



Butte County Board of Supervisors Agenda Transmittal

Clerk of the Board Use Only

Agenda Item:

4.09

Subject: Agreement Amendment with Runbeck Election Services for Maintenance and Software Service

Department: Clerk-Recorder

Meeting Date Requested: June 8, 2021

Contact: Candace J. Grubbs

Phone: 530.552.3401

Regular Agenda

Consent Agenda

Department Summary: *(Information provided in this section will be included on the agenda. Attach explanatory memorandum and other background as necessary).*

In 2014 the County Clerk-Recorder/Registrar of Voters entered into an agreement with Runbeck Election Services for the purchase of an Agilis Sorting System, maintenance and software service. This unit is vital in the processing and counting of vote by mail ballots received at each election. On February 13, 2018 the Board of Supervisors approved a new agreement with Runbeck Election Services for continued maintenance and software service needed to operate the Agillis Sorting System.

The Clerk-Recorder/Registrar of Voters recommends amending the agreement with Runbeck Election Systems for maintenance and software service. The amendment extends the term of contract by four years through June 30, 2025, and increases the maximum payable amount by \$126,000, not-to-exceed \$249,000. All other terms remain the same.

Fiscal Impact:

Appropriations for this contract are included in department's budget.

Personnel Impact:

None

Action Requested:

Approve agreement amendment and authorize the Chair to sign.

Administrative Office Review: Danielle Nuzum, Deputy Chief Administrative Officer

2/13/18
304

CONTRACT NO.

STANDARD CONTRACT
Greater than \$25,000.00

X 2 2 9 3 4

This Contract, dated as of the last date executed by the County of Butte is between the County of Butte, a political subdivision of the State of California, hereinafter referred to as "County", and the Contractor indicated in the variable information table below hereinafter referred to as "Contractor."

COUNTY OF BUTTE

VARIABLE INFORMATION TABLE			
Term of This Contract (Complete Dates in Just One of the Following Three Rows)			
√ Below	Term Begins	Term Completion Date	
<input type="checkbox"/>	On Following Date	On Following Date 6/30/2021	
<input type="checkbox"/>	Upon Date Notice to Proceed Received	<input type="checkbox"/> Calendar Days Following Receipt of Notice to Proceed	
<input checked="" type="checkbox"/>	Upon Last Date Executed by County	<input type="checkbox"/> Calendar Days Following Execution of Contract by County	
County Department		FOB Point	
Terms		Basis of Price (Do Not √ More Than One of the Following Four Blocks)	
Price 0	<input checked="" type="checkbox"/> Fixed Price	<input type="checkbox"/> Annual Price	<input type="checkbox"/> Monthly Price
Not-to-Exceed Price 123,000		<input checked="" type="checkbox"/> if Reasonable Expenses are authorized in addition to Hourly Rate	
Contractor Contact Information		County Contact Information	
Contractor Contractor	Contractor Election Services, Inc.	Project Manager	Laurie Cassady
Address	2401 W 14 th Street, Suite 110	Address	155 Nelson Ave.
City, State & ZIP	Tempe, AZ 85016	City, State & ZIP	Oroville, CA 95965
Telephone	602-230-0510	Telephone	530-538-7762
Facsimile	602-437-1411	Facsimile	530-538-6853

WHEREAS, County, through the County Department identified above, desires to have work described in the Attachment III - Scope of Work performed; and

WHEREAS, Contractor possesses the necessary qualifications to perform the work described herein.

NOW THEREFORE BE IT AGREED between the parties to this Contract that this Contract is subject to the provisions contained in the following attachments, which are made a part of this Contract. Should there be any conflicts between this Contract and the attachments that are incorporated herein, precedence shall first be given to the provisions of this Contract followed by the attachments, in descending order, as indicated below:

- Attachment I - Terms and Conditions
- Attachment II - Standard Insurance Requirements
- Attachment III - Scope of Work

By signature below, the department head or his or her deputy certifies that no unauthorized alterations have been made to the Attachment I - "Terms and Conditions" and/or the Attachment II - "Standard Insurance Requirements."

