

**AGREEMENT BETWEEN THE COUNTY OF BOULDER, COLORADO AND
HART INTERCIVIC, INC.
FOR A VOTING TABULATION SYSTEM**

This Agreement is entered into effective the ____ day of April, 2004, between the County of Boulder, a political subdivision of the State of Colorado ("County"), and Hart InterCivic, Inc., a Texas corporation ("Hart"), to provide a *New Voting Tabulation System* to the County for use by the Boulder County Clerk and Recorder.

RECITALS

1. All Colorado counties with punch-card voting systems, including the County of Boulder, are required by the federal Help America Vote Act of 2002 (*HAVA*), Public Law 101-252, to convert from their present systems to a new system no later than January 1, 2006.
2. County issued a Request for Proposal (RFP) #4437-03 for a *New Voting Tabulation System*, on May 9, 2003, and received Hart's response to the RFP on June 13, 2003.
3. County's objective is to procure and implement a high-quality, efficient and cost- effective system that will deliver accurate, error-free and rapid results for all elections.
4. Hart is certified by the State of Colorado and the appropriate certifying federal authority to provide these products and services to replace the County's present punch card voting system.
5. Hart represents that it has the necessary resources to provide these products and services in accordance with this Agreement for implementation in connection with all elections and canvasses beginning with the July 2004 "Mock Election", and including the August, 2004 Primary Election, and the November 2, 2004 Presidential Election.
6. County desires to purchase Hart's Voting Tabulation System and related software, products and services as set forth in this Agreement.

AGREEMENT

1. EXHIBITS AND CONTENTS

This Agreement includes these attached exhibits:

- Exhibit A. Hardware, Software and Support Services Compensation Plan
- Exhibit B. Statement of Work
- Exhibit C. Description of Warranty, Support, Maintenance and License Agreement
- Exhibit D. Indemnity and Insurance
- Exhibit E. Designation of Sub-Contractor(s)
- Exhibit F. Escrow Agreement

2. TERM

The term of this Agreement is one (1) year from the date of execution of this Agreement, unless terminated earlier in accordance with its provisions. By ninety (90) days advance written notice to Hart, County has the right to extend the software maintenance and support services portions of this Agreement.

3. SYSTEMS AND SERVICES TO BE PURCHASED

3.1 As used in this Agreement, the term "Systems" collectively includes all aspects of Hart's Voting Tabulation System and related software, products and services to be provided pursuant to this Agreement, including but not limited to all firmware, equipment, devices, materials, components, specifications and other items.

3.2 Hart must provide the System as stated in this Agreement at the prices set forth in Exhibit A, *Hardware, Software and Support Services Compensation Plan*.

3.3 Hart must furnish and deliver the System to the County and install the System at the site designated by the County.

3.4 On the terms and conditions set forth in this Agreement and the Exhibits, Hart will grant to the County a license to use all necessary Hart software and other Hart intellectual property to the extent required for the County to use for the System as set forth herein.

4. COMPENSATION AND PAYMENT

4.1 The full price to County for the System is \$1,365,270.00 as stated in Exhibit A.

4.2 County must pay the full price of \$1,365,270.00 to Hart, per the *Milestone Payments* listed in Exhibit A of this Agreement, after County's acceptance of the installation of the equipment and software. Acceptance of the installation of the equipment and software is defined in Exhibit B, *Statement of Work*. Hart will invoice County upon delivery of the equipment and software and other related items.

4.3 With respect to the payment required by section 4.2 only, late payment by the County will subject the County to late charges at the rate per annum of 1.5% per month (150 basis points) on the late balance.

5. TIME SCHEDULE

5.1 Hart must complete all activities in accordance with the *Implementation Schedule* contained in Exhibit B.

5.2 It is critically important to County that all activities be completed on a timely basis. If Hart anticipates possible delay in completing any activity, it must promptly notify County in writing within ten (10) working days.

6. HART'S OTHER RESPONSIBILITIES

In addition to its other responsibilities stated in this Agreement, Hart must:

6.1 Provide services for the July 2004 "Mock Election", the August 2004 "Primary Election", and the November 2, 2004 "Presidential Election", as described in Exhibit B.

