associated with the Verity System. The previously purchased Verity System referenced in this Attachment A are those items purchased via MA-031-20010105 and PO-031-21010252, including the perpetual license purchased therein and restated in this Contract through this reference, and this Contract shall not be construed to limit or reduce the scope thereof.

2. Verity System

2.1. Verity Software Suite

- 2.1.1. **Verity Data:** Election data import/management and ballot design software
- 2.1.2. **Verity Build:** Election definition and deployment software
- 2.1.3. **Verity Central:** High-speed central ballot scanning and adjudication
- 2.1.4. **Verity Count:** Tabulation and reporting software

2.2. Vote Center Voting Solution Devices

- 2.2.1. **Verity Scan:** a digital scanning solution for paper ballots
- 2.2.2. **Verity Touch Writer:** an accessible paper ballot marking device
- 2.2.3. **Verity Print:** on-demand ballot printing device
- 2.2.4. **Verity AutoBallot:** a barcode scanner kit for Verity Print and Verity Touch Writer for integration between the poll book and the voting system

2.3. Verity Accessories and Parts

- 2.3.1. **Verity Workstation:** HP Z240 workstation for Verity software
- 2.3.2. **Verity vDrive:** a flash memory device
- 2.3.3. **Verity Key:** an electronic security token
- 2.3.4. **Verity Battery Charger, 1 Bay:** 1-bay charge for Verity voting device battery
- 2.3.5. **Verity Voting Device Battery:** rechargeable battery for Verity voting device
- 2.3.6. **vDrive Duplicator, 23 port:** loads election data on up to 23 vDrives simultaneously
- 2.3.7. **Verity Headset:** headphones w/microphone for voice recording
- 2.3.8. **Verity Ballot Box w/Transport Bag and Privacy Screens:** ballot box w/transport bag and privacy screens for use with Verity Scan
- 2.3.9. **Secure Ballot Transport Bag:** bag for easy and secure removal and transport of ballots from ballot box
- 2.3.10. **Printer Stand:** small table for printer
- 2.3.11. **Secure Caddy with Casters, 3,4 and 5' wide:** storage unit for Verity Voting devices
- 2.3.12. **Okidata C831 Printer:** ballot printer w/starter cartridges
- 2.3.13. **Okidata B432dn Printer:** laser ballot printer w/starter cartridges
- 2.3.14. **Canon DR-G2140:** Central scanner

3. Hardware Warranty and Maintenance Support Services

3.1. Warranty services includes:

- 3.1.1. RMA (return to Hart) device repair for all Verity devices

- 3.1.2. Next business day hardware support for Hart provided commercial off the shelf high-speed scanners (parts and labor), provided that the manufacturer continues to offer this service for the County's specific products. Contractor will provide County 90-day advanced written notice of the discontinuance of this support.
- 3.1.3. Next business day hardware support for HP Workstations, provided that the manufacturer continues to offer this service for the County's specific products. Contractor will provide County 90-day advanced written notice of the discontinuance of this support.
- 3.2. Maintenance Support includes:
 - 3.2.1. Delivery of version updates (County staff will install the updates, per California requirements)
 - 3.2.2. Help desk support
 - 3.2.3. Replacement of each Verity device's coin battery in Year 2 of this Contract (includes materials, supplies, project management (estimated 5-day project)).

The above services are included at no additional charge.

4. Operations and Application Support Services

- 4.1. If County is current in payments due to Contractor under this Contract, Contractor shall provide the following operations and application support services for the Verity Voting System 3.2 Licensed Software and Firmware (including the Verity System items listed in Section 2 of this Attachment A). Payments for these services are the annual recurring payments listed in Attachment B, Compensation/Payment. Contractor's obligation to provide Support shall terminate in the event of a termination of the Contract for County's uncured failure to pay Support services related fees.
 - 4.1.1. Corrections of defects in the Licensed Software and Firmware so that it will operate substantially as described in the then-current functional specifications described in the Data, Build, Central, and Count Technical Requirements Documents applicable to Licensed Software.
 - 4.1.2. Updates of any Licensed Software covered under this Contract that are developed by Contractor and certified by the California Secretary of State, at County's option, will be promptly provided at no additional charge to County. County agrees to accept corrections of defects, fixes of minor bugs, upgrades, or enhancements so long as there are no additional costs to County.

