

AMENDMENT ~~ONE~~ TWO
TO
CONTRACT FOR MASTER AGREEMENT MA-031-14011608
FOR SOFTWARE, FIREWARE AND HARDWARE
MAINTENANCE, SUPPORT, AND SERVICES OF
HART INTERCIVIC DRE VOTING SYSTEM

This Amendment ~~One~~ Number Two to ~~Contract~~ Master Agreement Number MA-031-14011608 (hereinafter “Amendment”) to provide software, firmware and hardware maintenance, support, and services for the Hart InterCivic Direct Record Electronic (DRE) Voting System for the Registrar of Voters, hereinafter referred to as “Contract” and or “Agreement” is made and entered into on the date approved by the Board of Supervisors or when fully executed by the parties, whichever is later, 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., a Texas Corporation, with place of business 15500 Wells Port Dr., Austin, Texas hereinafter referred to as “Contractor”.

ATTACHMENTS

~~Attachment C – Compensation/Cost for Contractor Services – section C. Quarterly Payments with Due Dates~~

RECITALS

WHEREAS, County and Contractor entered into ~~Contract~~ Agreement MA-031-14011608, hereinafter referred to as “~~Original Contract~~Agreement” to provide software, firmware and hardware maintenance, support and services for the Hart InterCivic Direct Record Electronic (DRE) Voting System commencing on ~~6/17/2014~~ June 17, 2014 and expiring on ~~6/16/2016~~ June 16, 2016; and

WHEREAS, County ~~desires to~~ and Contractor amended ~~Contract~~ the Agreement by Amendment No. One to Master Agreement MA-031-14011608 on February 24, 2015 (hereinafter referred to as “Amendment One”) to revise Attachment C – Section C. Quarterly Payments with Due Dates tables;

~~WHEREAS, County desires to renew the Original Contract as Contract Number MA-031-16011618 for an additional one-year term (hereinafter referred to as “Amendment Two”) and to revise Attachment C – Compensation/Cost for Contractor Services, Section C. Quarterly Payments with Due Dates tables and Attachment A – Scope of Work, Section 3. Additional Services;~~

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree as follows:

- ~~1.~~ The Agreement Section 2 (“Agreement Term”) shall be amended to extend the term of the Agreement for an additional year term commencing on June 17, 2016 through June 16, 2017.
- ~~2.~~ Attachment A (“Scope of Work”), attached hereto and incorporated by reference, is amended and restated in its entirety to include the agreed upon negotiated additional services.
- ~~1-3.~~ Attachment C (“Compensation/Cost for Contractor Services”), attached and incorporated herein by reference, Section C. (“Quarterly Payment with Dues Dates Table”) is amended.

~~Amendment One includes revised ATTACHMENT c—section C. Quarterly Payment with Dues Dates table.~~

Except as previously amended and as amended herein, ~~all terms and conditions, including those terms of the~~ remaining provisions of the Agreement ~~Original Contract and any amendments are incorporates by this reference as if fully set forth herein and~~ shall remain in full force and effect.

- Signature Page Follows -

SIGNATURE PAGE

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

CONTRACTOR*

By: _____
Signature _____ Date _____

Print Name _____ Title _____

By: _____
Signature _____ Date _____

Print Name _____ Title _____

*** If the 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: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the officer 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

Print Name _____ Title _____

By: _____
Signature _____ Date _____

APPROVED AS TO CONTENT

Print Name _____ Title _____

By: _____
Signature _____ Date _____

~~Signature Page~~

~~Amendment One - Contract MA - 031 - 14011608~~

~~SOFTWARE, FIRMWARE AND HARDWARE MAINTENANCE, SUPPORT, AND SERVICES OF HART INTERCIVIC DRE VOTING SYSTEM~~

~~In WITNESS WHEREOF, the parties hereto have executed this contract on the dates shown opposite their respective signatures below:~~

~~VENDOR: Hart InterCivic, Inc.~~

Signature Date: _____

Print Name and Title

Signature Date: _____

Print Name and Title

~~If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasure. (See "Signature Requirements")~~

~~COUNTY: Registrar of Voters~~

Signature Date: _____

Print Name and Title

Signature Date: _____

Print Name and Title

Signature Date: _____

~~Print Name and Title~~

Signature Requirements

- ~~1. **Corporations** Corporations Code § 313~~
- ~~Nonprofit Public Benefit Corp. Corporations Code §§ 5214, 5141~~
- ~~Nonprofit Mutual Benefit Corp. Corporations Code § 7214, 7141~~
- ~~Nonprofit Religious Corp. Corporations Code §§ 9214, 9141~~

~~You must have one signature from each category listed in a & b:~~

- ~~a. Chairman of the Board, President, or any Vice President;~~
- ~~b. Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer;~~
- ~~c. Total of 2 signatures required.~~
- ~~d. Unless Board authorized or ratified to bind the Corp for the Contract regardless of whether executed or wholly or in part executory.~~
- ~~e. May delegate signature authority by Corporate resolution.~~

- ~~2. **Limited Liability Companies** Corporations Code § 17157~~

- ~~a. Two managers, unless articles of organization state that it is managed by only one manager;~~
- ~~b. Total of 2 signatures required.~~

- ~~3. **Partnerships** Corporations Code § 16301~~

- ~~a. Generally requires a Partner signature for contracts in the ordinary course of business.~~
- ~~b. Exception: Partner for ordinary course of business, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.~~
- ~~c. Only 1 signature required.~~

- ~~4. **Limited Liability Partnership** Corporations Code §§ 16111 & 16301~~

- ~~a. See above. Same as Partnership.~~

ATTACHMENT A
SCOPE OF WORK

1. Introduction:

During the period of the Agreement and subsequent renewal terms, if any, Contractor will provide the maintenance, support, and services prescribed in this Scope of Work for the Licensed Software, Firmware and Hardware associated with the DRE Voting System owned and operated by County.