Candace J. Grubbs

 Typed or Printed Name *Candace J. Grubbs* Signature 2/5/18 Date

This Contract and the above listed Attachments represent the entire undertaking between the parties.

COUNTY
Steve Lambert 2/27/18

 Steve Lambert, Date
 Chair Butte County Board of Supervisors

CONTRACTOR
James R. Suver 1/31/2018

 James R. Suver, Date
 Vice President Contractor Election Services, Inc.

REVIEWED FOR CONTRACT POLICY COMPLIANCE
 General Services Contracts Division

Just Woods 2/8/2018

 By Date

REVIEWED AS TO FORM
 BRUCE S. ALPERT
 Butte County Counsel

Bruce S. Alpert 2/12/18

 By Date

**ATTACHMENT I
TERMS AND CONDITIONS**

1. **Scope of Work.** The work to be undertaken is identified in the attached "Attachment III – Scope of Work" which is made a part of this Contract.
2. **Reimbursement.** The work shall be performed for the Fixed price, Annual price, Monthly price or Hourly rate as indicated above in the variable information table, but shall not exceed the Not-to-Exceed Price if included in the variable information table. Reasonable expenses are authorized in addition to the Hourly Rate if both the Hourly Rate block and the block authorizing Reasonable Expenses are checked in the variable information table. Payment shall be made after the Project Manager or designee reviews and approves the work and after submittal of an invoice by the Contractor.
3. **County Project Manager.** The County project manager or designee for this undertaking who will receive payment invoices and answer questions related to the coordination of this undertaking is identified above in the variable information table.
4. **Independent Contractor.** Contractor is an independent contractor, working under his/her own supervision and direction and is not a representative or employee of County. Contractor agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Contract.
5. **Confidentiality and Ownership.** The County retains the exclusive right of ownership to the work, products, inventions and confidential information produced for the County by the Contractor, and the Contractor shall not disclose any information, whether developed by the Contractor or given to the Contractor by the County.
6. **Termination.** This Contract may be terminated by either the County or Contractor by a thirty day written notice. Authorized costs incurred by the Contractor will be reimbursed up to the date of termination. Notwithstanding anything stated to the contrary herein, this Contract shall expire on the Completion Date indicated in the above Variable Information Table unless the Completion Date is modified by written amendment to this Contract.
7. **Indemnification.** Contractor agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the County, its officers, agents and employees from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including Contractor, to the extent arising out of or in connection with the negligent acts or omissions or willful misconduct in the performance by Contractor hereunder, whether or not there is concurrent negligence on the part of the County, but excluding liability due to the active negligence or willful misconduct of the County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under worker's compensation acts, disability benefit acts, or other employee benefits acts. Contractor shall be liable to County for any loss of or damage to County property arising out of or in connection with Contractor's negligence or willful misconduct.
8. **Insurance Requirements.** Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or be in connection with the performance of the Work hereunder by Contractor, Contractor's agents, representatives, employees and subcontractors. At the very least, Contractor shall maintain the insurance coverages, limits of coverage, and other insurance requirements as described in Attachment II to this Contract.
9. **Changes to the Contract.** Changes to this Contract may only be approved by written amendment to this Contract.