Contractor shall not be responsible for the cost of installing new releases, correction of any defects, fixes of any minor bugs, upgrades or enhancements of any Licensed Software, unless installation is necessitated by Contractor's failure to deliver workmanship or Licensed Software that substantially performs as described in the then current functional specifications presented in the application-specific Operator's Manuals accompanying such Licensed Software. Contractor will also not be responsible for costs incurred in connection with California Secretary of State Certification of the hardware, software or firmware that necessitates rework, reinstallation, or upgrade of previously certified hardware, software or firmware. Contractor services to conduct or manage such installation or upgrade activities will be the subject of a separate agreement, on a case-by-case basis. Such agreements will include a clear description of the extent to which Contractor will be liable for repair of equipment that may be damaged or otherwise rendered unserviceable during the course of the installation/upgrade project, as well as the arrangements for

completing such repairs and returning County equipment to service in a timely fashion. The extent of Contractor's liability for completing such repairs and logistic tasks will reflect the nature of Contractor's role in the installation/upgrade project.

- 4.1.3. System Documentation. Contractor agrees to provide to County, as part of any new version release, upgrade or enhancement of Licensed Software, updated versions of applicable manuals and other associated printed materials in electronic format. Contractor further agrees that County may create hard copy reproductions of the updated materials in quantities sufficient to satisfy County's own internal needs for the operation/use and maintenance of the Verity System. County agrees to include Contractor's copyright notice and all other proprietary rights notices on all such documentation reproduced as they appear on the original or in accordance with written copyright instructions provided to County by Contractor.
- 4.1.4. Support for System and/or Software failures.

Major System Failure. Major failures are defined as complete failure of the System or Software, or the failure of a single critical component or any combination of System components that place County's ability to conduct an election at risk.

Contractor's support personnel shall respond to a major System failure by commencing appropriate action to correct the failure within one (1) hour during an election cycle and within one (1) business day during periods outside of an election cycle. Response time is measured from the time the appropriate County representative notifies the Hart Customer Support Center or other appropriate Contractor representative that remedial maintenance for a major failure is required, until the time that appropriate responsive action is initiated. Contractor shall make every reasonable effort to correct major failures within two (2) hours of the notification of the System failure. For purposes of this paragraph, election cycle means sixty (60) days preceding any election and continuing through twenty-eight (28) days after the election. Such response time shall be available between the hours of 8:00 AM and 5:00 PM, Pacific Time, Monday through Friday, on the days County conducts business. Support of this type may be available up to ninety (90) days preceding an election upon County's request. Additionally, County can make arrangements for additional coverage during critical phases of the election cycle by notifying the Customer Support Center a minimum of seven (7) days in advance of specific periods when County will be working on the election.

Minor Licensed Software Failure. All other Licensed Software failures will be considered minor failures.

Contractor's maintenance personnel shall respond to minor failures within one (1) business day from the time a County representative notifies the appropriate Contractor representative that remedial maintenance for minor failure is required. Contractor shall make every reasonable effort to correct minor failure within two (2) business days of the notification of the minor Licensed Software failure.

- 4.1.5. Telephone assistance for County in design and production of elections, including pre-election and post-election testing and general operation of the Voting System. Requests for such assistance must be initiated through a request to the Hart Customer Support Center via any of the modes of communication listed below. On election days scheduled by County, except for specific additional coverage requested by County for major system

failures during critical phases of the election cycle, system failures or software bugs must be reported in writing, through the Hart Customer Support Center, and must be accompanied with sufficient detail to reproduce the error and provide a remedy or workaround. Because not all errors or defects can or need to be corrected, Contractor does not warrant that all errors or defects will be corrected. Contractor reserves the right to determine whether any reported, claimed software malfunction is in fact a “bug.”