6.2 Be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services as required by this Agreement. Hart must provide all services in accordance with applicable federal, State and local laws and regulations, and in a manner consistent with generally accepted professional and technical standards of the election industry except as otherwise stated in this Agreement.

6.3 Provide all new products that conform to applicable federal, State, and local laws and regulations.

6.4 Assign a Project Manager as stated in Exhibit B. County has the right to approve in advance in writing all Hart staff assigned at any time to this project, which approval shall not be unreasonably withheld or delayed. Hart's Project Manager must successfully manage the proper performance of Hart's obligations as stated in this Agreement. Except in emergency circumstances, Hart must not reassign or replace assigned staff without County's prior written

consent, which will not be unreasonably withheld or delayed. Hart must replace any staff member with an equally qualified person reasonably satisfactory to County. County is not responsible for any costs associated with changes in Hart staff.

6.5 Cooperate with County in performing this Agreement; and be available on-site and for consultation with County at reasonable times as requested by County after reasonable advance notice as defined in Exhibit B.

6.6 Cooperate with County's periodic review of Hart's performance. County may report its comments to Hart in writing as needed. County's review or comments (written or otherwise) will not relieve Hart of its obligations as stated in this Agreement.

7. COUNTY'S OTHER RESPONSIBILITIES

In addition to its responsibilities as stated elsewhere in this Agreement, County must:

7.1 Cooperate with Hart in performing this Agreement, and be available for consultation with Hart at reasonable times as requested by Hart after reasonable advance notice.

7.2 Furnish or make available for examination or use by Hart, after advance notice by Hart, County data (e.g., copies of previously prepared reports, maps, plans, specifications, records, ordinances, codes, or regulations) reasonably necessary for Hart's performance of this Agreement. Hart must return any original data as provided or requested by County. County must make reasonable efforts to assist Hart in obtaining similar data from third parties. Hart may rely on this data as being accurate.

7.3 Thoroughly test all future upgrades and enhancements before using the Systems in any election.

7.4 Maintain back-up data necessary to replace critical County data in the event of loss or damage to data from any cause.

7.5 (a) Provide adequate working and storage space for use by Hart personnel near equipment, (b) Provide Hart full access to the equipment and Software and sufficient computer time, subject to County's security rules, (c) Follow Hart's procedures for placing warranty service requests and determining if warranty remedial service is required, (d) Follow Hart's instructions for obtaining support, maintenance and warranty services, (e) Provide a memory dump and additional data in machine readable form if requested, (f) Reproduce suspected errors or malfunctions in Software, and (g) Provide timely access to key County personnel and timely respond to Hart's questions.

7.6 Prepare and maintain the installation site in accordance with instructions provided by Hart. County is responsible for environmental requirements, electrical interconnections and modifications to facilities for proper installation, in accordance with Hart's specifications. Any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.

7.7 Maintain the appropriate operating environment, in accordance with Hart's specifications, for the equipment and Software and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning and all other equipment and utilities necessary for the equipment and Software to operate properly. County shall properly store the equipment and Software when not in use.

County is exclusively responsible for supervising, managing and controlling its use of the System, including but not limited to, establishing operating procedures and audit controls, supervising its employees, making daily backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. County will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the System and that the equipment and Software are used in accordance with applicable manuals, instructions and specifications. County shall comply with all applicable laws, rules and regulations with respect to its use of the System.

8. CHANGES

Except as specifically stated in this Agreement, County personnel have no authority to order or direct any changes to this Agreement. Hart must not provide any equipment, services or other items that would cause County to incur additional costs beyond those stated in this Agreement, without the prior written approval in the form of a purchase order from Boulder County. Failure by Hart to secure proper prior written authorization from County for additional equipment, services or other items beyond those specifically stated in this Agreement may be a waiver by Hart of any claim for additional compensation related to such items; and such items may be deemed to be included in the compensation stated in this Agreement.

9. DESIGNATION OF SUBCONTRACTORS

Hart may use subcontractors as required for work to be completed under this Agreement. Exhibit E, "*Designation of Sub-Contractors*", as completed by Hart, reflects Hart's present intention to use only specific subcontractors.