2. Maintenance and Support for Licensed Software:

If County is current in payments due to Contractor under this Agreement, Contractor shall provide, without additional charge to the County, the following support and maintenance services for the Hart Voting System 6.2.1 Licensed Software and Firmware listed in Attachment C, Compensation/Cost for Contractor Services, Paragraph B, COST:-

- a. 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 BOSS, Tally, Rally, Servo, and Ballot Now Operators' Manuals applicable to Licensed Software."
- b. Updates of any Licensed Software covered under this Agreement that are developed by the Contractor and certified by the California Secretary of State, at the County's option, will be promptly provided at no additional charge to the 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 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.

- c. System Documentation. Contractor agrees to provide to the 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 the County may create hard copy reproductions of the updated materials in quantities sufficient to satisfy the County's own internal needs for the operation/use and maintenance of the DRE Voting System. The County agrees to include the 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 the Contractor.

d. 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 the 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 Standard 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 the 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 the 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.

e. Telephone assistance for County in design and production of elections, including pre-election and post-election testing and general operation of the DRE Voting System. Requests for such assistance must be initiated through the Hart Support On Line (HSO) Help System, or 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 HSO on-line Help System, 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 the County for submitting support requests to Contractor:

Customer Support Center:	1-866-ASK-HART (275-4278)
Hart Support On-line Help	http://hartsupport.hartic.com/
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 the County.

3. Additional Support Services:

Contractor shall provide without additional cost to the County, except as provided in this Agreement, the following additional support and maintenance services:

- a) On-Site Hardware Repair: Contractor will provide (1) on-site visit per year not to exceed five (5) working days to repair Hart Voting System Hardware by one Hart technician. Materials, supplies, and replacement parts, and standard transportation/shipping thereof, are included.
- b) 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 year, each shipment not to exceed one (1) percent of the County's total inventory of JBCs, eSlates, DAUs, eSlate/DAU booths, and VBOs. All parts and materials required for RMAs of the equipment are included at no additional charge, with the exception of consumables such as paper rolls, batteries, and MBBs. Contractor shall be required to return all completed RMA's in a period of sixty (60) calendar days or less from the date the Contractor received the item. Contractor shall be required to provide in writing to the 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.
- c) Computer and Peripherals Configuration: Configuration of HVS 6.2.1 PCs and HVS peripherals, purchased by the County, according to Contractor's published specifications, at Contractor's site in Austin, Texas are included.
- d) Hart Voting System (HVS) Tools and Utilities: County will receive commercially available tools and utilities as they relate to County owned HVS 6.2.1 equipment according to Contractor's release schedule and agreed upon Statements of Work.
- e) Engineering Services Support: No service days are included. Projects required by the County will be billed at Hart's then prevailing Engineering Services rates, less 40%.

- f) Utilities Outside the Current HVS: County will receive unlimited regular-release utilities according to Contractor's release timeline that are released for general customer availability.
- g) 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.
- h) Discretionary Professional Service Days: Sixty (60) on-site days per year for Hart Professional Services (trainers, project managers, and technical consultants). Days do not roll over from one year to the next, 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 HVS 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 60 per year will be billed at Hart's then prevailing Professional Services rates, less 40%.

4. Third Party Interfaces:

In any case where Licensed Software interfaces with a third party software system, including but not limited to, the County's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems; 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 the County requests Contractor's review and approval of any System changes outside the System specifications at the time of the Effective Date of this Agreement, or the custom software project-specific Statement 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.

5. County Suggestions and Recommendations:

County may, at any time in writing to the Contractor, propose, suggest, or recommend changes to the Software provided under this agreement. 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 C
COST COMPENSATION FOR CONTRACTOR SERVICES

C. QUARTERLY PAYMENTS WITH DUE DATES

Contract Quarterly Payment Date	Service From	Service To	Amount	Year
Due As of October 2014	June 17, 2014	September 16, 2014	\$171,250.00	Year 1
Due As of January 2015	September 17, 2014	December 16, 2014	\$171,250.00	Year 1
Due As of April 2015	December 17, 2014	March 16, 2015	\$171,250.00	Year 1
Due As of July 2015	March 17, 2015	June 16, 2015	\$171,250.00	Year 1
Due As of October 201 6 ⁵	June 17, 201 5 ⁶	September 16, 201 5 ⁶	\$182,500.00 178,750.00	Year 32
Due As of January 201 7 ⁶	September 17, 201 6 ⁵	December 16, 201 6 ⁵	\$182,500.00 178,750.00	Year 32
Due As of April 201 7 ⁶	December 17, 201 6 ⁵	March 16, 201 7 ⁶	\$182,500.00 178,750.00	Year 32
Due As of July 201 7 ⁶	March 17, 201 7 ⁶	June 16, 201 7 ⁶	\$182,500.00 178,750.00	Year 32