Support Contact Information and Hours of Operation. The following contact information is to be used by County for submitting support requests to Contractor:

Customer Support Center:	1-866-ASK-HART (275-4278)
Customer Support Center Fax:	1-866-391-1834
E-mail Address:	hartsupport@hartic.com
Hart InterCivic, Inc. Switchboard:	1-800-223-HART (4278)

The Hart Customer Support Center normal hours of operation are 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, except for Contractor company holidays. With seven (7) days prior notice by County, election day coverage can be extended to encompass one hour prior to polls opening until released by County.

5. Additional Support Services

Contractor shall provide, without additional cost to County except as provided in this Contract, the following additional services:

- 5.1. On-Site Hardware Repair: Contractor will provide one (1) on-site visit per year not to exceed five (5) working days to repair Verity System Hardware by one Hart technician. Materials, supplies, and replacement parts (with the exception of Consumables), and standard transportation/shipping thereof, are included. Consumables are defined as batteries (all types, including CMOS and device backup batteries), vDrives, Verity keys, paper rolls, paper, ballot stock, toner, Canon Scanner calibration packets, Canon Scanner Cleaning Kits, Canon Scanner Roller Replacement Kits, and Isopropyl alcohol wipes.
- 5.2. Hardware Return Merchandise Authorization (RMA): County may ship Return Merchandise Authorization Hardware (RMA), goods returned for repair, to Contractor for repair in up to four (4) shipments per term, each shipment not to exceed one (1) percent of County’s total inventory of Verity Scan and Ballot Boxes, Verity Touch Writer (and printers and booths), and Verity Print (and printers). All parts and materials required for RMAs of the equipment are included at no additional charge, with the exception of Consumables (defined in 5.1)). Contractor shall be required to return all completed RMAs in a period of sixty (60) calendar days or less from the date Contractor received the item. Contractor shall be required to provide in writing to County’s Project Manager if the RMA will exceed the sixty (60) calendar day requirement due to parts delay. Description of the part(s) on backorder and expected delivery time shall be included.
- 5.3. Computer and Peripherals Configuration: Configuration of Verity PCs and peripherals, purchased through Contractor according to Contractor’s published specifications, as per the requirements defined by the State of California Secretary of State, are included.
- 5.4. Engineering Services Support: No service days are included. Projects required by County will be billed at Contractor’s then prevailing Engineering Services rates, less 40%.

- 5.5. Training in Austin: County may take advantage of training at Contractor's facility in Austin. There is no limit to the number of County employees or days, and the cost of training is included. County will be responsible for transportation, room and board, and any other travel-related expenses.
- 5.6. Discretionary Professional Service Days: Five (5) on-site days per year for Hart Professional Services (trainers, project managers, and technical consultants). Days do not roll over, unless mutually agreed on. Failure to use allotted Professional Services Days will not result in a discount or refund of any part of the fee owing hereunder. Professional Service Days cannot be exchanged for Verity or third party equipment, software, support, maintenance fees, service days, or any other good or service. Professional Services Days are in addition to and are not the same as Engineering Services time. Days used over the allotted 5 per year will be billed at Contractor's then prevailing Professional Services rates, less 40%.

6. Third Party Interfaces

In any case where Licensed Software interfaces with a third party software system, including but not limited to, County's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems; Contractor will not be responsible for proper operation of any Licensed Software that interfaces with the third party software should such third party software be upgraded, replaced, modified, or altered in any way. Contractor will also not be responsible for the proper operation of any Licensed Software running on County's computer hardware, should County install a new computer operating system on said hardware without advising Contractor of such changes and receiving Contractor's written approval. Engineering services and associated costs may be required where County requests Contractor's review and approval of any System changes outside the System specifications at the time of the Effective Date of this Contract, or the custom software project-specific Scope of Work for the affected Hart hardware or software. Contractor will not be responsible for the proper operation of any Licensed Software that interfaces with third party software, should such third party software be configured or operated in any manner contrary to that described in the documentation provided for such third party software.