10. TRANSPORTATION OF EQUIPMENT

10.1 All shipments shall be F.O.B., ground transportation to County's facilities. Hart will select the carrier, unless otherwise requested in advance by County. Hart must ship all items ground, unless otherwise approved by the County, with insurance and freight prepaid, to the site(s) designated by County. Hart's selection of the carrier shall not be deemed as an assumption of additional liability by Hart, and the carrier shall not be Hart's agent.

10.2 Hart must notify County when any equipment or other items are shipped to ensure delivery dates that are mutually agreeable.

10.3. Title to the equipment shall pass from Hart to County upon delivery of equipment inside County's elections facility.

11. DELIVERY SCHEDULE

The delivery schedule for the Systems is detailed in Exhibit B.

12. SYSTEMS INSTALLATION

12.1 Hart must install the Systems as described in this Agreement.

12.2 For the on-site delivery of Hart services and after reasonable advance notice by Hart, County must make all necessary arrangements to provide Hart personnel with sufficient work space and access to install the equipment and software during normal business hours or at such other times as the parties agree. If it becomes necessary to work outside of normal business hours, County must arrange for appropriate access to buildings or resources that Hart personnel may reasonably require.

12.3 The Systems to be delivered shall be new when delivered and in accordance with all specifications as stated in this Agreement, and shall be in the same configuration as has already been certified for these Systems by the federal certifying authority and the State of Colorado.

12.4 During the original and extended warranty periods. County may return defective equipment, materials, or other components of the Systems to the original manufacturer per that manufacturer's warranty guidelines.

13. ACCEPTANCE TESTING

13.1 Hart will test the Systems at the County's primary location. Verification of the Systems functions will be completed according to the acceptance testing requirements as stated in this Agreement. County shall complete acceptance testing for product and software within ten (10) working days after receipt of each shipment. County's failure to notify Hart in writing of non-acceptance within such 10-day period shall be deemed acceptance by County.

13.2 County must notify Hart in writing when acceptance testing has been completed. County must identify in writing any functions that have not performed correctly. Hart must repair or replace any unaccepted or defective Hart component within ten (10) working days after notification. County must test the corrections within ten (10) working days of receipt. The failure of County to provide written notification to Hart of non-acceptance of replacement or repaired components within such ten (10) working day period shall be deemed acceptance by County. Third-party hardware or software must be returned to the manufacturer per its warranty/replacement guidelines. Failure of a third-party supplier to repair or replace defective hardware or software within the herein designated time parameters for acceptance testing shall not be deemed as a failure of Hart's acceptance testing for its systems. County shall make arrangements to provide interim replacement equipment of the same type of that shown to be defective (if a non-Hart product) so that the Acceptance Testing can be completed in a timely manner.

13.3 Hart has the right, upon advance written notice to County, to have its own personnel or representative(s) present to observe or assist with acceptance testing at County's site to assure conformance with established testing procedures.

14. SOFTWARE LICENSE AND MAINTENANCE FEE

14.1 Hart grants to County a non-exclusive license to the Hart Proprietary Software provided by Hart on the terms and conditions stated in Exhibit C, Description of Warranty, Support, Maintenance and License Agreement. This right is non-transferable.

14.2 For the 1st year, the annual fee for license and maintenance is \$78,000.00, plus tax, if any.

14.3 Beginning with the 1st anniversary, the annual license and maintenance fee is subject to price increases limited to 3 per cent per annum or CCPI, whichever is greater.

14.4 The annual license and maintenance fee includes upgrades to the software furnished by Hart under this Agreement at no additional cost. Hart must ensure that software upgrades are in compliance with the federal certifying authority and Colorado Secretary of State certification. County is responsible for testing these upgrades to ensure compliance with County's requirements.

15. ACCESS TO SOFTWARE SOURCE CODE

15.1 During the term of this Agreement, Hart must continuously maintain an escrow agreement, as described in Exhibit F, *Escrow Agreement*, covering software source code for the Voting Tabulation System.

16. ORIGINAL WARRANTY

16.1 The warranty period to which this Section 16 applies is from the effective date of this Agreement until one (1) year after County acceptance (as defined in Exhibit B).

