

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

March 1, 2022

FROM

MICHAEL JIMENEZ, Deputy Executive Officer, Registrar of Voters

SUBJECT

Licensing Agreements with Apple, Inc. for Management of Electronic Poll Books

RECOMMENDATION(S)

1. Approve the iOS and iPadOS licensing **Agreement No. 22-154** with Apple Inc., with the revision date of July 16, 2021, at no cost, for compatibility with electronic poll books, automatically renewing for successive one-year terms with no term limit.
2. Approve the tvOS licensing **Agreement No. 22-155** with Apple Inc., with the revision date of July 27, 2020, at no cost, for compatibility with electronic poll books, automatically renewing for successive one-year terms with no term limit.
3. Approve the MacOS licensing **Agreement No. 22-156** with Apple Inc., with the revision date of August 16, 2021, at no cost, for compatibility with electronic poll books, automatically renewing for successive one-year terms with no term limit.
4. Approve the Apple Business Manager licensing **Agreement No. 22-157** with Apple Inc. with the revision date of October 27, 2020, at no cost, for the mobile device management of electronic poll books, automatically renewing for successive one-year terms with no term limit.
5. Authorize the Registrar of Voters or the Chief Deputy Registrar of Voters to electronically execute the agreements for iOS, iPadOS, MacOS, tvOS, and Apple Business Manager with Apple, Inc., and any subsequent non-substantive amendments or to terminate the Agreements on behalf of the County, subject to review by County Counsel.
6. Direct the Registrar of Voters or the Chief Deputy Registrar of Voters to transmit all documents and amendments in relation to these agreements for iOS, iPadOS, MacOS, tvOS, and Apple Business Manager to the Clerk of the Board of Supervisors within 30 days of execution.
7. Authorize the Chief Executive Officer, upon consultation with County Counsel, to approve agreements with non-standard language as identified in County Policy 11-05, Section B., as it relates to licensing agreements with Apple, Inc. for compatibility with electronic poll books, subject to ratification by the Board of Supervisors at the next available Board meeting.

(Presenter: Michael Jimenez, Deputy Executive Officer, 387-4444)

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 these are non-financial agreements.

BACKGROUND INFORMATION

Approval of the recommended Apple Inc. (Apple) agreements will enable the Registrar of Voters (ROV) to continue to securely and efficiently check in voters at polling places with electronic poll books for the June 7, 2022 Statewide Direct Primary Election and subsequent elections.

On October 22, 2019 (Item No. 39), the Board of Supervisors (Board) approved the purchase of 3,000 State-certified electronic poll books from KNOWiNK, LLC, which use Apple iPad hardware. On November 5, 2019 (Item No. 37), the Board approved non-financial Apple Business Manager Agreement No. 19-734 with Apple. On August 25, 2020 (Item No. 59), the Board approved replacement Agreement No. 20-884 with Apple reflecting the Board's approval of Apple's updated non-standard terms reflecting a revision date of April 15, 2020.

Poll books are a separate component of the overall voting system and are used during elections for the life of the new system (15-20 years). ROV first used poll books during the 2020 Presidential Primary Election. The licensing agreements for iOS, iPadOS, MacOS, and tvOS are being presented to the Board for approval of the non-standard terms for the first time.

The recommended Agreements with Apple are evergreen and will remain in effect until either the poll books are replaced with different State-certified poll books or Apple substantially amends the Agreements, whichever occurs first.

Per County Policy 11-05, the Board must approve non-standard or missing contract terms. The updated Agreements are for iOS, iPadOS, MacOS, tvOS, and Apple Business Manager. The Agreements require Board approval because they include substantive changes, including terms that differ from the standard County contract, as follows:

1. Disclaimer of Warranties.

- There is no warranty requirement in the County standard contract. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorney's fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) for any goods or services.
- Potential Impact: The disclaimer of warranty means that the software is provided "as is" with all faults and without warranty of any kind. If a problem arises with the software, the County will have no recourse against Apple to have the issue fixed at Apple's cost.

2. Limitation of Liability.

- The County standard contract does not include a limitation of liability.
- Potential Impact: Apple caps its liability at \$250.00 and states that it is not liable for corruption or loss of data, business interruption or any other commercial damages or losses. If a problem arises, the County will have no recourse against Apple to cover any losses the County may incur.

3. Termination.

- The County standard contract gives the County the right to terminate the Contract for any reason, with a 30 day written notice without any obligation other

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than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.

- Potential Impact: The County may not terminate the contract for convenience. In addition, the County agrees that the License will terminate automatically if it fails to comply with any terms of the License.

ROV recommends approval of the updated Agreements 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 will improve County government operations. The recommended updated Apple Business Manager Agreement allows ROV to continue to use and manage electronic poll books, which use Apple iPads to check-in voters on Election Day.

Recommendation No. 5 will authorize the Registrar of Voters or Chief Deputy Registrar of Voters to electronically execute the Apple agreements on behalf of the County, subject to review by County Counsel. This is recommended because all Apple documents must be executed electronically.

Recommendation No. 7 will authorize the Chief Executive Officer to approve contracts with non-standard language relating to agreements with Apple and the use of electronic poll books, subject to ratification by the Board at the next available Board meeting. This authority will provide flexibility for ROV to continue operations and utilize the tools necessary for elections in the event Apple's terms are updated close to or during the elections.

PROCUREMENT

As the result of a competitive procurement process, the Board 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 Agreements with Apple are required to utilize the Apple products required under the KNOWiNK contract.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jolena Grider, Deputy County Counsel, 387-5455) on February 11, 2022; Finance (Elias Duenas, Administrative Analyst, 387-4052) on February 11, 2022; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on February 11, 2022.

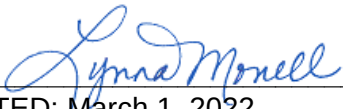
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 1, 2022



cc: ROV- Shea w/agree
Contractor- C/O ROV w/agree
File- w/agree
LA 03/8/2022