10. **Contractor's Standard of Care.** County has relied upon the professional ability and training of the Contractor as a material inducement to enter into this Contract. Contractor hereby warrants that all of Contractor's work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable Federal, State and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.
11. **Termination for Exceeding Maximum Level of Expenditures.** Contracts exceeding the monetary limits delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Supervisors. If this Contract was executed for the County of Butte by the Purchasing Agent, or authorized deputy, this Contract shall automatically terminate on the date that the provision of services or personal property or incurring of expenses, the cumulative total of which, exceeds the amount prescribed by Government Code Section 25502.5 for personal services contracts or the amount prescribed by Public Contract Code Section 22032 (b) for public works contracts.
12. **Termination for Exceeding Maximum Term.** Contracts exceeding the three year term delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Supervisors. If this Contract was executed for the County of Butte by the Purchasing Agent, or authorized deputy, this Contract shall automatically terminate on the date that the term exceeds three years. Amendments to this Contract, or new Contracts for essentially the same purpose, shall not be valid beyond the three year limitation unless duly executed by the Chair of the Board of Supervisors.
13. **Compliance with Laws.** Contractor shall comply with all Federal, State and local laws, rules and regulations including, without limitation, any nondiscrimination laws.
14. **Applicable Law and Forum.** This Contract shall be construed and interpreted according to California law and any action to enforce the terms of this Contract for the breach thereof shall be brought and tried in the County of Butte.
15. **Contradictions in Terms and Conditions.** In the event of any contradictions in the terms and/or conditions of this Contract, these Attachment I TERMS AND CONDITIONS shall prevail.
16. **No Delegation or Assignment.** Contractor shall not delegate, transfer or assign its duties or rights under this Agreement, either in whole or in part, directly or indirectly, by acquisition, asset sale, merger, change of control, operation of law or otherwise, without the prior written consent of County and any prohibited delegation or assignment shall render the contract in breach. Upon consent to any delegation, transfer or assignment, the parties will enter into an amendment to reflect the transfer and successor to Provider. County will not be obligated to make payment under the Agreement until such time that the amendment is entered into.

ATTACHMENT II
INSURANCE REQUIREMENTS FOR MOST CONTRACTS
Not for Professional Services or Construction Contracts

*Please provide a copy of Attachment II to your insurance agent.

Contractor shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property that may arise from or be in connection with the performance of the work hereunder by Contractor, Contractor's agents, representatives, employees and subcontractors. Before the commencement of work Contractor shall submit Certificates of Insurance and Endorsements evidencing that Contractor has obtained the following forms of coverage:

A. MINIMUM SCOPE AND LIMITS OF INSURANCE - Coverage shall be at least as broad as:

- 1) **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2) **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- 3) **Workers' Compensation Insurance:** As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury and disease. *(Not required if Contractor provides written verification he or she has no employees.)*

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS - The insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1) The County of Butte, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37 forms if later revisions used).
- 2) For any claims related to this contract, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- 3) Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

C. WAIVER OF SUBROGATION: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

- D. SELF-INSURED RETENTIONS:** Self-insured retentions must be declared to and approved by the County. The County may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
- E. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- F. VERIFICATION OF COVERAGE:** Contractor shall furnish County with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- G. SPECIAL RISKS OR CIRCUMSTANCES:** County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- H. SUBCONTRACTORS:** Contractor shall include all subcontractors as insured under its policies or require all subcontractors to be insured under their own policies. If subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing the County certificates of insurance and endorsements **before** beginning work under this contract.

ATTACHMENT III SCOPE OF WORK

Unless indicated otherwise herein, the Contractor shall furnish all labor, materials, transportation, supervision and management, and pay all taxes required to complete the project described below:

This Contract is for maintenance and support services for the Agilis Sorting System Equipment Exhibit A, Agilis Sorting System software license and Automated Signature Verification (AVS) software license, Exhibit B.

EQUIPMENT LIST

Primary location of the equipment:

County of Butte
County Clerk-Recorder
155 Nelson Ave.
Oroville, CA 95965-3411

Agilis Sorting System incorporating Auto Signature Verification, each includes:

- Agilis Sorting System
- 3 Stackers, 12 pockets
- 2 Label printers
- Automatic Opener
- Auto Thickness Detect
- Servers
- Monitor
- Keyboard
- Agilis Sorting Software
- Auto Signature Verification

MAINTENANCE SERVICES

Software Maintenance

- 7X24 technical software support hotline during declared election cycles
- Installation of all software updates
- Testing and validation of all software updates
- Software License Fees

Hardware Maintenance

- 7X24 technical support hotline during declared election cycles
- Hardware maintenance fees
- County also agrees to allow Contractor employees access to the equipment, when requested, during normal working hours.

Election Data

At the conclusion of the election, Contractor will provide phone assistance with the export of all election data from the Agilis Sorting System. This data will be retained by County. Media (DVDs, jump drives, etc.) for this data will be provided by County. County is responsible for the retention of this media and data.

Training

Training requires an on-site support fee, indicated below.