16.2 Third-party hardware warranties will be passed through to the County. Hart warrants that during the Warranty Period the Hart Proprietary Software licensed to the County will perform substantially according to the then current functional specifications described in the BOSS™, Tally™, Rally™, and Ballot Now™ Operator's Manual accompanying such Hart Proprietary Software.

16.3 Hart warrants that the Systems will conform to all applicable federal, State and local statutes, codes, ordinances, resolutions and other regulations, as the same exist on the date of this Agreement, and will be fit for the sole purpose of properly conducting all federal, state, and local government elections. The voting system shall comply with all provisions of Federal, State and local election laws and regulations, and any future modifications to those laws and regulations, which include HAVA.

16.4 Hart must correct any failure of the Hart Proprietary Software to comply during the warranty period with the warranties set forth in Sections 16.2 and 16.3 (collectively, the "Warranties"). Failure of Hart Proprietary Software to conform to the warranty must be reported in writing by the County and be accompanied with sufficient detail to enable Hart to reproduce the error and provide a remedy or suitable work-around. Hart will make commercially reasonable efforts to remedy or provide a suitable work-around for defects, errors or malfunctions covered by this warranty that have a significant adverse affect upon operation of the Hart Proprietary Software, at no additional charge to County. Because not all errors or defects can or need be corrected, Hart does not warrant that all errors or defects will be corrected. County acknowledges and agrees that this warranty is contingent upon and subject to County's proper use of the Systems and the exclusions from warranty coverage set forth in this Agreement.

16.5 The Warranties do not cover damage, defects, malfunctions or failure caused by: (1) Failure by County to materially follow Hart's installation, operation, maintenance, or use instructions or its failure to materially fulfill its obligations under this Agreement; (2) County's modification of the Systems; (3) County's abuse, misuse, or negligent acts; (4) the use of non-compatible media, supplies, parts or components; (5) Failure to maintain proper site specifications and environmental conditions, (6) Improper or abnormal use or use under abnormal conditions, (7) Use of equipment or software not supplied or authorized by Hart, (8) Use of software on equipment that is not in good operating condition, (9) Servicing, support or maintenance not authorized by Hart, or (10) Lightening, fire, flood, accident, actions of third parties not under the reasonable control of Hart, or other events outside Hart's reasonable control. Any acts or omissions of Hart's principals, officers, employees, agents, subcontractors, or consultants, are expressly recognized to be within Hart's control.

16.6 THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 16.2 THROUGH 16.4 OF THIS SECTION 16 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, USEFULNESS OR TIMELINESS. THE REMEDIES EXPRESSLY SET FORTH IN THIS SECTION 16 ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO COUNTY FOR BREACH OF ANY SUCH WARRANTIES.

16.7 County acknowledges that the Systems and/or Hart Proprietary Software may contain software and/or materials provided by other developers. Hart makes no warranty or representation whatsoever as to the non-Hart software and those materials not prepared by Hart that are contained in the Systems or Hart software. HART MAKES NO REPRESENTATIONS OR WARRANTIES AS TO NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART TO COUNTY, ALL OF WHICH IS SOLD, LICENSED OR SUBLICENSSED TO COUNTY "AS IS." HART HAS NO RESPONSIBILITY OR LIABILITY FOR NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART'S DISTRIBUTORS OR OTHER THIRD PARTIES TO COUNTY. If Hart sells, licenses or sublicenses any non-Hart equipment or non-Hart software to County, Hart will pass through to County, on a non-exclusive basis and without recourse to Hart, any third-party manufacturer's warranties covering the equipment or software, but only to the extent, if any, permitted by the third-party manufacturer. County agrees to look solely to the warranties and remedies, if any, provided by the manufacturer or third-party licensor.

16.8 WITH RESPECT TO CLAIMS ARISING FROM BREACH OF WARRANTY BY HART, HART SHALL NOT BE LIABLE TO COUNTY FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. GUARANTEE OF SUPPORT

Hart will provide warranty and support for the Software, along with all new release versions of said Software, provided the County continues uninterrupted payment for the warranty and support of said Software.

