

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

August 25, 2020

FROM

BOB PAGE, Registrar of Voters, Registrar of Voters

SUBJECT

Replacement Contract with Apple, Inc. Updating Terms for the Enrollment to Apple Business Manager to Manage Content for Electronic Poll Books and Support Services

RECOMMENDATION(S)

1. Approve the Apple Business Manager **Agreement No. 20-884** as revised on April 15, 2020 with Apple, Inc. for the mobile device management of electronic poll books, for the period of one year, automatically renewing for successive one-year terms with no term limit, subject to either party terminating the Agreement with 30 days notice.
2. Authorize the Deputy Executive Office of the Community Services Group, the Registrar of Voters, or Chief Deputy Registrar of Voters to electronically execute the Apple Business Manager Agreement with Apple, Inc., and any subsequent non-substantive amendments or to terminate the Agreement on behalf of the County, subject to review by County Counsel.
3. Direct the Deputy Executive Office of the Community Services Group, the Registrar of Voters, or Chief Deputy Registrar of Voters to transmit all documents and amendments in relation to this Agreement to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Bob Page, Registrar of Voters, 387-2100)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Costs) as this is a non-financial contract.

BACKGROUND INFORMATION

The recommended updated Apple Business Manager Agreement (Agreement) is needed for the Registrar of Voters (ROV) to continue to use and manage electronic poll books, which use Apple iPads to check in voters on Election Day.

On November 5, 2019 (Item No. 37), the Board of Supervisors (Board) approved non-financial Apple Business Manager Agreement No. 19-734 with Apple, Inc. ROV first used poll books during the 2020 Presidential Primary Election. They improved the security and efficiency of the election while also enhancing services to voters. Poll books are a separate component of the overall voting system and are used during the election season for the life of the new system (15-20 years). The recommended agreement with Apple is an evergreen one and will remain in

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effect until either the poll books are replaced with different State-certified poll books or Apple substantially amends the agreement, whichever occurs first.

The updated Agreement is Apple's revised standard commercial license. The Agreement requires Board approval because it includes substantive changes, including terms that differ from the standard County contract, as follows:

1. The County is required to indemnify Apple against third party claims arising from: (a) County's breach of any certification, covenant, obligation, representation or warranty made in the Agreement; (b) use of the Service by the County, including County Service Providers, Administrators, Authorized Users, and/or Permitted Entity's; (c) County's use, deployment or management of Authorized Devices, Device Enrollment Settings, and/or MDM Servers; (d) end user claims, about the provision, management, and/or use of Authorized Devices, Administrator accounts, Managed Apple IDs, or Content licensed or purchased through the Service, and/or any other use of the Service; and/or (e) County's use or management of Personal Data (including use by County's Permitted Entity or Authorized Users).
 - The County standard contract does not include any indemnification or defense by the County of a Contractor.
 - Potential Impact: By agreeing to indemnify Apple, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Apple without such limitations and the County would be responsible to defend and reimburse Apple for costs, expenses, and damages, which could exceed the total contract amount.

ROV recommends approval of the contract with Apple, including the non-standard terms, as Apple software and services are required for compatibility with the KNOWiNK State-certified electronic poll books, and it is to the County's benefit to improve County government operations.

PROCUREMENT

As the result of a competitive procurement process, the Board of Supervisors approved a contract with KNOWiNK on October 22, 2019 (Item No. 39) for the purchase of State-certified electronic poll books including software and hardware components, licensing, warranty, training, and election support services in an amount not to exceed \$7,140,534 for the five-year period of October 22, 2019 through October 21, 2024. The Apple Business Manager Agreement with Apple is required to utilize the Apple products required under the KNOWiNK contract.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5487) on July 14, 2020; Finance (Elias Duenas, Administrative Analyst, 387-4052) on August 5, 2020; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 10, 2020.

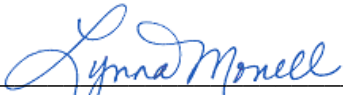
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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Josie Gonzales Seconded: Robert A. Lovingood
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 25, 2020



cc: ROV - Page w/agree
Contractor - C/O ROV w/agree
File - w/agree
CCM 09/18/2020