Materials management

- County is responsible for any pre-election inventory of Agilis Sorting System consumables.
- County is responsible for purchasing consumables, the shipping and taxes associated with such consumables.
- County is responsible for providing storage area that provides adequate space and maintains proper environmental conditions for stocking of supplies. County must provide Contractor notice of election at least 75 days in advance of 1st day that services will be required. County is responsible for installation of consumables while operating the Agilis Sorting System during an election cycle.

ON-SITE SUPPORT FEES

Dedicated on-site support, and/or training (does not include election set-up or routine maintenance) will be billed at a rate of \$1,750.00 for the first day (an eight-hour work day) and \$1,500 for each additional 8-hour work day. The amount billed shall be due and payable within thirty (30) days of the invoice date. This service is subject to availability.

OTHER

Taxes

If taxes apply, they will be the sole responsibility of County.

Shipping Fees

Shipping fees will apply as goods may be purchased and need to be shipped to the jurisdiction. Shipping fees are the sole responsibility of County.

End of contract options:

- Renew with existing system, for which new Usage, License, Maintenance and Service agreements shall apply.
- Upgrade existing system, for which new Usage, License, Maintenance and Service agreements shall apply.

EXHIBIT A

EQUIPMENT MAINTENANCE AND SUPPORT SERVICES

Upon payment of the required fees by County, Contractor shall provide Equipment maintenance and support services as set forth in this Exhibit "A".

1. Annual Equipment Maintenance Fee.

County shall pay to Contractor an Annual Equipment Maintenance Fee ("Fee") of \$7,500.00 for Agilis Sorting System. All payments of this Fee shall be made on each successive anniversary term of this Agreement.

2. Equipment Maintenance Services.

For payment of the Fee, Contractor shall perform preventative maintenance on Equipment once each year. The maintenance will be performed on a date and time that is mutually acceptable to the parties. The maintenance performed shall be Pre-election or Post-election Maintenance as described below:

A. Pre-election Preventative Maintenance.

- i. Cleaning and inspection of the Equipment
- ii. Replacement of any worn parts that need to be replaced*
- iii. Correct any hardware or software issues
- iv. Post maintenance testing

B. Post-election Preventative Maintenance.

- i. Cleaning and inspection of the Equipment
- ii. Replacement of any worn parts that need to be replaced*
- iii. Assisting County with the extracting of election data and archiving such data. Archive media will be provided by County.
- iv. All systems will be properly shut down and power will be removed.

* County is solely responsible for paying the cost (including the shipping costs and any applicable taxes) of any replacement parts and consumables that are needed for the Equipment.

3. Consumables.

County acknowledges that the Equipment includes consumable items that require replacement. The consumables include, but are not limited to, such things as belts, rollers and tray tags. County shall be solely responsible for the cost (including the shipping costs and any applicable taxes) to purchase all consumables that are needed for the Equipment. County is responsible for installation of the consumables.

4. Additional Remote Support.

The Contractor will provide County with a toll-free telephone number that it may use for assistance in addressing any Equipment issues that may arise or for general questions related to the use of the Equipment.

EXHIBIT B

SOFTWARE LICENSE

1. Grant and Scope of License.

A. Grant of License. Subject to County's discharge of its material duties under this Agreement, to include the timely payment of any fees due hereunder, Contractor hereby grants to County an irrevocable, non-exclusive right and license to install, display and use the Software pursuant to the terms of the Agreement. For the avoidance of doubt, the license granted under this clause shall become revocable in the event that County materially breaches this Agreement and County fails to cure within the proscribed cure period.

B. Title. Contractor shall at all times retain title to the Software provided by it hereunder and Contractor does not convey any proprietary interest therein to County.

C. Updates. For payment of the required fees by County as set forth herein and in the Service Agreement, Contractor shall provide to County updates of any Software licensed hereunder at no additional charge and continue to maintain the Software in accordance with the requirements of the attached Service Agreement as long as County continues to pay annual license and support services fees with respect to such Software.

D. Breach. In the event County commits a material breach of its obligations under this Agreement, to expressly include its failure to timely pay any fees due hereunder, and County fails to cure the breach within sixty (60) days after receiving notice thereof, Contractor may terminate this Agreement, and the license hereunder, immediately upon delivery of written notice to County.