18. DOCUMENTATION

18.1 Hart must provide to the County, federal authorities, and the Colorado Secretary of State all necessary documentation to meet all State of Colorado certification requirements for all upgrades to the Systems for the term of this Agreement and for future Agreement periods provided the County continues uninterrupted payment for warranty and support of said System. Hart must provide the documentation stated in Exhibit B, including, but not limited to, a user guide or training manual, a maintenance manual, system documentation, and current/future State of Colorado Electronic Voting System certification documents received or other official notices of Electronic Voting System certification compliance.

18.2 During the term of this Agreement and during future terms, provided the County continues uninterrupted payment for the warranty and support of said Software, Hart will amend all documentation to indicate changes in hardware and software made after the System is certified as ready to use. All documentation shall be delivered to County in proper form.

19. TERMINATION

19.1 Subject to Section 21.3 of this Agreement, either party has the right to terminate this Agreement if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. A party desiring to exercise this right of termination must first give the other party not less than thirty (30) days advance written notice, and an opportunity to cure such failure(s) within thirty (30) days. Hart has no right to give notice of termination and opportunity to cure within any thirty-day (30-day) period immediately prior to an official election.

19.2 If this Agreement is terminated, the County must pay to Hart all undisputed amounts due to Hart under this Agreement for the period prior to the date of termination. Upon receipt of a termination notice from the County, and payment by the County to Hart of all undisputed amounts owing to Hart under this Agreement, Hart shall deliver or otherwise make available to the County all deliverables that have been fully paid for, as required under this Agreement, prior to the date of termination under this Agreement.

20. INSURANCE

Hart must provide County with certificates of insurance as stated in Exhibit D, *Indemnity and Insurance*. If Hart fails to maintain any of the required insurance coverage, the County has the right to declare Hart in breach of this Agreement. The insurance requirements stated in Exhibit D do not relieve Hart of its responsibilities as otherwise stated in this Agreement or applicable law.

21. OTHER PROVISIONS

21.1 Compliance with Election Regulations: Hart, including its officers, employees and agents, must maintain all licenses and certifications required by the State of Colorado or other jurisdictions material to this Agreement at all times while performing services under this Agreement. This project is subject to all applicable election laws, rules and regulations.

21.2 Patent Indemnity:

21.2.1 Hart must not provide County with a product or design that violates or infringes any United States copyright or any registered United States patent, trade secret or other intellectual property right of a third party. If County promptly notifies Hart in writing of any third-party claim against County that any software or other item

provided to County by Hart infringes any such rights, Hart must indemnify, defend and hold County harmless against these claims. Hart shall have exclusive control over the conduct, compromise and settlement of all such claims. County will reasonably cooperate with Hart in the defense and settlement of all such claims. However, Hart need not indemnify County to the extent the alleged infringement is caused by (1) modification of the software or item by County or any third party not expressly authorized by Hart in writing; (2) use of the software or item other than in accordance with the documentation or this Agreement; (3) County's failure to use acceptable non-infringing corrections or enhancements made available by Hart; or (4) information, specifications or materials provided by County or any third party. If any software or other item is, or in Hart's reasonable opinion is likely to be, held to be infringing, Hart must, at its expense and option and to the extent commercially feasible: (1) procure the right for County to continue using it; or (2) replace or modify it so that it becomes non-infringing while giving equivalent performance. If neither alternative is available on commercially reasonable terms, then, at the request of Hart, any applicable Software license and its charges will end, County will stop using the applicable Hart Proprietary Software, and County will return or destroy all copies of the applicable Hart Proprietary Software, and will certify in writing to Hart that such return or destruction has been completed. Upon return or Hart's receipt of certification of destruction, Hart will give County a credit for the price paid to Hart for the returned or destroyed Hart Proprietary Software, less a reasonable offset for use and obsolescence.

21.3 Mandatory Dispute Resolution Procedure: County and Hart must make a good faith effort to resolve any dispute or problem relating to or arising under this Agreement. Within ten (10) business days after written notice of a dispute or a problem sent by either party, Hart's Vice-President and the Boulder County Clerk and Recorder will meet to discuss the issue involved. If the dispute or problem is not resolved within seven (7) business days of this meeting, Hart's President and the Boulder County Clerk and recorder will meet directly and attempt to resolve the dispute or problem. Other meetings will follow as necessary or as requested by either party, provided however, that this section 21.3 is not intended to limit or restrict the rights of either party to seek any judicial remedy.