7. County Suggestions and Recommendations

County may, at any time in writing to Contractor, propose, suggest, or recommend changes to the Software provided under this Contract. Such proposals, suggestions, or recommendations will become Contractor's property. Contractor may include any such proposals, suggestions, or recommendations, solely at Contractor's option, in subsequent periodic Software updates. Contractor is under no obligation to change, alter, or otherwise revise the Software according to County's proposals, suggestions, or recommendations.

ATTACHMENT B
Compensation/Payment

A. Compensation

This is a fixed price Contract between County and Contractor for Verity System Maintenance, Support, and Services as per the specifications in Attachment A, Scope of Work, in the amount **not to exceed \$3,799,575.00 for the life of the Contract.**

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder.

Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with paragraphs C and P of this Contract.

B. Fees

County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

1. Annual Support Services

Period	Item	Cost
9/11/24 – 9/10/25	Consolidated Operations and Application Support	\$434,915.00
9/11/25 – 9/10/26	Consolidated Operations and Application Support	\$434,915.00
9/11/26 – 9/10/27	Consolidated Operations and Application Support	\$434,915.00
9/11/27 – 9/10/28	Consolidated Operations and Application Support	\$434,915.00
9/11/28 – 9/10/29	Consolidated Operations and Application Support	\$434,915.00
Total		\$2,174,575.00

2. Verity Hardware, Software, Accessories, Parts, and Consumables and Additional Support Services

Additional Verity Hardware, Software, Accessories, Parts, and Consumables not included in Operations and Application Support, as needed	Not to Exceed \$300,000.00 annually
Additional Support Services not included in Operations and Application Support, as needed	Not to Exceed \$25,000.00 annually

Any Additional Support Services not specified in Operations and Application Support can be ordered off this Contract with written quote provided by Contractor and approved by County, except the total of all such additional support services shall not exceed the annual not to exceed amount for Additional Support Services specified in the Paragraph B.2 table. For any additional

support services that would exceed the annual not to exceed amount for Additional Support Services, an amendment to this Contract is required.

Additional Verity Hardware, Software, Accessories, Parts, and Consumables can be ordered off this Contract with written quote provided by Contractor and approved by County, except the total of all such additional support services shall not exceed the annual not to exceed amount for Additional Verity Hardware, Software, Accessories, Parts, and Consumables specified in the Paragraph B.2 table. For any additional support services that would exceed the annual not to exceed amount for Additional Verity Hardware, Software, Accessories, Parts, and Consumables, an amendment to this Contract is required.

- C. Firm Discount and Pricing Structure:** Contractor guarantees that the prices are equal to or less than prices quoted to any other local, State, or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.
- D. Payment Terms:** Invoices are payable 30 days in advance, unless otherwise directed in this Contract. Invoices are to be submitted to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net thirty (30) calendar days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. Contractor shall reimburse County for any monies paid to Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

- E. Taxpayer ID Number:** Contractor shall include its taxpayer ID number on all invoices submitted to County for payment to ensure compliance with IRS requirements and to expedite payment processing.
- F. Invoicing Instructions:** Contractor shall provide an invoice on Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, Contractor must leave an invoice with each delivery. Each invoice must have a unique number and must include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1 above
3. Name of County Agency/Department
4. Contract number (MA number)
5. Order Date
6. Product/service description, quantity, and prices
7. Sales tax, if applicable
8. Contractor's Federal Tax ID number
9. Total

The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction. Invoice and support documentation are to be sent to:

OC Registrar of Voters
Attn: Accounts Payable
PO Box 11298
Santa Ana, CA 92711

ATTACHMENT C
Master Preferred Escrow Agreement and Preferred Beneficiary Acceptance Form

(provided as a separate attachment)