2. Annual Software License Fee.

A. Fees. Contractor will invoice County for the annual Software License Fee, which is \$14,000.00 per year for the Agilis Sorting System software and \$7,000.00 for the Automated Signature Verification software in accordance with this Agreement. All payments of this Fee shall be made annually on each successive anniversary term of the Service Agreement, for as long as County continues to use referenced Software. The license for the Software entitles County to the Warranties in Section 4 below but does not otherwise entitle County to receive maintenance and support or updates to the Software

B. Invoices. Contractor's invoices will conform to the format requirements of County as shown in Exhibit C. County will pay Contractor's valid invoices within thirty (30) days after receipt.

3. Maintenance of Software: Term and Termination.

A. Maintenance Services. During the term of this Agreement and subject to payment of any required fees by County, Contractor agrees to provide 24/7 maintenance and support services for the Software ("Maintenance Services").

B. Software Updates. Contractor shall provide updates to the Software as they become available. Installation of Software updates will include testing and validation of the updated Software. The Contractor will provide County with a toll-free support hotline number that may be used to obtain assistance with the Software during the term of this Agreement, subject to payment of any required fees.

C. Term and Termination. This Agreement shall be effective as of July 1, 2017, and shall expire upon termination of the Service Agreement, unless mutually terminated earlier.

4. Warranties.

A. In addition to any warranties which may be contained in this Service Agreement, Contractor provides the following warranties:

i. Non-Infringement. Contractor warrants that Contractor owns the Software, including all associated rights, and has the right to grant County the licenses provided pursuant to this Agreement, free from all liens, claims, encumbrances, security interests and other restrictions. Contractor warrants that the Software does not, and use of the Software will not; infringe any valid patents, copyrights, trademarks, trade secrets, or other proprietary rights of any third parties.

ii. Correction of Defects. In the event of discovery of any material defect in the Software, County agrees to provide Contractor with sufficient detail to allow Contractor to verify and reproduce the error, and Contractor shall use reasonable diligence to correct such defect. Contractor shall use its reasonable efforts to promptly respond and thereafter to diagnose and correct the material defect. Contractor is not responsible for any error in the Software that has been modified by County without Contractor's prior written consent. County's sole remedy in the event of a breach of this warranty is to require that Contractor correct any material defects.

iii. Performance of Services. Contractor represents and warrants that all services provided by Contractor to County will be performed in a timely, competent and workmanlike manner. Contractor further represents and warrants that it has a sufficient number of competent, qualified employees to provide the Services to support the Software.

iv. Contractor Disclaimer of All Other Warranties. Except as otherwise expressly stated in the Service Agreement and in this Agreement, Contractor makes no representations or warranties concerning the Software. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND CONTRACTOR HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT C
INVOICE SCHEDULE

Invoice To: County of Butte
County Clerk-Recorder
155 Nelson Ave.
Oroville, CA 95965-3411
Attention: Hon. Candace J. Grubbs
County Clerk-Recorder/Registrar of Voters
Fax No.: 530-538-7975

Contract Period July 1, 2017-July 31, 2021

Contractor shall invoice county in the following format:

License and Maintenance Fees	Year 1 (2017-18)	Year 2 (2018-19)	Year 3 (2019-20)	Year 4 (2020-21)
	July 30, 2017	July 30, 2018	July 30, 2019	July 30, 2020
	of this agreement on existing equipment	of this agreement on existing equipment	of this agreement on existing equipment	of this agreement on existing equipment
ASV License Fee	\$7,000	\$7,000	\$7,000	\$7,000
Software License Fee	\$14,000	\$14,000	\$14,000	\$14,000
Maintenance Fee	\$7,500	\$7,500	\$7,500	\$7,500
Total	\$28,500	\$28,500	\$28,500	\$28,500
Estimated Sales Tax	\$2,066.25	\$2,066.25	\$2,066.25	\$2,066.25
Total	\$30,566.25	\$30,566.25	\$30,566.25	\$30,566.25

NOTES

Any applicable taxes are the sole responsibility of County