21.4 Indemnification: Hart's duty to indemnify County is stated in Exhibit D.

21.5 Contracting Principles: This Agreement is subject to the Resolution of the Boulder Board of County Commissioners adopted by the Board of County Commissioners on April __, 2004. Accordingly, Hart must:

21.5.1 Comply with all applicable federal, state, and local rules, regulations, and laws during the term of this Agreement, including federal legislative changes to the Help America Vote Act (HAVA) of 2002.

21.5.2 Maintain records of its operations under this Agreement. These records must be maintained during the term of this Agreement and for a period of three (3) years from termination of this Agreement or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under other provision of this Agreement.

Failure by Hart to comply with this section may be considered a material breach of this Agreement and may, at County's option, constitute grounds for termination and/or non-renewal of this Agreement. County must give Hart reasonable notice of any intended termination or non-renewal on the grounds of noncompliance with this section, and the opportunity to respond and discuss County's intended action.

21.6 Non-discrimination: Hart must comply with all applicable Federal, State, and local laws and regulations including Boulder County's equal opportunity requirements. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); or any other applicable state or federal law. Hart must not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Hart must not discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

21.7 Confidential Information: Hart and County must keep confidential all information, including, without limitation, voter records, obtained in performing this Agreement as required by State, federal or local laws or regulations.

21.7.1 Information that either party may acquire from the other in conjunction with this Agreement or the products or services provided by Hart hereunder are considered "Confidential Information," if so marked or identified, or if its confidential nature is reasonably apparent. In addition, Hart's Confidential Information includes all Software, firmware, diagnostics, documentation (including operating manuals, user documentation and environmental specifications), Software, trade secrets and related documentation. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, bug fixes, upgrades and trade secrets developed by Hart personnel (alone or jointly with County) in connection with Hart's Confidential Information, and/or Hart Proprietary Software will be the exclusive property of Hart. Hart must not use the County's Confidential Information except to provide services to County, and will not disclose or transfer County's Confidential Information to others, except to Hart's employees who reasonably require it for purposes of this Agreement and who agree to maintain its confidentiality or where disclosure is required by applicable law, and then on not less than ten (10) days prior written notice to County. County will not disclose Confidential Information of Hart to any third party, except to employees of County having a need to know and who agree to maintain its confidentiality or where disclosure is required by applicable law, and then on not less than ten (10) days prior written notice to Hart. Each party must safeguard all Confidential Information in its possession. However, neither party is prevented from using or disclosing information that:

21.7.1.1 The receiving party can demonstrate by written records was known to that party before the date of disclosure hereunder;

21.7.1.2 At the time of disclosure was in the public domain;

21.7.1.3 Becomes part of the public domain, except by breach of this Agreement;

21.7.1.4 Is lawfully disclosed to the receiving party on a non-confidential basis by a third party who is not obligated to any other party to retain the information in confidence; or

21.7.1.5 Is used or disclosed, without restriction, with the disclosing party's prior written approval.

County shall keep the Software and all tapes, diskettes, CDs and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable County to use the Software. County acknowledges that unauthorized disclosure of Hart's Confidential and Proprietary Information may cause substantial economic loss to Hart or its suppliers and licensors. Each permitted copy of Hart's Confidential and Proprietary Information, including its storage media, will be marked by County to include all notices that appear on the original. Title, copyright and all other proprietary rights in and to the Software at all times remains vested exclusively in Hart or, as applicable, third party licensors.

Upon termination or cancellation of this Agreement or, if earlier, upon termination of County's permitted access to or possession of Hart's Confidential Information, County shall return to Hart all copies of Hart's Confidential Information in County's possession (including Confidential Information incorporated in software or writings) and delete or destroy all remaining electronic copies in County's possession.

County acknowledges that all support and maintenance materials are the property of Hart and include Confidential Information of Hart. County agrees that it will not permit anyone other than Hart installation and maintenance personnel and authorized County employees to use such materials.

If County possesses or comes to possess a licensable or sublicensable interest in any issued patent with claims that read upon the Electronic Voting System, its method of operation, or any component thereof, County hereby grants and promises to grant an irrevocable, royalty free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use and sell materials or services within the scope of the patent claims.

This Section 21.7.1 will survive termination or cancellation of this Agreement.

21.7.2 Hart must not improperly disclose any information to County that is the proprietary property of a third party. However, if Hart does so, it must hold County and its contractors harmless and indemnify them against all claims, damages and costs as a result of County's use or disclosure of this third-party information in accordance with the procedures stated in section 21.2.

21.8 Notices: All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:

To Hart: Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, TX 78728
Attn: Administrative Services Manager

To County: Boulder County Clerk and Recorder
1750 33rd Street
Boulder, CO 80301
Attn: Ms. Linda Salas

21.9 Governing Law: This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of Colorado. The venue for legal action regarding this Agreement shall be in the County of Boulder, State of Colorado.

21.10 Assignment: Any attempt by a party to assign or otherwise transfer any interest in this Agreement without the prior written consent of the other party is void. Any subsequent owner of Hart must fulfill all the obligations of Hart as stated in this Agreement.

21.11 Relationship of Parties: Hart must perform all work and services as an independent contractor and not as an officer, agent, servant or employee of County. No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties except that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the right to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as explicitly stated herein.

21.12 Employees: County shall not solicit for employment, whether directly or indirectly, employ, engage or contract during the term of this Agreement or within a period of two (2) years thereafter, for work on voting and election matters, any person who is employed or contracted by Hart during the duration of this Agreement. If a person who is employed or contracted by Hart seeks to be employed or contracted by County prior to the expiration of said two-year (2-year) period, County shall promptly advise Hart in writing. County agrees that the restrictions set forth in this section 21.12 are fair and reasonable and are in addition to, and not in substitution for, any similar restrictions in any other agreements between the parties.

21.13 Non-Appropriation: If funds are not appropriated in any fiscal year for payments by County under this Agreement, County has the right to terminate this Agreement without penalty on or before September 30th of such fiscal year by giving thirty (30) days written notice. County administration must make every reasonable effort including, but not limited to, requesting budget funds to be appropriated in order to avoid termination of this Agreement. Upon termination of this Agreement under this section, Boulder County agrees to reimburse Hart InterCivic for any costs incurred through the date of termination and any costs that Hart InterCivic is committed to that cannot be cancelled. Hart has the right to recover any and all amounts then due or accrued.

21.14 Limitation on Hart's Liability: Hart's total aggregate liability to County for any loss, damage, costs or expenses under or in connection with the Agreement, howsoever arising, including without limitation, loss, damage,

costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall not exceed total contract amount.

21.14.1 HART SHALL NOT BE LIABLE TO COUNTY FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF HART OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

21.15 No Third-Party Beneficiaries: This Agreement is not intended and will not be construed to create any rights in third parties.

21.16 Titles and Headings: The titles and headings of sections, subsections and Exhibits are for convenience only and are not intended to affect the proper construction of this Agreement.

21.17 Construction: This Agreement was drafted jointly by the parties. They intend that any legal principle favoring construction of language for or against the drafter in case of dispute does not apply to this Agreement.

21.18 Entire Agreement: This Agreement, including its attached Exhibits, constitutes the entire agreement between the County and Hart relating to the subject matter of this Agreement. It supersedes any oral or written negotiations. This Agreement is modifiable only by a written document signed by both parties. The Exhibits are incorporated herein by reference.

21.19 Severability: If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect its validity or enforceability.

21.20 Waiver: No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply only to the specific instance expressly stated.

21.21 eSlate™, eSlate 3000™, Judges Booth Controller™, JBC1000™, Disabled Access Unit™, DAU5000™, Mobile Ballot Box™, Ballot Origination Software System™, BOSS™, Tally™, Ballot Now™, Rally™, and BRAVO™ are trademarks of Hart.

Therefore the parties, through their duly authorized representatives, have executed this Agreement on the dates shown below:

HART INTERCIVIC, INC.

COUNTY OF BOULDER

Signature

Signature

Ted Simmonds, VP/CFO
Printed Name

Printed Name

Date: April 19, 2004

Date: April __, 2004